

reasonable costs to determine a contribution in the absence of any details and invoices. TMS has provided invoices and details of its costs, but no details on the disbursements have been provided, although there are courier costs, telephone costs and copying referred to in the invoices. The invoices relate to work associated with the preparation of an investigation in the Authority and include travel time and travel expenses for TMS's EMA Central representative, from Palmerston North. I do not consider that travel time should be included in reasonable costs given the proximity of Palmerston North and Wanganui and that EMA Central covers the district. Such costs would not ordinarily be awarded where other counsel could be engaged. The basis upon which travel time has been calculated has not been explained. There is no itemised account for the travel expenses.

[6] Also, the nature of an investigation means that the Authority is able to apply a tariff for costs: *PBO* and *Rush* applied. I am prepared to consider that TMS made a *Calderbank Offer* to try and save costs. The offer was entirely reasonable and it would have been a pragmatic solution for Ms Collins to have accepted that offer. Since TMS was successful costs are determined in the normal manner and therefore the *Calderbank offer* is not directly applicable.

[7] Ms Collins had a genuine claim. However, TMS was correct to tell her that there was a high threshold to establish for a constructive dismissal and it attempted to resolve the problem to save costs. It also followed that Ms Collins would have some difficulty in establishing a breach of good faith. It was always going to be difficult for Ms Collins to establish a claim for overtime given her evidence and that TMS had evidence to defend the claim. Overall the varied nature of Ms Collins's claims has added to the time and length of the investigation and required the respondent to cover all the angles of the claim, which should have been much more focussed. If it had been more focussed I suspect the matter would have been open to a better risk assessment and reality check, instead of needing an investigation in the Authority.

[8] This leads me to conclude that the employer has been put to unnecessary expense, especially as Ms Collins elected to get vindication and proceed on principle. Now she will have to contribute some costs since she was not successful.

[9] I have decided that this matter should be approached on the basis of a tariff because the employment relationship problem followed the usual type of investigation process and lasted one day. There was no trial involved and the role of the parties' representatives was different to that of a trial. However, I have decided that the costs should be at the upper end of the scale for a one day investigation. This is because:

- The applicant has put the respondent to unnecessary costs;
- The applicant could have been pragmatic and settled the matter without the cost of an investigation. TMS offered a reasonable sum that would have been well within the boundaries of a litigation outcome given that Ms Collins was unsuccessful;
- The broad nature of the application for an employment relationship problem that involved at least three issues to be determined made it entirely reasonable for TMS to cover them all off in the event the investigation discovered something associated with any or all of them. Also, the nature of the application left TMS having to anticipate what might have ended up being relevant;
- Submissions were required to be made after the investigation, and put in writing, because the evidence took a day to cover and the range of matters associated with the claim reasonably required some further consideration by the representatives.
- TMS was fully successful.

[10] The ability to pay is a relevant factor. I have noted that Ms Collins says she will have some difficulties in paying for the costs. However, and despite her apparent limited income, there has been no evidence that would suggest that over time she will not be able to pay.

[11] Therefore, I hold that Ms Collins is to pay TMS Medical Limited the sum of \$3,000 contribution towards costs. The disbursements have not been itemised, therefore, I am not prepared to make an order on them.