

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

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

**[2025] NZEmpC 284
EMPC 2/2024**

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

AND IN THE MATTER OF an application for severance of proceedings
from substantive challenge EMPC 221/2023

AND IN THE MATTER OF an application for costs

BETWEEN GARTH MURRAY CUNNINGHAM
Plaintiff

AND HEALTHALLIANCE NZ LIMITED
Defendant

EMPC 119/2025

IN THE MATTER OF an application for compliance order under
s 140 of the Employment Relations Act
2000

AND IN THE MATTER OF an application for witness to give evidence
by AVL

AND IN THE MATTER OF an application for costs

BETWEEN HEALTHALLIANCE NZ LIMITED
Plaintiff

AND GARTH MURRAY CUNNINGHAM
Defendant

Hearing: On the papers

Appearances: G Cunningham, in person
R Upton, counsel for healthAlliance NZ Ltd

Judgment: 22 December 2025

COSTS JUDGMENT (NO 2) OF JUDGE M S KING
(Application for costs on severance of proceedings and for witness to give evidence by AVL)

[1] This judgment resolves an application for costs on an application for a witness to give evidence by audio visual link (AVL) and an application for severance of proceedings. Both applications were opposed.

[2] On 29 August 2025, the Court issued a judgment granting healthAlliance’s application for its witness, Mr Jury, to give evidence by way of AVL and it declined Mr Cunningham’s application for severance of proceedings.¹

[3] Costs were reserved, however, the parties were unable to agree. healthAlliance, as the successful party, has now applied for the Court to fix costs.

[4] The Court has a broad discretion in awarding costs.² It has provided a guideline scale to assist in its exercise.³ As noted in the Court’s Practice Directions, the scale is intended to support the policy objective that the determination of costs is predictable, expeditious and consistent.⁴

[5] healthAlliance has sought costs of \$6,453, on a category 2, band B basis as follows:

Item	Step	Time (days or part days)	Recovery rate	Amount claimed
28	Filing interlocutory application for witness to appear by AVL in EMPC 119/2025	0.6	\$2,390	\$1,434
29	Filing opposition to interlocutory application for severance in EMPC 2/2024	0.6	\$2,390	\$1,434

¹ *Cunningham v healthAlliance NZ Ltd* [2025] NZEmpC 191.

² Employment Relations Act 2000, sch 3, cl 19.

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

⁴ At 18.(4).

30	Preparation of submissions for both matters	1.0	\$2,390	\$2,390
32	Appearance at half day hearing of both matters	0.5	\$2,390	\$1,195
Total		2.7		\$6,453

[6] healthAlliance says it sought to address any duplication in time that may have arisen from the Court hearing two interlocutory applications on the same day by only applying for costs for one set of interlocutory proceedings, which covers both matters, with the view that this would achieve an equitable outcome.

[7] Mr Cunningham does not dispute healthAlliance’s calculation or its grounds for seeking costs. His submissions instead focus on the merits of his application for severance and his opposition to healthAlliance’s application. He submits that when applying for severance he was exercising his right to be heard under ss 27(1) and 27(2) of the New Zealand Bill of Rights Act 1990, and his right to bring a de novo challenge under ss 179(3) and 179(4) of the Employment Relations Act 2000 when filing his application for severance. In relation to his opposition to healthAlliance’s application to have Mr Jury give evidence by AVL, he says that “the law invites me to express my position, and have it considered, in the use of AVL technology during a hearing. I did this and my position was to oppose.”

[8] Mr Cunningham maintains that he conducted himself in good faith at all times in the proceedings before the Court. However it is notable that during the hearing, Mr Cunningham initially had no questions for Mr Jury. He then asked only one question after he was reminded that his application to oppose AVL evidence was based on his stated intention to cross-examine Mr Jury in person. I consider that this conduct goes to the lack of reasonableness and merits of Mr Cunningham’s opposition to Mr Jury giving evidence by AVL.

[9] Mr Cunningham is critical of healthAlliance’s conduct in related proceedings due to its non-compliance and this is a factor that should be taken into account when deciding costs in these proceedings.⁵ However, the conduct Mr Cunningham refers to

⁵ *Cunningham v healthAlliance NZ Ltd* [2025] NZEmpC 24 at [11].

is not relevant to the issue of costs arising in the present proceeding. Mr Cunningham has not pointed to any aspect of healthAlliance’s conduct in this proceeding that should sound in costs.

[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 guideline scale. Applying the scale to each relevant step is as follows:

Item	Step	Time allocation (days or part days)	Recovery rate	Amount claimed
28	Filing interlocutory application for witness to appear by AVL in EMPC 119/2025	0.3	\$1,590	\$477
29	Filing opposition to interlocutory application for severance in EMPC 2/2024	0.3	\$1,590	\$477
30	Preparation of submissions for EMPC 119/2025	0.5	\$1,590	\$795
30	Preparation of submissions for EMPC 2/2024	0.5	\$1,590	\$795
32	Appearance at half day hearing of both matters	0.5	\$1,590	\$795
Total		2.1		\$3,339

[11] 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 applications as well as the documents filed in opposition or support, were straightforward and brief. The category 1 band A scale rate is reflective of the actual time the parties have spent on the proceedings and is more equitable than the category 2, band B scale costs being sought by healthAlliance.

[12] healthAlliance also claims costs in preparing the memorandum on costs, due to the absence of engagement from Mr Cunningham to resolve the issues. It seeks \$500 as contribution of costs in the circumstances. I consider that healthAlliance be

entitled to a further 0.25 days of scale costs for its actions taken in seeking costs. This leads to a band A scale rate of \$397.50.

Outcome

[13] Mr Cunningham is ordered to pay \$3,736.50 in costs and disbursements to healthAlliance NZ Ltd within 21 days of the date of this judgment.

M S King
Judge

Judgment signed at 3.15 pm on 22 December 2025