

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN John George (Applicant)
AND Datacom Engineering Services Ltd (Respondent)
REPRESENTATIVES John George In Person
Duncan McGill, for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSIONS RECEIVED 19 April 2005 from the Applicant
26 May 2005 from the
DATE OF DETERMINATION 31 May 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] The Authority resolved the employment relationship problem between these parties by determining that Mr George was unjustifiably dismissed. Mr George was found to have contributed to the situation giving rise to the personal grievance. Datacom Engineering Services Ltd was ordered to pay \$6,750 to Mr George as compensation under s.123(c)(i) of the Employment Relations Act 2000.

[2] Costs were reserved in the Authority's determination dated 29 March 2005. Both parties have filed memoranda to assist the Authority in the exercise of its discretion to award costs.

Costs in the Authority

[3] It has been held generally that awards of costs in the Authority are modest, consistent with the Authority's approach to Investigations. The principles and rules conventionally applied to applications for costs in traditional adversarial or trial litigation do not fit with the Investigative role of the Authority and the objects of the legislation which establishes it (*Harwood v Next Homes Limited*, unreported, AC70/03, 19 December 2003, Travis J; *Koia v Attorney-General*, unreported, AC8/04, 23 February 2004, Colgan J).

[4] Mr McGill submits that Datacom's costs exceeded \$10,000; there was a calderbank offer made to the applicant which he rejected; and seeks costs to lie where they fall.

[5] Mr George advises his costs were \$5,160.00 and seeks an unspecified contribution to those costs.

The Calderbank Letter

[6] By letter dated 21 February 2005, Datacom made an offer of \$7,500 to Mr George in settlement of the employment relationship problem. That letter operates as what lawyers call, a Calderbank letter, and I shall refer to it as that from here. The offer set out in the Calderbank letter was open to be accepted until 23 February 2005.

[7] Mr George's costs were largely incurred before the offer set out in the Calderbank letter was made. All witnesses for both parties were required to and did file written witness statements which were received by the Authority by 14 February 2005.

[8] The Calderbank letter must be accompanied by a suitable period of time to allow the recipient to consider the offer. I am not satisfied that three days is a suitable period of time for "...*calm reflection and seeking advice*" (*Calderbank v Calderbank* [1975] 3 ALL ER 333). I have therefore disregarded the Calderbank letter.

[9] I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Mr George. Datacom Engineering Services Limited is ordered to pay the sum of \$1,000 as a reasonable contribution to costs given the subject of the investigation and the duration of the investigation meeting. An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority