

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Gavin John Hurliman
AND Auckland College of Natural Medicine Limited
REPRESENTATIVES Applicant In Person
Ross France, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
DATE OF DETERMINATION 19 April 2007

COSTS DETERMINATION OF THE AUTHORITY

I determined that the applicant was an employee, not a contractor, that the respondent did not breach its duty of good faith and nor did it breach s.62. I also found that the respondent did not discriminate against the applicant and that the applicant's dismissal on two occasions was justified. However, I found that the applicant had been unjustifiably disadvantaged and awarded him \$1,652.27 for lost wages.

The parties have been unable to resolve the issue of costs.

Mr Hurlimann submitted that the respondent's conduct was disruptive and nonsensical despite the presence of a translator, that the respondent requested an unnecessary four week adjournment to provide new evidence which was not taken into account by the Authority but the extra time and expense were visited upon the applicant; and that he did not receive a determination until eight weeks after the completion of the investigation.

Mr Hurlimann acknowledged the existence of what both parties termed a Calderbank offer from the respondent which was for \$2,000 and was made five days before the date of the Investigation.

In order to do submissions in reply Mr Hurlimann had to seek legal advice and had incurred costs of \$2,575.97.

Mr Hurlimann accepted that a reasonable contribution to the respondent's costs was fair.

The respondent's costs were \$16,818.75 and it seeks full solicitor client costs on the following grounds: the respondent had been put through lengthy litigation and incurred significant costs as a result; the conduct of the applicant had caused significant delays and inefficiencies in resolving these matters and the applicant's conduct had been destructive and humiliating for the respondent.

Had Mr Hurlimann accepted the offer made by the respondent the respondent's costs would have been less than they were. However, I can see no grounds for awarding full solicitor client costs.

A reasonable contribution to the respondent's costs is \$2,500.

Dzintra King
Member
Employment Relations Authority