

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 185
5464418

BETWEEN STOJAN STOJKOV
 Applicant

AND BELA LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Robert Bryant for Applicant
 No appearance for Respondent

Submissions received: 21 May 2015 from Applicant
 No submissions from Respondent

Determination: 23 June 2015

COSTS DETERMINATION OF THE AUTHORITY

A. Bela Limited is ordered to pay to Mr Stojkov \$3,500 as a contribution to the costs incurred by Mr Stojkov.

[1] In a determination dated 23 April 2015¹ I held Mr Stojkov had been unjustifiably constructively dismissed and awarded remedies pursuant to section 123 of the Employment Relations Act 2000 (the Act). I held Mr Stojkov had not received full payment for all hours he had worked for Bela Limited and that Bela Limited had breached the terms of the employment agreement between the parties and its obligations of good faith. I awarded Mr Stojkov arrears of wages and ordered Bela Limited to pay penalties into the Authority with 50% of the penalties to be paid to Mr Stojkov for its breaches. The financial orders totalled \$45,916.44.

[2] I reserved the matter of costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file cost memoranda and

¹[2015] NZERA Auckland 118.

evidence. I have received submissions dealing with the costs issue from the Applicant, but not from the Respondent.

[3] Counsel has submitted that as the successful party Mr Stojkov is entitled to an award of costs and seeks a contribution at the higher end of what is normally awarded by the Authority.

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

Jurisdiction

[5] Since issuing the substantive determination in this matter Bela Limited went into liquidation. I have continued to determine the matter of costs on the basis that costs follow the event and costs are a consequence of the proceedings which have already been substantively determined.²

Determination of costs

[6] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[7] The Authority has been provided with evidence that Mr Stojkov incurred costs of \$22,154.18.

[8] As held recently by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.³ As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*,⁴ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

Calderbank offer

[9] The Authority will take into account, when dealing with the issue of costs, any offers made by the parties to settle matters. As stated by the Court of Appeal⁵:

² *Orakei Group (2007) v Doherty (No 2)* [2008] ERNZ 505 at [34] followed.

³ *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

⁴ (2006) 7 NZELC 98,128; [2005] ERNZ 808; (2005) 3 NZELR 1 (EMC).

⁵ As cited in *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385.

The public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer with any consequences as to costs.⁶

[10] As was held by the Employment Court in *Mattingly v Strata Title Management Limited*⁷:

Where an offer of settlement has been made by a party to litigation and the other party unreasonably rejects that offer that should be taken into account in assessing costs. That is because costs have been wasted going to trial. This principle has been endorsed by the Court of Appeal as appropriate in assessing costs in litigation in the Employment Court and that a “steely approach” ought to be adopted. No such statement of approval has yet been made by the Court of Appeal in relation to the assessment of costs in the Authority. It may be that a somewhat diluted approach is appropriate in that forum having regard to the statutory imperatives identified above, and in light of the Court’s observation in *Da Cruz* that Authority awards will be “modest”. What is clear, however, is that the effect of an offer is ultimately at the discretion of the Authority, and the Court on a de novo challenge, having regard to the circumstances of the particular case.⁸

[11] On 11 February 2015 a Calderbank offer was made by Mr Stojkov to resolve the employment relationship problems between him and Bela Limited. The offer was a pragmatic offer to resolve all matters with the payment of \$7,000 pursuant to section 123(1)(c)(i) plus a contribution to costs in the amount of \$8,000 plus GST. The offer was available for acceptance for a period of 14 days.

[12] On 25 February 2015 Bela Limited requested an extension of time in which to respond to the Calderbank offer. This extension was agreed and on 4 March 2015 Bela Limited rejected the offer.

[13] Bela Limited has failed to engage with the Authority during the process of investigation and in the matter of costs. The Authority is not aware of any reasons why Bela Limited rejected the offer to settle which in all respects was very reasonable.

[14] I find the rejection of the Calderbank offer by Bela Limited was unreasonable and will affect the exercise of my discretion in determining an appropriate award for costs.

⁶Ibid at [18].

⁷[\[2014\] NZEmpC 15](#); [\[2014\] ERNZ 1](#).

⁸Ibid at [27].

Determination

[15] The investigation took half a day. Mr Stojkov was successful in all aspects of his claim. The Authority applies a starting point of a notional daily tariff for quantifying costs.

[16] There is no issue of the ability to pay a reasonable contribution to costs. Given Bela Limited's unreasonable rejection of the Calderbank offer an uplift of at least twice the daily tariff (proportionate with the time taken for the investigation meeting which was half a day) would be in accordance with principle.

[17] I consider it appropriate that Bela Limited pay to Mr Stojkov the amount of \$3,500 without deduction as a contribution to his costs.

Vicki Campbell
Member of the Employment Relations Authority