

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

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

**[2026] NZEmpC 23
EMPC 31/2025**

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

AND IN THE MATTER OF an application for costs

BETWEEN HEALTHALLIANCE (NZ) LIMITED
 Plaintiff

AND MOSES SHELEG
 Defendant

EMPC 436/2025

IN THE MATTER OF an application for a compliance order

AND IN THE MATTER OF an application for costs

BETWEEN MOSES SHELEG
 Plaintiff

AND HEALTHALLIANCE (NZ) LIMITED
 Defendant

Hearing: On the papers

Appearances: R Upton, counsel for healthAlliance (NZ) Ltd
 Moses Sheleg in person

Judgment: 12 February 2026

COSTS JUDGMENT OF JUDGE KATHRYN BECK

[1] This judgment resolves Mr Sheleg’s application for costs following healthAlliance (NZ) Ltd’s (healthAlliance) discontinuance of a challenge to a

determination of the Employment Relations Authority,¹ which found that Mr Sheleg was an employee of healthAlliance. In its notice of discontinuance, healthAlliance expressly recognised that it was discontinuing the proceeding in light of the Supreme Court’s decision in *Rasier Operations BV v E Tū Inc.*²

[2] The parties have now filed submissions, and healthAlliance accepts that some costs are payable.

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

[4] Mr Sheleg seeks costs of \$18,500 and disbursements of \$729 based on the Court’s guideline scale on a category 2, band B basis, using the daily recovery rate for a party acting in person.⁵ He has separated his claim into two parts, being the costs related to the substantive proceeding (EMPC 31/2025) and the costs related to his application for a compliance order in relation to disclosure (EMPC 436/2025). He also seeks an uplift on scale costs to either band C or 50 per cent to reflect the way in which healthAlliance and its counsel conducted this challenge and the disclosure process. Accordingly, he seeks an award of \$27,750.

[5] healthAlliance accepts that costs should follow the event, being the discontinuance of its challenge. However, it takes issue with Mr Sheleg’s costs calculation. On its calculation of costs on a category 2, band B basis, it says that Mr Sheleg is entitled to costs of \$2,050, together with disbursements of \$349 for filing the application for a compliance order.

[6] It notes that Mr Sheleg has sought costs in relation to 23 memoranda filed by him. It disputes that such memoranda were necessary and accordingly argues that the time allocation sought in relation to those memoranda is excessive.

[7] healthAlliance also disputes a \$380 disbursement sought by Mr Sheleg for an affidavit in support of the compliance order. It argues the affidavit is not supported by

¹ *Sheleg v HealthAlliance N.Z. Ltd* [2024] NZERA 765.

² *Rasier Operations BV v E Tū Ltd* [2025] NZSC 162.

³ Employment Relations Act 2000, sch 3 cl 19.

⁴ Employment Court of New Zealand “Practice Directions” (1 September 2024)

<www.employmentcourt.govt.nz> at No 18.

⁵ High Court Rules 2016, sch 2 pt 2.

invoices, nor was it required. It does not accept much of what Mr Sheleg says about its conduct, particularly in relation to disclosure, and notes that the notice requiring disclosure was wide ranging and required consideration of over 100,000 documents.

[8] It accepts that an uplift may be appropriate but submits that such amount should be nominal. It says that a further \$1,000 to recognise additional delays in disclosure, would be appropriate. It submits that such an award of that nature accords with equity and good conscience.

[9] It is fair to say that the parties are a substantial distance apart. It is reflective of the way in which much of this litigation has been conducted.

[10] Accordingly, it is appropriate to approach this on a principled basis. The guidelines are of assistance in this instance. I set out my calculations below, utilising the guideline scale on a category 2, band B basis:

Step	Particulars	Allocated Days at \$500	Amount \$
EMPC 31/2025 - Challenge			
2	Commencement of defence to challenge by defendant	1.5	750
11	Preparation for first telephone directions conference	0.4	200
12	Filing memorandum for first or subsequent directions conference – three directions conferences were held (0.4 x 3)	1.2	600
13	Appearance at first or subsequent directions conferences (0.2 x 3)	0.6	300
22	Notice requiring disclosure	0.8	400
27	Inspection of documents	1.0	500

EMPC 436/2025 – Application for compliance order⁶			
28	Filing interlocutory application – application for compliance order	0.6	300
11	Preparation for first telephone directions conference	0.4	200
12	Filing memorandum for first or subsequent directions conference	0.4	200
13	Appearance at first or subsequent directions conferences	0.2	100
30	Preparation of written submissions	1.0	500
Total Costs		8.1	\$4,050

[11] As noted above, Mr Sheleg has sought costs in relation to all 23 memoranda he has filed in these proceedings. However, many of the memoranda were not at the direction of the Court; nor were they necessary. Further, while they were often only one to two pages in length, on many occasions they were repetitive of previous memoranda filed. While I accept that this was a product of frustration, it is not appropriate that costs be awarded in relation to each one filed. I will deal with disclosure issues, which were the source of the frustration, when considering the amount of an appropriate uplift.

[12] The Court has the power to order an uplift of scale costs where a party has conducted themselves in a manner tending to increase costs.⁷ It is accepted by healthAlliance that a modest uplift is appropriate in the circumstances

[13] I agree that this is an appropriate case for an uplift. The extraordinary delay in relation to disclosure and the failure to meet a number of deadlines resulted in many of Mr Sheleg’s interactions with the Court and a considerable amount of his time and energy being expended. I consider an uplift of 50 per cent, as sought by Mr Sheleg, is appropriate.

⁶ I have included all steps taken in relation to the compliance order sought by Mr Sheleg regarding disclosure.

⁷ Employment Court Regulations 2000, reg 68.

[14] I have reduced the scale costs sought by Mr Sheleg. On my calculations, as set out above, he is entitled to \$4,050. However, I have also found that there should be a 50 per cent uplift, which brings the total costs to \$6,075.

[15] Mr Sheleg is also entitled to the disbursements he is seeking. The filing fee is not disputed. healthAlliance takes issue with an affidavit filed. It was filed in support of Mr Sheleg's submissions seeking a compliance order. He incurred a modest cost in preparing and obtaining the affidavit. That cost, which is supported by invoices, should be met by healthAlliance.

Outcome

[16] Mr Sheleg's claim for scale costs is successful, albeit on a reduced basis. I also order an uplift. Therefore, within 14 days, healthAlliance is to pay to Mr Sheleg the sum of \$6,804, comprising:

- (a) costs of \$4,050 uplifted by 50 per cent to \$6,075; and
- (b) disbursements of \$349 and \$380, totalling \$729.

Kathryn Beck
Judge

Judgment signed at 9.30 am on 12 February 2026