

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** John Lawrence (Applicant)  
**AND** Zici Limited (Respondent)  
**REPRESENTATIVES** Tony Kurta, Advocate for Applicant  
Tony Drake, Counsel for Respondent  
**MEMBER OF AUTHORITY** Dzintra King

**DATE OF DETERMINATION** 29 March 2005

**COSTS DETERMINATION OF THE AUTHORITY**

Mr Lawrence was unsuccessful in his personal grievance. The respondent, Zici Limited, seeks costs.

The respondent says that it made a Calderbank offer of \$2,000.00 on 30 March 2004 and seeks to be compensated for costs which it has been unnecessarily forced to incur. The costs amount to \$8,198 plus \$205 in disbursements and the respondent seeks \$8,400.

Mr Kurta for the applicant told me he believed the issue of costs had been resolved. After conducting a conference call I determined that costs had not been resolved. Mr Kurta submitted that the Calderbank offer was not relevant as the applicant had been completely unsuccessful.

The hearing took half a day. Mr Kurta maintained that the costs incurred were excessive and that Binnie v Pacific Health [2002] 1 ERNZ 438, relied upon by the respondent, was not appropriate for a hearing in the Authority. I accept that submission: Harwood v Next Homes Limited, unrep, EC, Ac 70/03. The applicant submitted that either \$1,500 should be paid or that costs should lie where they fell.

Mr Drake submitted that the applicant had pursued his case without any proper analysis having been made about the nature of the claim, that the claim was unclear and that the nebulous nature of the claim made it more costly to prepare a defence.

Mr Drake took issue with Mr Kurta citing Shanks v Agar [1996] 2 ERNZ 578 as authority for the proposition that a Calderbank offer was not relevant if the applicant was unsuccessful but did accept that Goddard CJ had said, obiter, that he inclined to the view that that it was of little weight in such circumstances.

Mr Drake referred me to a High Court decision, Diver v Geo Boyes & Co, unreported, CP58/93, 20 May 1998, Penlington J and submitted that where a valid Calderbank offer had been made, costs could be sought for all work required to be done after the date of the Calderbank offer. The amount

sought is for all work done over a period of five months starting with preparation of the statement in reply.

I am prepared to take the Calderbank offer into account when considering what costs should be awarded. I accept that the lack of clarity in the claim would have created more work for the respondent. However, the costs incurred are high and I will not make an award on an indemnity basis. Although the hearing took only half a day I am prepared to treat the matter as if it had taken a day. Reasonable costs would be in the order of \$4,000.

Taking the matters I have referred into account, the applicant is to pay the respondent the sum of \$2,500.

Dzintra King  
Member of Employment Relations Authority