

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 121A/09
5138674

BETWEEN QUI ZHANG
 Applicant

AND SCENIC CIRCLE HOTELS
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Tim Oldfield, Counsel for the applicant
 Mike Hodges, Advocate for the respondent

Submissions: 17 August 2009 from the applicant
 25 August 2009 from the respondent

Determination: 1 September 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 4 August 2009 I upheld Ms Zhang's personal grievance claim. Costs were reserved for determination following written submissions which are now to hand. This determination resolves the issue of costs.

[2] Ms Zhang was represented by her Union's solicitor. There is a claim for costs of \$750.00 and disbursements for travel, accommodation and the lodgement fee. The investigation meeting took a little over half a day and was a straight forward case of its type. The claim is on a daily tariff basis at the low end of typical awards to reflect the use of the Union's in-house counsel.

[3] The respondent says that costs should lie where they fall. The first point is that Ms Zhang was represented by her Union. That does not disqualify a party from an award of costs: see *O'Malley v Vision Aluminium Ltd* [1992] 2 ERNZ 1043.

[4] The Union's solicitor is based in Auckland so Ms Zhang was represented by out of town counsel and there is a claim for travel and accommodation expenses. The respondent says that it should not have to pay for the Union's decision to locate counsel out of Christchurch. There is no merit in this point. Ms Zhang could have instructed local counsel but that would have incurred much higher legal costs and resulted in a larger costs claim and likely award than at present. Here, everyone including the respondent has benefitted from the more modest legal costs incurred by use of the Union's Auckland based solicitor even including the claimed disbursements.

[5] The respondent says that there should not be any costs award because of the finding in the substantive determination that Ms Zhang contributed to the situation giving rise to her grievance and her remedies were accordingly reduced. I do not accept this point. While Ms Zhang's contribution was substantial and resulted in a reduction in remedies of 50%, to bring that to account now would be to penalise her twice. That would be wrong in principle: see *O'Connor v Wellington City Council* [1990] 3 NZILR 653. On any view of the matter Ms Zhang succeeded in her personal grievance claim and is entitled to an award of costs assessed in the usual way in accordance with *PBO Ltd v Da Cruz* [2005] ERNZ 808.

[6] The respondent says that costs should not be used as a punishment against the unsuccessful party. That is a correct statement of principle but the claim for cost here is not advanced on a punitive basis. What is sought is a modest contribution to costs reasonably incurred. I am told that the respondent has incurred considerable costs itself. That may be correct but it does not disentitle Ms Zhang to an award of costs.

Summary

[7] Scenic Circle Hotels Limited is to pay Ms Zhang \$750.00 in costs.

[8] Scenic Circle Hotels Limited is to pay Ms Zhang disbursements of \$360.68 for travel and accommodation and \$70.00 for the lodgement fee.

