

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 338
5306590

BETWEEN ARTHUR KAIPARA
 Applicant

AND CARTER HOLT HARVEY
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Stan Austin for Applicant
 Daniel Erickson for Respondent

Submissions received: No submissions from Applicant
 20 June 2011 from Respondent

Determination: 28 July 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 23 May 2011, the Authority held that Mr Kaipara had not been unjustifiably disadvantaged or unjustifiably dismissed by Carter Holt Harvey Limited ("CHH").

[2] I reserved the question of costs and invited the parties to resolve the matter between them. The parties have been unable to resolve the matter between them and I am now in receipt of a memorandum from the Respondent seeking a contribution towards its costs.

[3] The principles appropriate to the exercise of the Authority's discretion in relation to costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹. Costs will generally follow the event and awards will be modest. However, in exercising its discretion to award costs the Authority is required to first consider whether the costs incurred by CHH were reasonable in all the circumstances.

[4] CHH has provided proof to show that its legal costs in this matter were \$24,150.50 (exclusive of GST) plus disbursements of \$884.90. The disbursements include the costs of

¹ [2005] 1 ERNZ 808.

airfares and accommodation as a result of the hearing being held in Whakatane, however CHH does not seek a contribution to those travelling costs. Given the nature of the claims I find the costs incurred by CHH were reasonable.

[5] CHH asks the Authority to take into account a “without prejudice save as to costs” offer made to Mr Kaipara on 16 November 2010. CHH, while accepting no liability, offered to pay Mr Kaipara the sum of \$25,000 including Mr Kaipara’s legal costs to date. Mr Kaipara made a counter-offer on 23 November 2010 which was in turn rejected by CHH. On 25 November 2010 CHH reiterated its original offer which was then rejected by Mr Kaipara.

[6] The Court of Appeal has noted the public interest in the fair and expeditious resolution of disputes and that this would be adversely affected if parties were permitted to ignore Calderbank offers without costs being impacted.² Further the Court of Appeal has also identified the need for a more steely approach to costs where reasonable settlement proposals have been rejected.³

[7] The offer to resolve Mr Kaipara’s employment relationship problems were reasonable and timely. Had he accepted the offer, all costs associated with the litigation of the problems would have been avoided.

[8] Following the approach in *Carter Holt Harvey Ltd v Eastern Bays Independent Industrial Workers Union & Ors*⁴ I have taken into account the considerable preparation required by CHH to defend this matter.

[9] The investigation meeting took one day. Having regard to the nature of the investigation, and in the principled exercise of my discretion **Mr Kaipara is ordered to pay to Carter Holt Harvey Limited the sum of \$6,000 in costs plus disbursements of \$83.80.**

Vicki Campbell
Member of the Employment Relations Authority

² *Aoraki Corporation Ltd v McGavin* [1998] 1 ERNZ 601.

³ *Health Waikato Limited v Elmsley* [2004] 1 ERNZ 172 (CA).

⁴ [2011] NZEmpC 13.