

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

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

**[2024] NZEmpC 182
EMPC 457/2023**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN YAMAYA NZ LIMITED
 Plaintiff

AND SUHEE LEE
 Defendant

Hearing: On the papers

Appearances: No appearance for the plaintiff
 S Kang, counsel for the defendant

Judgment: 27 September 2024

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] Yamaya NZ Limited filed a challenge against a determination of the Employment Relations Authority.¹ Yamaya also applied for a stay of proceedings, effectively staying the execution of the Authority's determination. The defendant, Suhee Lee, filed an application for security for costs.

[2] Yamaya discontinued its proceedings against Ms Lee on 25 July 2024; it withdrew its statement of claim and its application for a stay of proceedings. The application for security for costs fell away. Costs on the proceedings up to and including the discontinuance, however, remained in issue. For that purpose, Yamaya

¹ *Lee v Yamaya NZ Ltd* [2023] NZERA 661 (Member Urlich).

had a change of representation from counsel that had previously represented it to Kyung Kim, who is one of the directors of Yamaya.

[3] As the parties could not agree on costs, on 29 July 2024 Mr Kang filed a memorandum seeking costs on Ms Lee’s behalf. Mr Kang cited High Court Rules 2016, r 15.23, which provides that unless the defendant otherwise agrees or the Court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance. Yamaya did not file anything in response to Ms Lee’s application.

[4] Mr Kang has calculated costs using the Court’s guideline scale, on a category 2B basis.² This led to a claim for \$10,277. Mr Kang has subsequently confirmed that the costs sought do not exceed Ms Lee’s actual costs.

[5] The items claimed are appropriate, but Mr Kang had previously suggested category 2A was the appropriate categorisation, and I agree.

[6] This leads to the following calculation:

Item number	Item	(Part) days
2	Commencement of defence to challenge by defendant	0.5
11	Preparation for first directions conference	0.2
12	Filing Memorandum for first directions conference	0.2
13	Appearance at first directions conference	0.2
12	Filing Memorandum for subsequent directions conference (15 July 2024)	0.2
13	Appearance at subsequent directions conference (17 July 2024)	0.2
28	Filing interlocutory application (security for costs)	0.3

² “Employment Court of New Zealand Practice Directions” at No 18.

29	Filing opposition to interlocutory application (stay)	0.3
	Total	2.1
	$\$2,390$ (daily rate) x 2.1 days = $\$5,019$	

[7] Accordingly, I order that Yamaya pay Ms Lee \$5,019 for costs. Payment is to be made within 14 days of the date of this judgment.

J C Holden
Judge