

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 152
5323000

BETWEEN DANIEL CUMMINGS
Applicant

A N D WYMA ENGINEERING (NZ)
LTD
Respondent

Member of Authority: Helen Doyle

Representatives: David Beck, Counsel for applicant
Peter Zwart, Advocate for Respondent

Applicants Submissions: 7 September 2011

Respondents Submissions: 27 September 2011

Date of Determination: 7 October 2011

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In my determination dated 5 August 2011 I found in favour of the applicant that he was unjustifiably dismissed and awarded remedies. I reserved the issue of costs and submissions have now been provided.

[2] Mr Beck submits because he made a without prejudice offer in the nature of a Calderbank offer to settle for less than the Authority awarded there should be reimbursement of the full costs of \$4,687 and the filing fee. In the alternative Mr Beck submits that the Authority apply the normal discretionary tariff based approach.

[3] Mr Zwart refers to the general principles in *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 applicable to the Authority in the exercise of the discretion as to costs. He submits that the amount claimed by Mr Beck includes mediation and that \$2000 should be deducted from the actual costs leaving an amount of \$2,785.56 including the filing fee. He submits costs should be modest.

Determination

[4] I do not find that there should be reimbursement of full costs. Some costs do appear to be related to mediation and there is no automatic right to indemnity costs if a settlement proposal is not accepted.

[5] I intend to approach the matter on the basis of a notional daily rate. The meeting did not occupy a full day. The parties were co-operative with the investigative process and the matter was not legally or factually complex. A suitable starting point for an assessment of costs in these circumstances is \$2,500.

[6] There are no adjustments I find required from that point.

[7] I order Wyma Engineering (NZ) Limited to pay to Daniel Cummings the sums of \$2,500 being costs and \$71.56 being reimbursement of the filing fee.

Helen Doyle
Member of the Employment Relations Authority