

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 87
5305448

BETWEEN

MARGARET WOOD
Applicant

AND

BOARD OF TRUSTEES OF
WOODFORD HOUSE
SCHOOL
Respondent

Member of Authority: G J Wood

Representatives: Peter Cullen for the Applicant
Phil Taylor for the Respondent

Submissions Received: 12 May 2011

Determination: 26 May 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination, I found against Ms Wood's claim for unjustifiable constructive dismissal. Having been successful, the respondent (Woodford House) has sought a contribution of \$12,000 to its costs of \$16,270.91. In particular it relied on a *Calderbank* offer which offered Ms Wood \$10,000, plus a reference, to resolve matters. Woodford House also relied on Ms Wood being late in providing documents and also seeking to introduce further medical evidence after the investigation meeting.

[2] In response, Ms Wood claimed that it was wrong for her to pay costs either for Woodford House's advocate and its insurer's lawyer, or the advocate's travel costs. She also submitted that any additional costs were not her fault and that her attempt to submit a psychologist's report had no bearing on the respondent's costs and was therefore irrelevant. Ms Wood also submitted that the *Calderbank* offer did not

address her concerns fully. Rather, Ms Wood submitted that a notional daily tariff should apply at the rate of \$2,500 or less.

Determination

[3] The incidental expenses claimed by Mr Taylor on behalf of Woodford House are the normal sorts of incidentals related to running a business providing a specialist professional service and are not normally claimable. Similarly, his costs of travel are well outside the sort of expenses usually reimbursed by the Authority. I therefore decline the claims for expenses.

[4] In terms of a contribution towards costs, where an applicant is unsuccessful she can expect to pay a contribution to her employer's costs. While the principles of *Calderbank* offers are not directly applicable where an applicant has been entirely unsuccessful, I accept that the fact of such an offer can properly be taken into account as part of the overall circumstances of the case, including whether the tariff approach of the Authority should be amended upwards (see for example *Gates v Air NZ Ltd* [2010] NZEMPC 26). Here Ms Wood would have at least covered her costs, rather than having to meet Woodford House's, had she accepted the offer, rather than put both parties to significant additional expense.

[5] There has been no claim that Ms Wood is unable to pay any costs awarded by the Authority. The matter was efficiently dealt with in a day, except for the request to provide additional medical information, which should not have been required had it been provided for by Ms Wood at the investigation meeting, as it should have been if she wanted the Authority to take account of it. The later application was thus counter-productive.

[6] Ordinarily, therefore, an award of costs of \$3,000 would be appropriate, but I extend that figure to \$5,000 to take into account the *Calderbank* offer, and by \$500 to account for the extra work done over the unnecessary claim to introduce additional medical evidence.

[7] I therefore order the applicant, Margaret Wood, to pay to the respondent, Woodford House School Board of Trustees, the sum of \$5,500 in costs.

G J Wood
Member of the Employment Relations Authority