



# Employment Court of New Zealand

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## Packwood v ANZ Bank New Zealand Limited [2019] NZEmpC 164 (14 November 2019)

Last Updated: 18 November 2019

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

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

[\[2019\] NZEmpC 164](#)

EMPC 65/2019

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority  
BETWEEN HELEN PACKWOOD  
Plaintiff  
AND ANZ BANK NEW ZEALAND LIMITED  
Defendant

Hearing: (on the papers)

Appearances: Plaintiff, in person  
H Kynaston, counsel for the  
defendant

Judgment: 14 November 2019

### COSTS JUDGMENT OF JUDGE B A CORKILL

#### Introduction

[1] Ms Packwood's claim against ANZ Bank New Zealand Ltd (ANZ) was struck out in my judgment of 23 September 2019.<sup>1</sup>

[2] I reserved costs, provisionally indicating that these should be assessed on a Category 2, Band B basis, under the Court's Guideline Scale as to Costs.

[3] I invited the parties to resolve these issues directly, but directed that if this did not prove possible, an application could be made by ANZ.<sup>2</sup>

<sup>1</sup> *Packwood v ANZ Bank New Zealand Ltd* [\[2019\] NZEmpC 130](#).

<sup>2</sup> At [99].

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[4] Subsequently, counsel for ANZ, Mr Kynaston, advised the Court that agreement had not been reached, and that ANZ sought scale costs of \$6,931, on a Category 2, Band B basis.<sup>3</sup>

[5] Ms Packwood responded by stating that the appropriate classifications would be Category 1, Band A. Using the same time allocations as described in the scale, this resulted in a figure of \$2,703.

[6] She also outlined her financial circumstances, stating in effect that payment of costs would cause hardship. She also said that she had represented herself to ensure any costs were affordable and within budget. She urged the Court to recognise these circumstances.

[7] Mr Kynaston then submitted that a party's ability to pay can be a relevant factor when the Court exercises its discretion

as to costs.<sup>4</sup> He argued, however, that such a factor is not decisive and that the interests of both parties and broader public policy considerations must also be taken into account: *Tomo v Checkmate Precision Cutting Tools Ltd*.<sup>5</sup>

[8] It was also submitted that the Court could order an award to be paid in instalments,<sup>6</sup> or make an indefinite stay of an award while reserving leave for a successful party to apply to have that stay uplifted in the event the other party obtains remunerative employment, amongst other approaches.<sup>7</sup>

[9] Mr Kynaston went on to say that there was insufficient evidence before the Court as to impecuniosity, so that it would be difficult for the Court to evaluate Ms Packwood's submission. This resulted in her filing a helpful affidavit as to income and assets.

<sup>3</sup> Relying on Items 11, 12, 13, 28, 30 and 34 of the Guideline Scale.

<sup>4</sup> *Sheppard v Scan Audio New Zealand Ltd* [1999] NZEmpC 205; [1999] 2 ERNZ 374.

<sup>5</sup> *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2, [2015] ERNZ 196 at [22].

<sup>6</sup> *Nisha v LSG Sky Chefs New Zealand Ltd (No 1)* [2018] NZEmpC 8 at [276].

<sup>7</sup> *Chen v Banclogix Ltd* [2012] NZEmpC 28.

## Analysis

[10] Clause 19 of sch 3 of the [Employment Relations Act 2000](#) governs the award of costs in this Court. The principles are well established, as set out in Court of Appeal judgments such as *Victoria University of Wellington v Alton-Lee*;<sup>8</sup> *Binnie v Pacific Health Ltd*;<sup>9</sup> and *Health Waikato Ltd v Elmsly*.<sup>10</sup>

[11] The primary principle is that costs follow the event. It is well established that the costs discretion is broad, and one which is able to be exercised in light of the Court's equity and good conscience jurisdiction.<sup>11</sup> The Guideline Scale as to Costs is routinely regarded as a useful starting point in the exercise of the Court's discretion.

[12] On the issue of ability to pay, Judge Inglis said in *Tomo v Checkmate Precision Cutting Tool Ltd*:<sup>12</sup>

... While the approach to undue financial hardship in this jurisdiction is said to be based on the broad discretion conferred on the Court, supported by the statutory imperative that the Court exercise its powers consistently with equity and good conscience, there is a risk that the countervailing interests of the successful party (who might also be financially stretched) and broader public policy considerations become marginalised. The principles of equity and good conscience must transcend the interests of simply one party. A broader approach is required.

[13] The consideration of a party's ability to pay is of course a case-specific exercise.<sup>13</sup>

[14] I proceed in light of these principles.

[15] The first factual issue relates to the correct classifications.

[16] The Guideline Scale makes it clear that:

<sup>8</sup> *Victoria University of Wellington v Alton-Lee* [2001] NZCA 313; [2001] ERNZ 305 at [48].

<sup>9</sup> *Binnie v Pacific Health Ltd* [2003] NZCA 69; [2002] 1 ERNZ 438 at [14].

<sup>10</sup> *Health Waikato Ltd v Elmsly* [2004] NZCA 35; [2004] 1 ERNZ 172 at [17].

<sup>11</sup> *Health Waikato Ltd v Elmsly*, above n 10, at [45].

<sup>12</sup> *Tomo v Checkmate Precision Cutting Tools Ltd*, above n 5, at [16] (footnotes omitted).

<sup>13</sup> *Nisha v LSG Sky Chefs New Zealand Ltd (No 1)*, above n 6, at [271]; *Snowdon v Radio New Zealand Ltd* [2014] NZEmpC 180 at [78].

- a. Category 1 proceedings are those of a straightforward nature able to be conducted by a representative considered junior by the Employment Court.
- b. Category 2 proceedings are those of average complexity requiring a representative of a skill and experience considered average in the Employment Court.<sup>14</sup>

[17] I accept Mr Kynaston's submission that in the present instance, the proceeding should be classified as falling within Category 2.

[18] Next, the Guideline Scale also provides the relevant definitions as to what constitutes reasonable time when taking a

particular step in a proceeding. The Guideline states:

- a. Band A is appropriate if a comparatively small amount of time is considered reasonable; or
- b. Band B is appropriate if a normal amount of time is considered reasonable.<sup>15</sup>

[19] In my view, it is reasonable to consider that the steps undertaken by the defendant in the present case involved a normal amount of time; thus, Band B is the appropriate classification.

[20] There is no dispute as to the individual time allocations referred to. It follows that the correct assessment of scale costs on a 2B basis is \$6,931.

[21] It is evident from the financial information provided by Ms Packwood that she has limited income, in part, because she is studying as well as working; and few assets.

14 It is unnecessary to consider Category 3.

15 It is unnecessary to consider Band C.

[22] She proposed that the Court make an order of \$1,000 and give her six months within which to pay that sum at the rate of \$40 per week. As she points out, such a weekly payment would be a significant component of her current income.

[23] A further factor should be considered. Although Ms Packwood was diligent in the presentation of her case, it was also apparent she did not have an accurate appreciation of some of the legal concepts involved. However, she exercised a right to represent her own interests, and she should not be penalised for doing so. This is an access to justice issue.

[24] Turning to the position of ANZ, this is not a case where the financial circumstances of the successful party are relevant. However, I do take into account the costs it incurred. This was regrettable because after the challenge was brought, Mr Kynaston wrote to Ms Packwood inviting her to discontinue her proceeding saying it was misconceived and pointing out that if she did not do so, needless costs would be incurred. She did not withdraw her challenge, and ANZ incurred the costs involved in obtaining the order for strike out.

[25] In all the circumstances, I consider it appropriate to direct Ms Packwood to pay costs to ANZ in the sum of \$3,000, at the rate of \$40 per week, the first payment being due on 28 November 2019.

B A Corkill Judge

Judgment signed at 1.15 pm on 14 November 2019