

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 168A/10
5282688

BETWEEN PETER LEWIS
 Applicant

AND CITY CARE LIMITED
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Lou Yukich for Applicant
 Raewyn Gibson for Respondent

Submissions received: 19 April 2010 from Applicant
 11 May 2010 from Respondent

Determination: 27 July 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Lewis's employment relationship problem concerned a personal grievance of unjustified dismissal. The substantive issues were disposed of in a determination dated 16 December 2009 with remedies dealt with in a supplementary determination on 13 April 2010. Reinstatement was declined and monetary remedies reduced due to the high level of contributory conduct by Mr Lewis. The final orders were:

- i. "\$1,511.38 gross reimbursement of lost wages, and*
- ii. \$6,000.00 compensation for hurt and humiliation."*

[2] Mr Lewis now seeks costs. On his behalf Mr Yukich has lodged a submission in which he argues for an award of \$3,500.00 "*based on average tariff for a one day investigation meeting, \$500.00 for attendance at mediation and incidentals for travel of \$128.00.*"

[3] In seeking costs in relation to mediation, Mr Yukich referred me to *Waugh v Commissioner of Police [2004] 1 ERNZ 450* and submitted that: “*The Court left open the possibility... that the costs of mediation should be taken into account ...*”

[4] No doubt anticipating that it would figure in the respondent’s submissions Mr Yukich acknowledged that City Care Limited had made Mr Lewis a Calderbank offer which was rejected. Mr Yukich argued that it should not be taken into consideration because it did not address the matter of vindication and was less than the sum awarded by the Authority before discounting for contribution.

[5] As expected, the respondent’s costs submission focussed on the Calderbank offer of \$8,000.00 and the fact that this was less than Mr Lewis finally recovered. Ms Gibson countered Mr Yukich’s arguments by saying that:

- i. the sum awarded is what is relevant (not the sum before deduction is made for contributory conduct) and
- ii. the vindication argument does not apply in this case because the Authority’s determination did not in fact vindicate the applicant. Rather, she said, by finding that there was a high level of contributory conduct it acknowledged the seriousness of Mr Lewis’s conduct.

[6] Both these arguments are accepted. I am satisfied that the existence of the Calderbank offer in this case serves to reverse the usual practice that costs follow the event.

[7] Ms Gibson has advised that the respondent’s costs were \$10,875.00 which she says were neither unusual nor unreasonable given what she says were the “*wide ranging claims*” made by Mr Lewis. She also noted that there were no issues relating to the conduct of the respondent during the course of the hearing such as would militate against an award of costs. In these circumstances Ms Gibson argues that a substantial contribution to costs is warranted.

[8] I consider this matter to have been relatively straightforward and note that the investigation meeting did not extend beyond a day. The circumstances merit an award within the usual range for a one day matter.

[9] **The applicant, Mr Lewis, is therefore ordered to pay the sum of \$3,000.00 to the respondent, City Care Limited as contribution to its costs.**

Yvonne Oldfield

Member of the Employment Relations Authority