

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 161B/08
5112387**

BETWEEN YUN YAN TIAN
 Applicant

AND HOLLYWOOD BAKERY (HOLDINGS)
 LIMITED
 Respondent

Member of Authority: Leon Robinson

Submissions received: 12 September 2008
 17 September 2008
 19 September 2008

Determination: 2 October 2008

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 30 April 2008, I made formal orders in settlement of an employment relationship problem between these parties. Subsequently, I declined to make any orders in respect of a recovery of arrears of wages application made by the applicant with my leave.

[2] The respondent Hollywood Bakery (Holdings) Limited now asks the Authority to order indemnity costs against the applicant Ms Yun Yan Tian ("Ms Tian"). The respondent's costs are advised as \$5,770.63. It is submitted that in respect of the recovery action, Ms Tian unreasonably rejected an offer by the respondent for the full sum in dispute and that in this situation Ms Tian should be ordered to pay costs on an indemnity basis. The Authority is informed of two unencumbered properties owned by Ms Tian and her ex-husband.

[3] Ms Tian informs the Authority she is now unemployed. She advises she is a single mother caring for her nine year old daughter. She says she is in receipt of a domestic purposes benefit. As a result of these circumstances, she says she does not have the ability to pay costs as sought.

[4] This is an equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations. The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties.

[5] This investigation has involved three half day meetings. Ms Tian succeeded in obtaining a determination in her favour in respect of a warning issued to her. That warning was found to be an unjustifiable action. She did not however succeed in obtaining an order for the recovery of wages. In all the circumstances, I consider it fair and reasonable that costs be left to lie where they fall.

[6] Accordingly, exercising my discretion on a principled basis and for the reasons outlined above, **I order that neither party shall have costs against the other.**

Leon Robinson
Member of Employment Relations Authority