

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 122
EMPC 379/2021**

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

AND IN THE MATTER OF an application for costs

BETWEEN HENDERSON TRAVELS LIMITED (IN
LIQUIDATION)
Plaintiff

AND RAJWINDER KAUR
Defendant

AND FLIGHT EXPERTS NZ LIMITED
Costs Defendant

Hearing: On the papers

Appearances: No appearance for plaintiff
J M Douglas, counsel for defendant
No appearance for costs defendant

Judgment: 8 July 2024

COSTS JUDGMENT OF JUDGE K G SMITH

[1] On 27 September 2021, the Employment Relations Authority determined that Rajwinder Kaur had not been paid properly by her employer, Henderson Travels Ltd, and was unjustifiably dismissed.¹ The Authority ordered Henderson Travels to pay Ms Kaur for certain hours she worked, to reimburse her for a premium she paid in breach of s 12A of the Wages Protection Act 1983 and to pay compensation for

¹ *Kaur v Henderson Travels Ltd* [2021] NZERA 418 (Member van Keulen).

unjustified dismissal. The Authority additionally imposed a penalty on Henderson Travels and reserved the question of costs.²

[2] Henderson Travels unsuccessfully challenged the Authority's determination.³ In dismissing that challenge I accepted Ms Kaur's evidence and ordered uplifts in some of the compensatory claims and other payments the Authority ordered Henderson Travels to pay.⁴ Henderson Travels was ordered to pay Ms Kaur \$30,000 under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act), \$38,220 under ss 123(1)(b) and 128(3) of the Act, and to pay wages and holiday pay previously unpaid of a further \$9,702. The Authority's order that Henderson Travels had to repay to Ms Kaur the premium she paid was confirmed as was the penalty.

[3] Ms Kaur was the successful party in the challenge and is therefore entitled to costs. She has applied for them. Not surprisingly, given the plaintiff is in liquidation, no steps were taken by it in response to the application.

[4] On 24 May 2024, an order was made joining Flight Experts NZ Ltd to this proceeding for the purposes of making that company liable for costs.⁵ That judgment provided Flight Experts with an opportunity to respond to the costs application; it was allowed to file submissions in response within 21 days of being served with the judgment.

[5] Flight Experts was served with the judgment on 11 June 2024 but has taken no steps.

[6] Ms Douglas, who acts for Ms Kaur, supplied a memorandum itemising costs claimed in this proceeding by applying Category 2B from the Court's Guideline Scale. That category was provisionally assigned to the proceeding following a directions conference with counsel, including counsel then retained by Henderson Travels, prior to the hearing.

² Ms Kaur subsequently obtained an order for costs in the Authority; *Henderson Travels Ltd v Kaur* [2021] NZERA 584 (Member van Keulen).

³ *Henderson Travels Ltd v Kaur* [2023] NZEmpC 181.

⁴ At [104].

⁵ *Henderson Travels Ltd v Kaur (No 3)* [2024] NZEmpC 88.

[7] Ms Kaur has sought costs of \$38,728. She also sought reimbursement of \$5,060, paid for translation services for a recording and transcript used during the hearing.

[8] Ms Douglas' memorandum included information about the Authority's costs order that remains unpaid.⁶

Power to award costs

[9] The Court has a broad discretion as to costs conferred by sch 3 cl 19 to the Act. The discretion is augmented by reg 68(1) of the Employment Court Regulations 2000, enabling the Court to have regard to the conduct of the parties tending to increase or contain costs.

[10] To assist the Court in exercising the discretion a Guideline Scale is used with the objective being to achieve predictability, consistency and expediency in determining costs.⁷ The scale does not replace the Court's discretion.

Outcome

[11] I am satisfied that costs should be fixed on a Category 2B basis and that the steps claimed by Ms Kaur are appropriate with one exception. A minor adjustment is required to the claim as calculated, relating to step 29. That was a claim for filing a notice of opposition and supporting affidavit for a stay application. The amount claimed was for an allocation of two days but the guideline provides only for it to be calculated at 0.6 of a day. That minor adjustment reduces the amount able to be claimed to \$35,372.

[12] The claim for disbursements is justified. Ms Kaur was put to the expense of translating recorded conversations that were pivotal to the substantive proceeding. She is entitled to recover that expense.

⁶ The order joining Flight Experts applied only to costs of the proceeding in this Court; a claim that the company is liable for costs in the Authority is no longer pursued.

⁷ Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

[13] Henderson Travels Ltd (in liq) and Flight Experts NZ Ltd are jointly and severally ordered to pay to Ms Kaur costs of the proceeding in this Court of \$35,372 plus disbursements of a further \$5,060.

K G Smith
Judge

Judgment signed at 12.30 pm on 8 July 2024