

[3] The company has now applied for costs. It seeks \$2,629 under the Court's Guideline Scale Category 2 Band A plus a further sum for preparing the submissions on costs of \$239. It seeks a further \$239 for what was described in the application as additional legal fees for time spent communicating with the plaintiff over missed timetable deadlines.² The total amount claimed by the defendant against the plaintiff is \$3,107.

[4] The plaintiff's response accepted that 2A is appropriate but considered the amount to be ordered should be \$478. The reason for that submission lies in a claim that a set off should be applied because costs previously awarded to the plaintiff are unpaid.³ The amount of \$478 is the difference once the suggested setoff is applied.

[5] The plaintiff also says there were unsuccessful attempts to negotiate costs, so it would be wrong to increase them to reflect the defendant's claims that additional expense was incurred and should be recompensed. An objection was also taken to the defendant's claim including attendances for preparing a memorandum for a directions conference when it was a joint memorandum.

[6] The Court has power to award costs.⁴ Exercising that power involves a discretion that is assisted by the Guideline Scale intended to support, as far as possible, the policy objective that determining costs should be predictable, expeditious and consistent.

[7] This proceeding was previously provisionally categorised as 2A in the Guideline Scale. The parties accept that costs should be fixed on that basis.

[8] The Court draws on the High Court Rules 2016 if a matter is not addressed in the Employment Relations Act 2000 or the Employment Court Regulations 2000.⁵ Under High Court r 15.23, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance unless an agreement is reached between them or the

² Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

³ *Hurrell v Menopaws Ltd t/a Number 8 Café* [2025] NZEmpC 88.

⁴ Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

⁵ Regulation 6.

Court otherwise orders. Rule 15.23 has its rationale in the discontinuance reflecting success of a sort for the defendant and recognises the presumption that costs follow the event.⁶

[9] I am not persuaded that there is any reason to depart from the presumption in favour of the defendant being awarded costs. There is no basis to apply a setoff of the sort invited; that is an issue of enforcement for the parties to consider, something at least inferentially accepted in submissions. Nor do I accept that an adjustment should be made because the directions conference memorandum was joint: it still needed to be prepared.

[10] Properly calculated the amount that could be ordered under the scale is \$2,629. The uncomplicated submissions do not justify making a further award for the costs of preparing them. I am not prepared to increase the costs claimed by the defendant for legal attendances for what was described as missing timetable directions. Both parties failed to adhere to the directions and in any event any related attendances are wrapped up in the overall costs award.

Outcome

[11] The plaintiff must pay to the defendant costs of \$2,629.

K G Smith
Judge

Judgment signed at 3.30 pm on 18 July 2025

⁶ See the discussion in David Bullock and Tim Mullins *The Law of Costs in New Zealand* (LexisNexis, Wellington, 2022) at 2.55.