

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

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

**[2025] NZEmpC 234  
EMPC 452/2024**

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

AND IN THE MATTER OF    an application for costs

BETWEEN                     JITBUG LIMITED (IN LIQUIDATION)  
   Plaintiff

AND                             ELISABETTA TURCONI  
   Defendant

Hearing:                     On the papers

Appearances:                No appearance for plaintiff  
   C Eggleston, counsel for defendant

Judgment:                    31 October 2025

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**COSTS JUDGMENT OF JUDGE M S KING**

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[1]     On 13 November 2024 the plaintiff, Jitbug Ltd (in liquidation) (Jitbug), filed a challenge to a determination of the Employment Relations Authority (the Authority).<sup>1</sup> The Authority determined that the defendant, Ms Turconi, was unjustifiably disadvantaged and unjustifiably dismissed from her employment by Jitbug. The Authority awarded Ms Turconi \$20,000 as compensation for hurt, humiliation and loss of dignity, \$8,100 in lost wages and holiday pay, and a \$5,000 penalty, which was to be paid to Ms Turconi. Jitbug filed a de novo challenge, in which it challenged the entirety of the Authority's determination.

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<sup>1</sup>     *Turconi v Jitbug Ltd* [2024] NZERA 630.

[2] On 13 March 2025 the parties attended a judicial directions conference, during which the key issues of the case were canvassed. This included questioning whether this was a hearing de novo, as Jitbug's statement of claim appeared to admit that it had unjustifiably disadvantaged and dismissed Ms Turconi. Jitbug's statement of claim focused on the fairness of the quantum of remedies and the penalty that the Authority awarded Ms Turconi. It appeared to describe the remedies and penalty as providing Ms Turconi with "retribution" and not "resolution" of her claims against Jitbug.

[3] During the directions conference, it was agreed that Jitbug would review its statement of claim and decide whether to file an amended statement of claim that clarified the scope and nature of its claims against Ms Turconi. Ms Turconi's representative, Mr Eggleston, indicated that Ms Turconi may file an application to strike out Jitbug's claim either, upon receipt of the amended statement of claim, or in the event Jitbug failed to amend its statement of claim. The parties also agreed to attend a judicial settlement conference.

[4] Jitbug did not file an amended statement of claim.

[5] On 22 May 2025 the parties attended a judicial settlement conference but were unable to reach a settlement.

[6] On 22 June 2025 Jitbug was placed into liquidation by way of a shareholders' special resolution.

[7] On 18 July 2025 the liquidators advised the Court that they did not consent to the current proceedings continuing.

[8] On 20 August 2025 Mr Eggleston filed a memorandum seeking costs for the discontinuation of the proceedings and the steps Ms Turconi was required to take prior to Jitbug's liquidation.

[9] The liquidators informed the Registrar that they did not intend to participate in resolving the issue of costs, other than to highlight that the proceedings are stayed by

operation of s 248 of the Companies Act 1993 and that a claimant is entitled to file their claim in the liquidation.

### **Can a costs application be made against a company in liquidation?**

[10] Section 248 of the Companies Act provides:

#### **248 Effect of commencement of liquidation**

- (1) With effect from the commencement of the liquidation of a company,—
  - (a) the liquidator has custody and control of the company's assets:
  - (b) the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Part:
  - (c) unless the liquidator agrees or the court orders otherwise, a person must not—
    - (i) commence or continue legal proceedings against the company or in relation to its property; or
    - (ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company:
  - (d) unless the court orders otherwise, a share in the company must not be transferred:
  - (e) an alteration must not be made to the rights or liabilities of a shareholder of the company:
  - (f) a shareholder must not exercise a power under the constitution of the company or this Act except for the purposes of this Part:
  - (g) the constitution of the company must not be altered.
- (2) Subsection (1) does not affect the right of a secured creditor, subject to section 305, to take possession of, and realise or otherwise deal with, property of the company over which that creditor has a charge.
- (3) This section is subject to section 139J(1) to (3) of the Banking (Prudential Supervision) Act 1989.

[11] Mr Eggleston submitted that s 248(1)(c) is not an impediment to the granting of costs in this case. He relied on the dicta in *Orakei Group (2007) Ltd (formerly, PRP Auckland Ltd) v Doherty (No 2)*<sup>2</sup> where this Court determined that if it remained only to determine costs after judgment had been given, the Court could do so. In *HR Processing 2008 Ltd (formerly known as Oss Ltd (in liq)) v Arthur*<sup>3</sup> this Court

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<sup>2</sup> *Orakei Group (2007) Ltd (formerly PRP Auckland Ltd) v Doherty (No 2)* [2008] ERNZ 505.

<sup>3</sup> *HR Processing 2008 Ltd (formerly known as Oss Ltd (in liq)) v Arthur* [2021] NZEmpC 158.

considered whether it could order costs arising from interlocutory applications that were brought by a party prior to it being placed into liquidation. The Court determined that there was no impediment to it determining the liability for costs which arose and was incurred by a party prior to it being placed into liquidation.<sup>4</sup>

[12] The Court's judgments in *Orakei* and *HR Processing* relied on the Supreme Court's decision in *Bradbury v Commissioner of Inland Revenue*<sup>5</sup> which referred to the observations of Lord Neuberger in *Re Nortel GmbH*<sup>6</sup>, with approval:

In my view, by becoming a party to legal proceedings in this jurisdiction, a person is brought within a system governed by rules of court, which carry with them the potential for being rendered legally liable for costs, subject of course to the discretion of the court. An order for costs made against a company in liquidation, made in proceedings begun before it went into liquidation, is therefore provable as a contingent liability under rule 13.12(1)(b) [corresponding to s 232(1)(b) of the Insolvency Act], as the liability for those costs will have arisen by reason of the obligation which the company incurred when it became party to the proceedings.

[13] The Supreme Court in *Bradbury* held that this logic was convincing, and that it was satisfied it should be followed in New Zealand.<sup>7</sup> It concluded that the liability for costs in respect of a proceeding initiated prior to adjudication should properly fall on that party, notwithstanding a liquidation or bankruptcy.

[14] The current proceedings were discontinued when Jitbug was placed into liquidation and its liquidators advised that they did not consent to the proceedings continuing. The Employment Relations Act 2000 and the Employment Court Regulations 2000 do not specifically deal with liability to pay costs on a discontinuance. In situations where the Regulations are silent on a subject, guidance can be obtained from the High Court Rules 2016.<sup>8</sup> Rule 15.23 of the High Court Rules provides that a plaintiff who discontinues proceedings must pay the costs of the defendant incidental to the proceeding up to and including the discontinuance.

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<sup>4</sup> *HR Processing 2008 Ltd*, above n 3, at [22].

<sup>5</sup> *Bradbury v Commissioner of Inland Revenue* [2015] NZSC 80, [2015] NZLR 739.

<sup>6</sup> *Re Nortel GmbH* [2013] UKSC 52, [2014] AC 209.

<sup>7</sup> *Bradbury*, above n 5, at [16].

<sup>8</sup> See Employment Court Regulations 2000, reg 6(2); and *Oliver v Biggs* [2025] NZEmpC 110 at [13]–[14].

[15] Applying r 15.23 and *Bradbury*, it is clear that Jitbug's actions in bringing the current proceedings and incurring liability for costs was initiated prior to it being placed into liquidation. Costs arising from the proceedings should therefore remain with Jitbug, notwithstanding it being placed into liquidation.

[16] Allowing costs to be determined against Jitbug in these circumstances is also consistent with the Court's equity and good conscience jurisdiction.<sup>9</sup> The relevant circumstances include that Jitbug was represented by its director Mr Phang throughout the Authority and Court proceedings. As such, it had not incurred legal expenses in bringing a challenge to the Authority determination, which it actively pursued prior to its liquidation. Ms Turconi on the other hand was represented by legal counsel throughout and incurred legal fees. She had little option but to defend the challenge and continue to incur legal fees.

[17] Jitbug's directors, Mr Phang and Ms Lau, who are also shareholders of Jitbug and the sole shareholders and directors of Jitbug's holding company,<sup>10</sup> made the intentional decision to pass a shareholder's resolution and place Jitbug into liquidation. This resolution occurred one month after the parties had attended a judicial settlement conference, where they were unable to reach an agreed settlement.

[18] I am satisfied that in these circumstances, the liability for costs arose from Jitbug's actions which occurred prior to it being placed into liquidation and allowing costs to be determined would be consistent with equity and good conscience. Although Ms Turconi obtained a determination from the Authority amounting to \$33,100, Jitbug subsequently challenged the determination without advancing a substantive basis and while appearing to accept Ms Turconi was unjustifiably dismissed. Once Jitbug was required to take substantive steps in the proceeding to clarify its position, it abruptly liquidated and left Ms Turconi responsible for legal costs incurred in defending the proceeding.

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<sup>9</sup> Employment Relations Act 2000, s 189.

<sup>10</sup> Jitbug Holdings Limited (New Zealand Company Number 5731628).

[19] In the present circumstances, the consent requirement under s 248(1)(c) of the Companies Act is not an impediment for making a costs award against Jitbug for pre-liquidation actions giving rise to Court costs.

### **Quantum of costs**

[20] The Court has a broad discretion as to costs.<sup>11</sup> The discretion is augmented by reg 68(1) of the Employment Court Regulations, which enables the Court to have regard to the conduct of the parties tending to increase or contain costs. To assist the Court in exercising the discretion, a guideline scale is used, the objective being to achieve predictability, consistency and expediency in determining costs. The scale does not displace the Court's discretion.<sup>12</sup>

[21] While the claim did not progress to a substantive hearing, Ms Turconi was required to take a number of steps prior to Jitbug's liquidation and the discontinuance of the proceedings.

[22] I assess the present proceedings to be of average complexity and that a normal amount of time for attendance was reasonable in the circumstances. Given this assessment, I find that the proceedings fall within a category 2, band B classification under the guideline scale. This is consistent with the memorandum of counsel filed by the defendant on 12 March 2025.

[23] Mr Eggleston has filed a memorandum setting out his assessment of costs under the Court's guideline scale. His assessment is based on a category 2, band B costs classification. A total of \$8,604 in costs is claimed on the following basis:

<b>Item No</b>	<b>Item</b>	<b>Days allocated by defendant</b>
2	Commencement of defence to challenge by defendant	2.0
10	Preparation for first case management conference	0.4

<sup>11</sup> Employment Relations Act 2000, sch 3 cl 19.

<sup>12</sup> "Employment Court of New Zealand Practice Directions" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

11	Filing memorandum for first case management conference	0.4
13	Appearance at first case management conference	0.3
15	Preparation for and appearance at pre-trial conference	0.5
<b>Total</b>		<b>3.6</b>

[24] However, the time allocations claimed under band B above do not align with those provided in the Court's guideline scale. The memorandum does not provide a sufficient explanation of the details of the pre-trial conference attendances that are being sought at item 15 of the table above.

[25] The table below sets out what I consider to be the attendances that can be reasonably claimed by Ms Turconi under the Court's guideline scale.

<b>Item No</b>	<b>Item</b>	<b>Allocated days under guideline scale</b>
2	Commencement of defence to challenge by defendant	1.5
11	Preparation for first directions conference	0.4
12	Filing Memorandum for first or subsequent directions conference	0.4
13	Appearance at first or subsequent directions conference	0.2
<b>Total</b>		<b>2.5</b>

[26] Based on the table above, the assessment of costs under category 2, band B would be \$5,975 (GST exclusive).

[27] Mr Eggleston is also claiming the GST element on the guideline scale. However, I do not have sufficient detail of the basis for him seeking indemnity costs, the amounts he has invoiced Ms Turconi, and confirmation that Ms Turconi is not able

to recover any GST component from his invoices. I also note that there is no application for costs on this application.

[28] In the circumstances, I consider it is just and reasonable to award Ms Turconi costs on the basis set out at [25] above. The liquidated plaintiff's liability is \$5,975. I make no order for costs on this application.

M S King  
Judge

Judgment signed at 10 am on 31 October 2025