

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 265A/10
5284637

BETWEEN

CHRISTENE NAFOI
Applicant

AND

COMPLETE FIRST AID
SUPPLIES LIMITED
Respondent

Member of Authority: R A Monaghan
Representatives: S Hough, advocate for applicant
R Upton, counsel for respondent
Memoranda received: 16 June 2010 from applicant
10 and 21 June 2010 from respondent
Determination: 24 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 3 June 2010 I found Ms Nafai was dismissed unjustifiably, but because of Ms Nafai's contributory conduct I awarded no remedies. I dismissed Ms Nafai's other personal grievance claims. Costs were reserved.

[2] Counsel for the respondent has filed a memorandum in respect of costs, seeking a contribution in the sum of \$3,500 based on a one-day investigation meeting in the Authority. He cited in support the principles set out in **PBO Limited (formerly Rush Security Limited) v Da Cruz**,¹ and asked that an award be made at the higher end of the range a one-day meeting can attract because a Calderbank offer had been made.

¹ [2005] 1 ERNZ 808

[3] Ms Hough replied, relying on Ms Nafoi's success in respect of the company's flawed dismissal procedure. She also drew attention to comments on the determination which were reported in the New Zealand Herald on 12 June 2010, but nothing in that report warrants any sounding in costs.

The Calderbank offer

[4] An offer of settlement made without prejudice save as to costs was forwarded to Ms Nafoi by letter dated 17 December 2009. The letter attached proposed terms of settlement and was open for signature until 23 December 2009. It also contained an assurance that payment would be made before Christmas if the terms of settlement were agreed. The offer was for:

- a. a written apology for any upset suffered;
- b. a payment of \$2,000 under s 123(1)(c)(i) of the Employment Relations Act 2000;
- c. a certificate of service; and
- d. the conversion of references to dismissal to references to resignation.

[5] By then the investigation meeting had been scheduled, and the filing and service of statements of evidence had been timetabled for dates in March 2010. Further Ms Hough was assisting Ms Nafoi in a personal capacity so that although the offer was silent on Ms Nafoi's costs little, if any, such costs would have been incurred and the silence is not significant.

[6] Ms Hough says the case was brought because a proper process had not been followed, and in that respect Ms Nafoi was successful. However Ms Nafoi had also made wide-ranging claims of bullying and unjustified disadvantage which were without merit and were unsuccessful. Further the conduct which led to her dismissal was found to be unacceptable to the extent that she was awarded no remedy.

[7] Accordingly even if I accept Ms Hough's assertion that the case was brought because of the flawed dismissal procedure, the flaw should have been weighed properly with reference to Ms Nafoi's conduct far earlier than it appears to have been and the Calderbank offer assessed in that light. The offer was fair and reasonable and

provided Ms Nafai with more than she has achieved by pursuing the employment relationship problem to a determination.

Conclusion

[8] The degrees of success achieved by both parties mean that, were it not for the Calderbank offer, I would probably have found that costs should lie where they fall in respect of the dismissal and made a small award in favour of the company in respect of the disadvantage grievances.

[9] However, for the reasons indicated, the presence of the Calderbank offer means I accept counsel's submissions and order Ms Nafai to contribute to the costs of Complete First Aid Supplies Limited in the sum of \$3,500.

R A Monaghan

Member of the Employment Relations Authority