

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

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

**[2025] NZEmpC 201  
EMPC 85/2022**

IN THE MATTER OF a declaration under s 6(5) of the  
Employment Relations Act 2000

AND IN THE MATTER OF an application for costs (disbursements)

BETWEEN SERENITY PILGRIM, ANNA  
COURAGE, ROSE STANDTRUE,  
CRYSTAL LOYAL, PEARL VALOR  
AND VIRGINIA COURAGE  
Plaintiffs

AND THE ATTORNEY-GENERAL SUED  
ON BEHALF OF THE MINISTRY OF  
BUSINESS, INNOVATION AND  
EMPLOYMENT, LABOUR  
INSPECTORATE  
First Defendant

AND HOWARD TEMPLE, SAMUEL  
VALOR, FAITHFUL PILGRIM, NOAH  
HOPEFUL AND STEPHEN  
STANDBAST  
Second Defendants

Hearing: On the papers

Appearances: B P Henry and S Patterson, counsel for plaintiffs  
P Skelton KC and C Pearce, counsel for second defendants

Judgment: 10 September 2025

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**COSTS JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS  
(Disbursements)**

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## **Introduction**

[1] This judgment deals with disbursements claimed by the plaintiffs in these proceedings. The issue was reserved for further information to be provided in support of the claim following an earlier costs judgment. The plaintiffs have since filed further memoranda, as have the second defendants.

## **Approach**

[2] The Employment Court has the statutory power to order costs and expenses in proceedings within its exclusive jurisdiction, as sch 3, cl 19 of the Employment Relations Act 2000 makes clear. It provides that:

### **19 Power to award costs**

(1) The court in any proceedings may order any party to pay to any other party such costs and expenses (including expenses of witnesses) as the court thinks reasonable.

(2) The court may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[3] Regulation 6 of the Employment Court Regulations 2000 provides that if any case arises where no form of procedure has been provided by the Act or Regulations, the Court must dispose of the case as nearly as may be practicable with the provisions of the Act or Regulations affecting any similar case or the provisions of the High Court Rules 2016 affecting any similar case.

[4] Regulation 68 reaffirms the Court's discretion and sets out the matters that the Court may have regard to, and may not have regard to, when making orders as to costs.

[5] Pausing there, it might be said (although it was not argued) that the Court need go no further: the Regulations have set out the "procedure" that must be followed, in the sense of what factors the Court should be guided by in the exercise of its broad discretion. Alternatively, it might be argued that provisions in the High Court Rules relating to the way in which the Court exercises its discretion to allow or disallow disbursements is not a matter of procedure and is accordingly not engaged by reg 6.

If that is so, the Employment Court is free to exercise its discretion, within the boundaries set by its empowering legislation, as it sees fit. That may, but need not, involve drawing from the sort of approach adopted in the High Court in its civil jurisdiction.

[6] An application of the approach to disbursements contained within the High Court Rules may run the risk of inhibiting the exercise of this Court's broad discretionary powers consistent with this Court's empowering statute and the objectives of the legislation, a consequence that Parliament likely did not intend, and which the wording of reg 6 does not appear to require.

[7] It may further be noted that the conventional (High Court Rules) approach has also been to equate expenses (to which the power in the Employment Relations legislation attaches) with disbursements. It seems to me that disbursements, at least insofar as that term is used in the High Court Rules, is properly regarded as a subset of expenses. If that is so, the power to order expenses under sch 3 extends more broadly, impacting the sort of orders the Court might make.

[8] As I say, the point was not raised and the conventional approach has been to revert to the High Court Rules when dealing with a range of matters, including issues in respect of claimed costs and expenses.

[9] In the absence of argument, I proceed on the conventional approach. However, I do not overlook the obvious and well accepted overarching need to be guided by the equities of the case and the underlying objectives of the Employment Relations Act.

[10] What do the High Court Rules have to say about disbursements?

[11] Rule 14.12 deals with disbursements. A disbursement, in relation to a proceeding, is an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from legal professional services. A disbursement includes (but is not limited to) the following:

- (i) Court fees.

- (ii) Expenses of serving documents.
- (iii) Expenses of photocopying required documents.

[12] A disbursement does not include counsel's fee.

[13] Where counsel have travelled for a hearing, their accommodation, meals and travelling costs may be claimed as a disbursement. Witness expenses, including fees and expenses of experts, are disbursements.

[14] A disbursement is recoverable to the extent that it is specific to the conduct of the proceeding; reasonably necessary for the conduct of the proceeding; and reasonable in amount. A disbursement may be disallowed if it is disproportionate in the circumstances of the proceeding.<sup>1</sup>

[15] An award of disbursements should include GST if the successful party is not GST registered. This ensures that the successful party is not left out of pocket for its allowable disbursements.<sup>2</sup>

### **Agreed and abandoned claims**

[16] The parties have reached agreement on the following disbursements, which total \$15,071.74 (excl. GST). The agreed items include:

- (a) Costs for counsel and second counsel's travel for various hearings and purposes, including the commencement of proceedings, the trial, and a site visit:
  - (i) \$923.83 for flights and a rental car to brief witnesses in Timaru;
  - (ii) \$585.72 for counsel flights to Christchurch;
  - (iii) \$3,526.40 for second counsel travel to Christchurch (including flights and private vehicle);

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<sup>1</sup> High Court Rules 2016, r 14.12(2) and 14.12(3).

<sup>2</sup> *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282.

(iv) \$862.60 for travel costs to Greymouth;

(v) \$109.25 for a site visit to Haupiri.

(b) Witness expenses for travel and accommodation (\$5,816.30).

(c) Other costs, including Ministry of Justice fees (\$3,247.64).

[17] I am satisfied that these claims are reasonable and adequately supported, and they are therefore allowed in full.

[18] The plaintiffs have also, in their final schedule, abandoned several claims. These include, most significantly, a portion of the investigator's invoice (\$10,320) relating to work on individuals who were not ultimately called as witnesses, along with various claims for flights and accommodation for which no invoices were provided. Those previous claims can be put to one side.

### **Disputed disbursements**

[19] The following four categories of disbursements remain in dispute. The parties' respective positions are summarised below.

<b>Disbursement Item</b>	<b>Amount sought by plaintiffs</b>	<b>Amount agreed by defendants</b>	<b>Amount in dispute</b>
Investigator costs	\$77,640.00	\$1,756.29	<b>\$75,883.71</b>
Expert accountant report	\$10,705.26	\$2,500.00	<b>\$8,205.26</b>
Counsel trial accommodation	\$23,560.00	\$9,200.00	<b>\$14,360.00</b>
Counsel trial meals	\$13,400.00	\$5,000.00	<b>\$8,400.00</b>
<b>Total amount in dispute</b>			<b>\$106,848.97</b>

## **The Investigator's Costs**

[20] The plaintiffs claim \$77,640 for the services of an investigator, Mrs Kitchen. They submit that Mrs Kitchen's involvement was "reasonably necessary for the conduct of the proceeding" due to the unique circumstances of the case. They say that her role was essential in assisting Auckland-based counsel to gather evidence from witnesses scattered across the South Island, co-ordinating their attendance, and providing support to female plaintiffs in what were highly charged and emotional proceedings.

[21] The second defendants object to this claim in almost its entirety, although they have accepted a total of \$1,756.29 can be claimed for her work, as reflected in the table above. The second defendants submit that the bulk of the work performed by Mrs Kitchen – specifically interviewing witnesses and preparing their briefs of evidence – is work that would ordinarily be done by a lawyer and is therefore covered by the contribution to legal costs award already made. They contend that allowing the claim now pursued by the plaintiffs in relation to Mrs Kitchen's involvement would amount to "double-dipping," as the plaintiffs have already been awarded costs for the step of briefing evidence.

[22] I agree with the second defendants that it is not uncommon for legal counsel to provide support and assistance to witnesses in preparation for and during a trial. Such support and assistance is, as counsel says, typically dealt with in terms of a contribution to costs; the danger is that treating this type of support and assistance as a recoverable disbursement runs the risk of double-dipping, which is to be avoided.

[23] However, while I agree that is a correct summary of the usual approach, this case was unusual. The witnesses had special characteristics. Having had the advantage of being the trial judge, I have no difficulty accepting that the witnesses had additional needs to support the proper conduct of the proceedings, and that Mrs Kitchen's described work, in the particularly difficult circumstances of this case, was reasonably necessary. In the circumstances, I consider it appropriate to approach her

invoice on a similar basis as I would costs, allowing 66 per cent.<sup>3</sup> This amounts to \$51,242.40.

### **The expert accountant's report**

[24] The plaintiffs claim \$10,705.26 for the cost of their expert forensic accountant. This amount is said to be comprised of an invoice from Ms James (for \$7,830.26) and an invoice from Mr Hansen for (\$2,500). I note that the claim contains a discrepancy – the total adds up to \$10,330.26, not \$10,705.26.

[25] The second defendants agree to pay Mr Hansen's invoice but object to paying for Ms James' work, leaving her \$7,830.26 invoice in dispute.

[26] The basis for the second defendants' objection is that while Mr Hansen gave evidence at the hearing, Ms James did not. After a challenge to the admissibility of her evidence, the plaintiffs decided not to call her. The second defendants therefore argue that her work was not reasonably necessary for the conduct of the proceeding.

[27] The plaintiffs maintain the claim is appropriate, noting that Ms James was subpoenaed and that Mr Hansen relied upon her preparatory work to complete his own analysis. The point made by the plaintiffs is a valid one. An expert's fees are recoverable as disbursements when retaining one is a reasonable step, even if, in the circumstances, their evidence is not used directly.<sup>4</sup> I am satisfied that it was reasonable to retain Ms James. Her fees are fully recoverable.

### **Counsel's trial accommodation and meals**

[28] The final points of contention relate to the number of days for which counsel's accommodation and meals during the trial should be allowed.

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<sup>3</sup> See *Nisha v LSG Sky Chefs New Zealand Ltd (No 1)* [2018] NZEmpC 8, (2018) 15 NZELR 483 at [250b].

<sup>4</sup> *Todd Pohokua Ltd v Shell Exploration NZ Ltd* HC Gisborne CIV-2006-485-1600, 1 July 2011 at [40]-[44].

[29] The plaintiffs claim accommodation costs of \$23,560, based on 67 nights for two counsel. The second defendants submit this should be reduced to \$9,200, covering only 25 nights. As to meals, the plaintiffs claim \$13,400 for 67 days. The second defendants submit this should be \$5,000, for 25 days.

[30] As will be apparent, the dispute stems from a disagreement over the relevant number of days. The second defendants argue that any allowance must be consistent with the Court's costs judgment, which determined that only 25 hearing days were relevant to the matters at issue and, accordingly, an assessment of costs. They contend that accommodation and meal expenses should therefore be limited to those 25 days.

[31] The plaintiffs take a different approach. They say that the hearing schedule, which typically ran from Monday to Friday in Christchurch, required counsel to travel and stay over weekends. They describe this as a "bookend" of accommodation and meal days before and after each hearing week, which they submit was a necessary consequence of the trial.

[32] The question is what constitutes a reasonably necessary number of days for these expenses in the circumstances of this case?

[33] Counsel were required to travel from Auckland to Christchurch (and Greymouth) for consecutive hearing weeks, namely Friday 2 September 2022 to Friday 9 September 2022; from Friday 23 September 2022 to Friday 30 September 2022 (Monday 26 September was a public holiday); Friday 17 February 2023 to Wednesday 1 March 2023 (including a site visit in Greymouth on Friday 24 February 2023) and Thursday 24 March 2023 to Thursday 30 March 2023.

[34] I consider it appropriate to "bookend" those hearing dates which spanned consecutive weeks. Bookending these dates is, in my view, appropriate because counsel were required to travel from Auckland to be in Christchurch (and Greymouth) for consecutive hearing weeks during those time periods. I accept that it was reasonably necessary to remain there rather than returning to their home base during those times, and it follows that it is appropriate to order accommodation and meal expenses during that time, to the extent that they are reasonable. I did not understand

counsel for the second defendants to take issue with the reasonableness of the expenses relating to accommodation and meals if they were considered to be a claimable disbursement.

[35] Approaching the issue on this basis leads to 51 days for accommodation and 51 days for meals for second counsel; 49 days for accommodation and 49 days for meals for senior counsel.<sup>5</sup> That leads to the following total: \$30,920.

## **Conclusion**

[36] The Overseeing Shepherd is ordered to pay to the plaintiffs the following amounts by way of expenses:

- (a) \$51,242.40 for investigator costs;
- (b) \$10,330.26 for the expert accountant report;
- (c) \$30,920 for counsel meals and accommodation;
- (d) the agreed amount of \$15,071.74, as set out above at [16].

[37] The total amount payable is \$107,564.40. This amount excludes GST. I apprehend that the plaintiffs are not registered for GST. If that is so GST is to be added to this sum.

[38] These amounts are to be paid within 21 days of the date of this judgment.

Christina Inglis  
Chief Judge

Judgment signed at 8.30 am on 10 September 2025

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<sup>5</sup> Based on the material before the Court it appears that senior counsel returned to Auckland on 24 September 2022 and returned in time for the next hearing date on 27 September 2022.