

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 99A/09  
5120773**

BETWEEN      RICHARD ADAMS  
                         Applicants

AND            NYK LOGISTICS (NZ) LIMITED  
                         Respondent

Member of Authority:      Leon Robinson

Submissions Received:    15 April 2009  
   23 April 2009

Determination:            24 April 2009

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**DETERMINATION OF THE AUTHORITY AS TO COSTS**

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[1] By a Determination dated 31 March 2009, I declined to make the formal orders sought by the applicant with the exception of one discrete and comparatively minor claim in the amount of \$300.00. The respondent now seeks costs from the applicant.

[2] Through its counsel, the respondent advises it has incurred costs of \$10,287.44. It refers the Authority to a Calderbank letter dated 27 August 2008 sent to the applicant communicating an offer of settlement of \$8,000.00 and held open until 3 September 2008 (the "Calderbank letter"). It is submitted that "in light of the reasonableness and timeliness of the offer of settlement, the amount recovered by the applicant and the costs incurred by the respondent; the amount of \$7,500.00 is sought by the respondent".

[3] The applicant's counsel submits that the applicant was partially successful, that usual cost awards in the Authority range from \$1,500 to \$2,500 per day, that the investigation meeting proceeded over one half day and that costs ought to lie where they fall or alternatively, an award of no more than \$1,000 ought to be made. The Authority is advised the applicant is presently unemployed.

[4] This is an equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations. The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties.

[5] This investigation proceeded over one half day. I consider the respondent having successfully resisted the principal claims against it, is to be regarded as the successful party. That being so, costs must follow that event. I therefore conclude the respondent is entitled to costs and on a contribution basis. On this basis, the Calderbank letter does not have its conventional effect but rather is one factor for consider in the exercise of my discretion as an offer of settlement.

[6] I take into account the offer of settlement, the length of the investigation meeting and the applicant's unemployment and award costs to the respondent on a tariff basis by awarding NYK Logistics (NZ) Limited the sum of \$1,000.00. Exercising my discretion on a principled basis and for the reasons outlined above, **I order Richard Adams to pay to NYK Logistics (NZ) Limited the sum of \$1,000.00 as costs.**

Leon Robinson  
**Member of Employment Relations Authority**