

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number: WA 138A/07
File Number: 5078569

BETWEEN Christopher Barnett
(Applicant)

AND Brooklyn Holdings Limited, JJ
Contractors Limited and Lance James
(Respondents)

Member of Authority: P R Stapp

Submissions received: 5 & 13 November 2007 from Applicant
7 November 2007 from Respondent

Determination: 22 November 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] Costs were reserved by me in a Determination dated 15 October 2007. The parties have not been able to settle and I have been requested to make a determination on the outstanding matter of costs.

[2] The Respondents have applied for costs and produced a *Calderbank offer* where an offer to settle was made to the Applicant on 6 March 2007 and rejected by him. The Respondents' actual costs I am told were \$13,186.50.

[3] The Applicant accepts he will be required to pay some costs and has argued that he should only have to pay a modest amount based on his strongly held belief that he had a strong case and that he acted entirely reasonably to bring the matter to the Employment Relations Authority for investigation.

[4] The Respondents were successful in defending the employment relationship problem filed in the Authority by the Applicant. For this reason whilst I have accepted

the *Calderbank offer* I have given it no weight since costs will be dealt with in the usual manner and as a matter of principle. Costs follow the event.

[5] I accept that the Respondents have been put to the expense of an investigation in the Authority. They decided to engage a lawyer.

[6] I accept the Applicant held a reasonable belief that he had a strong case and the evidence and information held by him was open to interpretation. However his actual views of the outcome and reasons for it are irrelevant when it comes to costs.

[7] The length of the investigation meeting was determined from the information available to both parties but as issues emerged during the first day, another day needed to be scheduled with two more witnesses and further documents being required. That is a risk in the process that both parties have to expect could happen. The time was nevertheless relatively short for the issues involved.

[8] Mediation costs should not be included. As a matter of public policy I entirely discount any costs for mediation. This is because that process exists for the parties to endeavour to settle their differences to try and save costs. I do not intend to change my approach in this case.

[9] I have not been provided with a sum of reasonable costs to assess a contribution that the Applicant will have to pay. This is not a matter that should involve actual costs being used for an assessment. The actual costs provided involve few details and therefore I have decided to assess the reasonable costs for myself. The three Respondents were represented by the same lawyer.

[10] The investigation meeting lasted approximately 10.20 hours over two scheduled days. There was preparation with witness statements being provided in writing and in advance of the meeting. I have used a multiplier of 2.5 to determine total time. With an hourly rate of \$180 per hour I assess reasonable costs as \$4,590.

[11] Mr Barnett is required to pay a contribution towards this sum. I have decided that he should contribute 66% of the sum as a contribution.

[12] I order Christopher Barnett to pay jointly Brooklyn Holdings Limited, IJ Contractors Limited and Lance James the total of \$3,029.40 costs.

P R Stapp
Member of the Employment Relations Authority