

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 229A/10
5282446

BETWEEN

JACQUELINE SYDOW
Applicant

AND

EXECUTIVE RECRUITERS
INTERNATIONAL LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 20 May 2010, from Respondent

Determination: 5 July 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] Further to the Authority's determination of Ms Jacqueline Sydow's personal grievance claim (17 May 2010 under AA 229/10), an application for costs has been received from Executive Recruiters International Limited.

[2] A copy of it was served on her representative. In accordance with the Authority's directions Ms Sydow had until 2 July 2010 to respond in writing, if she wished. Nothing has been received from her by the Authority.

[3] In its determination given after an investigation meeting lasting about a day, the Authority found that Ms Sydow did not have a personal grievance of any kind. The Authority found that she had not been constructively dismissed as claimed by her but had resigned her employment. Also she was found to have been properly paid in accordance with the terms of her employment.

[4] The respondent employer seeks a contribution of \$3,500 to its legal costs. Actual costs are said to have exceeded that amount but are not disclosed. The Authority readily accepts that they were greater, as professional representation by legal counsel was retained by the employer.

[5] I agree with counsel Mr Pollak's submission, particularly in the circumstances of this case, that the amount claimed is "quite modest." Costs of \$3,500 are only a few hundred dollars above a sum often regarded as average for a one day hearing.

[6] The feature of this case that leaves me in no doubt that an award higher than the daily tariff should be made is that, through a *Calderbank* offer, Ms Sydow was presented with a reasonable opportunity to resolve her grievance without the need for an investigation meeting and a determination being issued by the Authority. The *Calderbank* offer, had Ms Sydow accepted it, would have yielded her \$15,200 for lost remuneration and compensation.

[7] The rejection of an amount that large was plainly unreasonable, as it is unlikely Ms Sydow would have recovered remedies to that extent had she succeeded with her grievance claim.

[8] *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, sets out the principles to be applied by the Authority in exercising its costs discretion. In principle *Calderbank* offers may be taken into account, even where the offer was not accepted.

[9] I note that in a recent decision of the Employment Court given by Judge Perkins in *Chen v. New Zealand Sugar Company Ltd* [2010] NZEMPC 81, the applicant employee was found to have declined a reasonable *Calderbank* offer. This, and other circumstances, was held by the Court to make it appropriate for an award of full indemnity costs to be made (\$19,550) against the applicant in relation to an unsuccessful challenge made by him in the Employment Court.

[10] An order for payment by Ms Sydow of full indemnity costs has not been sought in this case, but a reasonable contribution of \$3,500 is asked for and I am satisfied that it ought to be awarded.

[11] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Jacqueline Sydow is ordered to pay costs of \$3,500 to Executive Recruiters International Limited.

A Dumbleton
Member of the Employment Relations Authority