

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 271
3046012

BETWEEN

PHIA VENTER
Applicant

AND

ACCOUNTING
MANAGEMENT LIMITED
First Respondent

Member of Authority: Vicki Campbell
Representatives: Danny Gelb for Applicant
Lawrence Ponniah for Respondent
Submissions received: 26 April 2019 from Applicant
17 April 2019 from Respondent
Determination: 6 May 2019

COSTS DETERMINATION OF THE AUTHORITY

- A. Ms Venter is ordered to pay to Accounting Management Limited the sum of \$2,000 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 20 March 2019 I held the Authority had no jurisdiction to investigate and determine Ms Venter's claim for unjustified dismissal however she was partially successful in her claim for reimbursement of her CAANZ membership fee.¹

¹ *Venter v Accounting Management Limited* [2019] NZERA 163.

[2] I reserved costs and invited the parties to resolve the matter between them. The parties have been unable to resolve the matter and I have received submissions.

[3] The respondent submits it was the more successful party and Ms Venter had unreasonably declined an offer to resolve the CAANZ membership fee issue so it seeks a contribution to its costs of \$10,000.

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks 'reasonable'.² The principles applying to costs are well settled and do not require repeating.³

[5] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[6] The investigation meeting took approximately two hours. The starting point therefore is \$1,500 on a proportionate basis.

[7] The Authority will take into account any offers made by the parties to settle matters:⁵

The public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer without any consequences as to costs.

[8] Calderbank offers were exchanged between the representatives. The final offer was made by Accounting Management on 13 November 2018 which was prior to this matter being timetabled for an investigation meeting. Accounting Management offered to contribute \$1,000 to Ms Venter's costs as at that date and reimburse her \$200 for her CAANZ membership fee.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ As cited in *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385 at [18].

[9] It is apparent Ms Venter rejected this offer because the matter proceeded to an investigation meeting. I have concluded Ms Venter's rejection was unreasonable given that she was not successful in her claims even to the extent of the offer made in relation to the reimbursement claim.

[10] There was a mixed measure of success by both parties. Although Ms Venter was successful in her claim for reimbursement she was not successful in her substantive claim because of the limitations set out in the Employment Relations Act 2000 (the Act) with respect to trial periods. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.⁶

[11] Ultimately I must stand back and look at things in the round.⁷ Having done so Accounting Management must be considered the successful party. Ms Venter claimed reimbursement of \$700 being the full annual subscription for her CAANZ membership fee. Taking into account her limited period of employment and that her new employer also contributed to her membership fee it was appropriate only to order reimbursement of a proportionate amount of the fee.

[12] Despite directing the parties to provide a breakdown of how and when costs were incurred Accounting Management has failed to do so. Accordingly I am unable to assess what costs it incurred and whether those costs were reasonable.

[13] Given my finding regarding the rejection of the calderbank offer there will be a small uplift in costs.

[14] Ms Venter is ordered to pay to Accounting Management Limited the sum of \$2,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

⁶ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁷ *Ibid* at [43].