

behalf that it should have been informed before the investigation meeting that these claims were no longer in issue, thus saving costs.

[3] The *Calderbank* offer for \$3,000 compensation plus \$1,000 in costs was rejected, with counterclaims that were at an extremely high level even if Mr van den Ende had been successful, including the claims for lost wages and exemplary damages that could not apply.

[4] In response, it was submitted on behalf of Mr van den Ende that the costs sought by The Vintage Aviator were disproportionate to the normal level of costs determinations of the Authority. The case was said to be uncomplicated and not frivolous. It was also submitted that The Vintage Aviator brought new information to the investigation meeting (which had not been available to Mr van den Ende before) and that he only withdrew his claim for reinstatement after reading The Vintage Aviator's evidence opposing it. It was therefore submitted that, both parties having had a degree of success, costs should lie where they fall. It was also submitted that given the injury suffered by Mr van den Ende it would be contrary to the interests of justice to award costs against him.

[5] While there were important issues for both parties to address through the investigation process, from the Authority's perspective this was pretty much a standard case. For both parties to have incurred costs each of over \$30,000 is accordingly surprising. However, that is a matter for the parties themselves.

[6] The Authority is entitled to adopt a tariff-based approach. In the absence of factors that necessitate a deviation from that approach, \$3,000 would be an appropriate award of costs. However, in this case, Mr van den Ende failed to accept a *Calderbank* offer that not only would have seen him monetarily significantly better off, but also would have greatly reduced the costs that both parties had to incur. The Court of Appeal has noted on several occasions that a *steely* approach is required by bodies such as the Authority in these circumstances.

[7] Given the failure to accept the *Calderbank* offer, which would have reduced costs all round, I consider that the normal tariff-based approach should be doubled in this case, namely to \$6,000.

[8] I therefore order the applicant, Andrew van den Ende, to pay to the respondent, The Vintage Aviator Limited, the sum of \$6,000 in costs.

G J Wood
Member of the Employment Relations Authority