

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 114
5345174

BETWEEN GUANJUN ZHANG
 Applicant

AND JOHNSON GROUP NZ
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 Royal Reed, Counsel for Respondent

Submissions Received 1 March 2012 from Applicant
 1 March 2012 and 9 March 2012 from Respondent

Determination: 30 March 2012

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] The Authority issued a determination on the substantive matter on 13 February 2012. The central finding was that Mr Zhang had not satisfied the Authority that he had a personal grievance.

[2] Costs were reserved.

The application for costs

[3] Johnson Group NZ Limited (Johnson Group), as the successful party, seeks an award of costs in the sum of \$4,000.

[4] Johnson Group says that, as the evidence in the substantive matter disclosed, it was already experiencing financial stress as a consequence of the downturn in its business, and the defence of this claim exacerbated that.

[5] It is contended for Johnson Group that Mr Zhang's claim was not just unmeritorious but also vexatious because of his contention that he was unjustifiably dismissed when the Authority preferred the weight of evidence suggesting that Mr Zhang had in fact resigned his employment because he had found a better position elsewhere.

The response

[6] Mr Zhang's response to the costs application is based on the thesis, already rejected by the Authority, that he was the victim of an unjustified dismissal dressed up as a redundancy. As submissions for Johnson Group correctly maintain, that view of matters was firmly rejected, on the evidence, by the Authority.

[7] However, in his submissions in opposition to the fixing of a sum of costs in favour of Johnson Group, Mr Zhang's former solicitors draw attention to correspondence from a firm of solicitors then acting for Johnson Group which refers to Mr Zhang's dismissal as a redundancy.

[8] However, in a response to those submissions specifically requested by the Authority, Johnson Group first quite properly draws attention to the Authority's earlier rejection of the termination of the employment as an improper redundancy and second points out that the firm of solicitors whose correspondence is relied upon by Mr Zhang's submissions on costs no longer acts for Johnson Group, was not involved in Johnson Group's successful defence of Mr Zhang's claim and indeed was specifically dismissed from acting for Johnson Group on the basis of erroneously representing to third parties that Mr Zhang's dismissal was a redundancy.

The law

[9] The relevant law on costs fixing in the Authority is well settled. The well known decision of the Full Bench of the Employment Court in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 provides an admirable summary of that jurisprudence.

[10] Relevant principles to be discerned from that judgment include the precepts that costs in the Authority will typically be modest, reflecting the non-adversarial environment, that costs will usually follow the event, and that it is appropriate for the Authority to apply a daily tariff in considering costs fixing.

[11] As to the daily tariff, the Authority has recently considered the quantum of the daily tariff, having regard to the effects of inflation and the consequential increase in charge out rates for lawyers and lay advocates. In consequence, the Authority has determined that a starting figure of \$3,500 per day will apply from now on.

Determination

[12] This was a straightforward matter dealt with in around a half day's hearing time, the total time itself being augmented by Mr Zhang's determination to dismiss his counsel during the course of the hearing and to then continue with the matter acting for himself.

[13] Had this matter taken a full day, the Authority would, in the normal course, be perfectly justified in fixing costs at the daily tariff rate of \$3,500. Given that the matter was dealt with in under a day of hearing time (commencing at 10am and concluding at 2pm), some reduction in the daily tariff is appropriate.

[14] However, Johnson Group maintains that Mr Zhang's application was frivolous and entirely without merit. The Authority is not persuaded Mr Zhang's claim was frivolous and entirely without merit. The Authority is satisfied that Mr Zhang was entitled to bring his claim but that it was unsuccessful. This is not a case where any additional impost should sound in costs.

[15] In all the circumstances of the present case, the Authority thinks that a figure of \$2,750 ought to be paid by Mr Zhang to Johnson Group to contribute to the latter's legal costs in successfully defending Mr Zhang's personal grievance claim.

[16] Mr Zhang may need time to pay this amount and that is allowed.

James Crichton
Member of the Employment Relations Authority