

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 15
5423590

BETWEEN PHILIP VINCENT PETERS
Applicant

A N D HOUSING NEW ZEALAND
CORPORATION
Respondent

Member of Authority: G J Wood

Representatives: B Paradza for the Applicant
B Scotland for the Respondent

Investigation Meeting: By way of submissions

Submissions received by: 17 January 2014

Date of Determination: 7 February 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant Mr Peters' claims for unjustifiable dismissal were dismissed by the Authority. The respondent, Housing New Zealand Corporation (HNZ) has sought a contribution towards its costs of \$12,000 plus GST. It relies principally on a *Calderbank* offer of the same value which the applicant refused to accept. It claims that *such a steely uplift* on costs under the tariff system (which would have a normal outcome of \$7,000) is required because of this refusal and because of the significant preparation required by HNZ to cover a claim for reinstatement.

[2] In response Mr Paradza, of behalf of Mr Peters, claims that HNZ as a government agency should not be able to claim costs against Mr Peters who has lost his livelihood and is on a benefit. It was noted that Mr Peters has savings of little over \$1,000 and has not been able to support his children since his dismissal. It was also

noted that he has paid over \$7,000 in legal costs to his previous lawyers and has yet to pay his current counsel. It was therefore submitted that costs should lie where they fall.

[3] In response, Mr Scotland noted that while claiming impecuniosity Mr Peters continues to incur legal costs as he is challenging the Authority's determination in the Employment Court. It is further submitted that the fact that HNZ is a Government agency has no relevance.

[4] This is a clear case where costs should follow the event, particular in light of the *Calderbank* offer, which would have seen Mr Peters more than \$12,000 better off than he is today.

[5] On the other hand costs are not a penalty and the fact that Mr Peters is pursuing a challenge is not relevant, as that is his statutory right.

[6] There is no doubt that Mr Peters could not currently afford to pay costs of more than around \$1,000. However, Mr Peters was pursuing employment opportunities at the time of the investigation meeting and there is no reason he should not be able to meet an award of costs in the short to near term.

[7] Taking into account all these factors I conclude that costs in the sum of \$6,000 for an investigation meeting lasting approximately two days should be awarded. However, I urge the parties to attempt to reach agreement over repayment over time, or at least deferment on payment until after the outcome of the challenge is known.

[8] I therefore order the applicant, Philip Vincent Peters, to pay to the respondent, Housing New Zealand Corporation, the sum of \$6,000 in costs.

G J Wood
Member of the Employment Relations Authority