

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 281
5423136

BETWEEN MICHAEL RILEY
Applicant

A N D COMMIT SERVICES
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Helen White, Counsel for the Applicant
Gretchen Stone, Counsel for the Respondent

Submissions Received: 2 July 2014 from the Applicant
27 June 2014 from the Respondent

Date of Determination: 3 July 2014

COSTS DETERMINATION OF THE AUTHORITY

The substantive decision

[1] In my substantive decision on this matter, issued on 2 May 2014 as [2014] NZERA Auckland 166, I found that Mr Riley had suffered a personal grievance by reason of having been unjustifiably dismissed from his employment but because I considered that his behaviour contributed completely to the outcome, I awarded him no remedies.

[2] Costs were reserved but the parties were urged to endeavour to resolve costs on their own terms, on the footing that both could claim to have been partially successful.

The application for costs

[3] The respondent employer (Commit) seeks an award of costs in the sum of \$6,000 having incurred costs of just over \$9,000 in total.

[4] The application for costs from Commit relies exclusively on two *Calderbank* offers that were made to Mr Riley prior to the Authority's investigation meeting, together with various other attempts made by counsel for Commit to try to resolve matters prior to hearing.

The response

[5] Counsel for Mr Riley argued that her client's reason for bringing the claim was:

... because he was found (by the employer) to have sought to damage his employer's business by speaking to a competitor.

His employer ... accepts this ... matter ... was the reason (it) dismissed ... Mr Riley."

[6] Moreover, counsel makes the observation that the *Calderbank* offer (actually offers) did not address the legitimate remedy that Mr Riley sought, namely a vindication that he had not done what he was accused of doing.

Discussion

[7] The law on costs fixing in the Authority is well settled and I need not recite it again here.

[8] The starting point for any analysis of costs fixing must be the base principle that costs usually follow the event. Here, Mr Riley was successful. He claimed he had been unjustifiably dismissed and I agreed with him. The fact that I chose not to award any remedies because I was satisfied that his behaviour caused the dismissal is not relevant in a costs setting. Costs fixing must not be seen as a punishment for wrongdoing.

[9] The short point is that Mr Riley was successful in his claim and on that basis, I am not satisfied that the *Calderbank* offers made by Commit during the lead up to the investigation meeting are operative simply because they were not made by the successful party.

Determination

[10] There is no claim for costs by Mr Riley against Commit despite him being successful in his claim, albeit without remedies. The only claim for costs before the

Authority is from the unsuccessful party which seeks to interest the Authority in the proposition that the *Calderbank* offers are operative because both parties had a measure of success in the Authority's determination.

[11] Put another way, although Mr Riley was successful in his claim, Commit could argue that it was successful in resisting the need to pay Mr Riley any remedies.

[12] But I am satisfied that that misses the point. Mr Riley was the successful party; he claimed that he had been unjustifiably dismissed and I agreed with him.

[13] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority