

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Ladd Oki Oki Wade (Applicant)
AND Owens Transport Limited (Respondent)
REPRESENTATIVES Rob Davidson, Counsel for Applicant
Lorne Campbell, Counsel for Respondent
MEMBER OF AUTHORITY James Crichton
SUBMISSIONS RECEIVED 16 December 2004
22 December 2004
DATE OF DETERMINATION 28 January 2005

COSTS DETERMINATION OF THE AUTHORITY

[1] At the conclusion of the determination I issued in relation to the substantive matter, the parties were left with an obligation to try to resolve the matter of costs between them. There were unsuccessful. They have accordingly asked me to determine the matter.

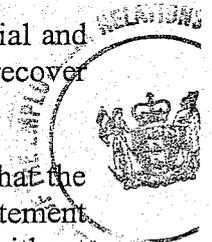
[2] Both parties have helpfully provided me with submissions and I have carefully considered them.

[3] Counsel for the applicant invites me principally to: (a) ignore or at the very least minimise the importance of two Calderbank letters filed by the respondent prior to the hearing; and (b) make an order meeting all of the applicant's costs which amount to \$8,514 exclusive of GST, such costs also including the costs of the unsuccessful mediation hearing and the withdrawn interim reinstatement application.

[4] Conversely, counsel for the respondent encourages me in the view that the matter is straightforward and the only reason it was not capable of being resolved prior to going to the Authority was because of the applicant's insistence on reinstatement. Counsel for the respondent also draws my attention to the aborted application for interim reinstatement which was filed and then without explanation withdrawn by the applicant.

[5] One has to have some considerable sympathy for the applicant and his reduced financial and personal circumstances. However, I do not think it is fair or reasonable for the applicant to recover the full amount of his legal costs from the respondent.

[6] I say this because I fail to see why the respondent should be responsible for choices that the applicant has made in respect particularly to the applicant's application for interim reinstatement and the subsequent withdrawal of that application within a matter of weeks and without explanation. Clearly this put the respondent to cost and by the applicant's own behaviour, that cost was completely wasted given that that matter never proceeded.



[7] Further, I am not persuaded that the applicant can rely on his enthusiasm to be reinstated as a basis for claiming full costs. After all, the applicant's application for reinstatement was unsuccessful in the Authority although the applicant succeeded in respect to compensation. If, as counsel for the applicant contends, the applicant's wish to go to the Authority was based on his determination to obtain reinstatement then the fact that he failed to satisfy me that reinstatement was a realistic option ought to mitigate against his claim for full solicitor/client costs.

[8] I refer now to the Calderbank letters. There are two of them, served on the applicant's counsel immediately prior to the hearing (in the second case only a matter of days before the hearing). My determination resulted in awards to the applicant in excess of either Calderbank letter. That being the position, at best these letters can only be persuasive.

[9] Mr Campbell for the respondent urges me to think of this matter as a straightforward one day hearing where an appropriate award would be \$1500. I think that may rather understate the complexity of the issues between the parties and while accepting that the applicant has played his part in contributing to those complexities, I am minded to make an award of costs in favour of the applicant in the sum of \$3000. I so order.

James Crichton

James Crichton
Member of Employment Relations Authority

