

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

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

**[2025] NZEmpC 99
EMPC 355/2023**

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| IN THE MATTER OF | a declaration under s 6(5) of the Employment Relations Act 2000 |
| AND IN THE MATTER OF | an application for costs |
| BETWEEN | CRAIG BROWN Plaintiff |
| AND | THE CLINICIAN HOLDINGS LIMITED Defendant |

Hearing: On the papers

Appearances: M Kilkelly and W Fotherby, counsel for plaintiff
M McGoldrick, counsel for defendant

Judgment: 16 May 2025

COSTS JUDGMENT OF JUDGE M S KING

[1] This judgment resolves an application for costs filed by the plaintiff, Mr Brown, following Mr Brown's successful claim.¹

[2] The parties agree that Mr Brown is entitled to scale costs on a category 2 band B basis and disbursements. They also agree on the steps of scale costs and the quantum of disbursements that he is entitled to claim.

¹ *Brown v The Clinician Holdings Ltd* [2025] NZEmpC 48.

[3] However, they disagree whether he is entitled to an uplift as a result of GST being unrecoverable on those scale costs and disbursements. They agree on the applicable law but disagree as to whether GST is, in fact, unrecoverable by Mr Brown. After the issue was raised, Mr Brown filed an affidavit confirming that he was not GST registered, that he has paid his legal fees personally rather than through his company, and that GST is therefore not recoverable.

[4] In light of the affidavit filed by Mr Brown, I accept that GST is not recoverable by him. Accordingly, I consider that it is appropriate to uplift any award of costs to take into account that fact.²

[5] Mr Brown is therefore entitled to costs and disbursements totalling \$49,978.84.

[6] The defendant seeks to pay the costs award by eight instalments. It has filed evidence indicating that if it is required to pay the sums immediately, it will have cash flow difficulties and that it will struggle to pay salaries. Mr Brown, on his part, says that he will be prejudiced by such an order and that he is entitled to receive the costs award immediately.

[7] In the circumstances, I do not consider it to be appropriate to order payment by instalments. Mr Brown is entitled to receive the costs awarded to him promptly. If cash flow difficulties arising from payment would render the defendant insolvent, it is free to attempt to negotiate a payment schedule with Mr Brown directly, but that is a matter for the parties.

[8] Mr Brown on his part seeks interest on the costs awarded from the date of this judgment.³ Given that interest could only accrue from the date of this judgment and given that payment is to be made within 14 days, I do not consider it appropriate to make an award of interest.⁴ Of course, the parties are free to make other arrangements.

² *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282, (2016) 23 PRNZ 260 at [11]–[12] and [17].

³ Employment Relations Act 2000, sch 3 cl 14; and *Hines v Eastland Port Ltd* [2018] NZEmpC 111 at [33]–[35].

⁴ *Chesterfield Preschools Ltd v Commissioner of Inland Revenue* [2013] NZCA 44, [2013] 2 NZLR 499 at [20].

[9] The defendant is to pay Mr Brown the sum of \$49,978.84 within 14 days of the date of this judgment.

M S King
Judge

Judgment signed at 2.45 pm on 16 May 2025