

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 88/10
5146492

BETWEEN ZHAO YANG
 Applicants

AND NEW ZEALAND COLLEGE
 OF CHINESE MEDICINE
 Respondent

Member of Authority: Marija Urlich

Representatives: Evgeny Orlov, Counsel for Applicant
 Ross France, Counsel for Respondent

Costs memorandum 27 November 2009 and 18 February, from Respondent
received: 11 February 2010, from Applicant

Determination: 24 February 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 29 October 2009 (AA376/09) I found the relationship between the parties was not an employment relationship and that Mr Yang was an independent contractor. Costs were reserved. The parties have been unable to resolve this issue and costs memoranda have been filed setting out the parties' respective positions.

[2] In his memorandum to the Authority Mr Ross advises the College's costs in relation to this matter total \$5967.50 and that the respondent seeks a contribution to those costs of \$1750.00 on the following rounds:

- The respondent was successful and costs should follow the event;
- By letter dated 26 November 2009 the respondent offered to settle the issue of costs with the applicant for \$1750. No reply was received and costs memorandum was filed in accordance with the timetable set by the Authority;

- The nature of the applicant's claim required a significant level of preparation, 22.1 hours of counsels time in total; and
- Additional costs were unnecessarily incurred – the first scheduled investigation meeting was adjourned at counsel for the applicant's request because the applicant had not expected to be questioned.

[3] Mr Orlov submits a reasonable contribution to the respondent's costs to be \$500 given the following:

- There was insufficient time to consider the respondent's costs settlement proposal;
- Costs awards for a one day hearing fall between \$1000 and \$1500;
- The overall question in a costs setting is what is reasonable and fair between the parties; and
- Any costs award should be minimal given the question before the Authority was jurisdictional and the hearing lasted half a day.

Determination

[4] *PBO Ltd v Da Cruz*¹ sets out the appropriate principles to be applied by the Authority in exercising its costs discretion. It is usual that costs follow the event. I find that an award of costs is warranted in this matter. In the circumstances of these proceedings, in particular the nature of the matters before the Authority and the hearing time involved (less than a full day), and accepting \$3000² as a usual notional daily rate in the Authority, I set the costs award at \$1600.00.

[5] **Zhao Yang is ordered to pay \$1600.0 in costs to the New Zealand College of Chinese Medicine: pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority

¹ [2005] 1 ERNZ 808

² *Chief Executive, Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73

