

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2025] NZEmpC 117
EMPC 4/2025**

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

AND IN THE MATTER OF an application for costs

BETWEEN JASMINE TANGOHAU
 Plaintiff

AND LITA MAIAVA-PEREZ
 Defendant

Hearing: On the papers

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

Judgment: 13 June 2025

COSTS JUDGMENT OF JUDGE KATHRYN BECK

[1] This judgment resolves an application for costs following discontinuance of the proceedings by the plaintiff.

[2] The defendant seeks scale costs on a category 2 band B basis.¹

[3] Where a plaintiff discontinues a proceeding against a defendant, they must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.² The defendant has provided evidence of the costs she has incurred in these proceedings. Therefore, I accept that she is entitled to an award of costs.

¹ Employment Court of New Zealand “Practice Directions” (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

² High Court Rules 2016, r 15.23.

[4] On 18 March 2025 the plaintiff was adjudicated bankrupt.

[5] A bankrupt person does not have standing to bring or continue proceedings, as all powers of the bankrupt person in respect of property are vested in the Official Assignee.³ However, the Official Assignee is not restricted from commencing, continuing or discontinuing Court proceedings.⁴

[6] The Official Assignee has elected not to commence or continue the proceedings against the defendant. Nor has it filed a memorandum in response to the defendant's application for costs.

[7] Mr Kersjes, advocate for the defendant, has advised that the defendant has prepared and filed a statement of defence, an opposition to an interlocutory application, two interlocutory applications and memoranda, and attended a directions conference. In line with the costs guideline scale, he submits that a costs award of \$10,277 is fair and reasonable. His invoice to the defendant is for that exact amount (including GST).

Commencement of defence	1.5 days
Filing two interlocutory applications	1.2 days
Filing opposition to interlocutory application	0.6 days
Preparation for directions conference	0.4 days
Filing first and subsequent memoranda	0.4 days
Filing of costs application	0.2 days
Total	\$10,277.00

[8] However, on reviewing the file, I consider that the proceedings sit more appropriately in Category 1 Band A. They were straightforward in nature and a comparatively small amount of time is reasonable in the circumstances. The statement

³ Insolvency Act 2006, s 101.

⁴ Insolvency Act 2006, sch 1(b).

of defence was less than a page and a half in length, as was each of the applications, notice of opposition and affidavit filed.

[9] Applying the guideline scale on a Category 1 Band A basis would entitle the defendant to \$3,339.00. This is calculated as follows:

Commencement of defence	0.5 days
Filing two interlocutory applications	0.6 days
Filing opposition to interlocutory application	0.3 days
Preparation for directions conference	0.2 days
Filing first and subsequent memoranda	0.2 days
Filing of costs application	0.3 days
Total	2.1 days
2.1 x \$1,590.00	\$3,339.00

[10] Overall, I consider that this amount is appropriate, and it is a fair representation of the work undertaken by the defendant.

[11] I am conscious that given the plaintiff's bankruptcy, the likelihood of the defendant being able to recover costs may well be remote. However, she has been put to cost, and it is appropriate that she be able to claim such amount in the bankruptcy, along with the amounts awarded to her in the Authority.

[12] I order that the plaintiff pay the defendant \$3,339.00 as a contribution to her costs within 14 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 3.15 pm on 13 June 2025