



Employment Court of New Zealand

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Tan v Yang [2014] NZEmpC 122 (10 July 2014)

Last Updated: 17 July 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 122](#)

ARC 45/13

IN THE MATTER OF a challenge to a determination of
 the
 Employment Relations Authority

AND IN THE MATTER an application for costs

BETWEEN WILLIAM TAN Plaintiff

AND FENGQIN YANG AND JINFU ZHANG
 Defendants

Hearing: By memoranda received on 30 May and 25 June
 2014

Appearances: T Delamere, advocate for plaintiff
 F Joychild QC, counsel for defendants

Judgment: 10 July 2014

COSTS JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] I gave my substantive judgment in this matter on 9 May 2014¹ dismissing the plaintiff's challenge to a determination of the Employment Relations Authority.² At the conclusion of my judgment I made timetabling orders for the exchange of submissions in the event that costs could not be agreed between the parties. Counsel

for the defendants, Ms Joychild QC, filed submissions in accordance with the orders made. No submissions were received on behalf of the plaintiff within the specified timeframe, despite further communication from registry staff. A belated memorandum was filed on 25 June 2014 explaining the delay and setting out brief

submissions. Ms Joychild did not object to the Court having regard to these

¹ *Tan v Yang* [2014] NZEmpC 65.

² *Yang v Tan* [2013] NZERA Auckland 208.

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submissions and I have accordingly considered the points made on behalf of the plaintiff in determining costs.

[2] Clause 19(1) of Sch 3 to the [Employment Relations Act 2000](#) (the Act)

confers a broad discretion as to costs. It provides that:

(1) The court in any proceedings may order any party to pay to any other party such costs and expenses ... as the court thinks reasonable.

[3] The discretion to award costs, while broad, is to be exercised in accordance with principle. The primary principle is that costs follow

the event. The usual starting point in ordinary cases is 66 per cent of actual and reasonable costs. From that starting point factors that justify either an increase or decrease are assessed.

[4] The defendant is legally aided. The recovery of costs by a legally aided person is governed by the same principles as those that generally apply.

[5] According to the tax invoices that have been filed in support of the defendants' application for costs, the legal fees incurred in defending the plaintiff's challenge amounted to \$6727.50. Disbursements totalling \$10,169.80 were also incurred.

[6] Mr Delamere, advocate for the plaintiff, submits that the costs were unreasonable but does not specify why this is said to be so. I accept, having regard to the nature of the challenge and the steps that were required to respond to it, that the claimed legal costs were reasonable.

[7] Ms Joychild submits that an award of indemnity costs is appropriate or, alternatively, that an increased award of costs ought to be made having regard to the plaintiff's conduct in commencing and pursuing the challenge in this Court. The plaintiff submits that it would be unfair to award the costs sought by the defendants because of their conduct in seeking a job offer on behalf of their daughter. It is the plaintiff's conduct in pursuing the litigation, not the defendants' conduct in relation to events giving rise to it, that is relevant.

[8] Useful guidance to the award of indemnity costs may be found in the High Court Rules. Rule 14.6(4) provides that the Court may order a party to pay indemnity costs if the party has acted vexatiously, frivolously, improperly or unnecessarily in commencing or continuing a proceeding.

[9] It is well established that indemnity costs may be ordered where a party makes allegations of fraud knowing them to be false and where irrelevant allegations of fraud are made.³ Very serious allegations were levelled against the defendants. The basis of the plaintiff's claim was effectively that the defendants (an elderly migrant couple) had knowingly put in evidence a forged receipt to support a claim that they had made a payment to him. This had been pursued, and rejected, in two other fora (the Disputes Tribunal and the Employment Relations Authority) and was similarly rejected in this one. The plaintiff's claim as to the defendants' conduct was implausible, the "expert" evidence given in support of the plaintiff's claim was rejected, the plaintiff's credibility was found to be lacking and the contemporaneous documentation did not support the position he was advancing.

[10] In the circumstances of this case, and having particular regard to the nature of the serious and baseless allegations made against the defendants, I consider that an award of full costs is appropriate. The plaintiff is accordingly ordered to pay to the defendants legal costs of \$6727.50. I am satisfied that the claimed disbursements were reasonably necessary for the conduct of the proceeding and that they are reasonable in amount. The plaintiff is therefore also ordered to pay the defendants

\$10,169.80 by way of disbursements.

Judgment signed at 10 am on 10 July 2014

Christina Inglis
Judge

3 *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [28]- [29].