



Employment Court of New Zealand

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Alkazaz v Enterprise IT Limited [2021] NZEmpC 224 (14 December 2021)

Last Updated: 18 December 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 224](#)

EMPC 100/2021

IN THE MATTER OF an application for leave to extend time
to file a challenge to a determination of
the
Employment Relations Authority
AND IN THE MATTER OF an application to strike out a party
AND IN THE MATTER OF an application to join parties
AND IN THE MATTER OF applications for costs

BETWEEN AHMED ALKAZAZ
Applicant
AND ENTERPRISE IT LIMITED
First Respondent
AND SERVIAN NEW ZEALAND LIMITED
Proposed Second Respondent
AND SVN HOLDCO PTY LIMITED
Proposed Third Respondent
AND COGNIZANT TECHNOLOGY SOLUTIONS
NEW ZEALAND LIMITED
Proposed Fourth Respondent

Hearing: On the papers
Appearances: A AlKazaz, applicant in person
R Bryant, counsel for Enterprise IT Ltd, Servian New
Zealand Ltd and SVN Holdco Pty Ltd
J Warren and C M Evans, counsel for Cognizant Technology
Solutions New Zealand Ltd
Judgment: 14 December 2021

AHMED ALKAZAZ v ENTERPRISE IT LIMITED [\[2021\] NZEmpC 224](#) [14 December 2021]

COSTS JUDGMENT OF JUDGE J C HOLDEN

(Interlocutory applications to strike out a party and to join parties)

[1] On 15 September 2021, an interlocutory judgment (no 3) was issued in relation to an application to strike out a party and an application to join parties.¹

[2] Mr AlKazaz was unsuccessful. Costs on the applications are now sought:

- (a) Enterprise IT Ltd (Enterprise IT), the first respondent, seeks an order of costs of \$3,318;
- (b) Servian New Zealand Ltd (Servian NZ), the proposed second respondent, seeks an order of costs of \$513.50;
- (c) SVN Holdco Pty Ltd, the proposed third respondent, does not seek an order for costs; and
- (d) Cognizant Technology Solutions New Zealand Ltd (Cognizant), the proposed fourth respondent, seeks an order for costs of \$4,541.

[3] Enterprise IT and Servian NZ also seek orders for costs in respect of the costs incurred in having to advance the application for costs. They seek \$684.50 and

\$750.50 respectively.

[4] Mr Bryant and Mr Warren both calculate costs under the Practice Directions Guideline Scale for a Category 2B matter as follows: 2

Scale of costs on a 2B basis			
Step	Action	Allocated Days	Amount
29	Filing opposition to interlocutory application	0.6	\$1,434
30	Preparation of written submissions	1	\$2,390
34	Obtaining judgment without appearance	0.3	\$717
Total		1.9	\$4,541

1 *AlKazaz v Enterprise IT Ltd* [2021] NZEmpC 152.

2 "Employment Court of New Zealand Practice Directions" <www.employment.govt.nz> at No 16.

[5] In respect of Enterprise IT and Servian NZ, the actual costs are less than those calculated and therefore are sought in full. Mr Bryant has attached the invoices and the Work In Progress (WIP) records to his memorandum, identifying the amounts charged and the relevant attendances.

[6] Mr Warren confirms that Cognizant's actual costs exceed scale costs, as calculated. Therefore, it seeks the amount calculated under the Scale.

[7] Mr AlKazaz's primary submission is that costs should lie where they fall. The key points Mr AlKazaz makes are:

- (a) he had a genuine reason for seeking the joinder of the proposed respondents, essentially being to access their relevant documents;
- (b) the Court should consider these novel driving factors in what was a test case;
- (c) the applications were pursued in good faith;
- (d) for these reasons, "there are no exceptional circumstances warranting an order that [Mr AlKazaz] pay costs".

[8] In the alternative, Mr AlKazaz says the costs claimed are excessive. He says Band A is the appropriate band here, there was duplication in effort between counsel, and that Cognizant has not provided any support for its application.³ Mr AlKazaz also submits that no costs should be awarded for the application for costs.

[9] The Court has a broad discretion when considering costs.⁴ To assist the Court in exercising its discretion it uses the Guideline Scale that is intended to support, as far as possible, the policy objective that determining costs should be predictable, expeditious and consistent.

3 Mr AlKazaz also refers to Cognizant having two counsel, but no claim for second counsel is made.

4 [Employment Relations Act 2000](#), sch 3, cl 19.

[10] Here, there were two applications to address. I consider the proceeding appropriately is classified as Category 2B. While I note that Mr AlKazaz is self-represented and accept that he made the applications in good faith, it was not a test case and the issues around access to documentation are not novel. Mr AlKazaz was entirely unsuccessful in his applications; they were misconceived.

[11] The general rule is that successful parties are entitled to an award of costs. A party cannot claim any more than its actual costs but where its actual and reasonable costs are less than scale costs, they may be recovered in full.⁵

[12] Servian NZ did not file separate submissions or have separate representation. I therefore look at the claims from Enterprise IT and Servian NZ in the round.

[13] I accept Cognizant was entitled to separate representation. I also accept counsel's statement that actual costs exceeded Scale costs, justifying a claim for Scale costs.

[14] I am not prepared to order costs for obtaining judgment without an appearance. Here, all parties made submissions and the judgment was issued without any further input from the parties. Scale costs then would be \$3,824.

[15] Using that figure, I award Enterprise IT costs of \$3,311.50 and Servian NZ costs of \$512.50.

[16] I award Cognizant costs of \$3,824.

[17] Mr AlKazaz is to pay the amounts identified in [15] and [16] by 14 January 2022.

[18] No order is made for costs on the applications for costs. While the Court does, on occasion, award costs for an application for costs, it does so relatively rarely, where the circumstances justify such an order, for example, where the successful party has

5 *Cornish Truck & Van Ltd v Gildenhuis* [2019] NZEmpC 57 at [9].

had to go to extraordinary lengths to pursue the issue of costs.⁶ No such circumstances exist here.

J C Holden Judge

Judgment signed at 2.15 pm on 14 December 2021

6. *Nisha v LSG Sky Chefs New Zealand Ltd (No 2)* [2018] NZEmpC 33, [2018] ERNZ 108, at [17]- [18]; *Head v Chief Executive of the Inland Revenue Department* [2021] NZEmpC 198, at [130].