



Employment Court of New Zealand

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Rungwanwilai (One) Kongbang v Lotus Touch Limited [2025] NZEmpC 18 (13 February 2025)

Last Updated: 19 February 2025

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2025\] NZEmpC 18](#)

EMPC 4/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs on application to set aside appearance under protest to jurisdiction
BETWEEN	RUNGWANWILAI (ONE) KONGBANG Plaintiff
AND	LOTUS TOUCH LIMITED First Defendant
AND	CRAIG JOHNSON Second Defendant

Hearing: On the papers
Appearances: D Fleming, counsel for plaintiff No
appearance for first defendant
No appearance for second
defendant
Judgment: 13 February 2025

COSTS JUDGMENT OF JUDGE KATHRYN BECK

(Application for costs on application to set aside appearance under protest to jurisdiction)

[1] Ms Kongbang was entirely successful in her application to set aside the appearance under protest to jurisdiction of the second defendant, Mr Johnson.¹ She now seeks costs from Mr Johnson. Her application is unopposed.

¹ *Kongbang v Lotus Touch Ltd* [\[2024\] NZEmpC 224](#).

RUNGWANWILAI (ONE) KONGBANG v LOTUS TOUCH LIMITED [\[2025\] NZEmpC 18](#) [13 February 2025]

[2] The Court's decision was delivered on 22 November 2024. The judgment concluded by stating that if the parties were not able to agree costs, Ms Kongbang would have 14 days from the date of the judgment to file a costs memorandum, and Mr Johnson would have a further 14 days to respond. Ms Kongbang filed a memorandum, but no memorandum has been filed by Mr Johnson. Mr Johnson was reminded of the timetable, but still nothing has been filed. Therefore, the matter was set down to be heard on the papers.

[3] The Court has a broad discretion as to costs.² It uses a Guideline Scale to guide the exercise of that discretion.³ Where a party is legally aided, they are entitled to scale costs or the amount of legal aid paid out by the Legal Services Commissioner, whichever is lesser.⁴

[4] Mr Fleming, counsel for Ms Kongbang, submitted that scale costs should be calculated on a category 2, band B basis. That category is appropriate. The legal issues involved in the application were complex, and that category was assigned to the matter in a minute of the Court.⁵

[5] Mr Fleming submitted that scale costs for Ms Kongbang come to \$9,321. However, the calculations provided do not reflect the Court's Guideline Scale. In particular, no directions conference was necessary as the parties filed a joint memorandum. I consider that the appropriate calculations are as follows:

Item	Step	Time	Cost
28	Filing interlocutory application	0.6	\$1,434.00
30	Preparation of written submissions	1	\$2,390.00
32	Appearance at hearing of defended application	0.25	\$597.50
	Total	1.85	\$4,421.50

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

3. "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

4 *Curtis v Commonwealth of Australia* [2019] NZCA 126 at [21]–[22].

5 *Kongbang v Lotus Touch Ltd* EmpC Auckland EMPC 4/2024, 28 May 2024 at [8].

[6] Mr Fleming has provided a copy of a legal aid invoice that indicates Ms Kongbang's actual costs on her application, including GST, come to \$4,350.74. Mr Fleming submitted, and I agree, that as her actual costs are lower than scale costs, Ms Kongbang should be awarded her actual costs, including the GST component.

[7] Therefore, I order Mr Johnson to pay Ms Kongbang costs of \$4,350.74 within 28 days of the date of this judgment.

Kathryn Beck Judge

Judgment signed at 9.30 am on 13 February 2025

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