

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** William Rackham (Applicant)  
**AND** New Zealand Fire Service (Respondent)  
**REPRESENTATIVES** Kerry Single, Advocate for Applicant  
Paul McBride, Counsel for Respondent  
**MEMBER OF AUTHORITY** R A Monaghan  
**MEMORANDA RECEIVED** 4 and 10 April 2006  
**DATE OF DETERMINATION** 3 May 2006

**DETERMINATION OF THE AUTHORITY ON COSTS**

[1] In a determination of the above matter dated 13 March 2006, I found Mr Rackham's personal grievance on the ground of disadvantage caused by an unjustifiable action of his employer was not made out. Costs were reserved and the parties have submitted memoranda.

[2] Counsel for the Fire Service sought an award either of full costs, or a substantial contribution to them, particularly as all solicitor and client costs were incurred after a Calderbank offer was made. Counsel cited legal fees of \$8,750 plus GST, and disbursements of \$1,089. The latter was comprised principally of two return airfares between Rotorua and Wellington, for Mr McBride and a witness for the Fire Service. In the circumstances I accept these disbursements were reasonably incurred. Counsel cited further fees of \$640 plus GST in respect of correspondence and submissions as to costs.

[3] In support, counsel referred to what he said was the Authority's finding that there was no legal basis for Mr Rackham's claim, as well as to the Calderbank offer and to the urgency sought by Mr Rackham.

[4] I deal with the second of these by referring to counsel's assertion that urgency is properly a factor which increases costs above those which might otherwise be awarded. I would say that in appropriate circumstances urgency may be taken into account, although not to the point where it necessarily results in an increase in costs. While it appears urgency was a factor in the Authority's award in **X v Auckland District Health Board**<sup>1</sup>, the circumstances here are not comparable. Moreover here there was nothing to indicate how the urgency accorded to this matter meant the costs incurred by the Fire Service were higher than they would otherwise have been, so I do not treat it as a relevant factor.

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<sup>1</sup> A determination on costs was made in respect of certain preliminary matters on 7 November 2005, AA 171B/05.

[5] The advocate for Mr Rackham drew attention to references in the determination to the Fire Service's mishandling of aspects of Mr Rackham's transfer to Rotorua, and to an inconsistency regarding what is counted in 'length of service'. He submitted that costs should lie where they fall, or that there should be only a limited amount by way of contribution.

[6] In setting costs I apply the principles in **PBO Limited v Da Cruz** (9 December 2005, AC2A/05). To that end I bear in mind that the Authority's awards of costs tend to fall within a recognised range, but that particular factors may warrant awards outside that range.

[7] One relevant factor here is the Calderbank offer. The offer was for a payment of '\$1,500 in full and final settlement of any claim that [Mr Rackham] might have or have had.' However the offer did not make any reference to the nature of the payment – in particular whether it was to be made under s 123(1)(c)(i) of the Employment Relations Act or was a payment in respect of something else – and did not make any reference to the costs of representation Mr Rackham had incurred to date. Secondly, the rejection of a Calderbank offer can lead to liability to meet the other party's solicitor and client costs incurred after the date of the offer if the applicant is awarded a sum less or equal to the amount of the offer. That is not automatic, however. The appropriate approach for a body like the Authority is to weigh such considerations in the overall mix of factors, without treating them as determinative.

[8] In disregarding the provisions of the collective employment agreement and insisting on appointment to the Rotorua vacancy, Mr Rackham took a stance that was not well-founded in employment law. For that reason, and more importantly because the Fire Service was the successful party anyway, Mr Rackham should contribute in more than a limited way to the costs incurred by the Fire Service. However, I do not believe the Calderbank offer was sufficiently clear, or sufficiently recognised the role of the Fire Service in the creation of the problem, to sound in an award of full costs. I would have given the offer more weight if it had been clearer and a little more generous.

[9] The meeting lasted for close to a full day. Mr Rackham is to contribute to the costs of the Fire Service in the sum of \$2,000, plus disbursements of \$1,089.

**R A Monaghan**  
**Member, Employment Relations Authority**