

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 113
5327104

BETWEEN

DOMINIC SPEED
Applicant

A N D

BOARD OF TRUSTEES OF
WELLINGTON GIRLS'
COLLEGE
Respondent

Member of Authority: G J Wood

Representatives: R Moody for Applicant
P McBride for Respondent

Submissions Received: 10 September 2012

Date of Determination: 28 September 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I dismissed all of Mr Speed's claims against the respondent (WGC), including his principal claim of unjustified dismissal.

[2] On behalf of WGC, Mr McBride seeks a contribution towards its full costs incurred of \$18,250 plus GST, namely \$15,688 plus disbursements. In particular, it relies on its complete success; that a two day investigation meeting was required; that there were delays by Mr Speed in pursuing the matter; and a *Calderbank* offer of \$3,000 together with provision of non-monetary benefits dated 3 May 2012, which was rejected by Mr Speed. That offer noted that solicitor/client costs would be pursued should it be rejected.

[3] In response Dr Moody noted that the Authority had described Mr Speed's situation as one of a *catch 22* not entirely of his own making. It was also noted that the stakes were very high for Mr Speed and that he was never given a fair hearing of the allegations which led to his dismissal and deportation. Given that the Teachers'

Council, which Mr Speed considers to be the root cause of his problems, was never subject to scrutiny as a party in any legal proceedings, this was an exceptional case for which costs should lie where they fall. In response Mr McBride submitted that Mr Speed's failure to address issues with the Teachers' Council directly was no reason for him to avoid paying costs in the Authority.

[4] While there were delays in the progress of this matter, they did not add greatly to the costs incurred. Furthermore, Mr Speed directly met the additional costs of video conferencing. Therefore I accept that this is the sort of case which would normally have been determined on the tariff approach for a two day investigation meeting. However, the *Calderbank* offer must also be taken into account. Ordinarily an award of \$6,000-7,000 would be appropriate given that there is no indication that Mr Speed is unable to pay any award of costs.

[5] However, taking into account the *Calderbank* offer, I consider that an award of \$10,000 is appropriate, consistent with the \$3,000 offered but not accepted - a *steely* approach being required of the Authority by the Court of Appeal. Disbursements for photocopying are not normally awarded, as they are normal office expenses, and I therefore decline the claim for expenses.

[6] I therefore order the applicant, Mr Dominic Speed, to pay to the respondent, the Board of Trustees of Wellington Girls' College, the sum of \$10,000 in costs.

G J Wood
Member of the Employment Relations Authority