

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 43
5305863

BETWEEN YAOZHONG (DANNY) XIE
Applicant

AND WELLINGTON CITY
TRANSPORT LIMITED
t/a GO WELLINGTON
Respondent

Member of Authority: G J Wood

Representatives: Kevin O'Sullivan for the Applicant
Blair Scotland for the Respondent

Investigation Meeting: Determined on the papers

Submissions Received by: 4 March 2011

Determination: 16 March 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Xie claimed reinstatement and other remedies following his summary dismissal from the employment of the respondent (Go Wellington), on 6 May 2010.

[2] An investigation meeting was scheduled for 7 December 2010. Unfortunately this investigation meeting could not take place due to Mr O'Sullivan being required to have surgery. It was rescheduled for 1 March 2011. It was then, however, withdrawn by Mr O'Sullivan on Mr Xie's behalf on 1 February. He stated:

This is to advise that the applicant Danny Xie wishes to withdraw these proceedings and the matter is now closed.

[3] By that time, the parties had filed all their witness statements so the matter was entirely ready for investigation.

[4] Mr Scotland, on behalf of Go Wellington, seeks a \$2,000 contribution to Go Wellington's costs of \$4,450 plus GST.

[5] On behalf of Mr Xie, Mr O'Sullivan chose to make no submissions on costs.

[6] In the ordinary course of events, an applicant who withdraws a matter well before the commencement of the investigation meeting should not be required to pay costs, in order to encourage parties to resolve matters. However, in this case, I accept that all the preparation work had been done by Mr Scotland on behalf of Go Wellington, no doubt in part because of the matter having previously been adjourned at the applicants' request.

[7] While I accept that Go Wellington's costs have been reasonably incurred, there is a need to balance the interests of justice in terms of a reasonable contribution towards its costs and due recognition of the withdrawal of the claim. In all the circumstances I consider that a contribution of \$1,000 is appropriate.

[8] I therefore order the applicant, Yaozhong (Danny) Xie, to pay to the respondent, Wellington City Transport Limited, the sum of \$1,000 in costs.

G J Wood
Member of the Employment Relations Authority