

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Carolyn Edith Margaret Hodgkiss (Applicant)
AND MidCentral District Health Board(Respondent)
REPRESENTATIVES Alan Miller for Applicant
Jonathan Coates for Respondent
MEMBER OF AUTHORITY G J Wood
SUBMISSIONS RECEIVED 19 April 2005
DATE OF DETERMINATION 13 May 2005

COSTS DETERMINATION AND ERRATUM OF THE AUTHORITY

Costs

1. In my substantive determination the parties agreed that Ms Hodgkiss had a personal grievance, however categorised, even although her salary was reinstated reasonably promptly after being stopped and the sole issue was thus one of remedies. In particular, this was placed on record by a letter signed on behalf of the Board, stating amongst other things:

“MidCentral District Health Board accepts that its action in terminating your pay was unjustified, and could be seen by you to be to your disadvantage. MidCentral acknowledges that your perception is a legitimate one. MidCentral apologised to you for its action. MidCentral notes that on you informing it of the cessation of your payment MidCentral made a manual payment to reimburse you for the missed pay and your salary was reinstated.”

2. By way of remedies I determined that the appropriate award for compensation was \$3,000. MidCentral Health now seeks costs of \$2875 on the basis of a *Calderbank* offer of compensation of \$3,500. It was made on 2 February and could have been accepted until 9 February, well before the investigation meeting of 10 March. Ms Hodgkiss responded refusing to accept this offer unless it was done so on the basis that MidCentral publicly accepted liability. MidCentral Health, which had already acknowledged that it had made a

mistake in stopping Ms Hodgkiss' pay and had rectified the matter reasonably promptly, declined then to do as required by her.

3. By contrast, having been successful in her claim before the Authority, Ms Hodgkiss seeks costs of \$2,531.25 for 15 hours work by her representative and \$85 in disbursements.
4. I accept that an employee is entitled when considering a *Calderbank* offer to take into account the non-financial benefits of a determination in her favour. However, in this case MidCentral Health had already accepted that it should not have stopped Ms Hodgkiss' pay and apologised to her, through her representative, for this action. Neither this acceptance nor the apology was in any way conditional or confidential. Thus Ms Hodgkiss could have used them to restore any concerns she had over a potential loss to her reputation, which was not proven to have occurred anyway.
5. I therefore determine that the *Calderbank* offer is a main feature in determining costs in this case. I do not accept, however, that the sum offered of \$3,500 is grounds for awarding costs in MidCentral Health's favour, given all the vagaries of this employment relationship problem. The sum was only marginally higher than the amount ordered by the Authority and Ms Hodgkiss did gain public acceptance that MidCentral Health's actions were not only unjustified, but also that her perception that they were to her disadvantage was legitimate. I therefore determine, in the interests of justice and in the particular circumstances of this case, that costs should lie where they fall and I so order.

Erratum

6. The first sentence of the quotation in para.12 of the substantive determination is hereby amended to read:

“MidCentral District Health Board accepts that its actions in terminating your pay was unjustified, and could be seen by you to be to your disadvantage.”

G J Wood
Member of Employment Relations Authority