

of \$553.75. He submits that a contribution to those costs of \$5000 plus disbursements would be just and equitable in the circumstances on the following basis:

- particular weight should be given to the valid and reasonable without prejudice settlement offer of \$5000 Mrs Stiekema made to settle the matter in a letter dated 29 March 2007;
- Mrs Stiekema's claim was successful in the area on which she placed particular importance; and
- Centurion's action in relation to discovery and witness attendance unreasonably contributed to increased preparation costs.

Centurion

[4] Centurion seeks a contribution to its costs of \$1500 plus \$200 to Stewart Ashworth, whose attendance at the investigation was a consequence of a subpoena. In support of this claim Mr Clemow submits:

- Mrs Stiekema ran two issues which had little prospect of success, doubling the hearing time and unnecessarily inconveniencing witnesses;
- the Authority's determination did not vindicate Mrs Stiekema – her remedies were reduced by 50% for contribution; and
- Centurion's counter-offer to Mrs Stiekema's *Calderbank* offer was reasonable and should be a factor weighed against any increased award of costs in favour of Mrs Stiekema.

[5] The basis of Centurion's claim on behalf of Mr Ashworth is unclear. Centurion did not call Mr Ashworth as a witness. It was necessary for the Authority to subpoena Mr Ashworth.

Determination

[6] Mrs Stiekema's *Calderbank* offer is not a significant consideration in the weighing of any costs award. The sum Mrs Stiekema offered to settle on was not close enough to the actual outcome of the Authority's investigation to be considered a

reasonable settlement proposal¹. Likewise, Centurion's counter-offer does not meet the reasonableness test to warrant consideration as a valid *Calderbank* offer.

[7] Mrs Stiekema has enjoyed a degree of success. It is usual that costs should follow the event.

[8] The investigation meeting ran for 1 ½ hearing days, at the conclusion of which written submissions were presented. I accept the issues were important to the parties and that importance may have been a motivator in the pursuit of issues which were ultimately unsuccessful. The Authority's expectation is that settlement discussions between the parties can narrow the issues to be determined, as can the provision of relevant documents. I accept that the procedural issues which arose between the parties before the investigation meeting have resulted in costs being incurred which would not have necessary if the parties had not had to refer to the Authority for directions.

[9] Guided by the principles set out in *PBO Ltd v Da Cruz*² I find that an award of costs is warranted. Given the particular circumstances of this matter I set the award at \$3000.00 plus \$200 towards disbursements and I so order.

[10] Centurion Management Services Limited is therefore ordered to pay \$3200.00 to Mrs Jacky Stiekema in costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority

¹ *Watson v NZ Electrical Traders Ltd t/a Bray Switchgear* AC 64/06, Colgan CJ, 24 November 2006

² [2005] 1 ERNZ 808