

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 13/08
5078047

BETWEEN LANCE RICHMOND
 Applicant

AND ARMSTRONG ALARMS
 LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Max Whitehead, for Applicant
 Peter Elder, for Respondent

Submissions received: 11 December 2007 from Applicant
 16 January 2008 from Respondent

Determination: 17 January 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 21 November 2007 (AA366/07) I upheld Mr Richmond's claim that his dismissal was unjustified and made an award of remedies in his favour. The parties were invited to try to resolve the issue of costs themselves. In the event they were unable to leave was granted to refer the matter to the Authority for determination; that is now the situation.

[2] Mr Whitehead advises that Mr Richmond's actual costs total \$6342.19. It is not clear if costs associated with mediation are included. Mr Whitehead submits that a contribution to those costs of \$4592 would be fair and reasonable given the following:

- Mr Richmond's claim was successful;
- The matter could have been settled of \$4500 if the respondent had accepted Mr Richmond's settlement offer which was made on a without prejudice basis;

- Mr Richmond is entitled to a reasonable award of costs which does not deny him an effective remedy;
- The matter was effectively disposed of within ½ a day.

[3] Mr Elder submits:

- An award of costs by the Authority is discretionary and overrides the principle that costs follow the event. The Authority is referred to the principles set out in *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808;
- Armstrong Alarms made reasonable settlement offers, including reinstatement and later a *Calderbank* offer of \$5000; and
- Any award of costs should be modest.

[4] Armstrong Alarm's without prejudice save as to costs offer was made the day after the investigation meeting. To be valid such an offer must be made with reasonable time to prevent costs being incurred. By the conclusion of the investigation meeting Mr Richmond had incurred significant costs. A valid *Calderbank* offer was not made.

[5] Mr Richmond's without prejudice offer was made on 31 October 2007. The letter states that incurring further costs was on hold pending Armstrong Alarm's response to the settlement proposal. This was a reasonable offer. It is unclear what costs were incurred by Mr Richmond after 31 October 2007.

[6] This matter was amenable to settlement. There was no factual disagreement between the parties. The investigation meeting provided the respondent with an opportunity to rectify the significant factual inaccuracies in its statement in reply and witness statements. These inaccuracies were central to the issues between the parties.

[7] The costs incurred by Mr Richmond are very high given the straightforward nature of matter.

[8] Taking into account the principles articulated in *Da Cruz* I find that an award of costs is warranted. Balancing the general principal that costs in the Authority should be modest with the undesirability of remedies being nullified by those costs

and given the particular circumstances of this matter I set that award at \$3000 plus \$70, by way of reimbursement of the filing fee incurred by Mr Richmond in lodging this application and I so order.

Marija Urlich

Member of the Employment Relations Authority