

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Tony Edwards

AND Regent Training Centre Limited

REPRESENTATIVES Stewart King, counsel for Tony Edwards
Murray Broadbelt, advocate for Regent Training
Centre Limited

MEMBER OF AUTHORITY R A Monaghan

MEMORANDA RECEIVED 13 and 25 June 2007

DATE OF DETERMINATION 03 July 2007

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the above matter, dated 21 May 2007, I found Mr Edwards was unjustifiably dismissed but awarded limited remedies because of the extent of Mr Edwards' contributory conduct. Costs were reserved and the parties have filed memoranda on the matter.

[2] Counsel for Mr Edwards sought a contribution to costs in the sum of \$3,000. He relied in particular on concerns about the willingness of Regent Training Centre Limited ("RTC") to settle the employment relationship problem.

[3] The advocate for RTC submitted that costs should lie where they fall.

[4] Regarding RTC's willingness to settle, both parties pointed to a letter headed 'without prejudice except as to costs', dated 5 July 2006. I refer to it as a Calderbank letter. The offer was for a payment of \$3,000 pursuant to s 123 of the Employment Relations Act 2000, as a full and final settlement of all matters between the parties. It was stated to be inclusive of legal costs incurred by Mr Edwards, and remained open until 14 July 2006.

[5] It appears the offer was made a day or two after the parties had attempted mediation. The bulk of the costs of representation in respect of the Authority's investigation had yet to be incurred, but I have no information about the actual

costs incurred at any time by either party save that RTC says its final costs are in excess of \$7,000 plus GST. Even so the amount of the offer suggests it is unlikely to have left Mr Edwards in a better position, had he accepted it at the time, than the outcome of the determination. Accordingly the existence of the offer does not assist in assessing costs.

[6] There was further discussion in submissions regarding whether RTC had taken an unrealistic stance in attempting to negotiate a settlement. Arguments of that kind can be pursued only to a very limited extent, and tend to focus on whether there is evidence of bad faith. Moreover, in most cases only very limited evidence is properly available as to the content of the negotiations. On the limited evidence available to me I consider it likely that both parties' stances were affected by their views of the merits of their cases. They were entitled to take those views, and assume any resulting litigation risk. I cannot take that matter any further.

[7] Turning to the commonly applied principles for assessing costs in the Authority, the matter was relatively uncomplicated and took less than a day to hear. Although I made a monetary award in favour of Mr Edwards, I found that his conduct amounted to bad faith in one respect in particular. In other respects he exhibited bad judgment and poor management. Thus, while he was successful to the extent that his dismissal was found to be unjustified, he was not successful in persuading me there was no contributory fault on his part. In short, both parties achieved some success in the matter.

[8] I consider an appropriate balance is to make a modest award of costs in Mr Edwards' favour. Accordingly RTC is ordered to contribute to Mr Edwards' costs in the sum of \$1,000.

R A Monaghan
Member of Employment Relations Authority