IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2014] NZERA Christchurch 113
5414108

BETWEEN   HENRY RICHARD COOPER
                 Applicant

A N D   FJ RAMSEY INVESTMENTS
                 LIMITED
                 Respondent

Member of Authority: M B Loftus

Representatives: Mark Henderson, Counsel for Applicant
                          Simon Menzies, Counsel for Respondent

Submissions Received: 4 April 2014 from Applicant
                          23 April 2014 from Respondent

Date of Determination: 31 July 2014

COSTS DETERMINATION OF THE AUTHORITY

[1]   On 29 January 2014 I issued a determination concluding Mr Cooper had been unjustifiably dismissed. Costs were reserved.

[2]   Mr Cooper spent a little under $17,000 toward which he seeks contribution of $14,120.82.

[3]   Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is $3,500 per day and from there adjustment may be made depending on the circumstances.

[4]   This matter took a day but as already said Mr Cooper seeks considerably more than the normal $3,500.

[5]   The principle rationale behind the request I increase the tariff is the existence of two Calderbanks sent by Mr Henderson. The first dated 3 May 2013 proposed the respondent pay $15,000 compensation plus $3,000 toward Mr Cooper's costs, along with a couple of ancillary items such as a reference. This offer was made at an early stage in proceedings (prior to either Mediation or filing in the Authority) but was rejected.

[6]   A second proposal was put at the time of filing (August 2013). The total sought remained the same but its constituent parts changed - $12,000 wages, $4,000 compensation and $2,000 toward costs. Again the proposal was rejected.

[7]   It is argued the offers were reasonable in that the total sought was exceeded by the Authority's award. This is especially true of the second offer which broke the offer into the components awarded by the Authority (lost wages and compensation) and both were exceeded by the awards made in the substantive determination.

[8]   It is argued that by rejecting what were reasonable offers the respondent put the applicant to unnecessary cost which should be recognised through an increase in the amount awarded.

[9]   The respondent accepts Mr Cooper is entitled to a contribution toward his costs and the Calderbanks justify an increase in the tariff but argues the amount sought is excessive. It suggests $5,000 is an appropriate amount.

[10]   It is difficult to agree with the respondent's contention the amount charged was grossly excessive. The hourly rate is not unreasonable and a considerable amount of work is noted as having been performed.

[11]   Add to that the fact the Courts have urged a more steely approach in respect of recognising Calderbanks and reasonable attempts to settle (*Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 CA), I conclude this is a situation I which, as the respondent concedes, the tariff should be exceeded. The question is by how much.

[12]   Here I note it difficult to consider rejection of the first offer unreasonable. While the amount awarded in the Authority exceeded it, its make-up differed considerably. It ignored wages and sought an amount of compensation which was not attained. As a result of the greater portion of my award being wages it is also

probable the proposal exceeds the net amount attained by Mr Cooper through the substantive determination.

[13]   The second offer was much more realistic given its altered construction and the fact it was issued in a timely manner. There is however its timing as the bills do not correlate with its issuance and I do not know how much of the total charged was accrued after its date.

[14]   Having considered the submission and the applicable law, I conclude an award of $7,000 to be appropriate.

Conclusion and Orders

[15]   The respondent, FJ Ramsey Investments Limited, is to pay the applicant, Mr Henry Cooper, the sum of $7,000 (seven thousand dollars) as a contribution toward costs.

M B Loftus
Member of the Employment Relations Authority