

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

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

**[2026] NZEmpC 22
EMPC 263/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	TERTIARY EDUCATION UNION First Plaintiff
AND	HUHANA WATENE Second Plaintiff
AND	PRABHAT CHAND Third Plaintiff
AND	WEI LOO Fourth Plaintiff
AND	TE PŪKENGA, NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY T/A UNITEC Defendant

Hearing: On the papers

Appearances: P Cranney, counsel for plaintiffs
S Cook and S Vitalis, counsel for defendant

Judgment: 11 February 2026

COSTS JUDGMENT OF JUDGE KATHRYN BECK

[1] This judgment resolves the plaintiffs' application for costs following the Court's judgment issued on 7 November 2025, which made declarations in relation to the removal of insurance policies for the employees of Unitec New Zealand Ltd

(Unitec).¹ While I found that the insurance policies were not a contractual entitlement under the collective employment agreements, the defendant had failed to comply with its consultation obligations under the Employment Relations Act 2000 in removing those insurance policies.

[2] At the conclusion of my judgment, I stated that in the event the parties were unable to agree on costs, the plaintiffs would be able to apply for the same.

[3] The parties have now filed submissions.

[4] The Court has a broad discretion as to costs.² It uses a guideline scale to guide the exercise of that discretion.³

[5] The plaintiffs seek:

- (a) costs of \$26,529, based on the Court's guideline scale on a category 2, band B basis;
- (b) disbursements of \$268.78, being half of the filing fee in the Authority (\$35.78) and the filing fee in this Court (\$233); and
- (c) the sum of \$4,000 for the Authority hearing.

[6] The total sum claimed is \$30,797.78, which includes disbursements of \$268.78.

[7] The defendant opposes the costs sought by the plaintiffs and submits that they should lie where they fall, such that each party should be responsible for their own costs in relation to the Court hearing. In relation to costs in the Authority, it accepts

¹ *Tertiary Education Union v Te Pūkenga, New Zealand Institute of Skills and Technology t/a Unitec* [2025] NZEmpC 242.

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.

that Unitec should repay to the plaintiffs \$4,000 of the \$8,000 that had been awarded in that forum.

Costs in the Authority

[8] While the plaintiffs did not provide reasoning behind their claim for \$4,000 in costs in the Authority, the defendant has helpfully set out the basis on which it assumes this claim was made.

[9] The claim by the plaintiffs in the Authority related to two issues – the removal of car parking and the insurance benefits. The plaintiffs were unsuccessful in relation to both, but only challenged the determination in relation to the insurance benefits. The Authority awarded \$8,000 costs to the defendant, which the plaintiffs paid.

[10] Accordingly, on the basis that the plaintiffs have been successful in relation to their claim regarding the insurance benefits, it follows that half of that award should be refunded. In practical terms, this requires Unitec to repay to the plaintiffs \$4,000 of the \$8,000 already paid to it by them.

Costs in the Court

[11] Unitec argues that costs should lie where they fall in relation to the Court hearing on the basis that both parties achieved a measure of success.

[12] It submits that in this instance, it is not easy to determine who ‘won’ the case so as to be entitled presumptively to costs. It acknowledges that while costs usually follow the event, this is a situation where the overall success of the parties is mixed, in the sense that both parties can be described as having been partially successful. As such, it submits that costs should lie where they fall.

[13] It argues that while the plaintiffs were successful in overturning the Authority’s findings in relation to the consultation process, they were not successful in challenging the finding that the insurance policies were not contractual entitlements. It says that a substantial amount of time was spent on the issue of whether the insurance benefits were contractual entitlements, on which point it was successful, and that to award costs

for the entire proceeding would be unfair. In support of its argument, it relies on a number of cases in the Court such as *Health Waikato Ltd v Elmsly*,⁴ *Chief of New Zealand Defence Force v Darnley*,⁵ and *Preece v Synlait Milk Ltd*.⁶ It accepts that the Court is reluctant to assess costs on an issue-by-issue basis because in most cases it would not be practical to separate out the cost per issue from total costs incurred by the parties; however, the failure of a successful party on what it considers to be a large scale cannot be ignored.⁷

[14] The defendant says that while costs normally follow the event, on any analysis of the relative success of the parties it is properly described as mixed.

[15] Unfortunately, the plaintiffs did not file any submissions in reply, despite having been given the opportunity to do so. Accordingly, the Court does not have Mr Cranney's view on the position taken by the defendant.

[16] No issue was taken by the defendant with Mr Cranney's calculation pursuant to the guideline scale. However, it did make submissions on the time spent on what it considered to be the substantive issue of whether the insurance benefits were a contractual term, compared to the procedural issue of the consultation.

[17] I do not necessarily accept the defendant's apportionment of the time spent. A significant part of Unitec's evidence was focused on the process followed and the Court's questioning was largely directed at the same. The written submissions to which Mr Cook, counsel for the defendant, refers do not reflect the discussion between the Court and counsel in relation to potential issues arising from the consultation process. That said, the point is well made that not all costs were expended on a successful finding.

[18] I do not agree, however, that costs should lie where they fall. I consider that the plaintiffs were the successful parties in this case given the declarations that were made against the defendant; however, it is appropriate to reduce the costs to reflect the

⁴ *Health Waikato Ltd v Elmsly* [2004] ERNZ 172 (CA) at [36].

⁵ *Chief of New Zealand Defence Force v Darnley* [2022] NZEmpC 206.

⁶ *Preece v Synlait Milk Ltd* [2025] NZEmpC 53.

⁷ Citing *Health Waikato Ltd v Elmsly*, above n 4, at [44(3)].

relative outcomes of the parties in relation to the finding that the insurance benefits were not a contractual term. That was a significant finding in the defendant's favour.

[19] I consider that costs of \$15,000 are appropriate in the circumstances, together with disbursements of \$233 for the Court proceeding. This amount represents a fair apportionment given the parties' relative success. In relation to the Authority proceeding, as noted above, Unitec should repay to the plaintiffs \$4,000 (half of the Authority's award of \$8,000) and \$35.78 (half of the Authority filing fee).

Outcome

[20] The plaintiffs' claim for scale costs is partially successful, albeit on a reduced basis. It is wholly successful in relation to its claim for a reduction of costs in the Authority.

[21] Therefore, I order the defendant to pay the plaintiffs the sum of \$19,268.78 within 14 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 12.30 pm on 11 February 2026