

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**CA 43A/07  
5042161**

BETWEEN ALANA PEAGRAM  
Applicant  
AND HERITAGE PRODUCTIONS  
LTD  
Respondent

Member of Authority: Philip Cheyne  
Representatives: Pool Troon for Applicant  
Raewyn Gibson, advocate for the respondent  
Investigation Meeting: 28 November 2006 and 15 December 2006  
Submissions received: 4 May 2007 from Applicant  
21 June 2007 from Respondent  
Determination: 22 June 2007

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 12 April 2007 I upheld Ms Pegram's personal grievance claim and awarded her remedies of lost remuneration and distress compensation totalling just under \$3,000.00. That reflected the relatively short period of lost remuneration and Ms Pegram's contribution to the circumstances of the grievance. Costs were reserved.

[2] The unsuccessful respondent lodged a memorandum seeking costs. The memorandum explains that the respondent made a *Calderbank* offer to Ms Pegram of \$3,500.00 compensation by letter dated 14 August 2006. Ms Pegram rejected the offer. A second *Calderbank* offer of \$5,000.00 compensation was conveyed verbally on 27 October 2006 and confirmed in writing by letter dated 6 November 2006. The investigation meeting was convened on 28 November 2006 with some further evidence heard on 15 December 2006.

[3] The respondent makes the point that acceptance of its first *Calderbank* offer would have given Ms Pegram more than she eventually recovered without either party having incurred costs in respect of the investigation meeting. The proceedings were lodged in June 2006 but referred by agreement to mediation. A directions conference was not convened until September 2006 following mediation. Almost none of the costs eventually incurred by the respondent would have arisen if the first *Calderbank* offer had been accepted. On that basis the respondent seeks a substantial contribution to the legal costs of \$4,819.50 (excluding GST) actually incurred. I am referred to *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 and *Chief Executive of the Bay of Plenty District Health Board v NZ Public Service Association* (Unreported AC 73/06).

[4] During the investigation, Ms Pegram was represented by Mr Paul Troon and he has provided submissions in reply. Mr Troon says that he has incurred costs which he expects Ms Pegram to pay if costs are awarded in her favour. The submission refers to events at mediation which I will ignore. There is no dispute that two *Calderbank* offers as described by the respondent were made. Ms Pegram simply felt the offers were too low and wanted her *day in court* so the full facts could be revealed. Mr Troon urges that costs lie where they fall.

[5] The Employment Relations Act 2000 emphasises the importance of parties resolving problems such as this without recourse to judicial intervention by the Authority or the Employment Court. Reducing the need for judicial intervention is an object of the Act (section 3) and also an object of the institutional arrangements established by Part 10 of the Act (section 143). In carrying out its role, the Authority must generally further the objects of the Act: see section 157. In keeping with these statutory provisions, there is a public interest in encouraging parties to resolve disputes short of judicial proceedings by recognising the relevance when setting costs of otherwise without prejudice settlement offers. For these and reasons of equity and good conscience the Authority has departed in appropriate cases from the usual principle that costs follow the event. The present matter is one of those cases.

[6] Not only should Ms Pegram not have any costs awarded in her favour, she should make a reasonable contribution to the respondent's costs. No argument about an inability to pay was raised, nor could it be given that a costs award should be offset against the compensation payable to Ms Pegram. Both offers made by the respondent were reasonable and one of them should have been accepted. Ms Pegram's refusal to accept either offer resulted in unnecessary legal costs. One of the strengths of a well judged *Calderbank* offer is the change in risk it creates. If the Authority does not give effect to a *Calderbank* offer in a case such as this, it would undermine the value of such offers. These are the reasons why Ms Pegram should make a reasonable contribution to the respondent's costs.

[7] The matter was relatively uncomplicated and occupied less than a full day's meeting time although spread over two different days. I see no reason to depart from a tariff type assessment of costs payable and according order Ms Pegram to pay costs of \$2,000.00 to Heritage Productions Limited.

P Cheyne  
Member of Employment Relations Authority