

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 144  
5307312

BETWEEN

CAROL WALDMAN  
Applicant

AND

FARMLANDS TRADING  
SOCIETY LIMITED  
Respondent

Member of Authority: G J Wood

Representatives: Vicki Eades for the Applicant  
Daniel Erikson for the Respondent

Submissions Received by: 29 August 2011

Determination: 15 September 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] I dismissed Ms Waldman's claims against the respondent, Farmlands Trading Society Limited (Farmlands), for unjustified disadvantage and constructive dismissal.

[2] Farmlands now seeks a contribution towards its costs of \$27,250.40 of \$22,500, plus disbursements of \$181.00. Farmlands relies, in particular, on a *Calderbank* offer of \$5,000 made well in advance of the investigation meeting. It was submitted that had that offer been accepted Ms Waldman would have been in a much better position, given that she failed to succeed in any of her claims before the Authority. It was therefore submitted that a tariff-based approach of the Authority should be increased to \$5,000 from \$3,000 a day accordingly. It was then submitted that preparation should also be allowed for at the rate of two days preparation time for each day of investigation meeting, which took approximately 1.5 days.

[3] I note that making allowances for preparation time is not the normal approach of the Authority. In *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 the Employment Court

accepted that a tariff approach could be adopted by the Authority, provided it was flexible enough to take into account the particular circumstances of any case. The usual tariff for a case such as this is in the range of \$2,000 to \$3,000 per investigation meeting day, without allowance for preparation.

[4] In response, Ms Waldman submitted that a contribution of up to \$4,500 would be appropriate, but that Ms Waldman could not afford to pay such a sum, even in instalments, at this time.

[5] When informed quite properly by Mr Erikson that in the absence of full information as to an inability to pay, the Authority can not take that into account, a statutory declaration was then provided by Ms Waldman. However, that dealt only with her income situation, and not her assets and liabilities (other than the liability of a mortgage). While the declaration shows that Ms Waldman and her husband are spending significantly more than they earn, it is clear that they do own an asset in their house, albeit one encumbered by a mortgage.

[6] Ordinarily I would accept that \$4,500 would be an appropriate contribution to costs in a case like this. However, Ms Waldman would have been far better off to have accepted the *Calderbank* offer, and the Authority is required to take a *steely* approach to costs where reasonable offers have been made to parties that have not been accepted.

[7] I therefore consider that an appropriate starting point for costs is \$7,500. It is not clear what, if any, the net assets compared to liabilities position of Ms Waldman and her husband is, except that the Bank is prepared to give them a loan up to \$70,000, of which only about \$20,000 to \$25,000 appears to have been utilised. It therefore follows that by increasing their loan to the Bank, Ms Waldman could meet a costs award. I do not accept that that would cause unnecessary hardship to her because the Bank is prepared to loan her that amount.

[8] I therefore order the applicant, Ms Carol Waldman, to pay to the respondent, Farmlands Trading Society Limited, the sum of \$7,500 in costs.

[9] I disallow the claim for disbursements as it applies only to regular expenses that would normally be covered by office overheads, such as toll calls and photocopying.

**G J Wood**  
**Member of the Employment Relations Authority**