

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Suk Chai Lee (Applicant)
AND Ryu International Limited (Respondent)
REPRESENTATIVES Tae Wok Kwon, Counsel for Applicant
Brent Kang, Counsel for Respondent
MEMBER OF AUTHORITY Marija Urlich
SUBMISSIONS RECEIVED 21 June, 12, 15 July 2005
DATE OF DETERMINATION 5 September 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

Application for costs

[1] In a determination dated 11 May 2005, AA 174/05, I found Suk Chai Lee had been unjustifiably dismissed and upheld his claim for wage arrears. Orders for remedies in relation to the personal grievance were made, as were orders in relation to the wage arrears claim.

[2] The parties were invited to resolve costs between them. They have been unable to do so and have filed memoranda as to costs to assist the Authority in its determination of this issue.

Submissions

[3] Mr Kwon advises that Mr Lee has incurred total legal costs of \$21,326.26 (including GST and disbursements) in relation to his application and seeks an award of full indemnity costs. These costs included those incurred in attending mediation. Mr Kwon submits the respondent, Ryu International Limited ("RIL") has dealt with Mr Lee in a reprehensible manner; RIL declined to accept a reasonable settlement offer, Mr Ryu, RIL's principal witness, unnecessarily protracted the hearing by avoiding answering direct questions, RIL took advantage of Mr Lee's visa status to make him work excessive hours, RIL sought to force Mr Lee to accept illegal arrangements with regard to visa conditions and PAYE payments, RIL refused to supply Mr Lee with necessary documents for his permanent residence application, RIL paid awards ordered by the Authority only following the issuing of a distress warrant by the District Court and RIL has failed to settle the costs issue. Mr Kwon submits that as Mr Lee was the winning party and given RIL's reprehensible conduct towards Mr Lee and that its case was wholly without merit, this is a case which falls within the criteria for an award of full indemnity costs¹.

¹ *Counties Manukau Health Inc v Pack*, unrpt, Goddard CJ, 25 October 2000, AC72A/00

[4] Mr Kang submits that any award of costs should be calculated on the basis of reasonable costs reasonably incurred. He submits it was not unreasonable for the respondent not to settle the costs issue with the applicant because the respondent has elected to challenge the Authority's determination. He also submits that the respondent and applicant should share the responsibility for any illegal arrangements entered. Mr Kang submits that a reasonable award of costs would be \$6,250 plus GST and disbursements.

Determination

[5] The Authority's power to award costs is set out in clause 15, schedule 2 of the Employment Relations Act 2000. In making an award of costs the Authority must take into account relevant matters but not irrelevant matters. The costs of attending mediation are not relevant to a consideration of costs in this forum.

[6] This employment relationship problem required three full days of investigation. The major contributing factor to the length of the investigation was that the Authority required the assistance of an interpreter to communicate with all the witnesses. Conduct in relation to applications for permanent residence and proposals as to the payment of PAYE fell outside the scope of this investigation. Further, the Authority found the excessive working hours were agreed between the parties. While Mr Lee has been successful in all aspects of his claim I do not think this is a case which warrants an award of full indemnity costs.

[7] Mr Lee is the successful party and a reasonable contribution to costs should follow. Applying a reasonable multiplier of two to a notional hearing time of eight hours gives a total of 48 hours of professional time. Reducing the actual hourly rate from \$250 to \$200 to reflect a reasonable rate given the inherent complexities of this case, gives a total of reasonable notional costs of \$9600.

[8] RIL is ordered to make a contribution of \$8000 (plus GST) to Mr Lee's legal costs.

[9] In addition RIL is ordered to pay Mr Lee the following expenses; hearing fees of \$600 and the lodgement fee of \$70.00.

Marija Urlich
Member of Employment Relations Authority