

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

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

**[2025] NZEmpC 18
EMPC 4/2024**

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

AND IN THE MATTER OF an application for costs on application to set
aside appearance under protest to jurisdiction

BETWEEN RUNGWANWILAI (ONE) KONGBANG
Plaintiff

AND LOTUS TOUCH LIMITED
First Defendant

AND CRAIG JOHNSON
Second Defendant

Hearing: On the papers

Appearances: D Fleming, counsel for plaintiff
No appearance for first defendant
No appearance for second defendant

Judgment: 13 February 2025

**COSTS JUDGMENT OF JUDGE KATHRYN BECK
(Application for costs on application to set aside appearance
under protest to jurisdiction)**

[1] Ms Kongbang was entirely successful in her application to set aside the appearance under protest to jurisdiction of the second defendant, Mr Johnson.¹ She now seeks costs from Mr Johnson. Her application is unopposed.

¹ *Kongbang v Lotus Touch Ltd* [2024] NZEmpC 224.

[2] The Court’s decision was delivered on 22 November 2024. The judgment concluded by stating that if the parties were not able to agree costs, Ms Kongbang would have 14 days from the date of the judgment to file a costs memorandum, and Mr Johnson would have a further 14 days to respond. Ms Kongbang filed a memorandum, but no memorandum has been filed by Mr Johnson. Mr Johnson was reminded of the timetable, but still nothing has been filed. Therefore, the matter was set down to be heard on the papers.

[3] The Court has a broad discretion as to costs.² It uses a Guideline Scale to guide the exercise of that discretion.³ Where a party is legally aided, they are entitled to scale costs or the amount of legal aid paid out by the Legal Services Commissioner, whichever is lesser.⁴

[4] Mr Fleming, counsel for Ms Kongbang, submitted that scale costs should be calculated on a category 2, band B basis. That category is appropriate. The legal issues involved in the application were complex, and that category was assigned to the matter in a minute of the Court.⁵

[5] Mr Fleming submitted that scale costs for Ms Kongbang come to \$9,321. However, the calculations provided do not reflect the Court’s Guideline Scale. In particular, no directions conference was necessary as the parties filed a joint memorandum. I consider that the appropriate calculations are as follows:

Item	Step	Time	Cost
28	Filing interlocutory application	0.6	\$1,434.00
30	Preparation of written submissions	1	\$2,390.00
32	Appearance at hearing of defended application	0.25	\$597.50
	Total	1.85	\$4,421.50

² Employment Relations Act 2000, sch 3 cl 19.

³ “Employment Court of New Zealand Practice Directions” <www.employmentcourt.govt.nz> at No 18.

⁴ *Curtis v Commonwealth of Australia* [2019] NZCA 126 at [21]–[22].

⁵ *Kongbang v Lotus Touch Ltd* EmpC Auckland EMPC 4/2024, 28 May 2024 at [8].

[6] Mr Fleming has provided a copy of a legal aid invoice that indicates Ms Kongbang's actual costs on her application, including GST, come to \$4,350.74. Mr Fleming submitted, and I agree, that as her actual costs are lower than scale costs, Ms Kongbang should be awarded her actual costs, including the GST component.

[7] Therefore, I order Mr Johnson to pay Ms Kongbang costs of \$4,350.74 within 28 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 9.30 am on 13 February 2025