

accordance with principle and not arbitrarily. Costs are not to be punitive and will generally be modest. The conduct of the parties can also be taken into account.

[5] The hearing on the second day was prolonged by the applicant's reluctance to answer questions.

[6] Mr Xian's submissions on costs stated that it was unfair for him to pay the respondent's costs and that as the respondent had chosen to hire a lawyer it should bear the costs of doing so.

[7] Mr Xian also appeared to be under a misapprehension that the respondent could only ask for the application fee. The application fee is paid by the applicant and legal costs can be sought by the successful party against the unsuccessful party.

[8] The respondent had to expend time and money to defend an unmeritorious claim. Given my assessment that Mr Xian's conduct lengthened the hearing time it is fair in the circumstances to depart from the notional daily rate.

[9] The applicant is to pay the respondent the sum of \$3,500 in costs.

Dzintra King

Member of the Employment Relations Authority