



[2] While costs were reserved I indicated to the parties that, subject to their submissions and any Calderbank offers, costs in favour of Ms Pryce in the order of \$2,000 could be anticipated in light of the fact this investigation was done on the papers.

### **Applicant's Costs Submissions Summarised**

[3] In costs submissions received on 19 May Mr Mackay relies on costs principles set out in *Okeby v Computer Associates (NZ) Ltd* [1994] 1 ERNZ 613, *Reid v NZ Fire Service Commission* [1995] 2 ERNZ 38, and *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA), including that costs typically follow the event.

[4] Work undertaken on Ms Pryce's behalf is outlined. Costs incurred total \$16,045.36. Billing sheets are attached.

[5] It is accepted that costs up to mediation can not be claimed but in this instance, because of extensive but unsuccessful efforts by the parties to settle this matter on their own terms, the Authority accepted that mediation would not assist them.

[6] Both parties initiated Calderbank and other without prejudice settlement offers (copies attached to the applicant's costs submissions).

[7] Costs generated by the need for a hearing were not incurred in this instance as the matter was determined on the papers.

[8] Based on *Binnie* (above) it is submitted that a reasonable contribution to the applicant's costs is \$10,589.94 (i.e. 66%), plus the \$75 filing fee.

### **The Respondent's Position Summarised**

[9] Costs should lie where they fall or, in the alternative, awarded to the respondent despite a largely successful application by Ms Pryce but because of a more than reasonable offer having been made prior to any proceedings being filed that should have been accepted.

[10] Progressive offers were made by the Company to the applicant commencing at \$5,500 on 19 November 2008 and culminating in an offer on the 26<sup>th</sup> of that month of \$20,000 to be paid under s. 123 of the Employment Relations Act 2000 (the Act). At no time did the applicant move from her settlement proposal of over \$50,000.

[11] The Authority should be firm with costs in the circumstances of this case, bearing in mind the more than reasonable offers of settlement offered by the respondent but not by Ms Pryce. Had she accepted the Company's offer she would have received a very similar result to that now ordered by the Authority. As noted in the Authority's determination there was no basis for Mr Pryce to claim the high sum she sought for humiliation, etc. The draft determination released by the Authority did not result in Ms Pryce adjusting her position.

### **Discussion and Findings**

[12] In determining this matter my approach to costs will be informed principally by *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808. Amongst other significant differences, that decision does not assume a 66% starting point in the assessment of fair and reasonable costs.

[13] The most generous Calderbank offer was one of \$20,000 nett of tax put on 26 November 2008. Ms Pryce's evidence (par 2.2, statement of problem) is that she was paid \$34,000 gross at the time of her dismissal. In my substantive determination I awarded the applicant \$13,000 under s. 123 (1) (c) (i) of the Act and 6-months lost wages, which I assume is agreed to be \$17,000 gross. Leaving aside the costs she has apparently incurred, and after a discount for taxation, simple arithmetic establishes that Ms Pryce has been more successful (by several thousands of dollars) in pursuing this matter through the Authority than had she accepted the respondent's best Calderbank. It follows that, albeit with some reluctance as it contained the lion's share of the applicant's success, the respondent's best Calderbank offer must be put aside.

[14] An inspection of Ms Pryce's billing sheets show that costs claimed include matters that far precede, and are separate from, the issues culminating in my determination in favour of the applicant. It is not appropriate to recognise any costs

other than those incurred in preparing for, presenting and arguing the applicant's claims before the Authority.

[15] Consistent with the parties' agreement to undertake this investigation on the papers so as, amongst other things, to keep costs down, while bearing in mind the concession as to costs set out in counsel for the respondent's email of 26 May, and after having regard to the overall facts, circumstances and parties' submissions, as well as the principles set out in *Da Cruz* (above), I confirm my earlier indication that costs of \$2,000 in favour of Ms Pryce are appropriate.

### **Determination**

[16] The company is to pay to Ms Pryce as a contribution to her fair and reasonable costs the sum of \$2,000 (two thousand dollars).

**Denis Asher**

**Member of the Employment Relations Authority**