

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 288A/10
5292348

BETWEEN JEFFREY KA
 Applicant

AND NATIONAL PACIFIC RADIO
 TRUST INCORPORATED
 Respondent

Member of Authority: Dzintra King

Representatives: Matt Robson, Counsel for Applicant
 John Burley, Counsel for Respondent

Memoranda Received: 23 July 2010 from Respondent
 18 August 2010 from Applicant

Determination: 22 September 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Jeffery Ka, was unsuccessful in his personal grievance claim. The parties have been unable to resolve the matter of costs.

[2] The respondent seeks actual costs of \$6,865.00.

[3] On 2 February 2010 the respondent made a Calderbank offer. The offer was for \$5,000 and the provision of a reference. The matter was due to be heard in the Authority on 23 and 24 March. The offer was open for 14 days. The offer, which was reasonable, was rejected.

[4] The hearing occupied a day.

[5] In the employment context it has been recognised, in *Aoraki Corporation Ltd v McGavin* [1998] 1 ERNZ 601, that the public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer without any consequences as to costs

[6] The applicant's witness statements were provided on 23 February and the respondent's on 15 March. The costs incurred by the respondent subsequent to the Calderbank offer were incurred because the applicant did not accept the offer; they were properly incurred.

[7] The principles applicable to an award of costs in the Authority have been set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The Full Court set out a number of principles including that costs generally follow the event, are frequently judged against a notional daily rate and that awards will be modest.

[8] Mr Robson has asserted that the applicant is not in a position to pay an award of costs. The material provided in support of this is a statement of earnings and income from 1 April 2009 to 31 March 2010. This gives no indication regarding the applicant's current financial status.

[9] The respondent is entitled to a reasonable contribution to its reasonably incurred costs. Were it not for the Calderbank offer I would apply a notional daily rate of \$3,000. Given the Calderbank offer, the applicant is to pay the respondent the sum of \$4,000

Dzintra King

Member of the Employment Relations Authority