



Employment Court of New Zealand

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Idea Services Limited v Crozier [2017] NZEmpC 135 (6 November 2017)

Last Updated: 9 November 2017

IN THE EMPLOYMENT COURT WELLINGTON

[\[2017\] NZEmpC 135](#)

EMPC 273/2016

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

BETWEEN IDEA SERVICES LIMITED Plaintiff

AND LYN CROZIER Defendant

Hearing: (on the papers filed on 30 June and 10 October
2017)

Appearances: P McBride, counsel for the plaintiff
G Ogilvie, advocate for the defendant

Judgment: 6 November 2017

COSTS JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] Idea Services Limited (ISL), formerly known as Timata Hou Limited (THL), successfully challenged a determination of the Employment Relations Authority (the Authority) in this Court.¹ In my substantive judgment of 19 June 2017, I concluded that the employer was substantively and/or procedurally justified in deciding to terminate Ms Crozier's employment on the grounds of medical incapacity.² I also concluded that there was no unlawful discrimination on the grounds of disability, by

reason of her dismissal. These conclusions reversed those of the Authority.

¹ *Crozier v Idea Services Ltd* [2016] NZERA Wellington 125.

² *Idea Services Ltd v Crozier* [\[2017\] NZEmpC 77](#).

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[2] Normally, a party in the position of ISL would be entitled to costs against the other party. However, Ms Crozier had received a grant of legal aid for the purposes of the investigation in the Authority and for the challenge in this Court, so that an order for costs could not be made against her.

[3] [Section 45\(2\)](#) of the [Legal Services Act 2011](#) (the LS Act), provides that no order for costs may be made against an aided person in a civil proceeding unless the Court is satisfied that there are exceptional circumstances. That possibility does not arise for consideration in the present case. Section 45(5) states:

If, because of this section, no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person's liability.

[4] Section 46(2) states that a party obtaining such an order:

... may apply to the [Legal Services] Commissioner in the prescribed manner for payment by the Commissioner of some or all of the difference between the costs (if any) actually awarded to that party against the aided person and those to which that party would have been entitled if section 45 had not affected the aided person's liability.

[5] For the purposes of these provisions, ISL therefore seeks an order specifying costs orders – in both the Court and the Authority – which would have been made against Ms Crozier, if she did not have the protection of the LS Act.

[6] Mr McBride, counsel for ISL, first sought orders with regard to the investigation meeting before the Authority. He said that although the investigation had been two days, extensive written submissions were then required to be placed before the Authority on the same matters as ultimately came before the Court. He said that the matter was accordingly akin to a three-day investigation meeting. The Court was asked to allow for three days, but at a rate of \$3,000 per day rather than the standard tariff rate of \$3,500 per day.

[7] With regard to the hearing in this Court, it was submitted that costs should be fixed having regard to the fact that the hearing spanned four days; and on the basis that Category 2, Band B were the appropriate classifications under the Costs Guidelines given by the Court in its Practice Note. He says that the correct

calculation under those Guidelines indicates a total of \$29,436. In addition, recognition of the following disbursements was sought:

Filing fee on challenge \$204.44

Hearing fee \$1,252.25

Photocopying and binding (agreed bundle) \$454.50

TOTAL \$1,911.19

[8] Mr McBride said that no claim had been advanced for second counsel, although junior counsel had appeared for ISL in the Court, or in respect of either a brief recall memorandum which was filed, or the present application for costs.

[9] Mr Ogilvie, the advocate for Ms Crozier, confirmed that she had been granted legal aid for the purposes of her claim in the Authority, and for the purposes of defending the challenge; otherwise no submissions were made for the purposes of the present application.

Costs in the Authority

[10] I have considered the details provided by Mr McBride as to the scope of the investigation. I have also considered the determinations issued by the Authority.³

[11] The substantive determination does not record any unusual features with regard to the investigation; and neither does the costs determination.

[12] In light of that material, I consider that an order for the purposes of s 45 of the LS Act should proceed on the basis that ISL is now entitled to an order for costs with regard to the Authority investigation; and on the basis of the time occupied by

the investigative process.

³ *Crozier v Idea Services Ltd*, above n 1; *Crozier v Idea Services Ltd* [2016] NZERA Wellington

149 (costs determination).

[13] There is no doubt that the two-day investigation should be allowed for. Mr McBride also submits that there were extensive submissions following the hearing, such as the Court was subsequently required to consider.

[14] My perusal of the substantive determination, and the range of submissions which it is recorded were filed following the investigation meeting, confirm that this must have been the case. I accept counsel's advice that a further day was devoted to these matters.

[15] Accordingly, I make an order specifying the order for costs which this Court would have made against Ms Crozier with regard to a costs challenge, had it been advanced and had the grant of legal aid not affected her liability. That order under s 45(5) of the LS Act is for \$9,000.

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[16] Having regard to the success achieved by ISL on its challenge, it is appropriate to proceed on the basis that an order for costs would have been made against Ms Crozier if she was not legally aided.

[17] I accept Mr McBride's submission that the necessary assessment should be carried out under the Court's Costs Guidelines.

[18] I have reviewed the time allocations. The steps relied on in Mr McBride's calculation are appropriate. Although the hearing occupied four days, that was appropriate having regard to the scope and complexity of the issues. There should, however, be one modification to the calculation advanced for ISL.⁴ A time allocation of two days is proposed for preparation of a list of issues and agreed bundle. The scale provides one day, which is appropriate for this case. Making this adjustment, the total is 12.2 days. Adopting the daily rate of \$2,230, the result is that an order should be made for costs in the sum of \$27,206.

[19] I agree with the quantum claimed in respect of disbursements, \$1,911.19.

4 Steps 1, 11, 22, 36, 37, 39 and 40.

[20] Accordingly, the total amount for the purposes of the order I now make in respect of the hearing of the challenge, under s 45(5) of the LS Act is \$29,117.19.

B A Corkill

Judge

Judgment signed at 4.30 pm on 6 November 2017

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