

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

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

**[2025] NZEmpC 162
EMPC 359/2023**

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act 2000
AND IN THE MATTER OF	an application for costs
BETWEEN	POSTAL WORKERS UNION OF AOTEAROA INCORPORATED Plaintiff
AND	NEW ZEALAND POST LIMITED Defendant

Hearing: On the papers

Appearances: S Mitchell KC, counsel for plaintiff
H Kynaston and H Tevita, counsel for defendant

Judgment: 5 August 2025

COSTS JUDGMENT OF JUDGE K G SMITH

[1] The Postal Workers Union of Aotearoa Inc sought declarations pursuant to s 6(5) of the Employment Relations Act 2000 (the Act) on behalf of two named members, seeking to establish that they were employees of New Zealand Post Ltd. Those members, Michael Wood and Pamela Moat, consented to the proceeding being brought on their behalf.

[2] While the proceeding was brought on behalf of those members, the parties expected the judgment to have wider ramifications.

[3] The union’s claim was to be heard in Wellington on 24 February 2025. Previously two applications by NZ Post seeking to adjourn were declined.¹

[4] When the case was called on 24 February 2025, Mr Mitchell KC applied for an adjournment. He did so because, just before the scheduled start of the hearing, a confidential agreement was reached between NZ Post and Mr Wood. As a consequence, Mr Wood withdrew his consent for the union to act on his behalf.

[5] NZ Post opposed the application to adjourn and it was declined. In those circumstances, the union decided that it could not proceed. The proceeding was immediately discontinued, although costs remained a live issue.

[6] The parties have not been able to agree on costs and NZ Post has now applied for them.

The costs application

[7] NZ Post’s application sought costs against the union on a category 2B basis under the Court’s Guideline Scale.² The amount claimed was \$13,025.50. The claim allowed a credit to the union for the two unsuccessful applications by NZ Post seeking to adjourn.

[8] The union accepted that, if costs are payable to the company, they should be calculated on a 2B basis. It also accepted that the amount claimed takes account of each relevant step in the Guideline Scale and is arithmetically correct. However, the union considers that it would be in the interests of justice to decline the company’s application and instead to let costs lie where they fall.

¹ *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd* [2024] NZEmpC 235; and *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd (No 2)* [2025] NZEmpC 19.

² Employment Court of New Zealand “Practice Directions” (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

The Court's power to award costs

[9] The Court has power to award costs.³ Exercising that power involves a discretion that is assisted by the Guideline Scale, the purpose of which is intended to support, as far as is possible, the policy objective that determining costs should be predictable, expeditious and consistent.

[10] The Act and the Employment Court Regulations 2000 do not address liability for costs where the plaintiff discontinues. Where matters are not dealt with in the Act or regulations, the Court draws on the High Court Rules 2016.⁴ Under r 15.23, a plaintiff who discontinues must pay costs to the defendant of the proceeding up to and including the discontinuance unless an agreement is reached between them, or the Court otherwise orders.⁵ The rationale for this rule is that the discontinuance reflects, in a sense, success for the defendant and recognises the presumption that costs follow the event.⁶

NZ Post's submissions

[11] Mr Kynaston's submissions were straightforward. He relied on the Court exercising the discretion to award costs to NZ Post as the successful party because the claim was discontinued. Added to that submission was a comment that the union could have chosen to continue its action on behalf of Ms Moat who had not withdrawn her consent to act.

[12] Mr Kynaston submitted that issues as between NZ Post and Mr Wood were resolved and the settlement they reached was not relevant to costs. For completeness, he advised the Court that NZ Post's actual costs exceeded the amount claimed.

Postal Workers Union submissions

[13] Mr Mitchell began by describing the situation as more complex than is apparent simply because the union discontinued. He referred to the Court's broad

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

⁴ Employment Court Regulations 2000, reg 6.

⁵ High Court Rules 2016, r 15.23.

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

discretion allowing the conduct of the parties to be taken into account to increase or decrease costs. That was an invitation to a wider inquiry to ascertain whether there were circumstances displacing the presumption created by r 15.23.

[14] With that background, there were two broad planks to the union's response:

- (a) The relevance of the settlement with Mr Wood.
- (b) That the proceeding was a test case having scope beyond the interests of Mr Wood and Ms Moat.

[15] Mr Mitchell confirmed what was apparent when the case was called, namely, negotiations between NZ Post and Mr Wood excluded the union. Nevertheless, he submitted that there was an unusual feature of the settlement, because it appeared that an aspect of it was that NZ Post would pay (or perhaps reimburse) Mr Wood for costs he had agreed to contribute towards the union's participation in the litigation.

[16] Mr Mitchell considered that such an arrangement placed NZ Post in a position where it had funded Mr Wood's share of the costs payable to the union only to claim that share back through this application. That was the foundation for a request that the Court require the production of the settlement agreement, presumably for inspection and to enable further submissions.

[17] The second plank in the union's response was that the settlement disrupted hearing what the parties were treating as a test case relevant to the whole NZ Post workforce. The nature of the case went towards establishing that the discretion should be exercised to decline to award costs. Mr Mitchell relied on *Maritime Union of New Zealand Inc v TRNZ Ltd* and *Total Property Services (Canterbury) Ltd v Crest Commercial Cleaning Ltd*.⁷

⁷ *Maritime Union of New Zealand Inc v TRNZ Ltd* [2008] ERNZ 91; *Total Property Services (Canterbury) Ltd v Crest Commercial Cleaning Ltd* [2024] NZEmpC 21.

Analysis

[18] In this case, NZ Post has the benefit of the presumption in r 15.23 unless, in the interests of justice, it is displaced.

[19] I am not persuaded that the union's responses are sufficient to displace the presumption. First, what is in issue is an award of costs as a contribution to the expenses incurred by NZ Post. From Mr Mitchell's submissions it is clear that Mr Wood was contributing funding towards this litigation, although the form that took, and how much was involved, was not disclosed. Those arrangements are between the union and its member, but they are not material to the liability incurred by the union to NZ Post following the discontinuance. Costs are normally determined as between the parties. While the claim was brought on Mr Wood's behalf, he was not exposed to the risk of a costs award being made against him. It follows that any arrangements between Mr Wood and NZ Post are irrelevant.

[20] Second, the fact that the parties contemplated the litigation being a test case does not assist the union's position because the subject matter of the proceeding was never tested. Further, as was discussed in *Total Properties*, even if the litigation was a test case, it does not automatically follow that costs will lie where they fall.

Outcome

[21] I am satisfied that costs should be determined on a 2B basis. The Postal Workers Union of Aotearoa Inc is ordered to pay NZ Post Ltd costs of \$13,025.50.

K G Smith
Judge

Judgment signed at 2.15 pm on 5 August 2025