

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 85
5286771

BETWEEN WEI CHENG (JAMES) YU
 Applicant

AND GOLDEN WORLD (NZ)
 LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 10 December 2010 and 14 January 2011

Determination: 7 March 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] On 29 November 2010 under AA495/10 the Authority determined that Mr Wei Cheng Yu (James Yu) had been unjustifiably dismissed from his employment and underpaid holiday pay. The Authority also determined that Mr Yu's employer, Golden World (NZ) Limited, had failed to give him a copy of the proposed employment agreement as required by s 63A(2)(a) of the Employment Relations Act 2000.

[2] To resolve Mr Yu's employment relationship problems the Authority ordered Golden World to pay him \$6,375 in reimbursement of lost wages, \$4,500 as compensation, \$604 as holiday pay and \$1,000 as half of a penalty awarded for breach of s 63A of the Act.

[3] Costs were reserved and a timetable was given for application to be made and replied to.

[4] Mr Yu has applied for an award of the full costs charged to him by Mr Nutsford his representative who invoiced total time of 28 hours. The investigation meeting took about one third of that, spread over 2 days. A rate of about \$250 per

hour was charged by Mr Nutsford for his services, giving a total of \$6,925 (excluding GST) and disbursements of \$157

[5] In a reply to the costs application Golden World addressed at length a number of complaints but not the merits of the costs application, or not directly. The complaints are about the Authority's investigation, the Authority's determination and the Authority itself. Appropriate procedures exist for addressing complaints of that nature which are not matters relevant in considering a costs application.

[6] Costs are normally awarded in the Authority on a reasonable contribution basis. There is no reason, and none has been suggested, to depart from that approach in this case by awarding full costs as sought.

[7] Applying normal principles as set out in *PBO (formerly Rush Security) Ltd v. Da Cruz* [2005] 1 ERNZ 808, an order of \$2,750 per full day of investigation seems justified. The investigation required the Authority to establish facts in dispute rather than being a case of any great legal complexity. I take into account that the investigation meeting lasted less than a day and a half but also that Golden World needlessly put Mr Yu to the expense of responding to an application it made after the claim was lodged seeking an order that Mr Yu give security for costs. This was an entirely unmeritorious application which was declined by the Authority.

[8] Exercising the discretion of the Authority to award costs, I consider that an appropriate sum will be \$4,000 including disbursements.

Determination

[9] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Golden World (NZ) Limited is ordered to pay James Yu \$4,000 as a contribution to his costs of representation and the expenses incurred by him in bringing this case successfully.

A Dumbleton
Member of the Employment Relations Authority