

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 10A/09
5098820**

BETWEEN SIMON PAUL WESTWELL
 Applicant

AND CLINTON IVAN WHEELER
 Respondent

Member of Authority: Leon Robinson

Submissions Received: 2 February 2009
 12 February 2009

Determination: 17 July 2009

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 19 January 2009, I made formal orders in settlement of the employment relationship problem between these parties. Mr Westwell now makes application for costs. .

[2] Mr Westwell produces three invoices to the Authority as evidence of costs incurred by him. One of those invoices is in respect of mediation. The two remaining invoices are in the sum of \$982.98.

[3] Mr Wheeler resists the application for costs and says that costs ought to be left to lie where they fall. He produces a letter known as a calderbank letter dated 28 March 2008 in which an offer of settlement in the sum of \$8,000.00 is made to Mr Westwell open for acceptance until 12 April 2008.

[4] Mr Westwell succeeded in obtaining formal orders in the form of arrears of wages totalling \$7,972.92. That was less than he was offered to settle the matter informally. I consider therefore that Mr Westwell incurred the legal costs of \$982.98 to recover a sum less than what he was offered. In that situation I conclude that Mr

Wheeler ought not in equity and good conscience be held to account for Mr Westwell's costs.

[5] I consider that Mr Wheeler incurred costs unnecessarily. I decline to award costs to him. Exercising my discretion on a principled basis and for the reasons outlined above, **I order that neither party shall have costs against the other.**

Leon Robinson
Member of Employment Relations Authority