

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Peter Henricus van Kampen (Applicant)

**AND** New Zealand Business Telephone Company Limited (First Respondent)  
**AND** Australian Business Telephone Company Limited (Second Respondent)

**REPRESENTATIVES** Anthony Vlatkovich, for the applicant  
Naomi Cervin, for the respondent

**MEMBER OF AUTHORITY** Marija Urlich

**INVESTIGATION MEETING** 24 September 2003

**DATE OF DETERMINATION** 20 December 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

[1] There have been two determinations issued in relation to this employment relationship problem. The first concerned a preliminary matter as to the identity of the respondent. This issue was resolved in favour of the applicant (AA 205/04). The second concerned the substantive issue as to whether the applicant's dismissal was unjustified (AA 262/05). I found that the applicant's dismissal for redundancy was for genuine reasons but that he was unfairly treated during the dismissal process and these process flaws gave rise to a successful claim of unjustified dismissal. An award of \$3000.00 was made in favour of the applicant pursuant to section 123(i)(c) of the Act.

[2] The parties advise they have unsuccessfully attempted to resolve the issue of costs themselves and have filed submissions requesting that the Authority determine this issue in relation to both determinations.

[3] Mr Vlatkovich advises the total costs incurred by the applicant in pursuing his personal grievance exceed \$20,000 (excluding GST) plus disbursements of \$240.45. He seeks a contribution to those costs of \$14,400 (excluding GST) and a contribution to disbursements. In calculating this amount Mr Vlatkovich submits the appropriate multiplier is three<sup>1</sup>. Mr Vlatkovich submits the respondent is not impecunious and the consequences of its opposition to every element of the applicant's claim, including the identity of the respondent have unnecessarily increased the costs incurred by the applicant.

[4] Ms Cervin submits that the applicant's success was limited and that total hearing time did not exceed one and half days. She submits that an appropriate guide for any costs award should be the tables of costs awards in the Authority published by the Employment Relations Service of the Department of Labour. Ms Cervin also submits that a valid and reasonable Calderbank offer of

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<sup>1</sup> *Victoria University of Wellington v Alton Lee* [2001] ERNZ 305

\$5000 was made to and rejected by the applicant on 29 April 2005 and that this should be a factor in the Authority's consideration of any costs award. Ms Cervin submits that in light of the Calderbank offer an award of costs should be made in favour of the respondent or, in the alternative, that costs should lie where they fall.

[5] In relation to the preliminary issue as to the identity of the respondent the applicant is entitled to an award of costs. Given the length of hearing time, the issues involved and the necessity for closing submissions to be filed in writing after the investigation meeting a reasonable contribution to costs incurred is \$1200.

[6] In relation to the substantive hearing the applicant is entitled to a contribution to costs, but these must be discounted given the Calderbank offer. The Calderbank offer was valid for the substantive issue; it was timely, clear in its terms and exceeded the remedies awarded the applicant. It does not extend to the preliminary matter because those costs had already been incurred. In these circumstances a reasonable contribution to costs incurred in relation to the investigation of the substantive application is \$1500.00.

**[7] I order Australian Business Telephone Company Limited to pay Peter Henricus van Kampen the sum of \$2700 as a contribution to costs incurred.**

Marija Urlich  
Member of Employment Relations Authority