

[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 I met with the parties in Hamilton in a face to face meeting on 31 March 2021. I adjourned the investigation meeting to allow the parties to discuss possible settlement, however, no agreement was reached and the investigation meeting continued. The investigation was adjourned a second time to allow me to interview a witness who had not been present at the investigation meeting. That interview was conducted via Zoom. In total the investigation into Mr Hargreaves claims took just over half a day. I have calculated the starting point as being \$3,000.

Calderbank offer

[4] The Authority will take into account any offers made by the parties to settle matters.⁵ If the Applicant does not beat the offer, there should be a steely response by the Courts, as that would be in the broader public interest.⁶

[5] That approach was reiterated by the Court of Appeal in *Bluestar Print Group (NZ) Ltd v Mitchell* where the Court said:⁷

It has been repeatedly emphasised that the scarce resources of the Courts should not be burdened by litigants who choose to reject reasonable settlement offers, proceed with litigation and then fail to achieve any more than was previously offered. ... The importance of Calderbank offers is emphasised by reg 68(1). It is the only factor relevant to the conduct of the parties specifically identified as having relevance to the issue of costs.

[6] Mr Hargreaves made a calderbank offer dated 1 April 2021 to settle his personal grievances. This followed the end of the investigation meeting on 31 March 2021 but was before the final witness interview and the lodgement of submissions. The

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

⁶ *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172, (2004) 17 PRNZ 16 (CA) at [53]

⁷ Above n 5 at [18]-[20].

calderbank offer was made after I had offered the parties an oral preliminary indication of my findings.

[7] I have concluded Carfixr's apparent rejection of the calderbank offer was unreasonable given that Mr Hargreaves was more successful in his monetary awards than the offer made to resolve matters on 1 April 2021.

Mixed measure of success

[8] There was a mixed measure of success by both parties. Although Mr Hargreaves was successful in his claim that he had been unjustifiably dismissed other aspects of his claim were not successful. Carfixr was the successful party in respect of all of Mr Hargreaves claims that one or more conditions of his employment were affected to his disadvantage.

[9] The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.⁸ Ultimately I must stand back and look at things in the round.⁹ Having done so Mr Hargreaves must be considered the successful party. His key claim was that he was unjustifiably dismissed.

[10] Taking into account my finding regarding the rejection of the calderbank offer and balancing that with Mr Hargreaves partial success I have declined Mr Hargreaves application to uplift the daily tariff.

[11] Carfixr Auto Services Limited is ordered to pay to Mr Hargreaves the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

⁸ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁹ *Ibid* at [43].