

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2014] NZERA Wellington 45  
5415400

BETWEEN

IAN MOFFATT  
Applicant

AND

PA AND SC STEENS  
LIMITED TRADING AS  
STEENS HONEY  
Respondent

Member of Authority: P R Stapp

Representatives: KA McClure Counsel for Applicant  
SJ Davies Counsel for Respondent

Submissions received: by 7 April 2014

Determination: 9 May 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The Authority reserved costs in [2013] NZERA 13. The Determination was issued on 5 February 2014. The respondent (Steens) successfully defended the applicant's claims. The respondent is now seeking costs. The claim has been opposed by Mr Moffatt.

[2] The respondent has requested full indemnity costs on a solicitor/client basis and/or a calculation made on the basis of a trial applying 2/3rds of the value of billable time. This has been rejected by Mr Moffatt and he submits that if the tariff approach be used by the Authority and that costs should be reduced, taking into account the respondent's conduct.

[3] The respondent has relied on a *Calderbank* letter with an offer to settle save for costs dated 1 November 2013. Three alternative offers were put forward for the applicant to consider by 7 November 2013, 8 November 2013 and 14 November 2013 for each offer respectively. The Authority's timetable for the substantive

investigation meeting was put in place that appears to have coincided with the time Mr Moffatt had to consider the offers to settle. Thus costs were being incurred despite the offers. This was because there needed to be participation from the representatives in a telephone conference for arrangements (10 October 2013), providing a list of witnesses (17 October), filing an agreed bundle of documents (by 30 October) and filing written witness statements and replies by 13 November 2013. The investigation meeting involved a large number of people and witnesses, but essentially was completed with the assistance of both parties within the one day. There were travel costs incurred by the respondent, but that goes with running a business from a distance and choosing to use out of town Counsel. The respondent has to meet those costs. Also there is no doubt in my mind that the issues were important to both parties that underpinned the need for them both to be heard on genuine matters and relying on their witnesses.

[4] The respondent decided not to file a counter claim, which the applicant had been put on notice could be pursued. The decision not to proceed would have resulted in costs being saved for the time involved and more preparation being required if the counter claim had been filed.

### **Determination**

[5] Costs follow the event. The respondent successfully defended the matter. I have considered the *Calderbank* offer to settle in the context of the costs incurred by the timetable to arrange the Authority's investigation meeting, the time available to the applicant to consider the options, the arguable nature of the matters heard by the Authority and that the respondent was able to defend the claims made. The applicant did not accept the *Calderbank* offer in the time available given the genuine nature of the arguable claims and the costs. As a result this is not a matter to shift to indemnity costs on a solicitor/ client basis. Also, there was nothing extraordinary and/or any exceptional circumstances to shift the arrangement for costs. The Authority's investigation meeting remained inquisitorial in nature. My approach is to apply the daily tariff. In doing so the starting point is \$3,500 per day. This was a one day investigation meeting and it took the full day that had been scheduled. Written submissions were made and filed later by agreement, and written submissions on costs were filed as the matter was reserved, and properly reserved as there was a

*Calderbank* offer. These matters are inclusive of the daily tariff. I have decided not to increase and/or decrease the tariff based on the above information.

[6] Mr Moffatt is required to pay Steens \$3,500 costs as a contribution for the costs incurred by Steens.

**Order of the Authority on costs**

[7] Ian Moffatt is required to pay PA and SC Steens Limited \$3,500 in costs.

P R Stapp  
Member of the Authority