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Sheriff v R.W & A.C. King Limited (Auckland) [2007] NZERA 160 (27 July 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA153A/07 5042482

BETWEEN

ALANZO SHERIFF Applicant

AND

RW & AC KING LIMITED Respondent

Member of Authority:

Leon Robinson

Submissions Received::

Nil from Applicant 7 June 2007

Determination:

27 July 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 18 May 2007, I declined to settle the employment relationship problem by granting the resolution sought by Mr Sheriff. RW & AC King Limited now asks the Authority to order that Alanzo Sheriff ("Mr Sheriff") contribute to its costs because the parties have been unable to resolve the matter informally between them.

[2] I permitted RW & AC King Limited to proceed with its application for costs out of time after Mr Sheriff failed to oppose the application for leave. I further invited Mr Sheriff to respond to the application for costs but he has also failed to do so.

[3] Ms Trotman advises RW & AC King Limited's costs are in the total sum of \$5,870.68 plus GST and disbursements. I note that some of those attendances relate to mediation. It is submitted that these actual costs are reasonable.

[4] Ms Trotman produces to the Authority a letter dated 23 January 2007 which offered to Mr Sheriff the sum of \$1,000.00 said to be "*for the purposes of avoiding litigation*". The offer was said to remain open for two weeks and it was suggested that Mr Sheriff may wish to discuss the implications of the advice with his advisers.

[5] The offer was not accepted and the problem proceeded to full investigation and determination by the Authority. Mr Sheriff did not succeed to the resolution he had sought.

[6] The power to award costs is a discretion that must be exercised in accordance with established principle. I note that the investigation meeting proceeded over less than one day. It was not a complicated investigation. RW & AC King Limited successfully resisted the claim against it and is therefore to be regarded as the successful party. It is entitled to a contribution to its costs. Costs awards in the Authority are modest but in this case, given there was a *Calderbank* letter which was not accepted, I consider it is appropriate that I should depart from the Authority's daily tariff in this instance, but not so as to grant indemnity costs. Regrettably I do not have Mr Sheriff's input to take into account his ability to pay.

[7] Accordingly, exercising my discretion on a principled basis, I conclude a contribution of \$4,000.00 is appropriate. **I order Alanzo Sheriff to pay to RW & AC King Limited the sum of \$4,000.00 as a contribution to costs.**

Leon Robinson

Member of Employment Relations Authority

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