

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 235A/07  
5072670 and 5070085

BETWEEN                      GLENN GREEN, JOHN  
   GRANT, CLAUDE WECKE &  
   YUELEI (LUCIA) LIU  
   Applicant

AND                              RENDEZVOUS HOTELS (NZ)  
   LIMITED  
   Respondent

Member of Authority:        Marija Urlich

Representatives:            Aaron Lloyd and Isobel Foote, Counsel for First, Second  
   and Third Applicants  
   Andrea Halloran, Counsel for Fourth Applicant  
   Andrew Shaw and Amy Shakespeare, Counsel for  
   Respondent

Submissions received:      4 September, 31 October 2007 from First, Second and  
   Third Applicants  
   31 August and 26 September 2007 from Fourth  
   Applicant  
   18 September 2007 from Respondent

Determination:              10 December 2007

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 6 August 2007 (AA235/07) I upheld the applicants' claim that their dismissals for redundancy were unjustifiable. Remedies were awarded. Costs were reserved and the parties invited to attempt to resolve this issue themselves. Those attempts have been unsuccessful and memoranda have been filed setting out the respective positions.

**Ms Liu**

[2] Ms Liu's personal grievance was joined to that of Mr Green, Mr Grant and Mr Wecke by order of the Authority. Ms Liu was separately represented during the investigation and her personal grievance had different characteristics to that of the other applicants. It is appropriate to determine Ms Liu's application for costs separately.

[3] In her memorandum to the Authority of 31 August 2007 Ms Halloran advised that the total costs charged to Ms Liu, including those for her attendance at mediation, amounted to \$10,026.25 including disbursement of \$270.00. Ms Liu seeks indemnity costs.

[4] Ms Halloran submits that in exercising the Authority's discretion to consider an award of costs particular weight should be given to a without prejudice settlement offer made by Ms Liu to Rendezvous early in the grievance process. She relies on the judgment of Chief Judge Colgan in *Watson v NZ Electrical Traders Ltd*<sup>1</sup>.

[5] Ms Halloran submits Ms Liu's settlement offer was demonstrably reasonable given the awards made in her favour by the Authority exceeded her settlement proposal, Rendezvous had plenty of time to consider and respond to the offer and the offer was made when little or no preparation for the Authority investigation had been undertaken.

[6] Ms Halloran submits that the without prejudice offer made by Rendezvous of a global sum to the applicants should be given no weight; it was made after two days of the investigation meeting when significant costs had already been incurred, an equal division of the amount offered would be less than the award Ms Liu received from the Authority.

[7] She also submits that the Respondent's conduct in providing relevant documents was unduly delayed and these delays meant further costs were incurred.

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<sup>1</sup> AC 64/06 ARC 56/06 (24 November 2006)

[8] I am guided by the judgment of the Full Court in *PBO Ltd v Da Cruz* [2005] ERNZ 808 as to the principles applicable to costs awards for Authority investigations along with those articulated in *Watson*. In *Da Cruz* the Court noted with particular approval the use of a notional daily rate as one means of fixing costs. However, I accept that in these circumstances the application of the usual notional daily rate is not appropriate given the reasonable settlement offer Ms Liu made to Rendezvous; the acceptance of that settlement offer would have prevented the costs incurred in pursuing her personal grievance.

[9] Ms Liu was successful in her claim of unjustified dismissal, including her claim that her redundancy was not genuine. The investigation of the four grievances took two and ½ days and as could be expected the majority of time was taken scrutinising Rendezvous' reasoning for and process of redundancy. The investigation was assisted by the considerable overlap between the applicants' respective cases.

[10] Rendezvous' settlement offer was made too late to be given the weight due a valid *Calderbank* offer.

[11] It is not appropriate that costs incurred in mediation are factored into this assessment of costs; mediation is a process available to parties to assist them to find resolution themselves.

[12] Discounting the amount claimed by \$1000 for costs associated with mediation I conclude that the costs award to Ms Liu should be \$8000 plus disbursements of \$270.

[13] Rendezvous Hotels (NZ) Limited is ordered to pay Yuelei (Lucia) Liu \$8270 in costs pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

**Mr Green, Mr Grant and Mr Wecke**

[14] Mr Green, Mr Grant and Mr Wecke's ("the applicants") legal costs exceed \$70,000. They seek a contribution to those costs of \$15,000 each plus the full costs of disbursements claimed (\$1652.13).

[15] Rendezvous says:

- (i) the applicants' costs are excessive;
- (ii) costs should not be used as a punishment;
- (iii) it has tried to settle this matter;
- (iv) any reasonable settlement was precluded because of the applicants inflated claims;
- (v) it is entitled to defend personal grievances brought against it; and
- (vi) the respondent has incurred significant costs in defending claims which included claims for remedies which had little chance of success.

[16] As noted above the without prejudice offer made by Rendezvous came after significant costs had been incurred. It does not meet the test for a *Calderbank* offer. I give it little weight.

[17] The efficiency gains made by running their cases together do not appear to be reflected in the actual costs the applicants have incurred. Individually the applicants' costs are more than twice that of Ms Liu's and her case had complexities which theirs did not. The notional daily rate is the usual approach in the Authority and it is appropriate to apply it to this situation.

[18] Taking into account the principles in *Da Cruz* and in particular the applicants' successful challenge to their dismissals on both substantive and procedural grounds I conclude that Mr Green, Mr Grant and Mr Wecke should be awarded \$7,000 each as a reasonable contribution to costs actually incurred, plus a total payment towards disbursements of \$500.

[19] Rendezvous Hotels (NZ) Limited is ordered to pay Glenn Green, John Grant and Claude Wecke \$7000 each in costs, plus a contribution to disbursements of \$500 in total, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority

