

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

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

**[2025] NZEmpC 4  
EMPC 175/2024**

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

AND IN THE MATTER OF    an application for costs

BETWEEN                      LCNZ PONSONBY PTY LIMITED  
   Plaintiff

AND                                CELINA CALDEIRA  
   Defendant

Hearing:                      On the papers

Appearances:                G Frykberg, agent for plaintiff  
   M Moncur, advocate for defendant

Judgment:                    24 January 2025

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**COSTS JUDGMENT OF JUDGE M S KING**

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[1] This judgment resolves an issue as to costs following the plaintiff discontinuing the proceedings against the defendant.

**Background**

[2] These proceedings first came before the Court by way of a challenge to a determination of the Employment Relations Authority (the Authority).<sup>1</sup> A telephone directions conference was convened with the parties on 11 October 2024. At that conference the parties advised that they had negotiated an agreement which included

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<sup>1</sup> *Caldeira v LCNZ Ponsonby Pty Ltd* [2024] NZERA 255 (Member Blick).

the plaintiff, LCNZ Ponsonby Pty Ltd, discontinuing the proceeding against the defendant, Celina Caldeira.

[3] However, the parties are unable to agree on the issue of costs arising from this proceeding. The parties now seek the Court to determine the issue of costs.

[4] Ms Moncur, advocate for the defendant, acknowledges that the appropriate scale costs fall within category 2 band A, as set out in the Employment Court Guideline Scale.<sup>2</sup>

[5] The defendant's outline for costs is as follows:

<b>Item</b>	<b>Proceedings</b>	<b>Days</b>	<b>Total \$</b>
2	Commencement of defence to challenge by defendant	0.5	1,195
11	Preparation for first directions conference	0.2	478
13	Appearance at first or subsequent directions conference	0.2	478
28	Filing interlocutory application	0.3	717
	<b>Total</b>	<b>1.2</b>	<b>\$2,868</b>

[6] The defendant has provided invoices which include descriptions of the attendances undertaken. The descriptions include attendances relating to without prejudice communications. The invoices also show the defendant's actual costs of \$3,478.25 plus GST, which exceed the Guideline Scale costs of \$2,868.

[7] The plaintiff submits that the actual work performed by the defendant's advocate was minimal due to the parties reaching agreement to settle the proceedings. The plaintiff disputes the necessity of the attendances set out in the invoices provided by the defendant.

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<sup>2</sup> "Employment Court of New Zealand Practice Directions" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

## **Analysis**

[8] The Court has a discretion as to costs.<sup>3</sup> There is a presumption that a plaintiff who discontinues their challenge will pay the costs of the other party up to the date of the discontinuance, and this is not easily displaced.<sup>4</sup> However, case law establishes that there are circumstances where it is just and equitable that the defendant should not receive an award of costs.<sup>5</sup>

[9] The way the Court usually exercises its discretion is set out in its Guideline Scale. That scale supports, so far as is possible, the policy objective that determining costs should be predictable, expeditious and consistent. The scale is not, however, a replacement for the discretion of the Court.

[10] The defendant seeks costs on a category 2 band A basis. The proceedings were of average complexity and required a comparatively small amount of time. I consider the plaintiff's categorisation as appropriate in the circumstances. I also consider the steps claimed by the defendant in the Guideline Scale are appropriate.

[11] As noted above, the defendant's actual costs exceed those claimed by the defendant under the Guideline Scale. On balance, after having regard to the circumstances, I am satisfied that the amount of \$2,868 should be awarded in accordance with category 2 band A of the Guideline Scale.

## **Outcome**

[12] The defendant's application for costs is successful.

[13] I order the plaintiff to pay the defendant \$2,868 within 21 days of the date of this judgment.

M S King  
Judge

Judgment signed at 12.30 pm on 24 January 2025

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<sup>3</sup> Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

<sup>4</sup> High Court Rule 2016, r 15.23; and *Yarrall v Earthquake Commission* [2016] NZCA 517, (2016) 23 PRNZ 765 at [12].

<sup>5</sup> *Kroma Colour Prints Ltd v Tridonicatco NZ Ltd* [2008] NZCA 150, (2008) 18 PRNZ 973 at [12].