

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 369A/10
5311509

BETWEEN	ANITA ZHAO Applicant
AND	HEALTH AND BODY CLINIC LIMITED First Respondent
AND	MURRAY ARNESEN Second Respondent
AND	LYNETTE ARNESEN Third Respondent

Member of Authority:	Vicki Campbell
Representatives:	Rebekah Smith for Applicant No appearance for First Respondent Katrina McLuskie for Second and Third Respondents
Submissions Received:	16 September and 1 October 2010 from Applicant 30 September 2010 from Second and Third Respondents
Determination:	19 November 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 26 March 2010, the Authority held that the Applicant had been unjustifiably disadvantaged and unjustifiably dismissed from her employment with the First Respondent. Ms Zhao was awarded lost wages and compensation of \$10,654.92. On 2 June 2010 the Authority made a costs determination in the Applicant's favour, for \$3,416.15. The payments were never made to the Applicant.

[2] On 1 July 2010 the Applicant filed an Application for Compliance Orders in the Authority and joined the Second and Third Respondents to the proceedings, as directors of the First Respondent.

[3] In its determination AA369/10 dated 19 August 2010, the Authority ordered the First Respondent to comply with its previous determinations. The Second and Third Respondents were also ordered to cause the payments to be made by the First Respondent.

[4] The Authority reserved the matter of costs and encouraged the parties to resolve that issue between them. They have been unable to do so and the Authority is now in receipt of memorandum from the Applicant and the Second and Third Respondents.

[5] I have read carefully the submissions from the parties with respect to the issue of costs. Ms Zhao's total costs amounted to \$3,150.00 in addition to disbursements of \$220.00.

[6] The principles appropriate to the exercise of the Authority's discretion in relation to costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹. Costs will generally follow the event and awards will be modest. However, in exercising its discretion to award costs the Authority is required to first consider whether the costs incurred by Ms Zhao were reasonable in all the circumstances.

[7] I have concluded based on other similar cases I have determined in the Authority, that the actual costs incurred by Ms Zhao were reasonable and that my discretion to award costs should be exercised in her favour.

[8] The Second and Third Respondents claim that while they were ordered to take steps to ensure payment pursuant to the Compliance Orders were made, they should not be made liable for the costs incurred by the applicant in having to seek the compliance order.

[9] I agree with submissions by Counsel for Ms Zhao that the Second and Third Respondents should be liable for the costs incurred by the Applicant in seeking a compliance order to cause the Second and Third Respondents to cause payment to be made by Health and Body Clinic Limited.

[10] Having regard to the nature of the investigation, which was undertaken on the basis of the papers lodged in the Authority, and in the principled exercise of my

¹ [2005] 1 ERNZ 808.

discretion **Health and Body Clinic Limited and Murray Arnesen and Lynette Arnesen are ordered to pay to Ms Zhao the amount of \$1,000 plus \$220.00 in disbursements, and costs.**

Vicki Campbell
Member of Employment Relations Authority