

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 171
3022571

BETWEEN	LARISA TAOUKTSI Applicant
A N D	Z & L GROUP LIMITED First Respondent
AND	TONG ZHANG Second Respondent

Member of Authority:	Anna Fitzgibbon
Representatives:	Mark Saunders, Counsel for Applicant No appearance for the Respondents
Submissions received:	8 May 2018 from Counsel for Applicant No submissions received from Respondents
Date of Determination:	29 May 2018

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Z & L Group Limited (the company) and Mr Tong Zhang are ordered to contribute \$4,500 towards the costs of Ms Larisa Taouktsi and to reimburse the filing fee of \$71.56, both within 14 days of the date of this determination.

The substantive determination

[1] In a written determination of the Authority, issued on 04 May 2018¹ the Authority determined that:

- (a) Ms Larisa Taouktsi was unjustifiably constructively dismissed from her employment by the company.

¹ [2018] NZERA Auckland 144

- (b) Ms Taouktsi was awarded the following sums and remedies:
- (i) Compensation of \$20,000 for humiliation, loss of dignity and injury to feelings in respect of his unjustifiable constructive dismissal pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act).
 - (ii) Reimbursement of wages pursuant to s.128 of the Act totalling \$5,159 net.
 - (iii) Unpaid wages totalling \$7,643.64 net
 - (iv) Unpaid holiday pay of \$9,476 net
 - (v) Kiwisaver entitlements of \$5,717.86 gross
 - (vi) Interest at the rate of 5% per annum from the 2 November 2017 until payment, was awarded on the sums in 1(b)(ii) to (v) above.
- (c) Penalties of \$1,000 each were awarded against the company and Mr Zhang.
- (d) Costs were reserved. Ms Taouktsi was given 14 days in which to file a memorandum as to costs. The company and Mr Zhang were given 14 days of receipt to file a memorandum as to costs in reply.

Costs Determination

[2] On 08 May 2018, Mr Saunders filed a memorandum seeking costs on behalf of the Applicant. Mr Saunders subsequently provided the Authority with invoices and receipts. Legal costs of more than \$14,000 have been incurred by Ms Taouktsi.

[3] The company and Mr Zhang were provided with the memorandum as to costs and given an opportunity to file a response but failed to do so.

[4] Ms Taouktsi seeks a contribution to costs based and assessed on the Authority's daily tariff. Ms Taouktsi seeks the daily tariff for 2 days in the Authority plus reimbursement of the filing fee of \$71.56. This is because the investigation meeting on 4 April 2018 was adjourned to the 30 April 2018. The adjournment was

due to the non-appearance on behalf of the company and by Mr Zhang. Mr Zhang informed the Authority at a very late stage that he would not be attending the investigation meeting due to ill health. Ms Taouktsi, Mr Smith and Mr Hart all attended the investigation meeting on 4 April 2018.

The Authority's daily costs tariff

[5] For matters filed in the Authority, the Authority's normal daily tariff is \$4,500 for the first day of an investigation meeting. For each subsequent day of an investigation meeting the Authority's normal daily tariff is \$3,500.

The Authority's power to award costs

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

[7] The full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*² sets out the principles that apply to awards of costs in the Authority. The principles are so well established that there is no need for them to be repeated.

[8] The general principle is that costs follow the event, and there is no reason to depart from that principle in this case. Ms Taouktsi was successful in her claim and should be awarded costs. Actual legal costs incurred were in excess of \$14,000 plus GST.

[9] The Employment in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers' Union & Ors*³ observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. This approach has been affirmed by the Employment Court in *Fagotti v. Acme & Co.*⁴.

[10] The investigation meeting on 30 April 2018 took approximately half a day in the Authority, or 4 hours. Based on the Authority's daily tariff, this would amount to the sum of \$2,250. Ms Taouktsi also attended the initial investigation meeting on 4 April 2018, along with her lawyer and 2 witnesses.

² [2005] ERNZ 808, para 44

³ [2011] NZEmpC 13

⁴ [2015] NZEmpC 135

[11] There was no representation by the company or Mr Zhang at either investigation meeting scheduled and there has been no response to the memorandum as to costs. I consider the daily tariff for one day in the Authority is appropriate in the circumstances.

[12] Accordingly, I order costs of \$4,500 and filing fee of \$71.56 be paid jointly and severally by the company and Mr Zhang within 14 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority