

Applicant's Costs Submissions Summarised

- [3] In costs submissions received on 2 September 2009, the applicant's representative, Mr Adrian Tayler advised in his covering email that, "*As usual, I cannot get any response from the respondent whatsoever*".
- [4] While Mr Tayler acknowledged my observation in the substantive determination that, as the investigation took half a day, Mr Pollock could argue strongly for a contribution to his fair and reasonable costs of \$2,000 ([par 27]). He went on to say that his client's actual costs were \$5,201.88 excluding mediation and asked the Authority to bear in mind Mr Pollock's Calderbank offer (copy attached) which sought payment of \$11,000 under s. 123 (1) (c) (i) of the Employment Relations Act 2000 and costs of \$4,000 GST inclusive.

The Company's Position Summarised

- [5] No costs submissions have been received from the Company. However its Director, Mr Ken Thurston, by fax dated 23 September 2009 but received on 25 September, advised that "*... we will be appealing the determination made by the Authority ...*".
- [6] On the same day an Authority support staff advised Mr Thurston that, per s. 179 (c) of the Act the Company had 28 days to lodge an appeal and as it was now out of time it was suggested he contact the court registrar. Her name and telephone number were supplied.
- [7] I was advised today by a court staff member that no challenge has been received.

Findings

- [8] The Authority's discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [9] The Company failed to participate in the Authority's substantive investigation, and it has also seen fit not to provide any costs submissions.

[10] While the remedies awarded Mr Pollock are greater than what he was willing to settle on had his Calderbank offer been accepted, I do not accept that this is a reason to go above the usual application of the Authority's costs guidelines. That is because he has been successful and there is no reason for costs to not follow the event.

[11] However, I do accept that the Company's non-participation in this problem clearly caused Mr Pollock to incur greater costs as a result of his need to make more comprehensive preparation for the investigation than would have been the case had he had the benefit of a coherent statement from the respondent as to its position, as is typically provided by a comprehensive statement in reply and witness statements.

[12] Having regard to the above a costs award of \$3,000 for the investigation is appropriate in all the circumstances.

Determination

[13] The Company is to pay to Mr Pollock as a contribution to his fair and reasonable costs \$3,000 (three thousand dollars).

Denis Asher

Member of the Employment Relations Authority