



New Zealand Employment Relations Authority Decisions

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Lin v Zhou (Auckland) [2012] NZERA 886; [2012] NZERA Auckland 235 (12 July 2012)

Last Updated: 30 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2012] NZERA Auckland 235
5307745

BETWEEN LING LIN Applicant

AND

AND

SANDY ZHOU First Respondent

NEW TIMES PRESS LIMITED Second Respondent

Member of Authority: K J Anderson

Representatives: M Moncur, Advocate for Applicant

T Mukusha, Counsel for Respondents

Submissions Received: 21 February 2012 for the Applicant

29 March 2012 for the Respondents

Determination: 12 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination issued on 31 January 2012,¹ the Authority determined the claims of Ms Lin. The outcome was that she was partially successful in that the respondents are required to repay to her \$11,000 pursuant to [s.12\(2\)](#) of the [Wages Protection Act 1983](#). Ms Lin also had penalties awarded to her in the total sum of

\$8,000. However Ms Lin's claims of unjustified constructive dismissal and for an order for repayment of the sum of \$63,165.50, regarding monies that she allegedly repaid the respondents in lieu of wages, were unsuccessful.

[2] The Authority also determined that it appeared that Ms Lin was entitled to be paid annual holiday based on 8% of her total gross earning for the total time she was employed at the New Times Press. However, as there remained some uncertainty about a particular period of time when Ms Lin returned to China, and there was

insufficient detail provided as to the calculations of any holiday pay due to Ms Lin, the parties were invited to resolve this matter on the basis that Ms Lin would prepare and present a detailed claim to New Times Press for consideration. Unfortunately, the Authority has been informed that the parties have not been able to resolve this issue. Therefore, accompanying the costs submissions for Ms Lin is a claim for annual holiday pay based on Ms Lin's Inland Revenue records.

[3] The respondents have filed a non *de novo* challenge to the determination of the Authority in relation to the monies awarded to Ms Lin. Also, the respondents challenge the finding of the Authority that Ms Lin is entitled to holiday pay. The outcome of a conference call convened by the Authority on 5 July 2012 is that, given that the issue of holiday pay due to Ms Lin is to be revisited in the Employment Court, the parties accept that the Court should finally determine the matter accordingly, hence this matter is no longer before the Authority.

The costs submissions

[4] The submissions for Ms Lin inform that she has incurred costs amounting to

\$12,200 (including GST). The Authority is urged to make an award of \$6,000 taking into account the principles recognised by the Employment Court in *PBO Limited (formerly Rush Security Limited v Da Cruz*² based on an investigation meeting spread over three days. Conversely, the submissions for the respondents say that given that Ms Lin was unsuccessful in regard to her substantial claims for unjustifiable constructive dismissal and repayment of wages (\$63,165.50), the Authority should

award the respondents the sum of \$5,000 as a contribution to the costs incurred in

defending these aspects of Ms Lin's claims.

[5] While the investigation of this matter required three separate investigation meetings, the time taken for two of those meetings only totalled half of a day, hence for the purposes of assessing appropriate costs applying a daily tariff, the multiplier should be, at most, 1.5 days. Further, the third investigation meeting was only required because a key witness for Ms Lin (Mr Jie Kuan Chen) had to eventually be summoned by the Authority as he did not come forward at either of the other two investigation meetings. On the whole it seems to me that taking into account the

overall outcome of this matter, including the fact that Ms Lin was only partially successful with her claims, a fair calculation of costs should be based on the current tariff of \$3,500 for one day only, without any increase or reduction.

Determination

[6] Pursuant to clause 15 of Schedule 2 to the [Employment Relations Act 2000](#), Ms Sandy Zhou and New Times Press Limited, jointly and severally, are to pay to Ms Lin Ling the sum of \$3,500.00 as a contribution to her costs.

K J Anderson

Member of the Employment Relations Authority

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