

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 401
3040791

BETWEEN

JOHN GREETHAM
Applicant

AND

LAWTER (NZ) LIMITED
Respondent

Member of Authority: Vicki Campbell
Representatives: Warwick Reid for Applicant
Erin Burke for Respondent
Submissions received: 9 May 2019 from Applicant
2 May 2019 from Respondent
Determination: 8 July 2019

COSTS DETERMINATION OF THE AUTHORITY

- A. Mr Greetham is ordered to pay to Lawter (NZ) Limited the sum of \$7,000 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 4 April 2019 I found Mr Greetham had resigned voluntarily and had not been constructively dismissed.¹ I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and Lawter (NZ) Limited has lodged a costs memorandum seeking a determination of the issue.

¹ *Greetham v Lawter (NZ) Ltd* [2019] NZERA 203.

[2] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[3] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴ The investigation meeting took one day so the starting point is \$4,500.

[4] The Authority will take into account any offers made by the parties to settle matters:⁵

The public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer without any consequences as to costs.

[5] Lawter made two calderbank offers to resolve Mr Greetham's alleged personal grievance. Both included offers of payment of wages and compensation. Both offers were rejected. When rejecting the second of the two offers Mr Greetham counter-offered to resolve matters with various payments amounting to \$125,000.

[6] Given Mr Greetham's lack of success at the Authority his rejection of the final offer of payment of three months lost wages plus \$10,000 compensation was unreasonable. Conversely, I find Lawter's rejection of Mr Greetham's offer was not unreasonable given its success.

[7] Given my finding regarding the rejection of the calderbank offers there will be a uplift in the daily tariff. The information provided to the Authority does not distinguish the costs incurred after the rejection of the final calderbank letter was sent to Mr Greetham so it is difficult to discern the actual costs incurred by Lawter's after the offer was rejected.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ As cited in *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385 at [18].

[8] Taking all of the circumstances into account I consider an appropriate contribution to costs for this matter is \$7,000. This reflects an appropriate uplift for the unreasonable rejection of the calderbank offer.

[9] Mr Greetham is ordered to pay to Lawter (NZ) Limited the sum of \$7,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority