

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 55/08
5077950

BETWEEN FREDERICK ROBERT
 STEPHENS
 Applicant

AND STICKY FINGERS 2006
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Dean Kilpatrick, Counsel for Applicant
 Andrew Shaw, Counsel for Respondent

Submissions received: 10 March 2008 from Applicant
 27 February 2008 from Respondent

Determination: 2 May 2008

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 18 December 2007, the Authority dealt with the employment relationship problem between these parties by determining that Mr Stephens had not made out his claim of a personal grievance by way of unjustified dismissal and/or unjustified disadvantage.

[2] Costs were reserved.

The claim for costs

[3] The respondent, as the successful party, seeks a contribution to its costs of \$2,250 inclusive of GST. Actual costs were a little over \$9,000 inclusive of GST.

[4] The respondent also refers to the *Calderbank* offer made in anticipation of the hearing. The offer made was in the sum of \$5,000 and the offer was conveyed by letter dated 25 July 2007 in anticipation of the investigation meeting held on 19 September 2007.

[5] The applicant, as the unsuccessful party, seeks to have costs lie where they fall based essentially on two factors:

- (a) The conduct of the respondent; and
- (b) The alleged inability to rely on the *Calderbank* offer.

[6] There is no doubt that there is an issue in this matter relative to the behaviour of the respondent. The matter was originally set down to be heard on 24 May 2007. Due to a fault in the office of the respondent's counsel, that fixture had to be adjourned at the last minute. The applicant says that the cost of that deferral amounted to \$1,985.50 exclusive of GST.

[7] In respect of the *Calderbank* offer, the applicant says that that offer was received after the date set for the fixture originally and therefore after the time when the applicant could reasonably have been expected to be ready for the hearing. By implication, one supposes that if the *Calderbank* offer had been received six or seven weeks prior to the original fixture date of 24 May 2007, the applicant would not have been in a position to advance the proposition that he does.

[8] I am satisfied that the applicant has made out his submission that the *Calderbank* offer should be discounted. I reach that conclusion principally because the applicant was blameless in the delay and had completely prepared for the hearing which was set down for 24 May 2007. While no doubt it was still available to the applicant to accept the *Calderbank* offer at the late stage at which it was offered, the argument for the applicant is simply that he had very little to lose by allowing the matter to run on till the hearing, given the late stage that the matter was put to him.

[9] I am also persuaded that the applicant has good grounds for complaint about the delay in the matter being dealt with. As I mentioned, the applicant was blameless; the delay was entirely the fault of the then counsel for the respondent and the letter received from the then counsel for the respondent confirmed that.

[10] The applicant says that he has incurred additional costs of around \$2,000 as a consequence of the delay wholly attributable to the respondent. The respondent claims costs of around \$2,000 given that it was the successful party.

Determination

[11] In all the circumstances, having discounted the *Calderbank* offer for the reasons I outline, I am not disposed to make an award of costs in favour of the respondent. The delay in dealing with the matter was wholly the respondent's fault and I see no good reason for the respondent to effectively benefit from its own default given its claim for costs is in the same amount as the additional cost incurred by the applicant in respect of the delay.

[12] Accordingly, costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority