

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

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

**[2025] NZEmpC 70
EMPC 2/2023**

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

AND IN THE MATTER OF an application for costs

BETWEEN CARRINGTON RESORT JADE LP
 Plaintiff

AND TONI MAHENO
 Defendant

Hearing: On the papers

Appearances: W Tan, agent for plaintiff
 A Kersjes, advocate for defendant

Judgment: 4 April 2025

COSTS JUDGMENT OF JUDGE KATHRYN BECK

[1] This judgment resolves an application for costs following the Court striking out the plaintiff's challenge.¹ As the successful party, the defendant is entitled to costs.

[2] The defendant seeks scale costs of \$12,667 calculated on a category 2 band B basis. Alternatively, she seeks indemnity costs of \$16,960 plus GST. The plaintiff has not filed any material in opposition to the application.

[3] In light of the plaintiff's conduct in these proceedings, I accept that this is a case where indemnity or increased costs could be ordered.² The plaintiff failed to

¹ *Carrington Resort Jade LP v Maheno (No 4)* [2025] NZEmpC 26.

² High Court Rules 2016, r 14.6.

pursue its proceedings in good faith, repeatedly breached the Court's timetabling directions, and subsequently abandoned the challenge without communicating with the Court or the defendant.³

[4] However, the sum of indemnity costs sought by the defendant appears to relate to all services provided by her advocate in relation to this challenge. That is inappropriate because the Court has already made two costs awards to the defendant totalling \$5,814 and has also indicated that costs would lie where they fall on two applications that she filed.⁴

[5] In light of the Court's previous awards, the Court is not able to identify with any clarity what the defendant's actual costs are to which an award of costs can relate. Therefore, I consider that the better approach is to award scale costs on a category 2 band B basis for the following steps:⁵

- (a) Commencement of defence: 1.5 days
- (b) Preparation for two directions conferences: 0.8 days
- (c) Appearance at two directions conferences: 0.4 days
- (d) Filing interlocutory application: 0.6 days
- (e) Preparation of written submissions: 1 day

[6] That totals 4.3 days or \$10,277. I consider that an uplift of 10 per cent is appropriate in the circumstances, which leaves a total of \$11,304.70. I consider that to be a fair sum in the circumstances.

³ *Carrington Resort Jade LP v Maheno (No 4)*, above n 1, at [5] and [17]–[20].

⁴ *Carrington Resort Jade LP v Maheno (No 2)* [2023] NZEmpC 115; *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 120; and *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 208.

⁵ "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

[7] I order Carrington Resort Jade LP to pay Toni Maheno \$11,304.70 as a contribution to her costs within 21 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 2.15 pm on 4 April 2025