

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

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

**[2025] NZEmpC 96
EMPC 322/2023**

IN THE MATTER OF	a challenge to the determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for strike out
AND IN THE MATTER OF	an application for costs
BETWEEN	CARRINGTON RESORT JADE LP Plaintiff
AND	GRAHAM MAHENO Defendant

Hearing: On the papers

Appearances: No appearance for plaintiff
A Kersjes, advocate for defendant

Judgment: 15 May 2025

COSTS JUDGMENT OF JUDGE M S KING

[1] This judgment resolves an application for costs following the Court striking out the plaintiff's challenge.¹ As the successful party, the defendant is entitled to costs.

[2] The defendant seeks scale costs of \$11,233 calculated on a category 2 band B basis. Alternatively, he seeks indemnity costs of \$20,400 plus GST. No disbursements have been claimed. The plaintiff has not filed any material in opposition to the application.

¹ *Carrington Resort Jade LP v Maheno* [2025] NZEmpC 29.

[3] In light of the plaintiff's conduct in these proceedings, I accept that this is a case where indemnity or increased costs could be ordered.² The plaintiff failed to pursue its proceedings in good faith and abandoned the challenge without communicating with the Court or the defendant.

[4] However, it is not clear whether the sum of indemnity costs sought by the defendant relates to all services provided by his advocate in relation to this challenge. The Court has previously issued a costs judgment in these proceedings in relation to various interlocutory issues in which the plaintiff was ordered to pay \$8,126 in costs to the defendant.³ In light of the Court's previous award, the Court is not able to identify with any clarity what the defendant's actual costs are to which an award of costs could relate. Further, I am not satisfied that it would be reasonable to award over \$20,000 in costs for the steps taken by the defendant in these proceedings.

[5] I consider that the better approach is to award increased scale costs on a category 2 band B basis for the following steps:

- (a) Commencement of defence: 1.5 days
- (b) Filing interlocutory application: 0.6 days
- (c) Preparation of written submissions: 1 day

[6] The defendant sought scale costs in relation to a directions conference; however, costs have already been recovered for that directions conference in the Court's previous decision on costs.⁴

[7] The steps set out above come to a total of 3.1 days or \$7,409. I also consider that an uplift of 10 per cent is appropriate, which leaves a total of \$8,149.90. I consider that to be a fair sum in the circumstances.

² High Court Rules 2016, r 14.6.

³ *Carrington Resort Jade LP v Maheno* [2024] NZEmpC 184.

⁴ At [6].

[8] I order Carrington Resort Jade LP to pay Graham Maheno the sum of \$8,149.90 as a contribution to his costs within 21 days of the date of this judgment.

M S King
Judge

Judgment signed at 4.30 pm on 15 May 2025