



[3] Mr Young has made no submissions in respect of costs. When this was raised with Mr Young’s representative, Ms Lambert, it seems she thought that the filing of the application for leave to appeal automatically stayed the proceedings, which is not the case. On 4 April 2025, the Court advised Ms Lambert that, in the absence of a stay, costs will be determined. She was told that if Mr Young wished to apply for a stay, he was to do so within seven days of that date. No application for a stay has been filed.

[4] Accordingly, this judgment deals with the Port’s application for costs.

[5] The Court has a broad discretion as to costs.<sup>2</sup> It is, however, assisted by the guideline scale, which is intended to support, as far as possible, the policy objective that the determination of costs is predictable, expeditious and consistent.<sup>3</sup>

[6] Mr Delaney, counsel for the Port, notes that in a joint memorandum dated 18 April 2024, the parties agreed that the appropriate costs categorisation for the proceedings under the guideline scale was category 2B. He says, and I accept, that remains appropriate.

[7] Mr Delaney’s calculation of costs is:

<b>Item</b>	<b>Description</b>	<b>Days</b>	<b>Amount at Daily rate of \$2,390</b>
2	Commencement of defence by defendant	1.5	\$3,585
11	Preparation for first directions conference	0.4	\$956
12	Filing memorandum for first or subsequent directions conference x 2	0.8	\$1,912
20	Notice to admit facts (preparation of agreed statement of facts)	0.8	\$1,912
35	Preparation of briefs of evidence	2.0	\$4,780

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

<sup>3</sup> “Employment Court of New Zealand Practice Directions” at No 18.

36	Preparation of list of issues, agreed facts, authorities and common bundle	2.0	\$4,780
38	Preparation for hearing	2.0	\$4,780
39	Appearance at hearing for sole or principal counsel	3.0	\$7,170
40	Appearance at hearing by second representative	1.5	\$3,585
<b>TOTAL COSTS</b>			<b>\$33,460</b>

[8] The Port also seeks \$212.74 as disbursements to cover the expenses for preparing the bundle of documents.

[9] In his submissions, Mr Delaney submits that it was appropriate for the claim under item 20 to be made as it relates to the agreed statement of facts prepared by counsel for the Port. However, item 36 includes time for the preparation of agreed facts. The claim for item 20 is therefore not accepted.

[10] I accept, however, that as the Port prepared the common bundle and list of issues, as well as the agreed facts, it was appropriate for the time allocation for those matters to be two days, rather than the one day usually allowed for a defendant.

[11] Finally, at item 40, the Port seeks an allowance for the appearance of second counsel. As Mr Delaney acknowledges, the default position is that provision is made for only one counsel in a proceeding; for category 2 cases, there must be some exceptional feature to justify a second counsel allowance.<sup>4</sup>

[12] Nevertheless, he submits that the broadly-pleaded nature of the claim required preparation for multiple potential areas of evidence, cross-examination, and submission, and that second counsel had institutional knowledge of previous evidence provided by a witness introduced late by Mr Young.

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<sup>4</sup> *Prattley Enterprises Ltd v Vero Insurance New Zealand Ltd* [2017] NZHC 1599, (2017) 23 PRNZ 484 at [44]-[45].

[13] I have no doubt that second counsel provided valuable assistance to the Port and to the Court, particularly in view of the issues identified by Mr Delaney in the application for costs. On balance, I consider that it is appropriate to recognise that by allowing \$1,500 for item 40 in the costs calculation.

[14] The remainder of the costs and disbursements sought are reasonable and accepted.

[15] Accordingly, Mr Young is ordered to pay the Port of Tauranga \$29,463 as costs, together with \$212.74 for disbursements, leading to a total of \$29,675.74. Unless otherwise agreed between the parties, that sum is to be paid within 28 days of the date of this judgment.

J C Holden  
Judge

Judgment signed at 11.30 am on 30 April 2025