

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 46
5404680

BETWEEN

PHILIP BEVAN
Applicant

A N D

GREENWAVE ENERGY
SAVING SOLUTIONS
LIMITED
Respondent

Member of Authority: G J Wood

Representatives: D Gelb for the Applicant
M Armstrong for the Respondent

Investigation Meeting: By way of written submissions

Submissions Received: By 7 January 2014

Date of Determination: 12 February 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Bevan, was successful in some but not all of his claims against the respondent, Greenwave Energy Saving Solutions Limited (Greenwave) and was awarded over \$12,000 in remedies. He now seeks costs.

[2] Mr Gelb submitted that pursuant to the Authority's tariff Mr Bevan be awarded \$3,500 in costs, together with the filing fee of \$71.56. Mr Gelb did not represent Mr Bevan at the investigation meeting, but was closely involved in preparation for the meeting. I accept that Mr Gelb was required on behalf of Mr Bevan to obtain a lot of information, and that a significant amount of work required post mediation was directly associated with preparation for the investigation meeting.

[3] However the fact is that in all respects this was a standard employment relationship problem investigated by the Authority. Given that Mr Bevan represented himself at the investigation meeting it would therefore be inappropriate for him to receive the normal tariff level as a contribution to his costs.

[4] By contrast, on behalf of Greenwave, Mr Armstrong relies on what is described as a *Calderbank* offer to settle the matter for \$15,000. This letter was not in fact a *Calderbank* offer but rather a without prejudice offer to settle. For instance, it was not expressed as a *Calderbank* offer as it should have been, and gave only five days for acceptance. Given that it was not in the proper form of a *Calderbank* offer I do not accept that it is appropriate that it should be taken into account.

[5] In any event, the preparation of the offer to settle pursuant to s.149 (known colloquially as a mediation settlement) was the only form of legal expense incurred by Greenwave. I therefore conclude in the alternative that these costs are too far removed from the investigation process to be taken into account.

[6] In his response Mr Gelb noted that it would *neither be fair nor equitable to award any costs in favour of the respondent*. I concur with that statement. However, given that the applicant was only partially successful in his claim and did not incur significant costs directly associated with the investigation meeting I consider that an award of \$1,200 for a part day investigation meeting is appropriate.

Orders

[7] I therefore order the respondent, Greenwave Energy Saving Solutions Limited, to pay to the applicant, Philip Bevan, the sum of \$1,200 in costs and \$71.56 in expenses.

G J Wood
Member of the Employment Relations Authority