

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

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

**[2024] NZEmpC 184  
EMPC 322/2023**

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

AND IN THE MATTER OF an application for costs

BETWEEN CARRINGTON RESORT JADE LP  
Plaintiff

AND GRAHAM MAHENO  
Defendant

Hearing: On the papers

Appearances: No appearance for plaintiff  
A Kersjes, advocate for defendant

Judgment: 27 September 2024

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**COSTS JUDGMENT OF JUDGE M S KING  
(Application for costs on good faith issues  
and security for costs application)**

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[1] This judgment deals with Mr Maheno's application for costs following the decision of the Court which dealt with issues surrounding the good faith report provided by the Employment Relations Authority at the Court's request and Mr Maheno's application for security for costs.<sup>1</sup>

[2] On 25 June 2024, Mr Kersjes, Mr Maheno's representative, filed a brief memorandum on costs which submitted that Mr Maheno has incurred \$17,075.20 in actual costs. He calculates that Mr Maheno is entitled to \$13,384 (being 5.6 days at

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<sup>1</sup> *Carrington Resort Jade LP v Maheno* [2024] NZEmpC 103.

Category 2B) in costs. It is not clear how Mr Kersjes has reached this figure. In his memorandum, Mr Kersjes seeks an uplift of Mr Maheno's costs on the basis that the plaintiff, Carrington Resort Jade LP (Carrington), has frustrated the Court proceedings by its inaction and repeated failure to adhere to directions and timetabling, which increased his costs. Mr Kersjes submits that given Mr Maheno attendances, and taking into account the plaintiff's actions, a costs award of \$15,000 is fair and reasonable in the circumstances.

[3] Carrington has not filed any submissions in respect of this application, despite the Court registry following up with its agent, Mr Tan.

### **Costs principles**

[4] The Court has a broad discretion as to costs.<sup>2</sup> The discretion is augmented by reg 68(1) of the Employment Court Regulations 2000, which enables the Court to have regard to the conduct of the parties tending to increase or contain costs.

[5] To assist the Court in exercising the discretion, a Guideline Scale is used with the objective of achieving predictability, consistency and expediency in determining costs. The scale does not displace the Court's discretion.<sup>3</sup>

### **Analysis**

[6] When considering the applicable Guideline Scale classification of this proceeding, I have reviewed the attendances of the parties, specifically those of Mr Maheno and his representative, in relation to the application for security for costs, which are set out in the table below.

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<sup>2</sup> Employment Relations Act 2000, sch 3 cl 19.

<sup>3</sup> "Employment Court of New Zealand Practice Directions" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

<b>Item</b>	<b>Event</b>	<b>Allocation</b>	<b>Sum, Daily Rate \$2,390</b>
11	Preparation for first directions conference	0.4	\$956
12	Filing Memorandum for first or subsequent directions conference	0.4	\$956
13	Appearance at first or subsequent directions conference	0.2	\$478
29	Filing interlocutory application for security for costs	0.6	\$1,434
30	Preparation of written submissions	1.0	\$2,390
	<b>Total:</b>	<b>2.6</b>	<b>\$6,214</b>

[7] In addition to the above, Mr Maheno reviewed the Authority's draft report but did not make any submissions on it. Brief submissions were filed in this Court when the report was being considered. On that basis, I consider that 0.8 days, allocated at a category 2B rate, are appropriate, equating to \$1,912.

[8] While Mr Maheno is entitled to costs, I am not persuaded that an uplift is justified in the circumstances. There is no clear connection between the alleged conduct of Carrington and the costs incurred by Mr Maheno that would make it responsible through that conduct for an uplift of costs.

[9] Accordingly, I am satisfied that the amount of \$8,126 should be awarded in accordance with category 2B of the Guideline Scale.

## **Outcome**

[10] Carrington is to pay Mr Maheno a total of \$8,126 in costs in relation to these two matters. Payment is to be made within 28 days of the date of this judgment.

M S King  
Judge

Judgment signed at 2.30 pm on 27 September 2024