

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 238A/09  
5147623

BETWEEN CALIM JAMES LEATHARD  
Applicant

AND S&S FOODS LIMITED  
Respondent

Member of Authority: Yvonne Oldfield

Representatives: Applicant in person, with Jackie Leathard in support  
Glenys Steele for Respondent

Submissions received: 11 and 12 August 2009

Determination: 19 October 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] This employment relationship problem concerned an allegation of constructive dismissal. The applicant claimed the usual remedies in relation to that allegation and also claimed reimbursement of expenses he purported to have incurred at the respondent's behest. In a determination dated 16 July 2009 both those claims were rejected. The respondent in turn counterclaimed a penalty in relation to an alleged breach of confidentiality. The breach was found to have been proven however the matter was not one for which the remedy of penalty was available.

[2] The respondent now claims a contribution of \$8,000.00 towards its costs which it says totalled \$13,946.87 plus disbursements of \$397.00. In support of this claim Ms Steele argues that the Applicant should bear a higher than usual responsibility for costs because a reasonable "Calderbank" offer (\$2,000.00) was made to the applicant on 30 January 2009 (well before the Authority investigation meeting on 2 and 3 April 2009.)

[3] In a submission provided on his behalf by his mother, Mrs Leathard, the applicant denies that he should pay costs, pointing out that the respondent was unsuccessful in its counterclaim, and noting as relevant background that he is in modest financial circumstances.

### **Determination**

[4] Were it not for the Calderbank offer, this would have been a case where I would have been persuaded to let costs lie where they fall. The Authority's investigation meeting took two days, with a substantial part of the second day being taken up by the counterclaim. In this way, it could be said that the parties shared responsibility for costs. However, I acknowledge that the respondent made an attempt, through its offer, to avoid either party incurring unnecessary costs. For this reason, I consider it appropriate for the applicant to make a contribution to the costs the respondent has borne in relation to the investigation of the personal grievance.

[5] As noted in submissions the Authority often takes what may be called a tariff based approach to costs, with \$3,000.00 representing a typical award in relation to a one day investigation meeting. I consider this an appropriate level of contribution in all the circumstances.

[6] **Mr Leathard is therefore ordered to pay \$3,000.00 to S&S Foods Limited as a contribution to the costs and disbursements it has incurred in relation to his personal grievance claim.**

Yvonne Oldfield

Member of the Employment Relations Authority