

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 84
5324829

BETWEEN	VICTORIA ELIZABETH KEEBLE Applicant
AND	SHAMROCK PASTURES LIMITED Respondent

Member of Authority:	Philip Cheyne
Representatives:	Rex Hancock, Advocate for Applicant Nanette Bolstad, Advocate for Respondent
Submissions received:	2 June 2011 from the applicant 15 June 2011 from the respondent
Determination:	16 June 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 31 May 2011 I upheld Ms Keeble's personal grievance claim and reserved costs for each party to lodge and serve a memorandum which they have done. This determination resolves the question of costs.

[2] I am told that Ms Keeble's costs are \$8,797.50 and I am asked to award full costs. In support various allegations are made about the respondent's failure to make any realistic offer to settle the matter. I am also told that the applicant made a *Calderbank offer* which was rejected.

[3] In reply, the respondent's representative contests much of what has been said on the applicant's behalf. I am also asked to either leave costs to lie where they fall; or if any award is made to reduce it by two-thirds to reflect Ms Keeble's contribution to the circumstances giving rise to the grievance.

[4] The Authority's approach to costs is well known and reflects the principles expressed in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[5] With the exception of the applicant's so-called *Calderbank offer* the exchanges between the representatives about resolution should properly be regarded as *without prejudice*. I will ignore what I have been told about that. The *Calderbank offer* is irrelevant since it was made by the applicant who succeeded in any event. I will approach the question of costs as a simple application of the *PBO Ltd* principles.

[6] I do not accept that costs should lie where they fall. Ms Keeble succeeded with her personal grievance claim and is entitled to costs in the usual way.

[7] The matter was very simple with few factual disputes. The investigation meeting took about 2 hours. Minimal preparation was needed and there was very little file material. Assessed on the basis of a daily tariff there would be an award of perhaps \$750.00 for costs.

[8] There is no justification for indemnity costs or an uplift on the daily tariff.

[9] I do not accept that there should be any reduction to reflect Ms Keeble's contribution to the circumstances of the grievance. That was given full weight in the assessment of remedies and it would amount to a double penalty to bring it to account now. This was an obviously unjustified dismissal but of an employee who contributed substantially to the situation. The proper course for a respondent in those circumstances is to use a *Calderbank offer*. If a well judged offer had been made here but not accepted, Ms Keeble probably would have been paying costs to the respondent.

Conclusion

[10] The respondent is to pay the applicant costs of \$750.00.

Philip Cheyne
Member of the Employment Relations Authority