



Employment Court of New Zealand

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Hatcher v Burgess Crowley Civil Limited [2020] NZEmpC 216 (4 December 2020)

Last Updated: 10 December 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[\[2020\] NZEmpC 216](#)

EMPC 310/2018

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	SHANE HATCHER Plaintiff
AND	BURGESS CROWLEY CIVIL LIMITED Defendant

Hearing: On the papers
Appearances: LE Hansen, counsel for plaintiff
T Wano, counsel for defendant
Judgment: 4 December 2020

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] The plaintiff, Mr Hatcher, filed a challenge to an Authority determination in October 2018.¹ He discontinued that challenge on 30 June 2020. The defendant, Burgess Crowley Civil Ltd (Burgess Crowley) now seeks costs. It bases its claim for costs on Category 2B in accordance with the Practice Direction Guideline Scale.² Using that categorisation it claims \$28,441.

[2] Mr Hatcher opposes the award of costs, submitting they should lie where they fall. First he says a settlement agreement entered into between the parties on 27 September 2017 included that “the parties will meet their own costs, regardless of

¹ *Hatcher v Burgess Crowley Civil Ltd* [2018] NZERA Wellington 81 (Member Loftus).

² Employment Court of New Zealand Practice Directions <www.employmentcourt.govt.nz> at No 16.

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outcome” for the wage and leave claims. He says the agreement is wide enough to include the costs subsequently incurred in the Employment Court.

[3] Alternatively, Mr Hatcher says that, should the Court find the settlement agreement does not extend to these proceedings, costs should be reduced having regard to the opposition by Burgess Crowley to Mr Hatcher pursuing some claims in the Court.³

[4] Mr Hatcher also says the amounts sought are excessive in the circumstances as the evidence filed in the Court is substantially similar to the witness statements filed in the Authority.

[5] Finally, Mr Hatcher seeks costs in relation to the opposition to the scope of the de novo challenge referred to above,

which opposition he says was frivolous.

[6] Burgess Crowley submits that the settlement did not and should not extend to the current Employment Court proceedings and notes that, by agreement, the Employment Court proceedings were assigned Category 2B for costs purposes. It says that the Judge's comments at a directions conference, on which Mr Hatcher relies to say the evidence would not require much amendment for the Court, were made regarding the use of the witness statements as submitted to the Authority for the purposes of a judicial settlement conference. It disputes that the costs sought are excessive.

[7] Burgess Crowley also opposes costs being awarded to the plaintiff in regard to the scope of the challenge, disputing that its opposition was frivolous.

[8] The Employment Court has a discretion as to costs which must be exercised in the interests of justice and in accordance with established principles. The Court is assisted by its Guideline Scale, which is intended to support the policy objective that costs are predictable, expeditious and consistent.⁴

3 *Hatcher v Burgess Crowley Civil Ltd* [2019] NZEmpC 5.

4 *Xtreme Dining Ltd (t/a Think Steel) v Dewar* [2017] NZEmpC 10, [2017] ERNZ 26 at [25].

[9] The settlement agreement in 2017 was directed to the Authority proceedings and to the settlement of Mr Hatcher's personal grievance. I do not accept it extends to the Employment Court proceedings, which the parties agreed would proceed on the basis of Category 2B costs.

[10] There have been two interlocutory judgments in this proceeding in which costs were reserved. In the first proceeding, dealt with on the papers, Mr Hatcher was successful.⁵ In the second judgment there was a hearing and Burgess Crowley was successful.⁶

[11] It is appropriate to recognise those results by deducting from the claim for costs, the steps for documents filed in relation to each set of proceedings. This reduces the time by 2.2 days.

[12] Further, Burgess Crowley's calculation does not reflect that, when the proceedings were commenced, the daily rate for Category 2B proceedings was \$2,230. The daily rate increased to \$2,390 on 1 August 2019. Using the lower rate for earlier steps also reduces the costs calculation.

[13] Finally, standing back and looking at the proceeding as a whole, I consider an appropriate sum for costs is \$20,000. Mr Hatcher is ordered to pay that amount to Burgess Crowley within 20 working days of the date of this judgment.

[14] There are no costs awarded on the application for costs.

J C Holden Judge

Judgment signed at 10.45 am on 4 December 2020

5 *Hatcher v Burgess Crowley Civil Ltd*, above n 2.

6 *Hatcher v Burgess Crowley Civil Ltd* [2019] NZEmpC 117.