

offer was made and rejected by BPL totalled \$8567 although a discount was offered which would have reduced that total to \$7741.

[4] The memoranda from both parties indicated BPL made a counteroffer to Mr Wood's settlement proposal but neither revealed the amount. I have deduced it was less than \$6000. In any event it was not accepted and the matter eventually proceeded to investigation although this was delayed due to an omission by Mr Wood.

[5] BPL submitted costs should be awarded at the usual daily tariff of \$3000.

[6] Applying the familiar principles for determining costs in the Authority,¹ Mr Wood is entitled as the successful party to an award of costs starting at the notional daily rate adjusted up or down for factors particular to this case. There are two.

[7] Firstly, Mr Wood failed, without leave or prior notice, to lodge his witness statement in accordance with previously agreed timetable directions. That was not acceptable, particularly when he was represented by legal counsel. It led to the Authority vacating the notified investigation meeting date and scheduling a telephone conference for further directions. A downward adjustment of \$500, for his counsel's attendances in relation to that delay, is made from the calculation of costs reasonably incurred by Mr Wood.

[8] Secondly, BPL's failure to settle the matter on the basis of Mr Wood's 'without prejudice' offer, for an amount that was less than ultimately awarded to him, is a factor requiring an upward adjustment in the award of costs to him. I consider the tariff should be increased by \$1500 to recognise the additional costs he then incurred.

[9] The result is \$4000. BPL is ordered to pay Mr Wood that amount as a reasonable contribution to his costs.

Robin Arthur
Member of the Employment Relations Authority

¹ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.