

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 31
5319715

BETWEEN GRAHAM FRENCH
 Applicant

AND FLAVORJEN LIMITED
 Respondent

Member of Authority: Dzintra King

Memoranda Received: 29 November and 7 December 2011 from Applicant
 5 December 2011 from Respondent

Determination: 20 January 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Graham French, was successful in his unjustified dismissal claim.

[2] The applicant claims \$4,169 in costs and \$117 in disbursements.

[3] The respondent accepts that it should pay the filing fee and photocopying expenses but does not agree that it should pay costs as Mr French was not legally represented.

[4] The respondent has supplied a copy of a Calderbank letter sent to the applicant on 6 July 2011 and says that had it been accepted Mr French would have received about the same as he did as a result of being successful in his unjustified dismissal claim. The offer remained open until 5pm on 7 July.

[5] The applicant says the Calderbank offer was open only for one day and it was unclear. The applicant did not know what a Calderbank offer was and had insufficient

time to seek advice about it. It was made 6 days prior to the hearing and therefore did not warrant consideration.

[6] In [*Ogilvy & Mather \(NZ\) Ltd v Darroch* \[1993\] 2 ERNZ 943](#) the Court ruled that the offer had to be clear and the recipient should be allowed a reasonable time to consider the offer.

[7] The Calderbank offer would not have been unclear to someone experienced in legal matters. I accept that laypeople would not be familiar with the concept and may not have understood that the payment was tax free or the meaning of a non-disparagement clause. The time period for consideration was too short and the applicant and his representative could not have been expected to fully understand the meaning of the offer. I will not take the Calderbank offer into account.

[8] In [*Murphy and Routhan t/a Enzo's Pizza v van Beek* \[1998\] 2 ERNZ 607](#) the Court explained the general rule that a party who is not represented by law practitioners cannot recover anything for that party's time and trouble in attending to the litigation. It noted that this was not an absolute rule and that there were exceptions to it. These include awards of costs in relation to the time spent by in-house solicitors, union advocates and other representatives in preparing for cases, where the Court will generally award "expenses" in recognition that the unsuccessful party should contribute to the paid time of its opponent's representative.

[9] It is fair and reasonable that the respondent make a contribution to the applicant's expenses. The respondent is to pay the applicant the sum of \$3,000 plus disbursements of \$105, being the photocopying charges and filing fee.

Dzintra King

Member of the Employment Relations Authority