

The response

[5] Submissions for Tan Pacific proceed on the footing that first there should be no costs awarded at all because Mr Tan who describes himself as the manager of the respondent, allegedly was unaware of the proceedings, unaware of the Authority's process, unaware of the various claims made by Ms Zhang and only became cognisant of the position when he found a copy of the Authority's determination in his mail box.

[6] The affidavit evidence filed by Mr Tan focuses principally on his various criticisms of the service on him of documents during the course of the Authority's investigation process.

[7] In the alternative, Mr Tan submits that if the Authority is not minded to let costs lie where they fall, then the claims made for costs on Ms Zhang's behalf are unreasonable given the extent of the Authority's investigation.

Determination

[8] The legal principles relating to costs fixing in the Authority are now well settled and need not be recited again here. A number of principles are well established including the fundamental precept that costs usually follow the event, that cost in the Authority are typically modest and that the Authority's notional daily tariff approach for costs fixing is a useful basis for the determination of costs in many cases.

[9] I have not been persuaded by Tan Pacific's arguments that costs should lie where they fall because of the contention, supported by Mr Tan's affidavit, that he was not in fact properly served with the documents pertaining to the Authority's investigation. That is a matter that in my opinion goes to the substance of the Authority's conclusion rather than to the question of costs and I note that the matter has gone on challenge to the Employment Court where no doubt that issue (service) can be progressed on Tan Pacific's behalf. I should have reached a similar conclusion if Tan Pacific had simply sought to reopen the Authority's investigation on the basis of a claim that the alleged failures to serve Tan Pacific constitute new evidence, which would justify a reopening.

[10] But the balance of the submissions made by Tan Pacific are well founded. In particular, I agree with Tan Pacific's submissions to the effect that the costs incurred

by Ms Zhang appear to be more extensive than would seem appropriate for an investigation meeting which occupied barely an hour of hearing time.

[11] I accept without reservation that in an effort to ensure that Tan Pacific was aware of the proceedings and had a proper opportunity to engage in the Authority's process, I insisted on Ms Zhang attending to the service of the relevant documents on Tan Pacific in an effort to ensure that Tan Pacific participated in the Authority's process. Of course, those matters attract the cost of process service and the like and are properly included within the fees charged to Ms Zhang.

[12] However, even with those additions, it is difficult to see how the fees charged can be regarded by the Authority as reasonable in all the circumstances.

[13] I think the proper course of action is to direct that Tan Pacific is to contribute to Ms Zhang's fees in the sum of \$1,000 which is a contribution to Ms Zhang's costs derived by an application of the daily tariff, having regard to the time that the investigation meeting actually took.

James Crichton
Member of the Employment Relations Authority