

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Gillian Paulin (First Applicant)
AND New Zealand Public Service Association (Second Applicant)

AND Southland District Health Board (Respondent)

REPRESENTATIVES Andrew Dallas, Counsel for Applicants
Janet Copeland, Counsel for Respondent

MEMBER OF AUTHORITY Paul Montgomery

SUBMISSIONS RECEIVED 13 February 2006
28 February 2006

DATE OF DETERMINATION 8 May 2006

COSTS DETERMINATION OF THE AUTHORITY

The application

[1] In a determination issued on 22 December 2005, the Authority found for the respondent and encouraged the parties to attempt to resolve the issue of costs. They have been unable to achieve this so it falls to the Authority to determine the matter.

[2] Counsel for each party has provided submissions which I have considered in coming to this determination.

Claimed costs

[3] For the respondent, Ms Copeland sought 80 per cent of the solicitor/client costs incurred in defending the action. Further, she sought that the Authority direct that 80 per cent of the award be met by the second applicant with the balance being paid by the first.

[4] Ms Copeland refers to what she terms a *calderbank* offer in respect to costs made to the applicants.

[5] In support of her application, counsel refers to the body of case law seen to be relevant in a costs setting and submits that the respondent's costs have been reasonably incurred and that nothing in the respondent's conduct would detract from a substantial costs award.

[6] Counsel sets out solicitor/client costs of \$15,320.57 (GST inclusive). From that I deduce Ms Copeland is seeking an award of \$12,256.45.

[7] Mr Dallas for the applicants contended that these costs were extraordinarily high and that some were not reasonably incurred. Counsel also contended that the so-called *calderbank* was

nothing more than an offer to settle the costs issue at a particular sum and having been rejected by the applicants, is of no force.

[8] In referring the Authority to the appropriate case law, Mr Dallas included references to the cogent sections of *PBO Ltd v Da Cruz* AC 2A/05, a decision of the Full Bench of the Employment Court. That point is well made and it is the guiding principles set out in that decision which have assisted me in this determination.

[9] Mr Dallas submitted that in the instant case, an award of \$1,500-\$2,000 would be appropriate.

Discussion

[10] This matter was dealt with in a day and the issues were not legally nor factually complex.

[11] There are no grounds in this case to depart from the accepted rule that costs are to follow the event.

[12] The notional daily cost at present is in the \$2,000-\$2,500 range and I am of the view in this matter that the higher figure is warranted. On that basis a contribution to the respondent's costs would start at \$2,500. The respondent's detail of costs included disbursements of \$166.66 and I think it appropriate to reimburse those costs.

The determination

[13] I direct that the applicants pay the respondent a contribution of \$2,500 towards its costs. Further, the applicants are to pay the respondent the sum of \$166.66 to cover its disbursements.

[14] I make no order as to how these costs are to be allocated between the first and second applicants. That is a matter for them to decide.

Paul Montgomery
Member of Employment Relations Authority