

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 458  
3037953

BETWEEN                      WEI (JACK) HU  
Applicant

AND                              BIFORM LIMITED  
Respondent

Member of Authority:        Nicola Craig

Representatives:             J Paul Young, advocate for the Applicant  
Tau Aupa'au, agent for the Respondent

Submissions Received:      25 July 2019 for the Applicant  
30 July 2019 for the Respondent

Date of Determination:      5 August 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Biform Limited is ordered to pay Wei (Jack) Hu within 28 days of the date of this determination the sum of \$2,250.00 as a contribution towards his costs, along with \$71.56 for the Authority's filing fee.**

**The Authority's first determination**

[1]     On 23 July 2019 I issued a determination<sup>1</sup> finding that:

- (a)     Wei (Jack) Hu was unjustifiably dismissed by Biform Limited (Biform or the company); and

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<sup>1</sup>     *Wei (Jack) Hu v Biform Ltd* [2019] NZERA 436

- (b) Biform was to pay Mr Hu \$816.75 gross as reimbursement of remuneration and \$3,000 as compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[2] The parties were invited to attempt to resolve the question of costs between themselves. It is not clear to me whether they attempted to do so, but submissions were filed two days later on Mr Hu's behalf on seeking costs. Biform then filed submissions.

### **Submissions for Mr Hu**

[3] The submissions do not explicitly identify a figure for costs being sought by Mr Hu. However, a breakdown is provided of the advocate's time on this matter, totalling 23.5 hours. An invoice of the same date sets out 23.5 hours at an hourly rate of \$300, totalling \$7,050.00. No reference is made to GST. I note that some of the attendances concern mediation, for which costs cannot usually be claimed.

### **Submissions for Biform**

[4] Biform considers that as the hearing time was only half a day, Mr Hu should only receive \$2,250 in costs, being half of the notional daily tariff. The company seeks an adjustment downwards for the unsuccessful reinstatement claim.

### **Costs award**

[5] The Authority has the power to award costs under clause 15 of Schedule 2 of the Act. The Authority's discretion is governed by principles set out by the full Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>2</sup>. These include that costs will usually follow the event and the discretion be exercised in accordance with principle and not arbitrarily, considering equity and good conscience. Also, 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.

[6] Costs usually follow the event, that is, the unsuccessful party will be required to make a contribution towards the successful party's costs. Mr Hu was successful in his personal grievance claim and was awarded monetary remedies. Although Mr Hu was unsuccessful in

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

his claim for reinstatement, this claim was only raised for the first time at the investigation meeting and the issue did not occupy much hearing time. I do not consider that that claim should affect the costs award.

[7] The hearing time was half a day. The notional daily tariff for the first day's investigation meeting is \$4,500.00.

[8] I order Biform Limited to pay Mr Hu within 28 days of the date of this determination the sum of \$2,250.00 as a contribution towards his costs, along with \$71.56 for the Authority's filing fee.

**Nicola Craig**  
**Member of the Employment Relations Authority**