

[3] On behalf of Mr Bailey, Mr Ogilvie submitted that costs should lie where they fall because of a *Calderbank* offer made by Mr Bailey. He also submitted that Scenario's representative's hourly rate of \$480 is excessive for matters before the Authority; that two of the witnesses for whom disbursements were sought by Scenario effectively gave evidence for Mr Bailey; that a director of Scenario is not entitled to claim travel costs; that Scenario's claim was only partially successful; that the matter did not require the urgency sought by Scenario; and that no evidence was produced of new or ongoing breaches by Mr Bailey.

[4] I do not accept that it is appropriate to take into account the *Calderbank* offer from Mr Bailey. This is because when assessing the financial costs to both parties I take into consideration the penalty awarded to the Crown for the breaches of the employment agreement by Mr Bailey. Once that penalty is taken into account, the sums awarded against Mr Bailey exceeded the sum that he was prepared to offer by way of *Calderbank* offer. In this regard, the penalties can be seen as vindication of Scenario's view that it was subject to unreasonable behaviour by Mr Bailey in breach of contract.

[5] In terms of the time taken to investigate the matter, while Scenario required witnesses to attend on summons who had little of benefit to say or documents to produce, the investigation meeting would have proceeded much more quickly had Mr Bailey simply admitted up-front that his actions were in breach of his employment agreement, rather than having to have that established by extensive questioning.

[6] In all the circumstances of this case I consider that an award of \$2,000 in costs is appropriate.

[7] As for the claims for disbursements, it is not appropriate to pay for travel costs of a principal of Scenario, who would be expected to attend as a witness and representative in any event, and that the costs of serving witnesses appears particularly high at \$740.

[8] I therefore consider that an appropriate level for disbursements is \$255.

[9] I therefore order the respondent, Steven Bailey, to pay to the applicant, Scenario Communications Limited, the sums of \$2,000 in costs and \$255 in disbursements.