

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUHAHI**

**[2024] NZEmpC 161
EMPC 301/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	TANE MAHUNU PUTAANGA Plaintiff
AND	MOVE FREIGHT LIMITED Defendant

Hearing:	On the papers
Appearances:	Plaintiff in person S Rigter, agent for defendant
Judgment:	27 August 2024

COSTS JUDGMENT OF JUDGE KATHRYN BECK

Background

[1] On 10 June 2024, the Court resolved a challenge brought by the plaintiff to part of a determination of the Employment Relations Authority, which found that he had not raised his grievance within 90 days as specified in s 114 of the Employment Relations Act 2000 (the Act).¹ In its decision, the Court indicated that costs ought not to be an issue as neither party was represented. However, it was also noted that if Mr Putaanga sought disbursements, and the parties were unable to reach agreement, memoranda could be filed within 28 days of the date of the judgment.²

¹ *Putanga v MOVE Freight Ltd* [2024] NZEmpC 99.

² At [80].

[2] Unfortunately, the parties were unable to agree on the issue of costs. Mr Putaanga applied for costs on 8 July 2024. He noted that although he was not represented at the hearing, he had obtained legal advice from a law firm, Malley & Co Lawyers, throughout the proceedings. He claims costs in relation to the expenses arising from obtaining that advice. Further, he claims additional expenses from legal advice received in support of his claim before the Authority and for the legal advice he obtained in preparing his submissions on costs. Finally, he claims a sum of disbursements.

[3] In summary, the following sums are claimed by Mr Putaanga:

- (a) \$10,117.11 as a contribution to legal expenses in the Court;
- (b) \$9,936.00 as a contribution to legal expenses in the Authority;
- (c) \$933.20 as a contribution to legal expenses for preparing submissions on costs; and
- (d) \$213.44 of disbursements.

[4] In response, the defendant acknowledged that the claimed disbursements are payable but submitted that a lay litigant is not usually entitled to recover costs and that where counsel remains in the background without registering an appearance, such assistance does not qualify as legal representation for the purposes of a costs award.³ The defendant also noted that the defendant's pleadings did not seek costs.

[5] Alternatively, the defendant submitted that if the Court does intend to grant costs, Mr Putaanga is only entitled to costs that reasonably relate to the proceeding. It said that any costs incurred prior to the challenge in the Court are not recoverable and any costs incurred in relation to the Authority ought to be addressed once the Authority completes its investigation.

³ Relying on *Sax v Simpson* [2017] NZHC 1128.

[6] Finally, it said that any costs award should be limited to the steps in the Court's guideline scale on costs for which there is evidence that costs were incurred, that the relevant steps should be calculated on a category 1 band A basis, and that only 50 per cent of the relevant scale costs should be awarded given uncertainty about how much assistance Mr Putaanga received.

Costs principles

[7] The Court has a broad discretion as to costs.⁴ The discretion is augmented by reg 68(1) of the Employment Court Regulations 2000, which enables the Court to have regard to the conduct of the parties tending to increase or contain costs. Costs follow the event, so it is not necessary for specific pleadings on the issue.⁵

[8] Lay litigants have traditionally been entitled to recover disbursements but not costs.⁶ That position is changing in the courts of general jurisdiction and may be revisited by this Court in the near future; however, it is not necessary to determine that issue in the present case.⁷ That is because sums paid to a solicitor for help in preparing documents or help in preparing to appear and argue the case in person are recoverable as disbursements.⁸

[9] The general rule on disbursements is that to be claimable, a disbursement must be incurred by the claiming party, specific to the conduct of the proceeding, reasonably necessary to the conduct of the proceeding, and reasonable in amount.⁹

Analysis

Legal expenses in the Authority

[10] When the Court sets costs for the Authority, it stands in the shoes of the Authority and applies the principles which apply in the Authority rather than those

⁴ Employment Relations Act 2000, sch 3 cl 19.

⁵ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

⁶ *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335 at [55] and [88].

⁷ See High Court Amendment Rules 2024.

⁸ *Knight v Veterinary Council of New Zealand* HC Wellington CIV-2007-485-1300, 31 July 2009 at [6]; and see *Working Capital Solutions Holdings Ltd v Pezaro* [2014] NZHC 2480, where the High Court set out the history of the relevant principles.

⁹ See High Court Rules 2016, r 14.12.

which apply in the Court.¹⁰ If Mr Putaanga were to claim disbursements for legal advice he received in respect of his proceedings before the Authority, any award would be limited by the Authority's daily tariff, which is \$4,500 for the first day of any investigation and \$3,500 for subsequent days.¹¹

[11] Although Mr Putaanga is likely entitled to an award, the Court is not in a strong position to calculate an appropriate sum for three reasons. First, although the Authority's determination records that the investigation meeting occurred on 8 May 2023, it is not clear whether the investigation took the whole day.¹² If it took only half a day, an award would likely be capped at \$2,250. Secondly, it is not clear how much of the legal advice received by Mr Putaanga was specifically relevant to the matters resolved by the Authority in its preliminary determination, in contrast to his claims in the Authority more generally. Thirdly, at the end of the Authority's determination, it reserved costs, indicating that it would, or at least could, return to the issue if necessary.¹³

[12] On the basis of the above, I consider that the Authority will be in a better position than the Court to resolve any issue of costs as to matters which it has heard between the parties. Therefore, I decline to determine costs on this point. However, I note that this outcome does not prejudice any claim for costs that Mr Putaanga may wish to pursue in the Authority either in conjunction with his substantive claim or separately.

Legal expenses in the Court

[13] Mr Putaanga seeks \$10,117.11 as a contribution to legal expenses which he incurred in bringing his challenge to the Employment Court.

[14] He has filed three invoices as evidence of his expenses. However, a substantial part of the second invoice is redacted. In the absence of evidence about what has been

¹⁰ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 (EmpC) at [19].

¹¹ Employment Relations Authority "Practice Direction of the Employment Relations Authority" (February 2024) <www.era.govt.nz> at 5.

¹² *Putanga v Move Freight Ltd* [2023] NZERA 415.

¹³ At [48].

redacted, the Court can only assume that the redacted portion dealt with matters which were not relevant to Mr Putaanga's challenge. Accordingly, I consider that only half of that invoice can be fairly claimed as an expense arising from the challenge. This reduces the sum claimed to a total of \$7,439.05.

[15] The Law Society has described the type of arrangement between Mr Putaanga and his lawyers as enhancing access to justice and helping to alleviate financial strain on parties and administrative strain felt by the wider legal system.¹⁴ Such arrangements increase the ability of self-represented parties to represent themselves well. Accordingly, I consider that it was appropriate and reasonably necessary for Mr Putaanga to incur legal expenses without formally instructing counsel to act for him in his challenge.

[16] The next question is whether the reduced sum is reasonable in amount. As a comparator, it is helpful to consider what scale costs would have been available in respect of the items for which Mr Putaanga received assistance. Based on the descriptions contained in the invoices and the periods to which they relate, the only claimable items would relate to preparing briefs of evidence and preparing for the hearing.

[17] In a minute dated 13 October 2023, I indicated that this matter could be categorised on a category 1 band A basis for the purposes of the Court's guideline scale on costs.¹⁵ I consider that categorisation remains appropriate; the evidence was not complex, and the applicable law was not disputed. Therefore, applying the guideline scale to the items noted above, scale costs of \$3,975 (2.5 days at \$1,590) could have been awarded.

[18] I consider that is a reasonable sum in the circumstances.

[19] Finally, the defendant submitted that any award should be reduced by 50 per cent as it is unclear how much Mr Putaanga was assisted in the relevant preparatory

¹⁴ New Zealand Law Society "Guidance to lawyers considering acting under a limited retainer" <www.lawsociety.org.nz>.

¹⁵ "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

work. However, I do not accept that any reduction is necessary. Mr Putaanga clearly received and paid for professional legal assistance, and he is entitled to recover a disbursement for that assistance; it is not the Court's role to closely review the exact extent of that assistance.

[20] Therefore, I find that Mr Putaanga is entitled to a sum of \$3,975 as a disbursement arising from legal assistance received in preparing for the hearing of his challenge.

Legal expenses from submissions on costs

[21] The Court generally does not award costs for successful costs applications. As Mr Putaanga has only been moderately successful in this application for costs, I consider that costs should lie where they fall.

Other disbursements sought

[22] Finally, Mr Putaanga seeks \$213.44 of disbursements arising in relation to postage costs and court fees. The defendant acknowledges that those disbursements are payable. I accept Mr Putaanga's claim for those disbursements.

Outcome

[23] I am satisfied that disbursements should be awarded to Mr Putaanga. The defendant is ordered to pay Mr Putaanga disbursements for this proceeding in the sum of \$4,188.44. Such sum must be paid within 14 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 11 am on 27 August 2024