

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Bruce De Grut (Applicant)  
**AND** Northcote College (Respondent)  
**REPRESENTATIVES** Emma Butcher, Counsel for Applicant  
Richard Harrison, Counsel for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**SUBMISSIONS RECEIVED** 21 December 2004,  
**DATE OF DETERMINATION** 7 March 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

In a determination dated 8 November 2004 I concluded that the applicant had a disadvantage grievance and ordered compensation of \$10,000.00 for hurt and humiliation arising out of that grievance. The applicant was unsuccessful in a further claim of constructive dismissal.

Subsequent to that determination the parties attempted to agree costs but have not been able to do so. Having had the benefit of submissions from both parties I now proceed to determine the issue.

The investigation of this matter was conducted in the usual manner with presentation of witness statements and documents followed by one full day meeting at which witnesses were questioned and a further half day meeting at which Counsel presented submissions.

Counsel for the applicant now advises that his costs on a solicitor/client basis were \$17,633.33 excluding GST and says:

*“The applicant seeks an award of costs which is a reasonable and realistic contribution to his actual costs. The investigation...involved some reasonably complex legal argument. In all the circumstances, the applicant believes \$5,000 would be a reasonable contribution.”*

However Ms Butcher also acknowledged in her submission that Mr Harrison had presented a Calderbank offer on behalf of his client. The offer was made by letter dated 30 April 2004 which was approximately a week prior to the telephone conference scheduled by the Authority to discuss a proposed timetable and process for the investigation of the employment relationship problem.

The letter read as follows:

*“I refer to your email of 19 April and advise your client’s counter offer is not accepted.”*

*I am instructed to make one last offer in order to settle this matter on a commercial basis in order to avoid the costs of hearing and allow the parties to move on and put this matter behind them. My client is prepared to pay to Mr de Grut \$10,000.00 in full and final settlement of this matter, the payment would be non taxable and made under section 123 (c) (i) of the Employment Relations Act. I note that we have a telephone conference set down for Friday 7 May 2004, the offer is open until this date and will then be withdrawn.”*

Ms Butcher argued in submissions that:

*“The Calderbank offer in the present case...did not include an allowance for any costs the applicant may have incurred up to that point....*

*By proceeding on to investigation the applicant has been awarded remedies equivalent to the Calderbank offer but has also achieved vindication of his reputation to which he was entitled. An award of costs to which the applicant is entitled will result in the applicant’s recovery exceeding the Calderbank offer. As such the Calderbank offer is irrelevant to the issue of costs.”*

Mr Harrison for his part says that his client relies on the Calderbank offer and notes that if the applicant had accepted the offer, the respondent would have been saved the \$7,788.09 it incurred in costs related to the investigation (all subsequent to the making of the offer.) He submits:

*“that a contribution towards the respondent’s costs of \$1,000.00 or in the alternative, an order that costs lie where they fall would be a fair exercise of the Authority’s discretion taking into account the value of the remedies sought by the applicant, limited success of his claim and the Calderbank offer made to the applicant in a timely fashion, well in advance of any significant legal costs being incurred.”*

### **Determination**

The Calderbank offer in this case matches the level of remedies Mr de Grut was successful in obtaining. In my view it was clear and transparent on its face. It was also made in what I consider to be a timely fashion before the Authority’s investigation had even begun and before any costs had been incurred beyond those associated with the preparation and lodging of the statements of problem and in reply. Those costs are or should be minimal and are not sufficient to nullify the effect of the Calderbank offer. (I note that any additional costs associated with mediation are not relevant to this determination.) Finally the offer was ‘on the table’ for a period of a week which I consider sufficient time for it to be given full consideration.

I conclude that the offer meets the requirements of a Calderbank offer. On this basis and in all the circumstances I consider the respondent’s request for a contribution to costs to be entirely justified.

**Mr de Grut is ordered to pay to the respondent the sum of \$1,000.00 as a contribution to its costs.**

Y S Oldfield  
Member of Employment Relations Authority