

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 442  
5391278

BETWEEN YANFEI (FIONA) YU  
Applicant

AND DA HUA SUPERMARKET  
CENTRAL LIMITED t/a  
DA HUA SUPERMARKET  
Respondent

Member of Authority: K J Anderson

Representatives: May Moncur, Advocate for Applicant  
Jiajian Song, Advocate for Respondent

Submissions received: 15 August 2013 from Applicant  
Nil from Respondent

Determination: 27 September 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 7 August 2013<sup>1</sup> the Authority found that the applicant was entitled to be paid the gross sum of \$526.50 but she was unsuccessful with her claim that she was unjustifiably dismissed. Submissions on costs have been provided by the applicant but none have been received from the respondent.

[2] The applicant submits that while the investigation meeting occupied approximately half of a day, rather than awarding the sum of \$1,750, as would normally occur upon the application of the current daily tariff<sup>2</sup> approach commonly adopted by the Authority, the full sum of \$3,500 should be awarded. In support of this proposition, the applicant submits that the conduct of the respondent was such that a higher award of costs is appropriate.

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<sup>1</sup> [2013] NZERA Auckland 344

<sup>2</sup> Currently \$3,500 for a one day investigation meeting.

[3] The applicant refers to a deliberate action on the part of the respondent in regard to its failure to pay the legal minimum wage and the obstructive behaviour adopted by the respondent when a resolution was being pursued by the applicant, including the involvement of a Labour Inspector.

### **Determination**

[4] It is well established that cost awards are not to be used as a punishment or disapproval of the unsuccessful party's conduct whether it be within proceedings or prior to.<sup>3</sup> Furthermore, the applicant did not come to the Authority with "clean hands" so to speak. The claim made against the respondent in regard to the level of penalties being sought (\$60,000) in regard to the circumstances applying to an applicant that had only worked for the respondent for a very short period of time, on a casual basis; was a substantial barrier to any cooperation that might have been forthcoming from the respondent.

[5] I also note that the applicant has not provided any record of the costs that she has incurred; an aspect that is all too common in respect of "no-win-no-fee" advocates. It should be noted that in future, cost applications may be declined in the event that evidence of the costs incurred by a successful party is not provided.

[6] Taking all the circumstances of this particular matter into account, I can see no reason to increase the costs which would normally be awarded for a half day investigation meeting. Pursuant to clause 15 of the Second Schedule of the Employment Relations Act 2000, Da Hua Super Market Limited shall pay to Ms Yu, within 30 days of the date of this determination, the sum of \$1,750.00 as a contribution to the costs incurred by her.

**K J Anderson**  
**Member of the Employment Relations Authority**

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<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808