



Employment Court of New Zealand

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Ways Electronics Limited v Sharma [2019] NZEmpC 150 (22 October 2019)

Last Updated: 26 October 2019

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

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

[\[2019\] NZEmpC 150](#)

EMPC 38/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	WAYS ELECTRONICS LIMITED Plaintiff
AND	SAURABH SHARMA Defendant

Hearing: On the papers

Appearances: J A Hope, counsel for plaintiff
S Sharma, in person

Judgment: 22 October 2019

COSTS JUDGMENT OF JUDGE B A CORKILL

[1] This judgment resolves a costs application which was made after the filing of a notice of discontinuance.

[2] Ways Electronics Limited (WEL) was dissatisfied with a determination of the Employment Relations Authority which found that the company should make various payments to Mr Sharma, for remedies relating to an unjustified dismissal, recovery of a premium under the [Wages Protection Act 1983](#), and payment of a penalty under that Act.1

[3] Eventually, WEL elected to file a notice of discontinuance of its challenge.

1 *Sharma v Ways Electronics Ltd* [\[2019\] NZERA 18](#).

WAYS ELECTRONICS LIMITED v SAURABH SHARMA [\[2019\] NZEmpC 150](#) [22 October 2019]

[4] In that document, Mr Hope, as counsel for the plaintiff, stated that as Mr Sharma had not been represented for the purposes of the challenge, there was no issue as to costs.

[5] Mr Sharma, however, considered that following the filing of the discontinuance, costs should in fact be paid to him.

[6] The normal rule is that legal costs of representation incurred by the opposing party may be claimed following the filing of a discontinuance: *Direct Auto Importers (NZ) Ltd v A Labour Inspector*.2

[7] An award of costs is made pursuant to the discretion which the Court possesses under cl 19 of sch 3 of the [Employment Relations Act 2000](#) (the Act) which states:

19 Power to award costs

- (1) The court in any proceedings may order any party to pay to any other party such costs and expenses (including expenses of witnesses) as the court thinks reasonable.
- (2) The court may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any

time vary or alter any such order in such manner as it thinks reasonable.

[8] Where a party is an unrepresented layperson, the general rule is that such a person cannot claim costs for their time: *Health Technology v MacDonald*,³ *Reid v New Zealand Fire Service Commission*,⁴ and *Reid v New Zealand Fire Service Commission*.⁵

[9] They may only claim for any expenses and disbursements they have reasonably and necessarily incurred: *Gibson v Department of Justice*.⁶ In *South Canterbury District Health Board v Milner*,⁷ a lay litigant was able to properly claim the legal costs incurred for the use of a solicitor who drafted and finalised a statement of defence following the evaluation of a statement of claim for the Court.

² *Direct Auto Importers (NZ) Ltd v A Labour Inspector* [2018] NZEmpC 39.

³ *Health Technology Ltd v MacDonald* [1993] 2 ERNZ 842.

⁴ *Reid v New Zealand Fire Service Commission* [1995] NZEmpC 192; [1995] 2 ERNZ 38.

⁵ *Reid v New Zealand Fire Service Commission* EmpC Wellington WEC22A/96, 16 July 1996.

⁶ *Gibson v Department of Justice* EmpC Wellington WEC58/94, 28 October 1994.

⁷ *South Canterbury District Health Board v Milner* EmpC Christchurch CC9A/02, 22 May 2002.

[10] Mr Sharma had told the Court that a lawyer had prepared relevant documentation pertaining to the challenge. Accordingly, in a minute of 22 August 2019, I stated that if a payment had been made for the rendering of those services, Mr Sharma should file and serve a copy of the applicable invoice; that document could then be considered by the company, and the Court, for the purposes of the costs application.

[11] This resulted in Mr Sharma advising that he was not in a position to provide an invoice, as he had been assisted in drafting legal documents by a friend who did not charge him. He said he had an informal arrangement to pay that person a percentage of any final award he received. He accordingly stated that his friend should be compensated for her time, regardless of whether he had in fact been able to pay for it.

[12] It is clear from cl 19 of sch 3 of the Act that the jurisdiction of the Court is to order the payment of “costs and expenses” where these have been incurred. Costs are different from compensation.

[13] Whilst I recognise Mr Sharma wants his friend to receive recompense for time taken in assisting him, I do not have jurisdiction to award such compensation.

[14] As a result, there will be no order for costs following the filing of the discontinuance.

B A Corkill Judge

Judgment signed at 12.15 pm on 22 October 2019

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