

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Yunpei (Sophia) Chin (Applicant)

**AND** Andrew Yong trading as Yong & Co Chartered Accountants  
(Respondent)

**REPRESENTATIVES** Mark Nutsford, Advocate for Applicant  
Rohineet Sharma, Counsel for Respondent

**MEMBER OF AUTHORITY** Leon Robinson

**SUBMISSIONS RECEIVED** 18 October 2006  
9 November 2006

**DATE OF DETERMINATION** 9 November 2006

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

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The Authority determines that:-

**Andrew Yong trading as Yong & Co Chartered Accountants is ordered to pay to Yunpei (Sophia) Chin the sum of \$1,615.00 as a contribution to costs.**

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[1] By a Determination dated 4 October 2006, I determined that Ms Yunpei (Sophia) Chin ("Ms Chin") had been unjustifiably dismissed. I made various orders to resolve the personal grievance found. I also invited the parties to agree costs but they have been unable to do so. Ms Chin now makes application for costs.

[2] Mr Nutsford lodged a memorandum on 18 October 2006. That memorandum details fees of representation in the sum of \$2,190.00 and disbursements of \$115.00. That sum is sought together with GST on it. It is the GST exclusive portion that is relevant. This is not a case for costs to be awarded on an indemnity basis.

[3] Mr Sharma, Counsel for Andrew Yong ("Mr Yong"), responded to Ms Chin's claim for costs by facsimile of the same date as follows: -

*We have this afternoon received a copy of your Memorandum As To Costs.*

*In respect of the second paragraph of your Memorandum, please note that the writer left a message on your voice mail on the afternoon of Monday 16 October 2006 and again on the morning of 17 October 2006 but has not received any call from you. The writer had also telephoned your office on at least two other occasions but was unable to contact you.*

[4] I did not regard that advice as the substantive reply and even though he was well out of time, I asked the support officer to ascertain whether Mr Sharma proposed to lodge any substantive response. Mr Sharma responded by facsimile letter today with this advice: -

*We acknowledge receipt of copy of cost submissions by the applicant.*

*We advise that our client, Yong & Co has appealed the decision of the ERA to the Employment Court. The Employment Court file number is ARC 76/06.*

*Our client will not pay the costs sought by the Applicant until the matter is decided by the Court.*

[5] Counsel's approach is most unhelpful. Firstly, costs in the Authority are most appropriately dealt with by the Authority<sup>1</sup>. Further, an election to challenge does not operate as a stay of the Authority's determination<sup>2</sup>. I would have preferred to have Mr Yong's input. I now proceed to determine costs as I have previously made expressly clear I would.

[6] In exercising its discretion to award costs, the Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones. Generally, awards of costs in the Authority are modest consistent with the Authority's approach to investigations.

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<sup>1</sup> as confirmed in *Bryson -v- Three Foot Six Limited*, unreported, WC17A/06, 2 November 2006, Shaw J (EC) para 2.

<sup>2</sup> section 180 *Employment Relations Act 2000*.

[7] This investigation meeting proceeded over one day. It had previously been adjourned because Mr Sharma had to attend a funeral in Sydney. I do not consider there is anything unusual in this case or any particular factor that warrants any departure from the Authority's conventional approach to costs.

[8] I regard Ms Chin's costs as reasonable and she shall have the greater proportion of the fees for representation in the sum of \$1,500.00. She shall also have her disbursements of \$115.00.

[9] Exercising my discretion on a principled basis, **I order Andrew Yong trading as Yong & Co Chartered Accountants to pay to Yunpei (Sophia) Chin the sum of \$1,615.00 as a contribution to costs.**

Leon Robinson  
Member of Employment Relations Authority