

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Patricia Cann, Applicant
AND Kiwi Carlton Cabs Whangarei Society Limited, Respondent
REPRESENTATIVES Andrew Holgate for Applicant
Murray Broadbelt, Sally Leftley for Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS 28 July, 21 August, 22 August 2006
DATE OF DETERMINATION 11 October 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

Employment Relationship Problem

[1] In a determination dated 4 July 2006 I concluded that Ms Cann had not established her claim of constructive dismissal however I found she did have a grievance of disadvantage and was owed arrears of wages. The parties have been unable to resolve the issue of costs in relation to the investigation of those matters and I now proceed to determine that issue based on their written submissions.

[2] Mr Holgate has advised that the applicant's costs were \$5,942.00 plus GST. He submitted that these costs were reasonable given that there were several issues involved, and reasonably extensive briefs and documentation were required. He argued that the applicant has had a significant degree of success, in particular with the claim for overtime pay, which took up most of the investigation meeting. He acknowledged that a "Calderbank" offer of \$3,500.00 was made by the respondent in March 2006, but pointed out that this was in full and final settlement of all matters including costs and fell short of the total \$5,963.56 awarded to Ms Cann. Mr Holgate concluded with the submission that a two thirds contribution to his client's costs was warranted.

[3] On behalf of the respondent Mr Broadbelt argued that the applicant did not have a significant degree of success as her original claim was for a total of \$37,831.46 excluding legal costs. He submitted that the Calderbank offer should be compared to the net value of the award and when this was done it could be seen that there was a difference of only (approximately) \$1,250.00. He also pointed out that the respondent's costs in relation to the investigation were \$3,675.00. He concluded by saying that costs should lie where they fall.

Determination

[4] I do not consider the "Calderbank" offer to be of relevance since even in net terms it is substantially less than the award. However I agree that it is relevant that the applicant's constructive

dismissal claim did not succeed. She is entitled to costs only for that part of her claim which was successful.

[5] This matter ran over two days. I consider a day and a half would have been sufficient for the wage arrears and disadvantage grievance. Ms Cann is entitled to a reasonable contribution to the resulting costs. In all the circumstances, I set this at \$3,000.00.

[6] The respondent is ordered to pay to Ms Cann the sum of \$3,000.00 as a contribution to her costs.

Y S Oldfield
Member of Employment Relations Authority