

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 438  
5337195

BETWEEN WEERAPHONG HARRIS  
Applicant

AND TSNZ PULP & PAPER  
MAINTENANCE LIMITED  
Respondent

Member of Authority: R A Monaghan

Representatives: L Yukich, advocate for applicant  
G Service, counsel for respondent

Memoranda received: 27 February 2012, 20 November 2012 from applicant  
14 February 2012, 20 November 2012 from respondent

Determination: 5 December 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 18 January 2012 I found that a personal grievance Weeraphong Harris had raised arose solely from the interpretation, application or operation of the parties' employment agreement or a disputed interpretation, application or operation of the agreement (the first determination). I determined the dispute in a determination dated 24 October 2012 (the second determination).

[2] Costs were reserved. The parties have filed separate exchanges of memoranda in respect of the two determinations.

**Costs in respect of the first determination**

[3] Ms Service cited the principles in *PBO Limited v da Cruz*<sup>1</sup> and sought a contribution to costs in the sum of \$8,000. As the investigation meeting took 1.5 days, if a notional daily rate of \$3,500 were applied the contribution would be \$5,250.

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

However Ms Service sought an enhanced contribution citing the extent of the preparation required and the costs incurred as a result.

[4] Mr Yukich submitted that costs should lie where they fall. Alternatively, given Mr Harris' limited means, he submitted that there be a contribution of no more than \$1,000 or \$1,500 to be paid in weekly instalments over 12 months.

[5] While I accept that the way in which the employment relationship problem was framed at the time required extensive preparation, I do not accept this was so to the extent that an enhancement to the notional daily rate is required.

[6] Further to Mr Yukich's submissions, I find the respondent is entitled to a contribution to its costs. As to whether there should be a reduction in the notional daily rate because of Mr Harris' limited means, no information was provided in support. Moreover Mr Harris has been and remains in the respondent's employ, and is on an above average income. In the absence of information to the contrary I consider it unlikely that his means are limited. Finally, although Mr Harris is cited as the applicant in his personal capacity, it was clear from the way in which the employment relationship problem was raised and argued that his union and his colleagues have a significant interest in the outcome. For them it is a test case and they have participated fully. It would be surprising if they expected or intended Mr Harris to bear any liability for costs.

[7] For these reasons Mr Harris is ordered to contribute to the respondent's costs in the sum of \$5,250.

[8] There will be no order for payment by instalments.

#### **Costs in respect of the second determination**

[9] By letter dated 20 November 2012 the respondent advised of its election not to seek costs in relation to the determination of the dispute.

[10] I understood Mr Yukich to suggest in his memorandum also dated 20 November 2012 that costs in that matter should lie where they fall.

[11] Accordingly there will be no order for costs in respect of the second determination.

**Summary of orders**

[12] Mr Harris is ordered to pay to the respondent the sum of \$5,250 in respect of the first determination.

[13] There is no order for costs in respect of the second determination.

R A Monaghan

Member of the Employment Relations Authority