

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 20/10
5134683

BETWEEN LOGAN HARTLEY
 Applicant

AND GAMMA PARTNERSHIP
 Respondent

Member of Authority: Vicki Campbell

Representatives: James Parlane for Applicant
 Cor Speksnijder for Respondent

Submissions Received: 6 November 2009 from Applicant
 16 November 2009 from Respondent

Determination: 19 January 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Hartley had three claims before the Authority. He claimed he was owed arrears of wages, had been unjustifiably dismissed and that Gamma Partnership had breached its obligations of good faith toward him. By determination dated 8 October 2009 I found Mr Hartley was successful in his claim for unjustified dismissal only. When considering the matter of remedies, I held that his contributory conduct was significant and awarded no remedies. Instead I concluded that Mr Hartley would receive a contribution to his costs in recognition of the fact that he was successful in his claim that he was unjustifiably dismissed.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. In his submissions on behalf of the Applicant Mr Parlane advises that the parties have not attempted to resolve the matter of costs between them because "...they will be unable to reach agreement."

[3] I agree with the submissions on behalf of the Respondent that Mr Parlane's refusal to discuss costs exemplifies the litigious and adversarial approach the Applicant has taken to his claims, however as set out in *PBO Ltd (formerly Rush Security*

*Ltd) v Da Cruz*¹ costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct.

[4] In coming to its conclusions on an award of costs the Authority may take into account reasonable offers of settlement made prior to the Investigation meeting. In this case the Respondent made two such offers, in the form of calderbank letters. Copies of those letters have now been supplied to the Authority. Mr Parlane, on behalf of Mr Hartley, responded only to the second letter, which is contrary to his submissions that to his knowledge no calderbank offers were made.

[5] The final calderbank offer, dated 17 April 2009 to which Mr Parlane responded, makes an offer of settlement of \$2,500, requires costs to lie where they fall and leaves the offer open until 24 April 2009. As already outlined, Mr Hartley, while successful in his claim for unjustified dismissal, did not receive any monetary remedies. In normal circumstances the existence of a calderbank offer would preclude the award of any contribution of costs.

[6] However, Mr Hartley was not awarded any remedies on the basis that he would receive a contribution to his costs. This is an equity and good conscience jurisdiction and as such I regard it appropriate to award costs to Mr Hartley in accordance with my determination.

[7] I consider it appropriate to award costs according to the Authority's daily tariff. I regard that tariff as ranging between \$1,500 and \$3,000 per day. Taking into account the limited extent to which Mr Hartley was successful and the nature and length of the investigation meeting, in the principled exercise of my discretion **I order Gamma Partnership to pay Mr Hartley a contribution of \$1,500 to his costs.**

Vicki Campbell
Member of Employment Relations Authority

¹ [2005] 1 ERNZ 808.