

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2025] NZEmpC 110
EMPC 261/2024**

IN THE MATTER OF an application for a sanction
AND IN THE MATTER OF an application for costs
BETWEEN DARREN VINCENT OLIVER
 Plaintiff
AND STUART DALE BIGGS
 Defendant

Hearing: On the papers

Appearances: J Pietras, counsel for plaintiff
 Defendant in person

Judgment: 30 May 2025

COSTS JUDGMENT OF JUDGE K G SMITH

[1] In July 2024, Darren Vincent Oliver applied to the Court for a sanction to be imposed on the defendant, Stuart Dale Biggs, under s 140(6) of the Employment Relations Act 2000 (the Act). The reason for the proceeding was that Mr Biggs had not complied with orders made against him.

[2] On 31 March 2025, Mr Oliver discontinued the proceeding. He has now applied for costs.

[3] Before considering the costs application it is necessary to provide some context by explaining why the proceeding was issued.

[4] This proceeding is the fourth one between Mr Oliver and Mr Biggs. The history of litigation between them is described in the Court’s judgment in November last year.¹ The first proceeding followed Mr Biggs being ordered by the Employment Relations Authority to take steps to ensure that a company in which he was a director paid to Mr Oliver the amounts owed to him from previous Authority determinations no later than 5 pm on Friday 12 February 2021.² The Authority’s compliance order was not satisfied and Mr Oliver took steps to force compliance. Mr Oliver sought orders against Mr Biggs to sequester a property, to impose a fine or imprison him. The proceeding was eventually discontinued and in July 2021 the Court ordered Mr Biggs to pay to Mr Oliver costs of \$7,200.³

[5] On 12 October 2021, Mr Oliver filed another claim against Mr Biggs seeking a compliance order and costs. Initial steps taken to manage the proceeding to a hearing were conducted in Mr Biggs’ absence, because he did not file a statement of defence. On 3 May 2022, the Court ordered Mr Biggs to comply with the previous costs decision and to pay \$7,200, within 28 days.⁴ He was ordered to pay costs arising from that claim of \$3,600. The costs of that claim were not part of the compliance order, but the Court noted that, if they were not paid promptly, such an application could be made.

[6] A third judgment was issued on 28 February 2023.⁵ In this judgment, the Court described the history that had led to the orders made in July 2021 and May 2022. This judgment was about Mr Oliver’s attempt to obtain payment for the costs previously awarded to him, by seeking sanctions against Mr Biggs. Mr Biggs took no steps in this proceeding.

[7] The February 2023 judgment analysed steps required to be considered before sanctions can be imposed, as discussed in *Peter Reynolds Mechanical Ltd v Denyer*

¹ *Oliver v Biggs* [2024] NZEmpC 219 [2024 Judgment] at [6]-[19].

² *Oliver v Scott Haulage 2010 Ltd* [2018] NZERA Christchurch 183; *Oliver v Scott Haulage 2010 Ltd* [2019] NZERA 36; and *Oliver v Scott Haulage 2010 Ltd* [2021] NZERA 7.

³ *Oliver v Biggs* [2021] NZEmpC 104 [2021 Judgment] at [5].

⁴ *Oliver v Biggs* [2022] NZEmpC 73 [2022 Judgment].

⁵ *Oliver v Biggs* [2023] NZEmpC 28 [2023 Judgment].

(Labour Inspector).⁶ Mr Biggs' culpability in relation to his failure to comply was described in the judgment as "not insignificant". The Court decided:

- (a) to make a compliance order requiring Mr Biggs to comply with the order made on 3 May 2022; that is, to pay \$3,600 within 28 days of the date of the judgment;
- (b) by way of a sanction, to fine Mr Biggs \$3,000, payable to Mr Oliver immediately; and
- (c) to award costs and disbursements to Mr Oliver that were fixed at \$2,420.80 payable within 28 days.

[8] The February 2023 judgment ended with an observation that, if there were further defaults, the Insolvency Act 2006 should be considered because that may provide an effective means of finalising this matter.

[9] The fourth judgment, issued on 19 November 2024, was primarily about whether leave should be granted to Mr Oliver to amend his pleading in yet another claim against Mr Biggs seeking a sanction under s 140(6) of the Act, because the previous judgments had not been satisfied.⁷ Mr Oliver filed his claim in July 2024 and the outstanding sums were paid on 2 August 2024. Despite being paid, Mr Oliver sought to continue the claim, but by amending the pleading to abandon imprisonment as a remedy.

[10] In early October 2024, the Court convened a directions conference for case management purposes. The presiding Judge heard from Mr Biggs even though he had not taken steps up to that point. Mr Oliver's intention to amend the pleading led to a direction to file a formal application which step was taken subsequently. Mr Biggs opposed the application.

⁶ *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)* [2016] NZCA 464, [2017] 2 NZLR 451, [2016] ERNZ 828.

⁷ 2024 Judgment, above n 1.

[11] The November 2024 judgment granted the application to amend the claim. The judgment, however, outlined difficulties with the pleading including that a fine could only be imposed under s 140(6) for a breach of a compliance order.⁸ The judgment pointed out that not all of the amounts referred to in the claim were the subject of a compliance order at the time Mr Biggs paid. The Court was concerned about the consequences if Mr Biggs was sanctioned and ordered to pay further costs. The risk was of an on-going cycle of claims for sanctions arguably creating a disproportionate response and being contrary to the purpose of s 140(6) as described in *Peter Reynolds*.⁹

[12] On 18 March 2025, the same day Mr Biggs was granted leave to amend his statement of defence, a settlement offer was made to him on Mr Oliver's behalf about discontinuing the proceeding in exchange for an agreement on costs. He did not reply to the offer. On 31 March 2025, Mr Oliver discontinued this proceeding while signalling that costs would be applied for.

Costs on discontinuance

[13] The Act, and the Employment Court Regulations 2000, do not specifically deal with liability to pay costs on a discontinuance. In situations where the regulations are silent on a subject guidance can be obtained from the High Court Rules 2016.¹⁰ Rule 15.23 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.

[14] The rationale for this rule is that filing a discontinuance reflects success of a sort for the defendant and recognises the presumption that costs follow the event.¹¹ The rule is consistent with costs being predictable. That said, costs remain at the discretion of the Court.

⁸ At [33].

⁹ At [37].

¹⁰ Employment Court Regulations 2000, reg 6(2).

¹¹ See generally David Bullock and Tim Mullins *The Law of Costs in New Zealand* (LexisNexis, Wellington, 2022) at [2.55]-[2.58].

Costs claimed

[15] Mr Oliver sought the following from Mr Biggs:

- (a) Actual costs incurred by him of \$9,874.32 for steps up to and including filing the costs submissions.
- (b) Category 2A scale costs of \$478 “in anticipation of sealing judgment”.
- (c) Disbursements of \$519.01 for the filing fee and a process server’s fee.
- (d) Interest under s 21 of the Interest on Money Claims Act 2016 from the date of judgment until the costs order is paid in full.

[16] The claim for actual costs was made because Mr Oliver incurred legal fees that were less than might have been awarded if the Courts Guideline Scale was applied on a Category 2A basis. Accompanying the submissions was a table prepared using the scale and showing a total of \$12,069.50.

[17] The Court was invited to exercise the discretion under r 15.23 in favour of awarding costs to Mr Oliver. Mr Pietras accepted that the presumption created by the rule is not to be lightly displaced, but submitted that may happen if such an outcome is just and equitable.¹² He referred to four criteria that might be taken into account:

- (a) The reasonableness of the parties’ stance, including whether it was reasonable for the plaintiff to bring and continue the proceeding and whether it was reasonable for the defendant to oppose it.¹³
- (b) Conduct prior to the commencement of the proceeding may be relevant.¹⁴

¹² *Powell v Hally Labels Ltd* [2014] NZCA 572 at [20].

¹³ *North Shore City Council v Local Government Commission* (1995) 9 PRNZ 182 (HC).

¹⁴ *Kroma Colour Prints Ltd v Tridonicatco NZ Ltd* [2008] NZCA 150, (2008) 18 PRNZ 973.

- (c) The merits where they are so obvious that they should influence the costs decision.
- (d) The reason for discontinuing the proceeding, such as a change of circumstances, that renders the proceeding unnecessary.

[18] Mr Pietras submitted it was reasonable for Mr Oliver to bring and continue this proceeding because when he started it there were three unsatisfied judgments with two of them being about compliance orders. To support this submission, he referred to my judgment in *Ugone v Star Moving Ltd*.¹⁵ In that case, I warned Mr Biggs about the risk he faced of a custodial sentence if Court orders were not complied with. The judgment was issued in March 2024, but did not prompt Mr Biggs to satisfy the outstanding judgments obtained against him by Mr Oliver.

[19] Mr Pietras accepted that Mr Biggs' subsequent payment of the outstanding amounts is relevant. However, he submitted that what should be brought to account was that Mr Biggs unsuccessfully opposed the application to amend the pleadings and declined an opportunity to compromise.

[20] Extensive comments were made about what had happened before any of the first three judgments were issued. They reached back to Mr Oliver beginning work in 2012 and being dismissed in December 2014, followed by compliance orders to compel the company and/or Mr Biggs to comply. Mr Biggs' conduct throughout was described as obstructive.

[21] The explanation provided for discontinuing the proceeding was because Mr Oliver faced what was described as two unpalatable choices:

- (a) Pursue the case to a defended hearing and incur further costs.
- (b) Discontinue and face the risks of an adverse costs order.

¹⁵ *Ugone v Star Moving Ltd* [2024] NZEmpC 48, [2024] ERNZ 108.

[22] Financial pressures and litigation fatigue were said to have led to the decision to discontinue, but the submission was that Mr Oliver should not be left out of pocket because of Mr Biggs' conduct.

[23] Finally, Mr Pietras' submissions contained an undertaking on behalf of Mr Oliver that he would not use the compliance order procedure to pursue any unpaid costs order.

[24] Mr Biggs filed submissions in response. They were brief and to the point. Mr Oliver's claim was criticised as incurring extra costs trying to get more than he was entitled to, followed by other criticisms including that two judgments had made it clear that seeking imprisonment was a lost cause, but was the lever being used to support the claim.

Analysis

[25] Principally, Mr Pietras' submissions relied on Mr Oliver having to take action because Mr Biggs refused or failed to meet Court orders until the last possible moment and only under compulsion. I have some sympathy for that view, especially bearing in mind Mr Biggs' track record including my warning to him in *Ugone* about the consequences of failing to adhere to Court orders.

[26] Those observations, however, carry this analysis only a limited distance. Mr Pietras' submissions do not confront what Judge Corkill said at the conclusion of the 2023 judgment and repeated in the November 2024 judgment. That was a concern about repeated attempts to use the coercive powers in s 140(6) to obtain payment of sums that were not the subject of compliance orders and the risks of a seemingly endless cycle of claims for sanctions as a method of pursuing unpaid costs.

[27] I accept that it can be said that Mr Oliver was justified in starting this claim because it achieved payment. However, there is force in Mr Biggs' submission to the effect that the proceeding achieved its purpose by 2 August 2024. That means that, while Mr Oliver is entitled to costs, I am not prepared to exercise the discretion to compel Mr Biggs to pay towards the costs incurred by Mr Oliver after 2 August 2024.

Continuing the proceeding beyond that point was unnecessary and Mr Biggs should not bear the associated costs.

[28] In my assessment, Mr Oliver is entitled to costs on a 2A basis of the Court's Guideline Scale for filing the claim of \$3,824, for the interlocutory application for substituted services of \$717, preparation for the first directions conference of \$478 and an appearance at that conference for a further \$478. Those amounts come to \$5,497. He is also entitled to recover his claimed disbursements of \$519.01.

Outcome

[29] Mr Biggs is ordered to pay to Mr Oliver costs of \$5,497 plus disbursements of \$519.01.

K G Smith
Judge

Judgment signed at 9.30 am on 30 May 2025