



Employment Court of New Zealand

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Guan v Jay.co Limited [2021] NZEmpC 209 (25 November 2021)

Last Updated: 2 December 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 209](#)

EMPC 260/2020

| | |
|-------------------|--|
| IN THE MATTER OF | a challenge to a determination of the Employment Relations Authority |
| AND IN THE MATTER | of an application for costs |
| BETWEEN | YINTONG GUAN Plaintiff |
| AND | JAY.CO LIMITED Defendant |

Hearing: (on the papers)
Appearances: Y Guan, plaintiff in person
L He, agent for JAY.CO Limited
Judgment: 25 November 2021

COSTS JUDGMENT OF JUDGE B A CORKILL

[1] At the conclusion of my substantive judgment of 18 October 2021, I dismissed Mr Guan’s challenge.¹ JAY.CO was accordingly the successful party.

[2] JAY.CO had been represented by Mrs He as agent. She is not a lawyer or advocate. However, I said that if JAY.CO had incurred professional costs in relation to the defence of the challenge, it could make an appropriate claim.

[3] JAY.CO then filed invoices for attendances undertaken by the Employers and Manufacturers Association (the EMA) prior to the hearing.

¹ *Guan v JAY.CO Ltd* [\[2021\] NZEmpC 178](#).

YINTONG GUAN v JAY.CO LIMITED [\[2021\] NZEmpC 209](#) [25 November 2021]

[4] Mr Guan filed a submission in opposition, stating that the making of an order for costs would be unfair, because the company had dismissed him. He also implied that his financial circumstances are such that he could not pay an order for costs. No supporting evidence was provided in respect of either point and I therefore place them to one side.

[5] Because the EMA invoices referred only to “consulting services” between particular dates, I asked for details as to what this meant. A schedule was then filed on behalf of EMA, which has assisted the Court.

[6] It is apparent that only one of the various invoices, in fact, relate to JAY.CO’s defence of the challenge.² It totals \$1,034, net of GST.³

[7] The attendances appear to relate to assistance given with regard to the preparation of a statement of defence.

[8] This sum is less than that which would be allowed for under the Court’s Guideline Scale as to Costs for such work, which would total, on a Category 2B basis,

\$3,585. Since the costs paid are lower, it is appropriate to resolve the costs issue on the basis of the alternative method for fixing costs, which is to award 66 per cent of costs reasonably incurred.⁴ That figure is \$682.44.

[9] JAY.CO also seeks reimbursement of the fee paid for the services of an interpreter, which was \$174, net of GST. I allow this claim.

[10] Accordingly, I order Mr Guan to pay JAY.CO the sum of \$856.44 as a contribution to its reasonable costs.

Judgment signed at 1.05 pm on 25 November 2021

B A Corkill Judge

2 Invoice 1238948.

3 I infer the defendant is a GST registered party, able to recover a GST input credit for GST paid.

4 *Binnie v Pacific Health Ltd* [\[2003\] NZCA 69](#); [\[2002\] ERNZ 438 \(CA\)](#) at [\[14\]](#).

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