



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2017](#) >> [\[2017\] NZEmpC 93](#)

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## Lal v The Warehouse Limited [2017] NZEmpC 93 (3 August 2017)

Last Updated: 8 August 2017

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2017\] NZEmpC 93](#)

EMPC 81/2016

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

AND IN THE MATTER   of an application for costs

BETWEEN                 MEENA LAL Plaintiff

AND                         THE WAREHOUSE LIMITED  
   Defendant

Hearing:                 On submissions filed on 26 June, and 21 and 25 July  
   2017

Appearances:         G Bennett, advocate for plaintiff  
   M McGoldrick, counsel for defendant

Judgment:               3 August 2017

### COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

[1] The defendant has applied for costs against the plaintiff. The application follows the dismissal of a challenge to a determination of the Employment Relations Authority.<sup>1</sup>

[2] Mr Bennett, advocate for the plaintiff, accepts that costs should follow the event. However, it is submitted that a reduction is appropriate having regard to the plaintiff's asserted financial circumstances.

[3] During the course of an initial telephone directions conference it was agreed

that costs would be calculated applying Category 2 of the Court's guideline scale,

1. *Lal v The Warehouse Ltd* [\[2017\] NZEmpC 66](#); challenge from *Lal v The Warehouse Ltd* [2016] NZERA Auckland 78.

MEENA LAL v THE WAREHOUSE LIMITED NZEmpC AUCKLAND [\[2017\] NZEmpC 93](#) [3 August 2017]

absent good reason not to do so.2 As Mr McGoldrick, counsel for the defendant, points out, calculating costs according to the guideline scale would result in a total of

\$22,746, which is greater than two-thirds of the defendant's actual costs (which equate to \$19,429.46). In these circumstances, the defendant seeks the lesser amount.<sup>3</sup>

[4] I did not understand Mr Bennett to be taking issue with the quantum of costs actually incurred by the defendant, or the reasonableness of them. Rather, he submits that the plaintiff's financial situation ought to be taken into account as a discounting factor. In this regard it is said that the plaintiff is currently on ACC and has a number of personal commitments. Mr Bennett submits that any award of costs ought to be modest, although not identifying what a modest award of costs might be. It is also submitted that instalment

payments should be ordered to enable the plaintiff to meet any costs liability over time.

[5] While financial hardship may be relevant in determining costs, the Court has repeatedly emphasised that any such claim must be adequately supported. This includes evidence as to assets and liabilities, income and expenditure.<sup>4</sup> No such evidence has been filed in support of the claims made on behalf of the plaintiff and the information contained within the memorandum filed on the plaintiff's behalf is slim on specifics. As Mr McGoldrick points out, while the plaintiff seeks payment

by instalments, no details of how that might be achieved, including as to timeframe or periodic amounts, has been provided.

[6] While I accept that meeting a costs order of the magnitude sought by the defendant may present some difficulties for the plaintiff, I do not accept (based on the information before the Court) that she would be unable to pay or that the defendant should be denied a reasonable contribution to its costs in all of the

circumstances.

2 Employment Court of New Zealand Practice Directions "Costs - Guideline Scale" at 18;

[www.employmentcourt.govt.nz/legislation-and-rules/Practice directions](http://www.employmentcourt.govt.nz/legislation-and-rules/Practice%20directions)>.

<sup>3</sup> See, for example, *Xtreme Dining Ltd t/a Think Steel v Dewar* [2017] NZEmpC 10 at [32].

<sup>4</sup> See, for example, *O'Hagan v Waitomo Adventures Ltd* [2013] NZEmpC 58, [2013] ERNZ 124 at

[37]; *Hamon v Coromandel Independent Living Trust* [2014] NZEmpC 108 at [14]- [15].

[7] I am satisfied that an award of costs of \$19,429.46 is appropriate, together

with a contribution of \$350 in respect of the defendant's costs in applying for costs.

[8] As to the issue of instalment payments, even assuming that the Court has the power to make such orders in favour of a party in the plaintiff's position (a point which is unsettled),<sup>5</sup> I would not have been minded to do so having regard to the paucity of information before the Court.

[9] I did not understand the plaintiff to be taking issue with the disbursements sought by the defendant. I am satisfied that those disbursements have been necessarily incurred in these proceedings and are reasonable in amount. The plaintiff is accordingly ordered to pay the defendant the sum of \$904.61 in respect of disbursements.

[10] Finally, the plaintiff remains liable to pay the defendant the sum of \$5,250 as a contribution towards its costs in the Authority, as previously ordered.<sup>6</sup>

Christina Inglis

Chief Judge

Judgment signed at 1.30 pm on 3 August 2017

<sup>5</sup> *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 137 at [38]- [43]; *Fox v Hereworth School Trust Board* [2016] NZEmpC 39 at [57]- [80].

Note that while the High Court Rules make provision for instalment payments this is in limited circumstances, where judgment has already been entered and following an examination undertaken by the Court for enforcement purposes (see High Court Rules, r 17.17(1)(b)).

<sup>6</sup> *Lal v The Warehouse Ltd* [2016] NZERA Auckland 305.

---

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZEmpC/2017/93.html>