

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2018] NZERA Auckland 352  
3028111**

BETWEEN	RAMANDEEP KAUR Applicant
AND	UBNZ CORPORATION LIMITED First Respondent
	PACIFIC SETTLEMENTS LIMITED Second Respondent
	ROBERT BELL Third Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 25 October 2018 from Applicant  
8 & 9 November 2018 from Respondent

Determination: 15 November 2018

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 17 October 2018 ([2018] NZERA Auckland 321), I found that the Applicant, Ms Ramandeep Kaur, had been unjustifiably dismissed by the First Respondent, UBNZ Corporation Limited (UBNZ), and that she had not been employed by the Second Respondent, Pacific Settlements Limited (PSL). The claim against the Third Respondent, Mr Robert Bell, was not pursued by the Applicant and therefore not determined.

[2] In determination [2018] NZERA Auckland 321 costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[3] The matter involved approximately two days of meeting time.

[4] Mr Gelb, on behalf of Ms Kaur, citing actual costs of \$20,556.27, is seeking a contribution to costs in the sum of \$14,000.00 in addition to the filing fee.

[5] In support of his submission Mr Gelb submits that Ms Kaur made a Calderbank<sup>1</sup> Offer to UBNZ on 1 March 2018 (the Offer) in the amount of (i) \$20,000.00 in respect of compensation and (ii) a costs contribution of \$4,600.00 (plus GST).

[6] Mr Bell, on behalf of the Respondents, submits that in the event Ms Kaur achieved a much lower award as a result of the Authority's investigation process than the Offer represented.

[7] Mr Bell further submits that by adding 'speculative' claims, being those against PSL and him personally, Ms Kaur unnecessarily increased costs.

[8] In determination [2018] NZERA Auckland 321 Ms Kaur was awarded a total of \$16,407.69, plus \$598.00 in respect of unpaid medical expenses, and a penalty of \$250.00. This is a total award of \$17,255.69 awarded in remedies by the Authority, which is notably less than the \$20,000.00 claimed by Ms Kaur in the Offer.

## **Determination**

### *Principles*

[9] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

#### ***15 Power to award costs***

*(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*

*(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[10] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*<sup>2</sup>.

[11] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup>.

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<sup>1</sup> *Calderbank v Calderbank* [1976] Fam 93 (CA)

<sup>2</sup> [1996] 2 ERNZ 622

<sup>3</sup> [2005] 1 ERNZ 808

[12] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>4</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>5</sup> at para [48] “*As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.*”

[13] I consider that the Calderbank Offer should be taken into consideration in determining the appropriate level of costs.

[14] I also take into consideration the fact that Ms Kaur chose to pursue claims against Mr Bell and PSL. She was unsuccessful in her claim against PSL and subsequently decided not to pursue the claim against Mr Bell personally.

[15] In all the circumstances, I take as the appropriate starting point the normal daily tariff in the Authority of \$8,000.00 for a 2 day meeting; from that point I make an adjustment in light of the factors as outlined above.

[16] UBNZ is ordered to pay Ms Kaur an amount in the sum of \$7,000 as a contribution to costs, pursuant to clause 15 of Schedule 2 of the Act.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>4</sup> [2005] 1 ERNZ 808

<sup>5</sup> [2001] ERNZ 305