

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 64  
5281260

BETWEEN                      IRVINA LUNT  
   Applicant  
  
AND                                FIRTH & STEPHENSON  
   LIMITED  
   Respondent

Member of Authority:        P R Stapp

Representatives:             M Smith, Counsel for the Applicant  
   G Tayler Advocate for the Respondent

Submissions Received By:   15 March 2011

Determination:                27 April 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     Firth & Stephenson Limited have applied for costs, which have not been settled between the parties following a determination of the Authority issued on 25 January 2011. Costs were reserved.

[2]     Firth & Stephenson Limited has applied for \$4,000 contribution towards actual costs having regard to preparation and attendance at the investigation meeting. The actual costs were \$10,783.26 (invoices were provided). In support of the respondent's application the following points were noted:

- (a)     The hearing took up to a full day;
- (b)     The respondent made a *Calderbank* offer of \$3,000 in May 2010 to settle. This was rejected by the applicant and no counter-offer made in reply;

- (c) There is no basis for departing from the usual principle that costs should follow the event in favour of the successful party;
- (d) The determination of the Authority has been challenged but that this should not operate as a stay of proceedings.

[3] The applicant has accepted that, although there has been a challenge, there is no stay of proceedings. The applicant has not opposed the application for costs being made as costs were reserved by the Authority and the usual practice is to deal with costs so that all matters can be dealt with by the Employment Court in regard to any challenge. In addition, the applicant has accepted that costs should follow the event, but she has requested that the award should be substantially lower than the claim that has been sought by the respondent. The applicant has submitted that:

- (a) The notional daily rate should be applied, but lower than the respondent has claimed;
- (b) The applicant genuinely had matters in her employment relationship that she was entitled to bring before the Authority;
- (c) The reasonable time required to prepare for the Authority's investigation.

### **Determination**

[4] I am not satisfied that it is appropriate to apply the *Calderbank* offer, except to note that it was made in an attempt to try and settle the matter by the respondent to save costs and time before the investigation meeting. Since the applicant did not succeed with her claims the rationale for consideration of that *Calderbank* offer is absent. This is because the respondent was successful and is able to pursue costs as the successful party in the ordinary way and the usual principles apply.

[5] I am satisfied that preparation was required in regard to the matters raised by the applicant. It was also appropriate for both parties to be represented. There is nothing unusual about either of these two points. Even although there were a number of matters to be determined, this was able to be done in the time available. Also I have had regard to:

- a. The investigation meeting took one day.

- b. The parties followed a timetable in preparation for the investigation meeting.
- c. The number of witnesses.
- d. The focussed attention given to the issues by the parties during the investigation.
- e. The notional daily tariff ranges from \$1,500 to \$3,000.
- f. The respondent has incurred costs in defending the applicant's claims.

[6] The matters raised during the investigation meeting were not unexpected and there were no unnecessary delays brought about by the applicant to cause the respondent any unnecessary costs.

[7] It is my decision that the applicant is to pay a contribution of \$2,500 costs to Firth & Stephenson Limited.

P R Stapp  
Member of the Employment Relations Authority