

which to respond. The Authority's indulgence is sought on the time issue on the basis that there has been no prejudice to the applicant as a result and the respondent should not be punished for counsel's omission."

[3] Upon receipt of this memorandum, the applicant's solicitors advised that they had no instructions. Nothing more has been received from either party since then.

[4] The respondent's submission is that a \$2,000.00 offer to settle was made to the applicant on 23 October 2008 "*without prejudice except as to costs.*" This left two weeks until the investigation meeting. After that offer was rejected, the respondent incurred further costs of \$5,000.00 in preparation for and attendance at the investigation meeting. The respondent submits that the rejection of the offer was unreasonable and it is appropriate that the respondent be indemnified for all costs incurred after it was made. It therefore seeks an order for the sum of \$5,000.00 plus GST plus disbursements associated with attendance at the investigation meeting (\$1,770.00 plus GST, being the costs of three return airfares from Auckland to Christchurch.)

Determination

[5] In keeping with its low level and informal character, the Authority can and does apply some flexibility in relation to compliance with timetabling directions. However it is unable to do so where this would prejudice the other party. Contrary to the submission for the applicant, I consider that would be the case here. To overlook the delay in the making of submissions would mean determining costs without hearing from the applicant.

[6] As much time again elapsed between the deadline for submissions and their arrival as was originally allowed for submissions, and this, at the end of the process. Mr Beach has not elaborated on his statement that he has no instructions but I must allow for the likelihood that his client simply ceased to retain him when, at the conclusion of the 28 day period, nothing more had been heard from the respondent. Effectively, at that point, the proceedings were at an end.

[7] It is most unfortunate that the respondent has been deprived of the opportunity to pursue a claim for costs, especially one which had good prospects of success. However, that is a result of counsel's oversight.

[8] **The application for costs is declined.**

Yvonne Oldfield

Member of the Employment Relations Authority