

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Marie Ann Ramsay (Applicant)
AND Stephen Funeral Home Limited (Respondent)
REPRESENTATIVES Shelley Gray, Counsel for Applicant
Christine French, Counsel for Respondent
MEMBER OF AUTHORITY Philip Cheyne
SUBMISSIONS RECEIVED 11 December 2006
16 January 2007
26 January 2007
DATE OF DETERMINATION 29 January 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 27 September 2006 I reserved costs, having rejected any grievance claim by Ms Ramsay against her former employer. The respondent lodged a memorandum on 11 December 2006 and Ms Ramsay lodged a reply on 16 January 2007. The respondent then lodged a reply on 26 January 2007. This determination resolves the disputed question of costs.

[2] The respondent company says that its actual costs were \$7,326.54 (excluding costs associated with mediation) and it seeks a contribution from Ms Ramsay. In addition, the respondent says that it had made an offer of \$3,725.00 without prejudice except as to costs on 22 June 2006 (known as a *Calderbank* offer) about 3 weeks before the investigation meeting which was not accepted. The respondent repeated its offer during a break in the investigation meeting which was also not accepted.

[3] Ms Ramsay responded to the costs issue personally rather than through her former solicitor. She says that she was advised that having an offer on the table was an admission of wrong doing. There are situations where that might be accurate but this was not one of them. In any event, I agree with counsel for the respondent that issues about the advice given to Ms Ramsay and other aspects of the dispute between her and her former solicitor do not affect the present matter. The respondent succeeded and costs fall to be determined on the usual principles. I do not see that the *Calderbank* offer adds much to the strength of the respondent's right to have costs assessed.

[4] Ms Ramsay says that she still owes her former solicitor about \$8,000.00 which is being met by weekly payments of \$20.00. She says that she is not in a position to contribute to the respondent's costs and that she has had difficulty finding further employment. However, Ms Ramsay does have some employment in retail work.

[5] The meeting took from 9.30 am until about 2.45 pm with a lunch break of about 30 minutes. It was handled in an economical and effective manner by those involved as were the preliminary

matters. As a straight forward grievance claim, it is very much a matter amenable to costs being assessed on a tariff basis: see *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.

[6] The recent Department of Labour survey of cost awards (1 January 2006–30 June 2006) reports that most cost awards for successful employers when meetings last less than one day are below \$2,000 with awards of \$1,000-\$1,499 being most common. Those awards cover the range of work done by the Authority, not all of which involves as much preparation as personal grievance claims.

[7] I see no reason to doubt what Ms Ramsay has said about her difficult financial situation and that leads me to make an award towards the lower end of the range just indicated. Ms Ramsay is to pay Stephen Funeral Home Limited \$1,200.00 as a contribution to their costs.

Philip Cheyne
Member of Employment Relations Authority