

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 169
5281908

BETWEEN SUSAN LUCAS
 Applicant

AND ULTIMATE CARE GROUP
 LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Angela Sharma, Counsel for the Applicant
 Darren Mitchell, Advocate for the Respondent

Submissions Received: 24 July 2012 from the Applicant
 30 July 2012 from the Respondent

Determination: 14 August 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] On 26 June 2012 my colleague, Mr Cheyne, issued a determination in respect to this matter. Ms Lucas was successful and awarded \$11,101.63 plus interest on part of that amount. She would have lost some of the award by way of tax, leaving a net award of approximately \$10,750. Costs were reserved.

[2] As the successful party, Ms Lucas now seeks a contribution toward the costs she incurred in pursuing her claim.

[3] Normally the Authority will assess costs on a daily tariff basis: refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances. The matter took a day so application of the standard tariff would see a contribution of around \$3,500.

[4] Ms Lucas, however, seeks a greater contribution. Indeed, she seeks full indemnity in the amount of \$16,185.83 (including disbursements and GST). She

supports her position by referring to various settlement attempts, the principles applicable to Calderbank offers, and reference to *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 (CA) where the Court urged a steely approach to the reimbursement of costs incurred as a result of one party having rejected a reasonable settlement offer.

[5] Ultimate Care responds by referring to the principles of *Da Cruz* before making various observations about how those principles apply to the present matter. These include double handling of files as a result of the matter having to be rescheduled after Christchurch's February earthquake and the generation of additional costs through protracted efforts to settle. Reference is also made to *Ogilvy & Mather (New Zealand) Ltd v Darroch* [1993] 2 ERNZ 943 and the principle of indemnity costs following a Calderbank only applying to those costs incurred after its rejection.

[6] The underlying principle of a Calderbank is the offer would have led to a more beneficial outcome for the party against whom costs are now sought, thus putting the other party to costs that (albeit with the benefit of hindsight) could have been avoided.

[7] *Without prejudice except as to cost* offers were proffered by both parties via a combination of letters and e-mails. Multiple offers obviously means each party's position altered. It was not till Ms Lucas' final Calderbank offer of 10 March 2011 that she put an offer less than the amount ultimately obtained and therefore her earlier positions do not constitute valid Calderbanks. The information before me suggests the costs incurred thereafter amount to \$4,876 plus GST. Add disbursements to that and the total is in the order of \$6,250.

[8] Having considered the issues and the submissions I conclude that to be an appropriate award.

Conclusion

[9] Ultimate Care Group Limited is to pay Ms Lucas the sum of \$6,250 (six thousand, two hundred and fifty dollars) as a contribution toward costs.