

[4] The statement of problem does not mention the raising of any grievance and gives no date on which that was done in respect of Ms Yang's employment, but the statement asserts that Ms Yang had not understood legal matters in the New Zealand system and had not realised she had been treated unfairly until she spoke to an immigration lawyer in December 2008. The application was lodged the following month, over three years after the alleged termination of employment.

[5] Presumably Ms Yang received advice about her employment law situation from her lawyers, Royal Reed & Associates, the firm that lodged the statement of problem on her behalf.

[6] A response to the claim on behalf of Persona Beauty Therapy Limited was received from law firm Wynyard Wood. The response raised an objection to the Authority's jurisdiction to determine the claim, on the grounds that more than three years had elapsed since Ms Yang's employment ended. The point was also raised that Ms Yang was outside the 90 day period for raising a personal grievance, assuming the statement of problem was the first communication of any grievance by Ms Yang.

[7] There cannot be any consideration given to the 90 day issue (or to whether exceptional circumstances exist) until an employment relationship problem has been properly brought before the Authority. This required an application by Ms Yang for leave to be given under s 219(3) of the Act, extending the three year lodging period.

[8] After directions were given to the parties on 16 February 2009, Ms Yang's solicitors wrote advising that she was withdrawing the claim from the Authority.

[9] Mr Bruton, a director of Persona Beauty Therapy Limited, in his application for legal costs is entitled to his suspicion that the claim had always been just try-on by Ms Yang, to extract money through the threat of proceedings and from the fear that successfully defending the claim might cost more than the cost of paying out to settle it.

[10] It is significant that Ms Yang was legally represented in bringing this claim and therefore must be taken to have had the opportunity to weigh up the chances of it being properly brought before the Authority, given the delay that had occurred. If that considerable hurdle was able to be overcome then there was a second hurdle in relation to the 90 day requirement, and if that could not be overcome there was yet a

third hurdle in relation to the exceptional circumstances ground for allowing a grievance to be raised out of time.

[11] In the face of those considerable hurdles and with legal advice Ms Yang had elected to attempt to bring the claim. She then withdrew it as soon as she was challenged as to her ability.

[12] I consider that the legal fees incurred by the respondent were reasonable in all the circumstances and therefore in principle the company is entitled to recover costs. I am satisfied from the copies of Wynyard Wood invoices that the legal costs incurred by Persona Beauty Therapy Limited were \$2,473 (excluding GST), with additional expenses of \$123.

[13] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, in the exercise of the Authority's discretion Ms Lin Yang is ordered to pay \$1,750 to Persona Beauty Therapy Ltd, as a reasonable contribution to the legal costs and expenses needlessly incurred by the company.

[14] No order can be made against Ms Royal Reed as sought by Mr Bruton, as she was not a party to the claim of her client Ms Yang but was her representative.

Alastair Dumbleton

Member of the Employment Relations Authority