

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2024] NZEmpC 162  
EMPC 265/2023**

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| IN THE MATTER OF     | a challenge to a determination of the<br>Employment Relations Authority |
| AND IN THE MATTER OF | an application for costs  |
| BETWEEN              | MAH ENTERPRISES (FIJI) LIMITED<br>First Plaintiff                       |
| AND                  | MALCOLM HERBERT<br>Second Plaintiff                                     |
| AND                  | A LABOUR INSPECTOR<br>Defendant   |

Hearing: On the papers

Appearances: No appearance for the plaintiffs  
J Ellison, counsel for defendant

Judgment: 28 August 2024

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**COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS**

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[1] This judgment deals with an application for costs following the Court's decision of 5 August 2024, making an order to dismiss the plaintiffs' challenge for want of prosecution.<sup>1</sup>

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<sup>1</sup> *MAH Enterprises (Fiji) Ltd v A Labour Inspector* [2024] NZEmpC 145.

[2] The Court has a broad discretion as to costs.<sup>2</sup> A set of guidelines has been developed to assist it in exercising the discretion.<sup>3</sup> The guidelines are intended to support the policy, so far as is possible, that determining costs should be predictable, expeditious and consistent. The guidelines are not a straitjacket and are not intended to replace the Court's broad discretion to allocate costs as it considers just in the particular circumstances of each case. In this case I am satisfied that it is appropriate to award costs calculated according to the scale contained within the guidelines.

[3] Counsel for the defendant has set out a schedule of each of the steps taken in the proceedings and has calculated scale costs, based on a category 2B basis. I accept that the claimed costs are appropriate in the circumstances. Costs of \$9,799 are accordingly ordered against the plaintiffs on a joint and severable basis. Such costs are to be paid by the plaintiffs to the defendant within 20 days of the date of this judgment.

Christina Inglis  
Chief Judge

Judgment signed at 2.45 pm on 28 August 2024

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<sup>2</sup> Employment Relations Act 2000, sch 3 cl 19; Employment Court Regulations 2000, reg 68; *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA); *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA); *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 (CA).

<sup>3</sup> "Employment Court of New Zealand Practice Directions" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.