



Employment Court of New Zealand

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Martin v Solar Bright Limited (in liquidation) [2021] NZEmpC 53 (27 April 2021)

Last Updated: 30 April 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 53](#)

EMPC 312/2020

IN THE MATTER OF an application for rehearing
AND IN THE MATTER of an application for costs by
 Murray Spackman
BETWEEN PATRICK MARTIN
 Applicant
AND SOLAR BRIGHT LIMITED (IN
 LIQUIDATION)
 Respondent

Hearing: On the papers
Appearances: G Slevin, counsel for M Spackman
 P Martin in person
 M Taefi, counsel assisting the
 Court
Judgment: 27 April 2021

COSTS JUDGMENT OF JUDGE K G SMITH

[1] Murray Spackman successfully applied to be granted access to court documents in this proceeding.¹ He has now applied for costs.

[2] The application for costs was made by counsel's memorandum. After pointing out that costs are at the discretion of the Court pursuant to cl 19 of sch 3 to the [Employment Relations Act 2000](#), and reg 68 of the [Employment Court Regulations 2000](#), Mr Slevin's memorandum argued that costs should be awarded on a Category 2

¹ *Martin v Solar Bright Ltd (in liq)* [\[2021\] NZEmpC 36](#).

PATRICK MARTIN v SOLAR BRIGHT LIMITED (IN LIQUIDATION) [\[2021\] NZEmpC 53](#) [27 April 2021]

basis. He submitted that the application involved proceedings of average complexity requiring a representative of skill and experience considered average in the Court. His memorandum proposed that costs should be fixed by reference to Band B and the daily rate of \$2,390. A time allocation of 0.6 days was nominated under step 28 of the guideline scale for filing an interlocutory application and 0.3 days under step 34 for obtaining judgment without an appearance.² No further steps were claimed. This assessment resulted in a claim for costs of \$2,151.

[3] In response to Mr Slevin's memorandum a minute was issued noting that the amount claimed was not accompanied by a statement that it was less than the costs actually incurred by Mr Spackman. Mr Slevin provided a further memorandum confirming that, on reviewing his time records, the maximum amount that could be claimed was \$1,835 and amended the application accordingly.

[4] The Court has a wide discretion about costs.³ The discretion is to be exercised judicially and on a principled basis. To

assist the Court in exercising that discretion, the Guideline Scale was designed to ensure that costs are reasonably predictable, can be expeditiously assessed and are consistent. That said, the scale does not fetter the Court's discretion.

[5] The application for access to documents on the court file was made on a standard form available from the Employment Court Registry. The form was three pages long. Pages one and three contained Mr Spackman's name, the name of his counsel, contact details and a signature.

[6] Page two invited the applicant to write down the documents he or she wished to inspect. The information provided consisted of the name of the case, its file number, and a request to inspect:

Such documents on [the] court file as the Court deems appropriate to allow me access to on a confidential basis.

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

3 [Employment Relations Act 2000](#), sch 3 cl 19.

[7] The reasons given for this request were contained in three sentences on the same page. In the first sentence Mr Spackman referred to being involved in a High Court proceeding that may be affected by findings of this Court and mentioned having applied for leave to be represented in this proceeding for that reason. In the second sentence he said that being given access to the Court file at this stage may enable him to determine whether it is necessary to continue with and/or clarify the nature of his application for leave to be represented. In the third sentence he said he would receive any document to which he was given access on a strictly confidential basis.

[8] Aside from the application no other steps were taken by Mr Spackman. No submissions were made by him to support the application, which can be contrasted with Mr Martin filing a notice of opposition and submissions. Counsel assisting the Court, Ms Taefi, also made submissions.

[9] While some other attendances may have been necessary aside from completing the application, the paucity of information makes any attempt to assess the claim problematic. It is difficult to see how preparing such a brief informal application and considering a reasonably short judgment issued on the papers could justify time allocations under the scale of nearly a whole day. It is instructive that an inquiry about the expense actually incurred by Mr Spackman was responded to with information about time records rather than to fees incurred and paid.

[10] The application required greater explanation than was provided. There is insufficient information to justify an award of costs and the application is dismissed.

K G Smith Judge

Judgment signed at 3 pm on 27 April 2021

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