

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 444
5376244

BETWEEN HONG (ALEX) ZHOU
Applicant
AND HARBIT INTERNATIONAL
LTD
Respondent

Member of Authority: Rachel Larmer
Representatives: May Moncur, Advocate for Applicant
Investigation Meeting: On the papers
Submissions Received: 21 November 2012 from Applicant
No submissions from Respondent
Date of Determination: 10 December 2012

COSTS DETERMINATION OF THE AUTHORITY

- A. Harbit International Ltd (Harbit) is ordered to pay Mr Hong (Alex) Zhou \$3,500 towards his legal costs plus \$71.56 to reimburse his filing fee.**

Employment relationship problem

[1] In a determination dated 16 November 2012¹ Harbit was found to have:

- charged Mr Zhou an illegal premium in respect of his employment
- failed to have kept wage and time records for Mr Zhou
- failed to have provided Mr Zhou's wage and time records upon demand
- failed to have paid Mr Zhou wages

¹ [2012] NZERA Auckland 404.

- failed to have paid Mr Zhou holiday pay
- unjustifiably dismissed Mr Zhou from his employment.

[2] The parties were encouraged to resolve costs by agreement but if that was not possible then a timetable was set for costs to be dealt with by an exchange of memoranda. Costs were not agreed and Mr Zhou now seeks costs of \$4,500 against his actual costs of \$7,000. Harbit has not filed any costs submissions.

Costs principles

[3] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

[4] The principles guiding the Authority's approach to costs are set out by the Full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². Those principles are so well recognised that I do not need to restate them.

[5] The general principle is that costs follow the event, and there is no reason to depart from that in this case. Accordingly, Mr Zhou as the successful party is entitled to a contribution towards his actual legal costs.

Outcome

[6] I adopt the Authority's usual daily tariff based approach to costs. This matter involved a one day investigation meeting so the starting point for assessing costs is the current notional daily tariff of \$3,500.

[7] I must now consider on a principled basis whether any factors warrant an adjustment to that notional daily tariff. I consider there are no factors which would warrant a decrease to the notional tariff.

[8] In terms of factors warranting an increase to the notional tariff, Ms Monur submits costs should be increased "to reflect the nature of the applicant's grievance and the respondent's conduct." I do not accept that submission. Cost cannot be used to punish an unsuccessful party.

² [2005] 1 ERNZ 808.

[9] Ms Moncur did not identify what conduct of the respondent she was referring to in her submissions as warranting an increase to the notional daily tariff. She did make a comment later in her submissions to the effect that the respondent had “attempted to delay the proceedings or hinder settlement” but no details of that were provided.

[10] I am not aware of Harbit attempting to delay the proceedings or of any other conduct by it which would have unnecessarily increased the applicant’s costs. Ms Moncur has not identified any factors which she says actually increased the applicant’s costs.

[11] I therefore conclude there are no grounds to increase the notional daily tariff.

Order

[12] Harbit is ordered to pay Mr Zhou \$3,571.56. This consists of \$3,500 towards his costs plus \$71.56 to reimburse him for his filing fee.

Rachel Larmer
Member of the Employment Relations Authority