

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2025] NZEmpC 56
EMPC 303/2024**

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

AND IN THE MATTER OF an application for costs

BETWEEN SECRETARY FOR EDUCATION
 Plaintiff

AND PUBLIC SERVICE ASSOCIATION – TE
 PŪKENGA HERE TIKANGA MAHI
 INCORPORATED
 Defendant

Hearing: On the papers

Appearances: H Kynaston and R Doyle, counsel for plaintiff
 P Cranney, counsel for defendant

Judgment: 24 March 2025

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] The Secretary for Education succeeded in her non de novo challenge to a determination of the Employment Relations Authority. Costs were reserved but, if they could not be resolved between the parties, and the Secretary sought costs, the Court said she may apply for an order.¹ Costs have not been agreed and the Secretary now applies for an order.

¹ *Secretary for Education v Public Service Association – Te Pūkenga Here Tikanga Mahi Inc* [2024] NZEmpC 248.

[2] She seeks costs against the Public Service Association – Te Pūkenga Here Tikanga Mahi Inc (the PSA) of \$31,070. Those costs have primarily been calculated on a category 2, band B basis, although for some matters category 2, band A has been used.² The Secretary also seeks disbursements of \$500 in respect of filing fee and hearing fee, bringing the total sought to \$31,570.

[3] The Secretary confirms the actual legal costs incurred substantially exceed the scale costs claimed, and that those scale costs are substantially less than two thirds of the Secretary's actual costs.

[4] The PSA opposes costs. It submits that, while there is no rule which requires that costs automatically lie where they fall in cases resolving a dispute, this case concerned a poorly drafted agreement affecting a large number of employees; and there was a broader benefit in resolving the dispute. On that basis, it submits that the proceedings fall into an established category of cases in which there should be no order as to costs.³

[5] In the alternative, it submits that, if the Court considers costs to be appropriate, they should be modest. In particular, the PSA submits that there is no basis for a contribution for second counsel on the ground that the case was document-heavy. It notes that the bundles were largely the same as those used in the Authority. It points out that, in the Authority, the PSA was largely successful.

Costs are a matter of discretion

[6] The Court has a broad discretion as to costs.⁴ While the general rule is that a successful party is entitled to an award of costs, ultimately the Court's discretion allows it to allocate costs as it considers just in the particular circumstances of each case.

² "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.

³ See generally *Quality Service Enterprises Ltd v Huriwai & Anor* EmpC WC16A/05, 23 November 2005; *Hansells (NZ) Limited v Ma* [2007] ERNZ 637; and *Tertiary Education Union v Vice-Chancellor University of Auckland* [2016] NZEmpC 6, [2016] ERNZ 283.

⁴ Employment Relations Act 2000, sch 3, cl 19; and Employment Court Regulations 2000, reg 68.

[7] I acknowledge that, in some instances where there is a dispute between parties, particularly unions and employers, the successful party does not choose to seek costs or, where costs are sought, they are not awarded. That remains an exercise of the Court's discretion based on the circumstances of the case. The submission by the PSA that therein lies an established exception must be viewed with a degree of caution.⁵

[8] In these proceedings, the parties agreed in advance of the hearing that the proceeding should provisionally be assigned category 2 band B for costs purposes. I see no reason to ignore that agreement. By challenging the Authority's determination on a non-de novo basis, the Secretary limited the scope of the hearing. She was successful in her challenge.

[9] On balance, however, recognising the nature and the scope of the proceedings, I consider that some reduction in scale costs is warranted. In particular, I recognise that there was a public interest in resolving the ambiguities in the clauses in the parties' collective agreement concerning change management processes, especially as they apply to a significant number of employees. In my view, an appropriate award is \$23,000 together with disbursements of \$500.

[10] Accordingly, the PSA is ordered to pay the Secretary for Education a total sum of \$23,500 by way of costs and disbursements. That sum is to be paid within 28 days of the date of this judgment.

J C Holden
Judge

Judgment signed at 9 am on Monday 24 March 2025

⁵ *Tertiary Education Union v Vice-Chancellor University of Auckland*, above n 4, at [13]-[14].