

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 66
5627030

BETWEEN IVAN VOO
Applicant

AND ACG YOOBEE SCHOOL OF
DESIGN LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Eska Hartdegen for Applicant
Ray Parmenter for Respondent

Submissions received: 28 February 2017 from Applicant
20 February 2017 from Respondent

Determination: 13 March 2017

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A. Mr Voo is ordered to pay to ACG Yoobee School of Design Limited a contribution to its costs in the sum of \$3,500 within 28 days of the date of this determination.**

[1] In a determination dated 27 January 2017¹ I found that one or more conditions of Mr Voo's employment were not affected to his disadvantage by unjustifiable actions of ACG Yoobee School of Design Limited (Yoobee School of Design), that Yoobee School of Design had not breached its statutory obligations of good faith and that Mr Voo was not unjustifiably constructively dismissed.

[2] I reserved costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file costs memoranda and evidence. An attempt was made by Yoobee School of Design to resolve the matter of costs but

¹ [2017] NZERA Auckland 24.

received no response from Mr Voo. Memoranda from the parties have been received by the Authority for consideration.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

Determination of costs

[4] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[5] As held by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.² As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*³ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[6] Yoobee School of Design seeks a contribution to its costs equivalent to the daily tariff of \$3,500. In my determination dated 27 January 2017 at paragraph [115] I directed the parties to include information about how and when costs were incurred. The Authority has not received from Yoobee School of Design any information about the level of costs or a breakdown of how its costs were incurred.

[7] Mr Voo submits a reasonable contribution to costs would be \$1,000. Mr Voo gave evidence at the investigation meeting that he has chosen to set up his own business and has not earned income since he was put on sick leave by his doctor. Mr Voo has not provided any evidence about his ability or otherwise to pay a contribution to costs.

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

³ (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

[8] The hearing took one day. There was nothing overly complex about the matters in question and taking all the circumstances into account I consider it appropriate that Mr Voo pay to Yoobee School of Design the amount of \$3,500 as a contribution to its costs and that this payment be made within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority