

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

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

**[2025] NZEmpC 192
EMPC 293/2025**

IN THE MATTER OF an application for compliance order

AND IN THE MATTER OF an application for costs

BETWEEN GARTH CUNNINGHAM
 Plaintiff

AND HEALTHALLIANCE NZ LIMITED
 Defendant

Hearing: On the papers

Appearances: G Cunningham in person
 R Upton, counsel for defendant

Judgment: 29 August 2025

**COSTS JUDGMENT OF JUDGE M S KING
(Application for compliance order)**

[1] This judgment resolves an application for costs on a compliance order. The compliance order arose from a 24 June 2025 judgment where the Court declined healthAlliance NZ Ltd’s application for urgency and ordered it to pay \$500 in costs to Mr Cunningham.¹ healthAlliance was ordered to pay the costs within 14 days of the date of the judgment. healthAlliance failed to comply with the costs order, which entitled Mr Cunningham to seek a compliance order.

[2] Mr Cunningham filed proceedings seeking compliance orders against healthAlliance on or about the day that the judgment sum became payable.

¹ *healthAlliance NZ Ltd v Cunningham* [2025] NZEmpC 122.

healthAlliance paid the judgment sum six days after it became payable. However, by that time proceedings had already been filed and served on healthAlliance. As a result of the payment of the judgment sum, the substance of these proceedings was resolved, leaving only the issue of costs arising in these proceedings.

[3] During a directions conference held on 17 July 2025, the Court sought to deal with the issue of costs and indicated that costs would be modest given the circumstances of the proceeding. While Mr Cunningham was prepared to deal with the issue and indicated that he would accept \$599 as payment of his costs and disbursements, healthAlliance’s counsel, Mr Upton, did not accept the offer but requested an opportunity to confer with his client and seek instructions on the issue of costs. While the parties were encouraged to confer and try and reach agreement on costs, no agreement was reached.

Legal principles

[4] The Court has the power to award costs.² That power is guided by a guideline scale on costs which is intended to support, as far as possible, the policy objective that the determination of costs be predictable, expeditious and consistent.³ Where costs are sought by a self-represented party, the appropriate daily recovery rate is \$500 and applies irrespective of the complexity of the proceedings or skill of the self-represented party.⁴

Quantum of costs in dispute

[5] Mr Cunningham submits that healthAlliance has “unreasonably failed to agree on costs”. He now seeks two days of scale costs and disbursements, which is effectively \$1,000 plus the Court filing fee of \$349. Mr Cunningham’s attendances included commencing of compliance order proceedings and his preparation and attendance at a directions conference on 17 July 2025. Mr Cunningham also seeks costs on his application for costs of 0.25 of a day, which include his communications

² Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

³ Employment Court of New Zealand “Practice Directions” (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

⁴ High Court Rules 2016, sch 2 pt 2.

with Mr Upton in attempting to settle the matter of costs and then filing his costs application and submissions in reply.

[6] healthAlliance submits that the compliance order application was premature. It maintains that Mr Cunningham should have “written to [healthAlliance] pointing out its failure to pay the \$500 at issue. That sum would then have been paid quickly by [healthAlliance], as ultimately occurred”. It also points the Court to the “hypocrisy” of Mr Cunningham’s position. Specifically that Mr Cunningham owes healthAlliance over \$20,000, and half of this amount has been owing since January 2024.

[7] healthAlliance submits that any costs award should be limited to what was originally proposed at the directions conference, being \$250 for a half day of costs and payment of the \$349 court filing fee. It claims that amount is a more accurate representation of the minimal amount of work undertaken by Mr Cunningham and the simplicity of the proceedings. It submits that there is no justification for an award beyond that amount.

Costs are payable

[8] The parties in this proceeding appear to be engaged in an unnecessarily litigious and adversarial approach. The Court has convened twice to hear the substantive proceedings of Mr Cunningham’s challenge to the Authority’s substantive determination, only to have the hearings adjourned at the request of the parties on the first day of each hearing. The parties have collectively filed six substantive proceedings and six interlocutory applications. Both parties have failed at times to comply with Court orders regarding timetabling and costs. I do not consider that either party has acted as an exemplary litigant, such that they can credibly accuse the other side of hypocrisy or uncooperativeness. However, I observe that healthAlliance is in a different position from Mr Cunningham, who is a self-represented litigant. healthAlliance is a well-established service provider operating within the public sector, and it is also represented by counsel. There is some expectation therefore that healthAlliance complies with court orders, and without delay.

[9] The fact of the matter remains that healthAlliance failed to comply with a Court order. Mr Cunningham was justified in filing an application for a compliance order because it achieved its purpose, being payment. Costs should follow the event.

[10] In my assessment, this proceeding is straightforward and it is appropriate that it be assigned a category 1 band A scale for costs purposes under the Employment Court's Practice Direction Guideline Scale. My assessment applying the scale to each relevant step is as follows:

Step	Proceedings	Allocated Days
1	Commencement of other proceeding by plaintiff	1.6
11	Preparation for first directions conference	0.2
13	Appearance at first directions conference	0.2

[11] I acknowledge that the amount of costs that Mr Cunningham was prepared to agree to at the directions conference was considerably less than what he now seeks. However, this was suggested by the Court during the directions conference, without considering the actual time Mr Cunningham had spent on proceedings. The quantum was proposed with the view of bringing an end to the proceedings by agreement, in a pragmatic, timely and low-cost manner. While Mr Cunningham was prepared to agree to this arrangement during the directions conference, Mr Upton did not have instructions. This resulted in a lost opportunity for costs to be resolved at that rate.

[12] I acknowledge that band A of the Court's scale costs provides a comparatively small amount of time which is considered reasonable for a party to allocate to each task. However, the brief and straightforward statement of claim filed by Mr Cunningham does not justify an allocation of 1.6 days. In the circumstances, considering the document filed and Mr Cunningham being a self-represented litigant, I consider that it is appropriate that the time allocated under step 1 should be reduced by 0.5, from 1.6 to 1.1. I accept that a 0.4 allocation for the preparation and attendances at a directions conference is reasonable in the circumstances. Standing

back, I consider a scale rate of 1.5 is reflective of the actual time Mr Cunningham has spent on proceedings. This leads to a band A scale rate of \$750.

[13] Mr Cunningham also claims for costs for preparing the memorandum on costs, due to the absence of agreement at the directions conference which subsequently resulted in having no alternative but to apply for costs. I consider that Mr Cunningham should be entitled to a further 0.25 days of scale costs for his actions taken in seeking costs. This leads to a band A scale rate of \$125.

[14] Mr Cunningham is also entitled to be reimbursed the court filing fee of \$349 (including GST).

Outcome

[15] healthAlliance NZ Ltd is ordered to pay \$1,224 in costs and disbursements to Mr Cunningham within 14 days of the date of this judgment.

M S King
Judge

Judgment signed at 12.15 pm on 29 August 2025