

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 156A/07
5054877

BETWEEN IAN WILLIAM MONAHAN
Applicant
AND LISTER'S PIONEER
SERVICES LTD

Member of Authority: Yvonne Oldfield
Representatives: Brian Warren for applicant
Cathy Bormans for Respondent
Submissions received: 14 June 2007, 31 July 2007
Determination: 31 August 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

Employment Relationship Problem

[1] 22 May 2007 I issued a determination in which I awarded Mr Monahan a total of \$2,187.50 as remedies for his personal grievance. At the conclusion of the determination I noted:

“Mr Monahan was not professionally represented. He may however seek to recover his filing fee and disbursements. Should he wish to do so he has a period of 28 days in which make application to the Authority for a contribution to his costs. Upon receipt of any such application the respondent will have a further 14 days in which to reply.”

[2] Mr Monahan did not make such a claim. However, the respondent did make an application for costs on a solicitor/client basis. In a submission dated 14 June Ms Bormans advised that the respondent had made *“repeated attempts”* to settle the matter including a *“Calderbank”* offer of \$3,750.00 by letter of 26 March, held open until 30 March. Mr Monahan declined to settle the matter on these terms. Ms

Bormans attached a copy of the letter which explains clearly that should the applicant fail in the Authority to achieve a greater sum the respondent would rely on the Calderbank offer in support of an application for full solicitor/client costs. Ms Bormans advises that the respondent's actual legal costs amounted to \$5,267.78 plus GST.

[3] Mr Monahan made a short submission in reply in which he said that the offer was made on the basis of instalment payments. However the letter of 26 March provides for payment of the \$3,750.00 without conditions. Mr Monahan was not professionally represented.

Determination

[4] I am satisfied that the letter of 26 March represented a reasonable offer to settle. By refusing it, Mr Monahan has unnecessarily increased the respondent's costs. I accept therefore that he should make a contribution to those costs.

[5] I do not accept however that he should be required to meet full solicitor/client costs. Mr Monahan is only responsible for additional costs incurred after the offer was made. Although I was provided with a copy of Fortune Manning's invoice to the respondent, it was not broken down into specifics and I cannot be confident that it does not contain costs incurred prior to 26 March. In addition I note that this was an uncomplicated investigation that took less than a day. It would be rare in such a case in the Authority for even a wholly successful party to be awarded in excess of \$5,000.00 in costs.

[6] Taking all these factors into consideration, and consistent with awards made to successful parties in investigations of a similar length I conclude that a reasonable contribution to costs would be \$1,000.00.

[7] **Mr Monahan is ordered to pay the sum of \$1,000.00 to Lister's Pioneer Services Ltd as a contribution to its costs.**

Yvonne Oldfield

Member of the Employment Relations Authority