

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 292  
3022958

BETWEEN                      QI ZUO  
   Applicant

A N D                            123 CASINO LIMITED  
   TRADING AS 123 PALM BAR  
   & RESTAURANT & FUNCTION  
   CENTRE  
   Respondent

Member of Authority:        Nicola Craig

Representatives:             May Moncur for the Applicant  
   Anchi Huang for the Respondent

Investigation Meeting:      On the papers

Submissions Received:      3 September 2018 from Applicant  
   14 September 2018 from Respondent

Date of Determination:      18 September 2018

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**COSTS DETERMINATION OF THE  
AUTHORITY**

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- A.        123 Casino Limited is ordered to pay Qi Zuo the sum of \$3,400.00 as a contribution to her costs and \$71.56 for the filing fee, within 14 days of the date of this determination.**

**Earlier determination**

[1]        In an earlier determination of the Authority, I found that 123 Casino Limited trading as 123 Palm Bar & Restaurant & Function Centre (the Palm Bar or the company) had unjustifiably dismissed Qi Zuo and ordered remedies to her, as well as

wage arrears and holiday pay.<sup>1</sup> The company was also ordered to pay a penalty to the Crown for breaching the Holidays Act 2003.

[2] The parties were invited to resolve the issue of costs between themselves. They have been unable to do so and submissions on costs were received from both parties.

### **Submissions for Ms Zuo**

[3] Ms Zuo seeks an award of costs and disbursements in the amount of \$4,500 plus the filing fee, on the basis that she was successful in her grievance, arrears and penalty claims.

[4] An invoice from her representative was submitted showing fees for work completed to a total of \$7,475.00 inclusive of GST, based on a charge out rate of \$260.00, apparently plus GST. The invoice covered work in preparation for and attendance at mediation. A modest payment had already been received by Ms Zuo's representative towards the costs incurred.

[5] It was accepted that the notional daily tariff was the appropriate basis on which to award costs in this case.

### **Submissions for the Palm Bar**

[6] The Palm Bar seeks that the Authority leave costs to lie where they fall. This is on the basis of the Palm Bar acting in good faith throughout the process and it being justified in using its best endeavours to defend the claims as its case was not hopeless.

[7] If the Authority were inclined to make a costs award, the Palm Bar submitted that the notional daily tariff was no more than a guiding point. Reductions are sought for the length of the investigation meeting and the inclusion in the representative's invoice of costs associated with preparation for and attendance at mediation.

[8] The Palm Bar noted that costs are not to be used as a punishment or expression of disapproval of an unsuccessful party's conduct.

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<sup>1</sup> *Qi Zuo v 123 Casino Limited trading as 123 Palm Bar & Restaurant & Function Centre* [2018] NZERA Auckland 271

## Costs award

[9] The Authority's power to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000. There is a wide discretion to award costs, on a principled basis.

[10] The Employment Court set out principles guiding the Authority's approach to costs in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup>, which include:

- The statutory jurisdiction to award costs is consistent with the equity and good faith jurisdiction of the Authority.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

[11] Ms Zuo was largely successful in her claims against the Palm Bar. I accept that the Palm Bar should not be punished for defending her claims, however it should make a contribution to costs reasonably incurred by Ms Zuo.

[12] The two grounds on which the Palm Bar sought a reduction of the notional daily tariff were the length of the investigation meeting and the inclusion of mediation costs in the invoice.

[13] The investigation meeting commenced at the usual time, included a lunch break of less than one hour and finished some 25 minutes before the usual finish time. I do not consider that a reduction is required on the basis of hearing length.

[14] In terms of mediation, the invoice indicates that over \$1,000 of costs were incurred in communications related to mediation, and preparation for and attendance at mediation.

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<sup>2</sup> [2005] 1 ERNZ 808

[15] Costs associated with mediation are not typically included in costs awards in the Authority.<sup>3</sup> Although Ms Zuo is only seeking a contribution towards her costs based on the daily tariff, once a deduction is made from the invoice figure for mediation related costs, the amount incurred for the remainder is somewhat less than the daily tariff. If the tariff were awarded, Ms Zuo would be awarded more than she had actually incurred on usually claimable costs. I do consider that a reduction should therefore be made.

[16] I order that 123 Casino Limited pay Ms Zuo the sum of \$3,400.00 as a contribution to her costs and \$71.56 for the filing fee, within 14 days of the date of this determination.

Nicola Craig

Member of the Employment Relations Authority

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<sup>3</sup> Practice Note 2, Costs in the Employment Relations Authority, 30 June 2016, at [12]