

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

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

**[2025] NZEmpC 174
EMPC 474/2023**

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

AND IN THE MATTER OF applications for costs

BETWEEN MELISSA JANE BOWEN
Plaintiff

AND NATIONAL AUSTRALIA BANK
LIMITED
First Defendant

AND ANTHONY HEALY
Second Defendant

AND ANNIE BROWN
Third Defendant

AND REBECCA LEE
Fourth Defendant

Hearing: On the papers

Appearances: M O'Brien and J Plunket, counsel for plaintiff
R M Rendle and J Grenheld, counsel for first and second
defendants
P Swarbrick, counsel for third and fourth defendants

Judgment: 14 August 2025

COSTS JUDGMENT OF JUDGE K G SMITH

[1] In December 2023, the Employment Relations Authority member, Rachel Larmer, declined to recuse herself from investigating a preliminary issue that had

arisen in proceedings brought by Ms Bowen against National Australia Bank Ltd, Mr Healy, Ms Brown and Ms Lee.¹

[2] Ms Bowen challenged that determination. All of the defendants filed protests to the jurisdiction of the Court to consider the challenge and applied to have the proceeding dismissed.² The protests were successful and the challenge was dismissed.³ Costs were reserved.

[3] All of the defendants applied for costs. Before they could be resolved Ms Bowen sought leave from the Court of Appeal to appeal the judgment dismissing the challenge. Pending resolution of the application for leave a stay was granted the effect of which was that the costs issue was temporarily unresolved.⁴

[4] The Court of Appeal dismissed Ms Bowen's application for leave to appeal on 27 June 2025.⁵ The terms on which the stay was granted meant that it automatically lapsed when the Court of Appeal judgment was issued.

[5] By minute dated 1 July 2025 timetable directions were issued providing an opportunity for Ms Bowen to file submissions responding to the applications for costs, provided that step was taken by 22 July 2025.

[6] Ms Bowen has not filed submissions. However, in February 2025, before the stay was granted, Ms Bowen's counsel filed a memorandum in which three comments pertinent to this decision were made. First, a minor error was noted in the costs memorandum filed on behalf of the first and second defendants. Second, counsel signalled an intention to address a comment made on behalf of the first and second defendants which anticipated Ms Bowen raising her financial means in response to the costs claim. Third, counsel raised the possibility that this litigation was about a test case which status might have some bearing on costs.

¹ *Bowen v National Australia Bank Ltd* [2023] NZERA 735.

² Ms Bowen also applied for a stay which was not necessary to resolve.

³ *Bowen v National Australia Bank Ltd* [2024] NZEmpC 234, [2024] ERNZ 1123.

⁴ *Bowen v National Australia Bank Ltd* [2025] NZEmpC 41.

⁵ *Bowen v National Australia Bank Ltd* [2025] NZCA 282.

[7] For completeness, the memorandum proposed a timetable for submissions tied to the outcome of the application for leave to appeal. That proposal was overtaken by the directions in the July minute and the elapsed time has now exceeded what was initially suggested on Ms Bowen’s behalf.

The Court’s power to award costs

[8] The Court has power to award costs.⁶ Exercising that power involves a discretion that is assisted by a 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.⁷

[9] While a costs award is discretionary, the primary principle is that they follow the event. That ordinarily means a successful party is entitled to a contribution to costs from the unsuccessful party.⁸

The costs applications

[10] The first and second defendants sought costs under the Court’s Guideline Scale on a Category 2B basis of \$13,503.50. The calculation took into account each of the steps from the guideline.

[11] The error identified by Ms Bowen’s counsel in the February memorandum was that a step for an appearance at the first directions conference was wrongly allocated 0.4 when the guideline provides for 0.2. That observation is correct and reduces the amount claimable to \$13,025.50.

[12] The third and fourth defendants sought \$4,660.50. This claim was also made using the Court’s Guideline Scale, but costs were sought on a Category 2A basis because they accepted that their case essentially “followed the lead” of the first and second defendants.

⁶ Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

⁷ Employment Court of New Zealand “Practice Directions” (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

⁸ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

[13] I am satisfied that it is appropriate to apply Category 2B to the claim by the first and second defendants and 2A to the third and fourth defendants.

[14] The two other comments made by Ms Bowen's counsel in the February memorandum need to be briefly touched on. First, her financial circumstances, whatever they might be, have not featured in this decision for the simple reason that the subject was not pursued.

[15] Second, while there was a suggestion that this proceeding is a test case that is not borne out either by the decision dismissing the challenge or the subsequent Court of Appeal judgment. Even if it might have been said that the subject matter of the challenge involved a test case, that may not be enough to decline or reduce costs.⁹

Outcome

[16] The applications for costs are successful. Ms Bowen is ordered to pay costs of \$13,025.50 to the first and second defendants and \$4,660.50 to the third and fourth defendants.

K G Smith
Judge

Judgment signed at 10.40 am on 14 August 2025

⁹ *Maritime Union of New Zealand Inc v TRNZ Ltd* [2008] ERNZ 91; and *Total Property Services (Canterbury) Ltd v Crest Commercial Cleaning Ltd* [2024] NZEmpC 21.