

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

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

**[2024] NZEmpC 197
EMPC 384/2023**

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

AND IN THE MATTER OF an application for costs on interlocutory
 applications

BETWEEN ANDREW BYRNE
 Plaintiff

AND COVERSTAFF RECRUITMENT GROUP
 LIMITED
 Defendant

Hearing: On the papers

Appearances: Plaintiff in person
 D Brabant, counsel for defendant

Judgment: 10 October 2024

**COSTS JUDGMENT OF JUDGE KATHRYN BECK
(Costs on interlocutory applications)**

[1] This judgment deals with an application for costs by the defendant in respect of an interlocutory decision of the Court dated 2 August 2024.¹

[2] In that decision, the Court made the following orders:²

- (a) The plaintiff's application for leave to file a notice of opposition is dismissed.

¹ *Byrne v Coverstaff Recruitment Ltd* [2024] NZEmpC 141.

² At [23].

- (b) The defendant's applications for unless orders, strike-out and security for costs are declined.

[3] Pursuant to s 181 of the Employment Relations Act 2000, the Court also requested a good faith report from the Employment Relations Authority in light of concerns about whether the plaintiff's challenge was brought in good faith.³

[4] Finally, the judgment indicated that the defendant might be entitled to costs and invited memoranda if the parties were unable to reach agreement.⁴ The parties were unable to agree.

[5] The defendant applied for costs of \$2,390 on the basis that it was the successful party on the plaintiff's application for leave to file a notice of opposition. That sum was calculated on a category 2B basis for one day of preparing written submissions. The defendant submitted that as the Court accepted that the plaintiff's behaviour raised concerns about whether his challenge is brought in good faith and requested a good faith report, both parties had a measure of success on the strike-out application.

[6] No memorandum was filed by the plaintiff, and the matter was set down to be heard on the papers.

[7] The Court has a broad discretion as to costs.⁵ 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.

[8] To assist the Court in exercising the discretion, a Guideline Scale is used with the objective of achieving predictability, consistency and expediency in determining costs. The scale does not displace the Court's discretion.⁶

[9] The plaintiff's application for an extension of time and the defendant's application for unless orders were connected. It was not necessary to resolve the

³ At [24].

⁴ At [27].

⁵ Employment Relations Act 2000, sch 3 cl 19.

⁶ "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

application for unless orders because the plaintiff's application remained incomplete, was frivolous, and had to be dismissed. However, in light of the steps taken by the defendant in relation to the application for an extension of time, together with the steps taken on the application for unless orders, I accept that it incurred costs in respect of the plaintiff's application for which it is entitled to costs.

[10] In relation to the strike-out and security for costs applications, the plaintiff did not take any steps apart from filing the incomplete and frivolous application for an extension of time to file a notice of opposition. Accordingly, even though the defendant was unsuccessful on those applications, no costs could arise from them that need to be set off against the costs on the application for an extension of time.

[11] In the circumstances, I accept that the sum of \$2,390 claimed by the defendant is reasonable, particularly in light of the delays caused by the plaintiff in having these matters resolved.

[12] Therefore, I order that costs of \$2,390 are to be paid by the plaintiff to the defendant within 14 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 11.15 am on 10 October 2024