

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 175
5306232

BETWEEN WILLIAM QUIN
 Applicant

AND TRUCKING RELIEF
 (WAIKATO) LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
 Rose Alchin for Respondent

Submissions received: 4 February 2011 from Applicant
 24 January 2011 from Respondent

Determination: 29 April 2011

COSTS DETERMINATION OF THE AUTHORITY

- A Trucking Relief (Waikato) Limited is entitled to an award for costs.**
- B Mr Quin is ordered to pay to Trucking Relief (Waikato) Limited the sum of \$3,000.**
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[1] In a determination dated 7 January 2011, the Authority held Mr Quin was a permanent employee with an expectation of ongoing employment, but whose dismissal was justified. The question of costs was reserved and the parties were encouraged to resolve the matter between them. I am now in receipt of a memorandum from the parties seeking and opposing a contribution to costs.

[2] Ms Alchin seeks a contribution to the costs of this matter in the sum of \$4,832.50. The application relies on a Calderbank letter sent to Mr Quin following attendance at mediation. Mr Quin asks the Authority to let costs lie where they fall.

The Calderbank letter

[3] In its Calderbank letter dated 28 June 2010 Trucking Relief (Waikato) Limited offered to resolve Mr Quin's employment relationship problem by:

- Paying him the sum of \$5,000 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000;
- Offered Mr Quin to be considered for any driving positions;
- Offer of a reference.

[4] It seems no response was received from Mr Quin to the offer.

[5] The Calderbank letter also, very reasonably in my view, set out Trucking Relief (Waikato) Limited's view of the litigation risk and explained why the offer was reasonable.

[6] Mr Quin represented himself throughout this matter. In that case, his costs at the date at which he received the offer would have been negligible. Its acceptance, therefore, would have left him with a better outcome than the one he achieved.

Conclusions

[7] The principles appropriate to the exercise of the Authority's discretion in relation to costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹. Costs will generally follow the event and awards will be modest. However, in exercising its discretion to award costs the Authority is required to first consider whether the costs incurred by Trucking Relief (Waikato) Limited were reasonable in all the circumstances.

[8] Ms Alchin has failed to produce any copies of the invoices to support her claims that the total costs incurred by Trucking Relief (Waikato) Limited were \$9,832.50 which seems to me to be on the high side. If I allow two days preparation, plus one day hearing at a notional rate of \$250.00 per hour, the total would equate to \$6,000.00.

¹ [2005] 1 ERNZ 808.

[9] On the other hand, Mr Quin has not provided the Authority with any information with respect to his ability to pay. The lack of information makes it difficult for the Authority to consider the circumstances in a way that is fair to both parties. Without better information I am not satisfied Mr Quin will be unable to meet an order for costs.

[10] The Calderbank letter is relevant and the Authority is mindful of the judgment of the Employment Court in *Watson v New Zealand Electrical Traders Limited trading as Bray Switchgear*² where the Chief Judge re-emphasised the need for a steely approach to costs where reasonable settlement proposals have been rejected.

[11] I find the offers made in the 28 June 2010 letter were reasonable and a realistic approach in terms of assessing litigation risk should have been taken to it. I have given considerable weight to the offer, as acceptance of it would have allowed the resolution of the matter at an early stage. Mr Quin was entitled to choose to refuse the offer, but not to disregard the associated risk.

[12] The total amount sought is more than the amount the Authority would generally order in the absence of a Calderbank offer. I have stood back and considered the overall outcome of the employment relationship problem which was that Mr Quin was successful in one aspect of his claim, but not in the substantive claim of unjustified dismissal.

[13] Given the above, and adopting a steely approach as required, in the principled exercise of my discretion **I order Mr Quin to pay to Trucking Relief (Waikato) Limited the sum of \$3,000 as a contribution to its costs.**

Vicki Campbell

Member of the Employment Relations Authority

² Employment Court Auckland, Colgan CJ, 24 November 2006, AC 64/09