

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 90
5303100

BETWEEN

IESE OSO
Applicant

A N D

MASTAGARD COLERIDGE
RECYCLING LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Johnny Sanders, Advocate for Applicant
Dean Russ, Counsel for Respondent

Submissions Received: 5 April 2011 from Applicant
18 March 2011 and 11 May 2011 from Respondent

Date of Determination: 22 June 2011

COSTS DETERMINATION OF THE AUTHORITY

Introduction

[1] In the substantive determination issued by the Authority on 13 January 2011, the applicant (Mr Oso) was successful in proving his personal grievance for unjustified dismissal but was denied any remedies on the basis that his contribution to the circumstances giving rise to the dismissal was 100%.

[2] Costs, in the substantive determination, were reserved.

The claim for costs

[3] Both parties, in their submissions on costs, claim to have been successful. Mr Sanders on behalf of Mr Oso submits that costs should lie where they fall on the footing that while Mr Oso was successful in demonstrating his grievance, no remedies were awarded because of his significant contribution.

[4] Conversely, the respondent (Mastagard) asks that costs be fixed in its favour in the amount of \$1,500. It relies on the fact that although Mr Oso was successful in principle, because no remedies were awarded it was available to Mastagard to say that it had ... *succeeded in defending the personal grievance and that costs should follow.*

[5] Mastagard supported that submission by drawing the Authority's attention to the existence of a *Calderbank* offer made on 24 November 2010 in the sum of \$3,720.

[6] It is contended by Mastagard that had that offer been accepted, all matters would have been satisfactorily resolved and the expense of going to hearing would have been obviated.

[7] However, I note that the *Calderbank* offer was effectively made at the last minute, just two days before the investigation meeting, by which time much of the costs associated with the investigation meeting would already have been incurred.

[8] Furthermore, it seems to me difficult for Mastagard to claim the moral high ground in trying to resolve the matter by agreement in advance of the investigation meeting because the correspondence before the Authority discloses that Mr Oso's representatives also endeavoured to resolve matters by agreement by making a settlement offer to Mastagard as well.

Determination

[9] In all the circumstances of the present case, I think the proper course of action is for costs to lie where they fall. This was a straightforward matter dealt with by the Authority in less than one day and resulting, I think it is fair to conclude, in a relatively even outcome where, although Mr Oso was successful in demonstrating that he had sustained a personal grievance by way of unjustified dismissal, the Authority also had no hesitation in failing to grant Mr Oso any remedies at all because of 100% contribution to the circumstances giving rise to the grievance.

[10] In the Authority's view, that is the sort of case where costs should not be fixed and they should lie where they fall with each party bearing their own costs.