

[2] I have already found that the costs determination of the Authority should not be disturbed.³ I also have already issued a judgment on costs on interlocutory matters.⁴ This judgment therefore only deals with costs in the substantive matter before the Court.

[3] The Court has a discretion as to costs,⁵ but they usually follow the event so that a successful party might expect an award of costs in their favour. There are, however, two issues that need particular consideration in respect of this application. First, there is the issue of availability of costs when Carrington was represented by Mr Tan, who is its general manager and the chief executive officer of its parent company. Mr Tan says that when he was representing Carrington in the Court proceedings, he was not doing so in the capacity of a paid employee, but pursuant to a separate agreement that provided for him to be paid for his work at an hourly rate of \$400 per hour. Second, there is the issue of Carrington's failure to act in good faith in respect of the Authority proceedings.

[4] Although Mr Tan has not identified the particular steps taken in the proceedings that led to his calculation of scale costs, the defendant has not raised any dispute about that figure itself. It seems Mr Tan has based his calculation on 12.25 days. The Court's assessment, based on band B, is 8.1 days:⁶

Item number	Item	days
1	Commencement of proceeding by way of challenge by plaintiff	2
11	Preparation for directions conference (2 May 2023)	0.4
13	Appearance at directions conference (2 May 2023)	0.2
42	Preparation of briefs of evidence	2.5
45	Preparation for hearing	2

³ *Carrington Resort Jade LP v Roy*, above n 1, at [41].

⁴ *Carrington Resort Jade LP v Roy* [2023] NZEmpC 122.

⁵ Employment Relations Act 2000, sch 3 cl 19.

⁶ Omitting the plaintiff's application for an extension of time to file its briefs of evidence.

46	Attendance at hearing	1
	Total	8.1 days

[5] As noted by Mr Mark, counsel for Ms Roy, in the courts of general jurisdiction, an entity that is represented by a salaried legal advisor in its employ can be entitled to an award of costs in appropriate circumstances.⁷ However, Mr Mark submits that Mr Tan falls outside that rule and that his involvement was akin to a litigant in person.⁸ Successful litigants in person were generally not entitled to recover costs prior to 1 September 2024.⁹

[6] In this jurisdiction, however, unlike in other courts, parties are entitled to be represented by a non-lawyer agent or advocate. In those instances, the Court can still award costs in favour of a successful party, often by reference to the Court’s Guideline Scale. By analogy then, the employed lawyer rule would logically become the employed representative rule; that is, parties who are represented by in-house employees are entitled to seek costs, even if that in-house representative is not a lawyer.¹⁰

[7] The attendances related to this proceeding took place within normal business hours and there is no reason for the Court to treat Mr Tan’s representation as something outside his role at Carrington. I therefore put to one side any separate arrangements entered into between Mr Tan and Carrington for the provision of his services.

[8] In considering costs pursuant to the employed lawyer rule (or, here, the employed representative rule), care is required to ensure any costs award does not exceed the actual costs incurred by the party. There is no information before the Court as to Mr Tan’s usual salary. The amendment to the Court’s Practice Directions, that now allows parties in person to seek \$500 a day towards their costs, was not in force at the time of these proceedings.¹¹ Nevertheless, it gives some guidance as to what an

⁷ *Henderson Borough Council v Auckland Regional Authority* [1984] 1 NZLR 16 (CA); and *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335 at [55] and [88]. The Supreme Court referred to this as the “employed lawyer rule”.

⁸ Mr Tan has an LLB but does not hold a practising certificate.

⁹ *McGuire*, above n [7], at [55] and [88]. Compare High Court Amendment Rules 2024.

¹⁰ See also *Dumolo v Lakes District Health Board* [2014] NZEmpC 40, (2014) 11 NZELR 493 at [43] where this point was made prior to the Supreme Court’s decision in *McGuire*.

¹¹ Above, n 2 and High Court Rules 2016, Schedule 2, Part 2.

appropriate daily rate might be in a case such as this where an employee represents their employer. Basing the calculation on \$500 a day and the Court's assessment of 8.1 days, gives a figure of \$4,050. I consider that is an appropriate award for costs in respect of the Employment Court proceedings.

[9] If the calculation of scale costs had led to a figure that was disproportionate to what might have been awarded by the Authority, Carrington's conduct in the Authority would have come into play.¹² The Court has already found that Carrington failed to facilitate the Authority's investigation and was obstructive of it, and that it was disrespectful, contemptuous, or unhelpful in correspondence to and about Ms Roy.¹³ A party should not be unfairly disadvantaged by costs in the Court due to the failure of the other party to properly engage in the Authority process. If Carrington had engaged earlier, costs in the Court might have been avoided altogether, or at least contained.

[10] In conclusion, costs of \$4,050 are to be paid by Ms Roy to Carrington within 28 days of the date of this judgment.

J C Holden
Judge

Judgment signed at 3.15 pm on 30 September 2024

¹² See Employment Court Regulations 2000, reg 68.

¹³ *Carrington Resort Jade LP v Roy (No 2)* [2023] NZEmpC 88.