

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 155
EMPC 100/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	SUPERCITY TOWING LIMITED Plaintiff
AND	SAKALIA HUCH Defendant

Hearing: On the papers

Appearances: A Sharp, advocate for plaintiff
No appearance for defendant

Judgment: 19 August 2024

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] Having been successful in its non de novo challenge to a determination of the Employment Relations Authority, Supercity Towing Ltd now seeks costs.¹

[2] Mr Sharp, Supercity Towing's advocate, has endeavoured to engage with Mr Huch regarding costs. However, Mr Elwell, counsel who represented Mr Huch before the Court, has advised that he has received no response from Mr Huch to his request for instructions in the matter. Supercity Towing has taken the step of serving Mr Huch personally with the memorandum setting out its application for costs. Mr Huch has not filed anything with the Court.

¹ *Supercity Towing Ltd v Huch* [2023] NZEmpC 205.

[3] Supercity Towing also challenged the costs award in the Authority.² In its costs memorandum, Supercity Towing points to its level of success in the Court and, further, that the Authority took into account a Calderbank offer made on behalf of Mr Huch that was exceeded in the Authority but not in the Court.

[4] Supercity also submits that the Court should take into account that Mr Huch agreed in cross-examination in the Court that his employment agreement provided for the level of remuneration as found by the Court. In light of that concession, Supercity Towing says that the position previously taken by Mr Huch on that issue could not have been reasonably taken and that it extended the length of the proceedings in the Authority.

[5] Supercity Towing has calculated costs under the Court's Costs – Guideline scale using category 2B.³ This was the costs categorisation that was provisionally assigned to these proceedings with the agreement of the parties.

[6] Supercity Towing's calculation for the substantive hearing is \$28,321.50. However, one of the items claimed is 0.1 of a day for a post-judgment step: "noting judgment".

[7] Supercity Towing properly notes that it made an unsuccessful application for a stay.⁴ The Court's calculation of scale costs on a category 2B basis for that application is \$3,824.⁵ Supercity Towing submits, however, that given its success in the Court, costs on the application for a stay should lie where they fall.

[8] The Authority said that costs for the investigation would usually be \$6,250 but, as a result of the Calderbank offer, it ordered an uplift to a total of \$8,000, plus the filing fee. Supercity Towing submits that an appropriate amount for costs in the Authority would be \$4,500 plus the filing fee.

² *Huch v Supercity Towing Ltd* [2023] NZERA 137 (Member Craig).

³ "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

⁴ *Supercity Towing Ltd v Huch* [2023] NZEmpC 125.

⁵ Supercity had calculated a slightly higher figure.

[9] Mr Sharp has advised that the actual costs incurred by Supercity Towing, excluding the attendances regarding the Authority's determination and consultations preceding the decision to file the non-de novo challenge, exceed the amount claimed.

[10] The Court has a discretion as to costs.⁶ It is assisted by the Guideline scale.

[11] I accept the scale costs categorisation and the calculation provided, apart from the post-judgment step noted. With costs for that step removed, scale costs are \$28,082.50. I consider, however, that it is appropriate for the costs award to be reduced to reflect Supercity's lack of success on its application for a stay. I therefore award \$24,250 for costs in the Court.

[12] I also accept that the uplift made by the Authority should not continue to apply because the total amount Supercity was ultimately required to pay was less than Mr Huch's Calderbank offer. That brings the costs in the Authority down to \$6,250. Further, given the success on the non-de novo challenge, it is appropriate for that figure to be further reduced. Overall, I consider that \$5,000 plus the Authority's filing fee is an appropriate figure. Supercity Towing has paid Mr Huch the total amount awarded to him by the Authority. A partial refund of \$3,000 is therefore due.

[13] Accordingly, Mr Huch is to pay Supercity Towing the sum of \$27,250 in respect of costs, covering the refund of costs awarded in the Authority and costs awarded for the Court proceedings.

[14] Mr Sharp advises that Mr Elwell has indicated that Mr Huch has spent some or all of the monies he won in the Authority. He therefore may not be in a position to immediately pay anything towards the costs award. Supercity Towing appears to be open to entering into a payment arrangement with Mr Huch.

⁶ Employment Relations Act 2000, sch 3 cl 19.

[15] At this stage, I order that, unless otherwise agreed with Supercity Towing, Mr Huch is to pay the costs award within 30 days of the date of this judgment. This should give Mr Huch time to either raise the funds or enter into an arrangement for payment with Supercity Towing.

J C Holden
Judge

Judgment signed at 3.30 pm on 19 August 2024