

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 459  
3030032

BETWEEN                      WANDA DENSEM  
   Applicant  
  
AND                              CLEMENCE DRILLING  
   CONTRACTORS LIMITED  
   Respondent

Member of Authority:        Helen Doyle

Representatives:             Paul Mathews, Advocate for Applicant  
   John Shingleton, Counsel for Respondent

Submissions received:        10 July 2019 from Applicant  
   31 July 2019 from Respondent

Determination:                5 August 2019

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**COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

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- A        Clemence Drilling Contractors Limited is ordered to pay to Wanda Densem costs in the sum of \$4,500 together with reimbursement of the filing fee of \$71.56.**
- B        There is to be payment by instalments of the costs order. That is consistent with an order made in the substantive determination. Any payment missed will result in the full amount being due and payable.**

### **The substantive determination**

[1] The Authority in its determination dated 26 June 2019 found that the applicant was disadvantaged by an unjustified action of the respondent and unjustifiably dismissed.<sup>1</sup>

[2] The Authority found the financial situation of the respondent was such that payment was ordered by instalments for the total sum awarded of \$22,606.25 over a period of six months. The first payment was ordered to be made on 20 July 2019 and thereafter on the 20<sup>th</sup> of each month. Any payment missed would result in the full amount being due and payable.

[3] Costs were reserved and a timetable for an exchange of submissions set.

### **The applicant's submissions**

[4] Mr Mathews in a refreshingly succinct submission seeks an uplift in the daily tariff from \$4,500 to \$7,000 based on a Calderbank offer dated 22 February 2018.

### **The respondent's submissions**

[5] Mr Shingleton confirmed that he was no longer receiving instructions but invited the Authority to consider the financial crisis the company had been in for some time.

### **Analysis and conclusion**

[6] The award made by the Authority exceeded the “without prejudice save as to costs” offer, by a considerable amount. The Calderbank offer was contained in a letter dated 22 February 2018 but remained open until Monday, 26 February 2018 at 4pm. The reason for that short timeframe appeared to be that an application which was attached to the Calderbank offer was to be lodged with the Authority after that date if the offer was not accepted.

[7] I accept that the Calderbank offer was clear and provided a basis for the applicant's belief that her claim would succeed. I do pause at the very limited period which the offer was

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<sup>1</sup> *Wanda Densem v Clemence Drilling Contractors Limited* [2019] NZERA 378

open. The offer was made at a time when the company did not appear to have engaged a representative. I don't find that it was in a position to be able to fairly and reasonably make an assessment of whether it could succeed within such a short timeframe. In the exercise of my discretion as to costs I cannot conclude in those circumstances that the respondent acted unreasonably in rejecting the offer. I note that the circumstances should be assessed at the time of the offer and rejection and not with the benefit of hindsight following the determination.

[8] There did not appear to have been further offers to settle after that time.

[9] In all the circumstances I intend to limit any award to the daily tariff of \$4,500 for this matter that occupied one day of investigation together with reimbursement of the filing fee of \$71.56.

[10] I order Clemence Drilling Contractors Limited to pay to Wanda Densem the sum of \$4,500 costs together with reimbursement of the filing fee of \$71.56.

[11] There is already an order for payment by instalment of the award made in the substantive determination. It seems sensible that this additional amount for costs be paid by instalment by dividing it amongst the remaining five instalments payable on the 20<sup>th</sup> of each month. I so order. As with the other order any payment missed will result in the full amount being due and payable.

Helen Doyle  
Member of the Employment Relations Authority