

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 139B/10  
5164314

BETWEEN PAMELA GALBRAITH  
Applicant

A N D GIRL GUIDES  
ASSOCIATION OF NEW  
ZEALAND  
Respondent

Member of Authority: James Crichton

Representatives: Jeff Goldstein, Counsel for Applicant  
Peter Macdonald, Advocate for Respondent

Submissions Received: 23 August 2010 from Applicant  
14 September 2010 from Respondent

Date of Determination: 27 September 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The claim for costs**

[1] In my determination dated 30 June 2010, I found for the applicant and reserved costs.

[2] The applicant seeks costs in the sum of \$8,000 plus disbursements as a contribution to the costs she actually incurred. The respondent proposes a lesser figure of \$3,000 together with GST and disbursements as a reasonable contribution to costs.

**The legal principles**

[3] Both parties rightly draw my attention to the leading case of *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. That decision given by Her Honour Judge Shaw on behalf of the Full Court approved the tariff-based approach traditionally used by the Authority in the costs environment provided that the daily tariff approach was applied

in accordance with principle and not arbitrarily. Her Honour also listed the various factors which the Authority ought to take into account in exercise of its discretion in the cost fixing environment.

[4] The circumstances of this case require the Authority to consider the effect of a *Calderbank* offer made by the ultimately successful party to the ultimately unsuccessful party and invites me to conclude that a proper approach to cost fixing is to require a payment by the unsuccessful party to the successful party of all the costs that were incurred after the *Calderbank* letter together with a more modest contribution to the costs incurred prior to that.

[5] In suggesting that approach, the applicant refers me to an earlier decision of mine, *Allan v. Ogilvy Wellington Ltd* 24 April 2009 in which I said this:

*The effect of a Calderbank letter is, of course, to entitle the author of that letter to ask that it be considered in an application for costs where the recipient of the letter rejects the offer and the sender of the letter is successful in the proceedings. If as in this case, Mr Allan does better in the decision of the Authority than he would have by force of his Calderbank letter, then that is a material factor in the decision the Authority has to make in relation to costs.*

### **Determination**

[6] I must say that I think the logic advanced by the applicant in relation to the *Calderbank* letter is unimpeachable. It seems to me axiomatic that if Ms Galbraith had had her *Calderbank* offer accepted, matters would have been able to be concluded some months before the hearing and eventual determination and Ms Galbraith would have saved herself a great deal of money in fees that she subsequently incurred by reason of the necessity to proceed when her *Calderbank* offer was rejected.

[7] The *Calderbank* offer was in the sum of \$5,000, it was made on 24 March 2010 to expire on 30 March 2010. The offer was rejected by Girl Guides and the matter subsequently went on to be determined by me and, having found Ms Galbraith had a personal grievance, I directed that Girl Guides was to pay her \$16,000 as compensation under s.123(1)(c)(i) of the Employment Relations Act 2000, to remedy that personal grievance.

[8] Having concluded that it is appropriate to take into account Ms Galbraith's *Calderbank* offer, I now determine that she should properly enjoy the benefit of the \$7,000 in legal costs which she incurred after the *Calderbank* offer was rejected

together with a sum of \$500 as a contribution to the costs for the period prior to the *Calderbank* letter being in play. Girl Guides is also directed to pay the disbursement cost of \$70.

[9] Accordingly, I direct that Girl Guides is to pay to Ms Galbraith the sum of \$7,500 as a contribution to her fees in the matter together with the sum of \$70 as reimbursement of the filing fee in the Authority.

James Crichton  
Member of the Employment Relations Authority