

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Maurice Douglas (Applicant)
AND Richard Black (Respondent)
REPRESENTATIVES Gail Erwin for the Applicant
Danny Jacobson for the Respondent
MEMBER OF AUTHORITY P R Stapp
SUBMISSIONS ON COSTS 19 July 2005 and 1 & 2 August 2005
DATE OF DETERMINATION 9 August 2005

COSTS DETERMINATION OF THE AUTHORITY

Application from the Respondent for Costs

[1] The respondent has applied for full costs for being put to unnecessary expense associated with the proceedings. Mr Black relies upon a Calderbank offer to settle and his representative attending mediation to try and save costs.

[2] The applicant has requested that costs lie where they fall.

The considerations of the Authority

[3] The substantive matter was dealt with on the papers without the need for an investigation meeting. The respondent was successful in resisting the applicant's claim that he personally was the employer when there was a company that existed and had been cited in an earlier application. The claim against Mr Black was only made after the company went into liquidation.

[4] The Calderbank offer is not relevant since Mr Black has been successful and where costs follow the event. I intend for costs to follow the event. My reason is that Mr Black has been put to

unnecessary expense on a claim that never enjoyed much prospect of success. The applicant should have assessed his chances much better so as to avoid the risk of costs.

[5] The total costs claimed by the respondent amount to \$5,430 including GST (including a charge for preparing submissions for costs of \$260 and a sum of \$4,458.88 (including GST) for representation and advice including disbursements). The costs include travel to mediation services of \$460.

[6] Costs for mediation should be incurred by the parties as a matter of public policy. I will apply this principle. The GST component should also be deducted because in the Authority it is not treated as a claimable item. In the circumstances, and in the absence of any invoices and receipts, I have decided to make an assessment of reasonable costs instead of accepting that this matter should involve the full costs claimed. In doing so it is my decision that only a contribution of costs should apply as is normal practice. There is nothing exceptional in this matter for me to depart from that principle.

[7] I accept that preparation was required for written submissions to determine the matter. The parties were saved at least a one day investigation meeting. The matter involved the respondent providing a substantive submission of 6 pages (14 June 2005), two affidavits from Mr Black and Mr Flannery that were relevant, a reply of 6 pages (29 June 2005), and costs submissions and reply totalling 7 Pages (19 July and 2 August 2005). Twelve pages of other documents were produced. The respondent put the applicant on notice of the information being relied upon to get the matter dismissed: 2 page application for an order of dismissal (12 May) and affidavits including documents from Mr Black (11 May) and Mr Flannery (12 May). The respondent's submissions were entirely reasonable considering the applicant's claim and submissions. There was also a short telephone conference. It is reasonable to base costs for all the respondent's submissions, including the documents and affidavits on \$260 per hour at 6 hours, times 1.5, for preparation. It is fair therefore to assess reasonable costs in the order of \$2,340 considering that costs and disbursements were incurred by Mr Black.

[8] A contribution therefore should be set at the higher end of the scale that I assess at 90% of reasonable costs. I order Maurice Douglas to pay Richard Black the sum of \$2,106 contribution for costs and disbursements.

P R Stapp
Member of the Authority