

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

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

**[2025] NZEmpC 265
EMPC 426/2025**

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

AND IN THE MATTER OF an application for security for costs

BETWEEN DAVID HANNAH
 Plaintiff

AND THE SALVATION ARMY NEW
 ZEALAND TRUST
 Defendant

Appearances: R Morgan, advocate for plaintiff
 A J Davis, counsel for defendant

Judgment: 9 December 2025

**INTERLOCUTORY JUDGMENT OF JUDGE HELEN DOYLE
(Application for security for costs)**

[1] Mr Hannah has challenged determinations of the Employment Relations Authority (the Authority) dismissing his personal grievance for unjustified dismissal and awarding costs to the Salvation Army New Zealand Trust (the Salvation Army).¹ He has elected to have the matters heard in the Employment Court by way of a de novo hearing.

[2] The Salvation Army seeks an order for security for costs and an associated order for a stay of proceedings until security for costs is paid.

¹ *Hannah v The Salvation Army New Zealand Trust* [2025] NZERA 509; *Hannah v The Salvation Army New Zealand Trust* [2025] NZERA 602.

[3] This judgment resolves that application.

[4] There was agreement that the application can be decided on the papers.

Power of the Court to order a stay

[5] Chief Judge Inglis recently made some observations in a judgment about the scope of the Court's power to order security for costs on a stand-alone application.² The Court's power was not the subject of argument in that case and did not need to be decided, as the application for security for costs was declined.³

[6] The Chief Judge stated there were numerous instances where the Court has accepted jurisdiction to order security for costs where there is no order for a stay.⁴ A review of the cases suggested that a combination of the Employment Court Regulations 2000 (the Regulations), particularly regs 6 and 64, and the Court's equity and good conscience jurisdiction were seen as creating a power to order security for costs.⁵

[7] Chief Judge Inglis stated in her view it is arguable that, given the express provisions in the Regulations relating to when an order relating to security for costs can be made, no broader power exists.⁶ It was considered arguable that reg 6 did not apply to create a bridge to the High Court Rules 2016 and its provision relating to security for costs.⁷ Further, it was said that the wording of s 189 suggests that the Court's equity and good conscience jurisdiction is directed at the way matters before the Court are to be determined, rather than conferring jurisdiction in and of itself.⁸

² *DSJ Joinery Ltd v Da Silva* [2025] NZEmpC 231.

³ At [26] and [32].

⁴ *Watkins v Highmark Homes Ltd* [2024] NZEmpC 105 at [21]; *Burgess v Tutton Sienko and Hill Partnership* [2025] NZEmpC 133; *Koia v Attorney-General* [2004] 1 ERNZ 116 (EmpC); *Watson v Fell* [2002] 2 ERNZ 1 (EmpC).

⁵ *DSJ Joinery Ltd*, above n 2, at [21].

⁶ At [22]. Employment Court Regulations 2000, reg 64 provides that if a stay of proceedings is ordered then the stay may be made subject to such conditions, including conditions as to the giving of security, as the Authority or Court think fit. Reg 69 applies where a party to any proceedings applies for leave to appeal against a decision of the Court.

⁷ At [23].

⁸ At [24].

[8] There was no argument in this matter about the power of the Court to make a stand-alone order for security for costs. The decision reached on the application does not require the matter to be decided in this case.

Application for security for costs

[9] Rule 5.45(1) of the High Court Rules 2016 provides that a plaintiff may be required to give security for costs where they reside outside of New Zealand, or are incorporated out of New Zealand, or there is reason to believe that they will be unable to pay the costs of the defendant if unsuccessful.

[10] The Salvation Army applies for security for costs on the basis that there is reason to believe that Mr Hannah will be unable to pay its costs if he is unsuccessful in the Employment Court. A further ground is that the de novo challenge appears to have little chance of success.

[11] It is only when the Court is satisfied of the threshold issue that there is reason to believe that Mr Hannah will be unable to pay costs (if unsuccessful) that it may, if it thinks it is just in all the circumstances, order the giving of security for costs.⁹

[12] An affidavit in support of the application has been filed by the human resources manager for the Salvation Army. Reliance is placed in the affidavit evidence on the reluctance by Mr Hannah to agree to costs together with the contents of a submission made on his behalf to the Authority about an award of costs.

[13] The submission made on behalf of Mr Hannah to the Authority was that a costs award not exceeding \$2,500 would be reasonable given that the investigation was less than half a day spread over two separate days. It further stated that Mr Hannah had not worked since the dismissal and his sole source of income is currently the Jobseeker Support.

⁹ High Court Rules 2016, rr. 5.45(1) and (2).

[14] The Salvation Army sought a costs award of \$4,500 in its submission to the Authority, which was the quantum of the costs award made by the Authority in its determination.¹⁰

[15] Mr Hannah provided two affidavits in opposition to the application for security for costs. One was an updating affidavit.¹¹

[16] In his first affidavit, Mr Hannah set out amongst other matters that he is currently recovering from surgery, but that did not mean he was incapable of working in the future and fully providing for his family as he has done in the past.

[17] Mr Hannah set out in his updating affidavit that prior to his surgery he worked as a driver and holds a Class 5 licence, which enables him to drive vehicles up to and including trucks with trailers. A copy of the licence was appended to this affidavit. Mr Hannah states in his affidavit that over the past five years there has been a shortage of Class 5 drivers and there is no shortage of work regardless of the region a driver lives in. Mr Hannah said in his affidavit that he is in receipt of a sickness benefit.

[18] Mr Hannah had a different view about the quantum of any costs award in the Authority based on his assessment of the time required for investigation. His reluctance to agree to costs in those circumstances is not credible evidence that he may be unable to pay costs in the event he is unsuccessful in his substantive challenge. In the submission made on his behalf about costs, it was clear that Mr Hannah understood that he will be required to contribute towards costs. The submission focussed on the amount that should be awarded.

[19] There is very little evidence before me about Mr Hannah's financial ability and any inability to pay costs beyond the fact he is currently on a sickness benefit as he recovers from surgery. In his evidence, Mr Hannah was unable to give a date as to when he will be declared medically fit; however, job prospects when he does recover appear promising. Whilst Mr Hannah is recovering from surgery, he states in his affidavit evidence this does not mean he cannot work in the future. There is no

¹⁰ *Hannah v The Salvation Army New Zealand Trust* [2025] NZERA 602.

¹¹ The Salvation Army was given an opportunity to respond to this updating affidavit but did not wish to provide further affidavit evidence.

evidence about whether there has been any attempt to enforce the costs award made. The Authority costs award has been challenged.

[20] On the material provided, I cannot conclude that there is reason to believe that Mr Hannah will be unable to pay an award of costs if the Salvation Army is successful in defending his challenge in the Employment Court. As this is a threshold requirement that must be overcome, I do not need to consider the merits of the claim and whether it is just in all the circumstances to order the payment of security for costs.

[21] The application for security for costs is declined.

[22] I reserve the issue of costs until after the substantive hearing.

Helen Doyle
Judge

Judgment signed at 9.30 am on 9 December 2025