

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 159
5148979

BETWEEN WENDUO (ROBERT) PENG
Applicant

AND DRAPAC LIMITED
Respondent

Member of Authority: Yvonne Oldfield

Representatives: Royal Reed and Jessica Middleton for Applicant
Dr Quan Shu, Director, for Respondent

Submissions received: 17 January 2011 from Applicant
13 April 2011 from Respondent

Determination: 18 April 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Peng's substantive employment relationship problem was the subject of a determination dated 23 December 2010. It recorded that he had made out a personal grievance of unjustified dismissal in respect of which he was awarded remedies of lost earnings (\$12,500.00) and compensation (\$7,000.00). In relation to a separate claim he was awarded \$4,278.48 holiday pay and \$2,971.80 unpaid statutory holidays.

[2] It has now been submitted for the applicant that his legal costs exceeded \$10,000.00 although invoices were not provided. No specific figure was placed on the claim for costs. Instead it was submitted that:

“the applicant requests the Authority to assess a fair and reasonable award of costs.”

[3] Dr Shu responded as follows on behalf of his company:

“Although the respondent is not happy with the determination and is currently applying for a hearing to challenge the Authority determination, the original authority determination did decline many of the Applicant’s claims.

The Respondent believes that it is a fair way for both parties to be responsible for their own costs. Accordingly, the Respondent requests the Authority to assess a fair and reasonable solution on this matter on above basis. “

Determination

[4] Dr Shu is correct in his submission that the respondent’s defence was partially successful. As the determination records, the evidence was not sufficient to prove additional claims for arrears of wages including a bonus claim.

[5] The investigation of this matter required two days of meetings however neither was a full day. Further information was then received from the parties in a somewhat piecemeal fashion. With better organisation this could have been presented prior to the meeting.

[6] Overall the matter was not unduly complex. I am satisfied that all aspects of the employment relationship problem were capable of being investigated in a one day meeting and that any award of costs should be commensurate with that length of investigation. On that basis I consider an appropriate level of contribution to be \$3,000.00.

[7] **The respondent, Drapac Limited, is therefore ordered to pay the sum of \$3,000.00 to the applicant as contribution to his costs.**

Yvonne Oldfield

Member of the Employment Relations Authority