



# Employment Court of New Zealand

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## Clark v Idea Services Limited [2014] NZEmpC 126 (11 July 2014)

Last Updated: 17 July 2014

### IN THE EMPLOYMENT COURT CHRISTCHURCH

#### [\[2014\] NZEmpC 126](#)

CRC 22/10

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

AND IN THE MATTER   of an application for costs

BETWEEN                WILLIAM STUART CLARK  
                                 Plaintiff

AND                        IDEA SERVICES LIMITED  
                                 Defendant

Hearing:                By memoranda of submissions filed on 8 October 2013  
                                 and 13  
                                 May 2014

Representatives   D Pine, counsel for plaintiff  
:                            P McBride, counsel for defendant

Judgment:            11 July 2014

### COSTS JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The plaintiff seeks an order that the defendant contribute to his legal costs and disbursements following an unsuccessful attempt by the parties to settle these between themselves.

[2] The delay in issuing this judgment is attributable to the parties' joint request to the Court to delay determining costs until after the defendant's application for leave to appeal to the Court of Appeal had been dealt with. That application for leave has now been refused by the Court of Appeal.<sup>1</sup>

[3] The defendant's opposition to being ordered to pay costs is comprehensive although it accepts both that Mr Clark should have an award and that the disbursements sought of \$751.32 can be properly awarded. The defendant's

opposition addresses the amount of any costs' order for the case on appeal and

proposes that it should have an award against Mr Clark for the Authority phase.

[4] The defendant submits that its claim to an order is warranted in the circumstances of its successful opposition to the remedy of reinstatement; its successful defence of the separate and what is described as the "spurious" suspension grievance; and Mr Clark's conduct of the case before the Authority including his breach of Authority orders.

[5] Mr Clark's challenge to the Authority's determination that he had been dismissed justifiably was successful although, for reasons set out in the primary judgment, his remedies were limited to a relatively modest \$15,500.<sup>2</sup>

[6] Mr Clark was ordered by the Authority to pay (and did pay) an award of costs and disbursements to Idea Services Limited (ISL) of

\$7,800. Given his success in the substantive proceedings, and the statutory setting aside of the Authority's determinations (including on costs) pursuant to [s 183\(2\)](#) of the [Employment Relations Act 2000](#) (the Act), the defendant must now repay or otherwise give credit to Mr Clark for that sum of \$7,800 and the Court must determine the question of costs in the Authority as well as on the challenge in this Court.

[7] Mr Clark's legal fees and disbursements in the Authority totalled \$8,716.06. For his challenge, which occupied 2.5 hearing days in this Court, his legal costs and disbursements totalled \$54,202.90.

[8] I deal first with the discrete matter of costs in the Authority. In its costs' determination in favour of the defendant, the Authority took, as its starting point, what it described as its "daily tariff" for a two day investigation meeting. This suggested a figure of \$7,000 excluding disbursements. It concluded that what it described as "Mr Clark's rather cumbersome approach to his claim" did contribute to increasing ISL's costs but it took into account also what it described as "Mr Clark's

reduced circumstances since the dismissal".<sup>3</sup> On that basis, costs were fixed at

\$7,000 with disbursements of \$800.<sup>4</sup> Mr Clark paid these sums to ISL.

[9] Although conceding both that Mr Clark should be entitled to costs on his proceedings in this Court and that this should be an award between \$10,000 and

\$15,000 plus disbursements of \$751.32, ISL claims that any award should be reduced by \$3,500 in respect of Mr Clark's proceedings against it in the Authority. That would reduce, by about half, the amount that was made by the Authority but that award was made on the assumption that Mr Clark's dismissal was justified. That position is no longer tenable and it would be an unusual case in which an employer, having dismissed an employee unjustifiably, would nevertheless be entitled to a not insignificant award of costs against that employee.

[10] ISL says, nevertheless, that the Court's decision should reflect its successful defence of Mr Clark's reinstatement application, the Authority's rejection of his unjustified suspension grievance, and Mr Clark's conduct of proceedings in that forum which included breaches of Authority orders.

[11] On the information available to me, I am not prepared to make the serious finding that Mr Clark breached Authority orders. He was, in effect, an unrepresented litigant in that forum, and some latitude should be allowed to him that might not be to a lawyer or a professional advocate.

[12] Although Mr Clark was unrepresented at the Authority's investigation meeting, it is clear that he incurred some legal costs in preparing his case and in dealing with interlocutory aspects of it. He is, therefore, entitled to a reasonable reimbursement of reasonable legal fees incurred in prosecuting his case there. I assess that contribution payable by the defendant to be the sum of \$1,500. In addition, Mr Clark is entitled to reimbursement of his Authority disbursements

(including its filing fee) of \$70 and any hearing fees paid.

<sup>3</sup> *Clark v Idea Services Ltd* ERA Christchurch CA112A/10, 17 December 2010 at [19].

<sup>4</sup> At [20].

[13] As already noted, in addition, ISL must either repay to Mr Clark the costs and disbursements ordered by the Authority in its favour and which Mr Clark has paid or, alternatively, the company must give credit to Mr Clark for those sums in the wash-up of implementing this Court's costs' orders.

[14] The plaintiff seeks a contribution towards what he says are his reasonable costs of representation of \$50,497.295 comprising a contribution of \$41,945.97, being two-thirds of his actual costs, together with disbursements of \$751.32, being the hearing costs paid to the Court on the challenge. Added to that should be the court filing fee of \$204.44.

[15] The defendant makes the point that Mr Clark did not challenge the Authority's determination dismissing his unjustified disadvantage (suspension) grievance. Counsel for the defendant submits that the plaintiff's own figures for his costs in submissions to this Court are inconsistent and difficult to reconcile. The defendant submits that the vast majority of Mr Clark's legal costs appear to have been contained in an account rendered to him only after the judgment of this Court was given and, therefore, in view of the known outcome of the case.

[16] Addressing the question of what may have been comparable costs assessed under the High Court Rules, the defendant says that, taking account of category 2B for first instance litigation, this may be a relevant but not determinative consideration. The defendant calculates the equivalent High Court figure would be

\$18,706 which is outside its range of suggested orders of between \$10,000 and

\$15,000.

[17] The amount of a costs' award for the challenge in this Court must reflect Mr Clark's success in having his dismissal found to have been unjustified, and the amount of costs reasonably incurred.. That assessment involves a reduction from the notional starting point of two-thirds of costs actually and reasonably incurred. It will, however, be more than the range of figures (between \$10,000 and \$15,000)

proposed by the defendant.

5 This sum appears to include an allowance for Authority costs awarded against him with which I deal separately in this judgment.

[18] I fix costs and disbursements in Mr Clark's favour on the challenge in the sum of \$25,000 together with disbursements of \$955.76 (being filing and hearing fees). As already noted, Mr Clark is also entitled to Authority costs and disbursements of \$1570 and to the reimbursement of the Authority costs' award paid by him.

GL Colgan  
Chief Judge

Judgment signed at 10 am on Friday 11 July 2014

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