

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

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

**[2025] NZEmpC 268
EMPC 508/2025**

IN THE MATTER OF an application for leave to extend time to file
 a challenge

BETWEEN JOHN MCDERMOTT
 Applicant

AND PENINSULA GROUP NZ LIMITED
 Respondent

Hearing: On the papers

Appearances: A Halse, advocate for applicant
 S Laphorne, counsel for respondent

Judgment: 10 December 2025

JUDGMENT OF JUDGE K G SMITH

[1] John McDermott lodged a claim in the Employment Relations Authority against his former employer, Employsure Ltd, alleging certain personal grievances. Since his claim was filed in the Authority the employer has changed its name to Peninsula Group NZ Ltd.

[2] All of Mr McDermott's claims were unsuccessful.¹ The Authority was satisfied that he was justifiably dismissed for redundancy. Costs were reserved.

[3] On 11 September 2023, the Authority dealt with two applications.² The first of them was by Mr McDermott who sought to have the Authority stay its decision

¹ *McDermott v Employsure Ltd* [2025] NZERA 187.

² *McDermott v Peninsula Group NZ Ltd (formerly Employsure Ltd)* [2025] NZERA 588.

about the costs of the investigation. The second application was by Peninsula Group for costs. The application for a stay was unsuccessful. The costs application succeeded and Mr McDermott was ordered to pay \$13,162.50 within 28 days of the determination.³

[4] On 25 October 2025, Mr McDermott applied for what was described in the application as leave to file a challenge “out of time”. Effectively, this was an application to extend time.

[5] Several reasons were given for the delay in taking steps, the first one of which was that its length was minimal at three working days. Most of the rest of the reasons concerned his advocate’s unavailability.

[6] The application was supported by an affidavit from an employee in CultureShift NZ, rather than the plaintiff, and a draft statement of claim. I pause to note that the draft statement of claim referred to seeking an order staying the determination of costs in the Authority but a similar application is not before the Court.

[7] Peninsula Group responded to the application, stating its intention to abide the Court’s decision.

Analysis

[8] Mr McDermott challenged the Authority’s substantive decision. That proceeding is scheduled to be heard on 23 February 2026. In that case, Mr McDermott sought a full rehearing of the substantive matter determined by the Authority, commonly called a *de novo* hearing. As well as making claims for compensation the relief sought included legal costs in his favour.

[9] In *Maheta v Skybus NZ Ltd*, the Court of Appeal held that costs awards are generally parasitic on the substantive determination to which they relate, in the sense that they are assessed on the basis that the determination is correct.⁴ In that case, the plaintiff elected to have the entire matter heard by the Court “*de novo*”, and the

³ At [24].

⁴ *Maheta v Skybus NZ Ltd* [2022] NZCA 516, [2022] ERNZ 1005 at [12].

remedies he sought included costs. The Court of Appeal noted that this Court must make its own decision on the matter and any relevant issues.⁵ The Court concluded that, if the substantive determination from the Authority is reversed, its costs decision cannot stand. The Court went on to say that, as with any appeal, a party challenging a substantive determination need not separately challenge an associated costs judgment if the only basis for the challenge is that the substantive determination which underpins it is incorrect.⁶

[10] The position would be different, however, if a party wishing to challenge the costs judgment is doing so on the basis that it is incorrect irrespective of the correctness of the underlying substantive determination.

[11] In this case, Mr McDermott's challenge to the Authority's substantive determination sought legal costs. It is apparent from the application to extend time, and the supporting draft statement of claim, that the reason for seeking to dispute the costs awarded against him is entirely connected with his disagreement about the correctness of the substantive determination.

[12] It follows that an application to extend time to challenge the costs determination was not required. Liability for costs arising from the Authority investigation depends on the outcome of the challenge to the substantive determination to be heard in February next year.

[13] In the circumstances where an application was not necessary, and the defendant abided the decision of the Court, there is no order for costs.

K G Smith
Judge

Judgment signed at 9.15 am on 10 December 2025

⁵ At [11]; referring to the Employment Relations Act 2000, s 183(1).

⁶ At [14]; and see *Parsot v Greig Developments Ltd* [2009] NZCA 241, (2009) 10 NZCPR 308; and *Reid v New Zealand Fire Service Commission* [2010] NZCA 133, (2010) 19 PRNZ 923.