



# New Zealand Employment Relations Authority Decisions

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## Tan v Wong and anor (Christchurch) [2010] NZERA 942 (20 December 2010)

Last Updated: 11 January 2011

### IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

CA 189A/10 5156771

BETWEEN BOON CHWEE TAN

Applicant

A N D CHUNG WONG

First Respondent

A N D ASHA CO LIMITED

Proposed Second Respondent

Member of Authority: Helen Doyle

Representatives: John Horan, for Applicant

Robert Davidson, for First and Second Respondents

Submissions Received: 19 October 2010 from the Applicant

15 November 2010 from the Respondent

Determination: 20 December 2010

### COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 29 September 2010 the Authority found that the applicant was owed money for holidays, working on public holidays, payment for lieu days and overtime. A significant award was made in that respect against both the first and second respondent. The Authority also found that there was an unjustified dismissal and grievance and ordered payment of \$3000 compensation. The Authority reserved the issue of costs.

[2] Mr Horan and Mr Davidson have now provided costs submissions to the Authority. Mr Horan seeks total costs of \$59,290.00 which costs include in addition to Mr Horan's own costs, two days for the investigation meeting at \$3500 per day and disbursements set out as follows:

- Accountancy costs for analysis and determination of wages from December 2000 - 2009 and preparation and presentation of statement of claim plus incidental expenses \$5040.00 (invoice attached)
- Legal advice and services rendered in the sum of \$3,300 between April 2009 and October 2010 to Mr Horan re assistance in the applicants case and
- Department of Labour hearing fee in the sum of \$172.50.

[3] Mr Davidson opposes costs on behalf of his clients and submits the claim is excessive, that the respondents should not be liable for costs in obtaining legal advice and that the way the case was presented and the claims made were excessive and inaccurate.

[4] He submits that the Authority should adopt the principles set down by the full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*

[2005] 9 December 2005.

## Determination

[5] This matter took almost two full days to investigate. I accept Mr Davidson's submission that the matter was not legally or factually complex however because of the passage of time over which payments were made and some issues around the identity or change in the employer party, there were some complicating matters. The assessment of the claim itself in the absence of any records was time consuming rather than complex.

[6] Mr Horan would not agree to the claim being against the second respondent. The Authority had to therefore propose a joinder of the second respondent and the parties provided submissions. The Authority then determined that the second respondent should be joined. The company was a party to two employment agreements with the applicant over the course of her employment. The position taken in this regard increased costs. The other matter that increased costs was that the applicant continued to maintain a claim for lost wages beyond six years notwithstanding some guidance from the Authority on that matter at an early stage.

[7] One of the matters that I have regard to is the accountant's analysis of unpaid wages, holiday pay, statutory days and time in lieu for which she charged the sum of \$5,040.00. This has been claimed as a disbursement by the applicant. Aside from that information the statements of evidence provided on behalf of the applicant were not particularly extensive or lengthy.

[8] The accountant's records were helpful for the applicant to assess the sorts of awards that could possibly be made and for the Authority to understand the possible amounts involved. I am not satisfied though that this was the sort of case where an accountant's assessment of money owing was necessary. I do not consider that there should be an award in terms of that invoice as a disbursement.

[9] The other claim as a disbursement that is out of the ordinary is the invoice for legal advice from David Paris expressed to be advice to Mr Horan with respect to the applicant's claim. I am not satisfied that this should be a claim that the respondents are responsible for.

[10] The usual daily tariff in the Authority as accepted by the Employment Court in its judgements ranges up to \$3,000 or even higher in a complex matter. I accept that rather than this being a complex matter it was time consuming and required a more careful analysis of the amounts claimed. On that basis, although the matter did not take two full days, I have assessed an appropriate daily tariff at \$3000 per day to arrive at a figure of \$6000.

[11] Mr Davidson submits that the applicant's claim was not completely successful. I accept that, but I have also taken into account the absence of records to assist the applicant and the fact that probably the evidence would have had to have been given in any event so there was no significant effect on the time taken to investigate. I do not therefore make any adjustment in that regard.

[12] I do however make an adjustment of \$500 for the extra costs incurred by virtue of the joining of the second respondent at a late stage and the maintaining of a claim for lost wages in excess of six years from the date of lodging. Both these matters increased the costs before the Authority.

[13] Applying the principles in *PBO* and in particular observing that costs in the Authority are usually modest I am of the view that a fair and reasonable award for costs would be \$5,500 and I allow disbursements of \$70 for the filing fee and \$172 hearing fee on top of that. Costs and disbursements in this matter are in the sum of \$5742.00.

[14] Mr Davidson has asked that the costs be apportioned between the two respondents appropriately. A fair apportionment would be 40% of \$5742 to be paid by the first respondent and 60% of \$5742 to be paid by the second respondent and I so order.

Helen Doyle  
Member of the Employment Relations Authority