

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

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

**[2025] NZEmpC 122
EMPC 119/2025**

IN THE MATTER OF a compliance order
AND IN THE MATTER OF an application for urgency
AND IN THE MATTER OF an application for costs
BETWEEN HEALTHALLIANCE NZ LIMITED
 Plaintiff
AND GARTH CUNNINGHAM
 Defendant

Hearing: On the papers

Appearances: R Upton, counsel for plaintiff
 G Cunningham in person

Judgment: 24 June 2025

INTERLOCUTORY COSTS JUDGMENT OF JUDGE M S KING

[1] This judgment resolves an application for costs. On 26 March 2025, the Court declined an application by the plaintiff, healthAlliance NZ Ltd, for urgency.¹ The judgment noted that Mr Cunningham was entitled to costs.²

[2] The Court has power to award costs.³ That power is guided by a guideline scale on costs which is intended to support, as far as possible, the policy objective that

¹ *healthAlliance NZ Ltd v Cunningham* [2025] NZEmpC 59.

² At [16].

³ Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

the determination of costs be predictable, expeditious and consistent.⁴ Where costs are sought by a self-represented party, the appropriate daily recovery rate is \$500 and applies irrespective of the complexity of the proceedings or skill of the self-represented party.⁵

[3] Mr Cunningham submitted that he should be entitled to indemnity costs of \$1,912 because of delays caused by healthAlliance in complying with a verification order made in relation to the broader proceedings between the parties. Considering the circumstances of the broader proceedings both parties are guilty of serious breaches of Court orders. I do not consider that it would be appropriate to award indemnity costs based solely on the plaintiff's actions in relation to the verification order. Further, indemnity costs reflect a party's actual costs. Based on the evidence before the Court I am not satisfied that the amount sought is reflective of Mr Cunningham's actual costs.

[4] Mr Cunningham did not file a notice of opposition or any other documentation in relation to the application for urgency. Therefore, under the guideline scale, he is only entitled to scale costs of 0.25 days for his appearance at the hearing of the application. Although he did not file any documents, I consider that he should be entitled to a further 0.5 days of scale costs for preparation for the hearing.

[5] Mr Cunningham sought \$472.50 in costs on his application for costs. Although the quantum sought by Mr Cunningham was excessive, I note that he made efforts to agree the matter with the plaintiff. The plaintiff, on the other hand, rejected his offer and stated that it was not willing to pay more than what the Court might award. There is no evidence of the plaintiff making any offer to pay any amount. In the circumstances, I consider that Mr Cunningham should be entitled to a further 0.25 days of scale costs for his actions taken in seeking costs.

[6] As a result of the above analysis, I conclude that Mr Cunningham is entitled to one day of scale costs, which amounts to \$500.

⁴ Employment Court of New Zealand "Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

⁵ High Court Rules 2016, sch 2 pt 2.

[7] healthAlliance NZ Ltd is ordered to pay \$500 in costs to Mr Cunningham within 14 days of the date of this judgment.

M S King
Judge

Judgment signed at 11.15 am on 24 June 2025