

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

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

**[2025] NZEmpC 271  
EMPC 215/2023  
EMPC 216/2023**

IN THE MATTER OF challenges to determinations of the  
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN JASMINE CATERING LIMITED  
Plaintiff

AND ZHENG WANG  
Defendant

Hearing: On the papers

Appearances: M Lyttelton, advocate for plaintiff  
D Kim, advocate for defendant

Judgment: 12 December 2025

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**COSTS JUDGMENT OF JUDGE M S KING**

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[1] This judgment resolves an application for costs following the plaintiff, Jasmine Catering Ltd (JCL), discontinuing its challenges in these proceedings.

**Background**

[2] These proceedings first came before the Court by way of challenges to three determinations of the Employment Relations Authority (the Authority).

[3] Mr Wang, a former employee of JCL, was successful before the Authority in respect of the claims he brought against his former employer, JCL.<sup>1</sup> JCL subsequently brought a counterclaim against him which he also successfully defended.<sup>2</sup> Subsequently, he was awarded costs by the Authority.<sup>3</sup>

[4] JCL filed a de novo challenge to the determinations of the Authority. JCL also applied for a stay of the Authority's awards made in its determinations. Mr Wang filed an application for security for costs and an application to join JCL's director, Jessie Bo as a party to the proceedings. However, on 5 August 2025 JCL filed a notice of discontinuance withdrawing its proceedings before any of the applications filed could be considered.

[5] On 29 August, Mr Kim, Mr Wang's advocate, filed a memorandum seeking costs following the notice of discontinuance.

### **Costs are discretionary**

[6] A plaintiff who discontinues a proceeding against a defendant must usually pay costs to the defendant of, and incidental to the proceeding up to and including discontinuance.<sup>4</sup> The Court also has a broad discretion as to costs.<sup>5</sup> It uses a guideline scale to guide the exercise of that discretion.<sup>6</sup>

[7] Mr Kim has calculated Mr Wang's costs using the Court's guideline scale on a category 2 band B basis at the rate of \$2,390 per day. This led to a claim for \$13,025.50 as a contribution to Mr Wang's costs in these proceedings. Mr Kim has provided the service agreement between himself and Mr Wang, and a copy of an invoice setting out the fee that Mr Wang has been invoiced for legal costs in these proceedings, being \$15,000 exclusive of GST. Mr Kim also seeks an order from the Court to recover any

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<sup>1</sup> *Wang v Jasmine Catering Ltd* [2023] NZERA 263.

<sup>2</sup> *Jasmine Catering Ltd v Wang* [2023] NZERA 264.

<sup>3</sup> *Wang v Jasmine Catering Ltd* [2023] NZERA 333.

<sup>4</sup> High Court Rules 2016, r 15.23.

<sup>5</sup> Employment Relations Act 2000, sch 3 cl 19.

<sup>6</sup> Employment Court of New Zealand "Practice Directions" (1 September 2024) <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

costs from Ms Bo, director of JCL personally, due to Mr Lyttleton indicating that JCL was being placed into liquidation in the near future.

[8] Mr Kim's submissions refer to a Court minute from a separate matter where proceedings were assigned on a category 2 band B basis. He submits that the complexity in the present case is higher, given JCL's counterclaim, which makes these proceedings an appropriate one for costs to be awarded on a category 2 band B basis.

[9] Mr Kim claims that an award of scale costs for attendances incurred in these proceedings totalling \$13,025.50 is appropriate. He claims the following attendances:

<b>Item</b>	<b>Step</b>	<b>Time</b>	<b>Cost</b>
2	Preparing and filing of statement of defence (EMPC 215/2023)	1.5	\$3,585.00
2	Preparing and filing of statement of defence (EMPC 216/2023)	1.5	\$3,585.00
14	Preparation for case management conference	0.4	\$956.00
16	Attending case management conference	0.25	\$597.50
28	Preparing and filing of application for security for costs	0.6	\$1,434.00
28	Preparing and filing application to join director of JCL as a party to the proceedings	0.6	\$1,434.00
29	Preparing and filing of opposition to stay application	0.6	\$1,434.00
<b>Total</b>		<b>5.45</b>	<b>\$13,025.50</b>

[10] Mr Lyttleton, JCL's advocate, submits that the proceedings should be assigned a category 1 band A basis, which has a rate of \$1,590 per day. Mr Lyttleton says that category 1 band A is more appropriate as these proceedings were relatively straightforward. He says Mr Kim has provided no evidence for the costs Mr Wang has claimed and that the costs should be scaled back to reflect the actual, reasonable costs that have been incurred.

[11] I consider the proceedings sit more comfortably in category 1 band A, despite the amount invoiced to Mr Wang. The proceedings were straightforward in nature and a comparatively small amount of time is reasonable in the circumstances. While there were two challenges to respond to, the statements of defence filed were brief and no more than two pages long. The interlocutory applications were equally brief, the application to join a party was filed without an affidavit in support and the application for security for costs was filed with a brief affidavit comprising of two sentences of evidence. Mr Wang's notice of opposition to JCL's stay applications was not supported by an affidavit.

[12] Applying the guideline scale on a category 1 band A basis would entitle Mr Wang to the following:

<b>Item</b>	<b>Step</b>	<b>Time</b>	<b>Cost</b>
2	Commencement of defence to challenge by defendant (EMPC 215/2023)	0.5	\$795.00
2	Commencement of defence to challenge by defendant (EMPC 216/2023)	0.5	\$795.00
14	Preparation for case management conference	0.2	\$318.00
16	Attending case management conference	0.25	\$397.50
28	Filing of application for security for costs (interlocutory application)	0.3	\$477.00
28	Filing application to join director of JCL as a party to the proceedings (interlocutory application)	0.3	\$477.00
29	Filing opposition to interlocutory application	0.3	\$477.00
<b>Total</b>		<b>2.35</b>	<b>\$3,736.50</b>

[13] Overall, I consider that the guideline scale for category 1 band A is appropriate in these proceedings, it is a fair representation of the work undertaken by Mr Wang's advocate in these proceedings.

[14] Lastly, Mr Wang seeks an order from the Court to recover any costs from Ms Bo personally. Mr Wang previously made an application to join Ms Bo; however, the purpose of Mr Kim's submission appears to be to ensure any costs awarded are recoverable as JCL indicated at various stages of these proceedings that liquidation was imminent. I note that JCL remains on the Companies Register meaning costs are recoverable, and joinder is not appropriate for this purpose.

[15] Accordingly, I order that JCL pay Mr Wang \$3,736.50 for costs. Payment is to be made within 28 days of the date of this judgment.

M S King  
Judge

Judgment signed at 2.40 pm on 12 December 2025