



Employment Court of New Zealand

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Chen v WNY Group Limited [2023] NZEmpC 42 (16 March 2023)

Last Updated: 21 March 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2023\] NZEmpC 42](#)

EMPC 319/2021

| | |
|----------------------|--|
| IN THE MATTER OF | a challenge to a determination of the Employment Relations Authority |
| AND IN THE MATTER OF | an application for costs |
| BETWEEN | RAN CHEN Plaintiff |
| AND | WNY GROUP LIMITED First Defendant |
| AND | LI WU Second Defendant |

Hearing: On the papers
Appearances: Plaintiff in person
J Wickes, counsel for defendants
Judgment: 16 March 2023

COSTS JUDGMENT OF JUDGE KATHRYN BECK

[1] The defendants have applied for costs following their success in defending a challenge¹ brought by the plaintiff to a determination of the Employment Relations Authority.²

[2] The Court determined that the plaintiff, Mr Chen, was not an employee of the first defendant, WNY Group Ltd. The defendants were entirely successful. As a result, costs should follow the event.

1 *Chen v WNY Group Ltd* [2022] NZEmpC 227.

2 *Chen v WNY Group Ltd* [2021] NZERA 369 (Member Urlich).

RAN CHEN v WNY GROUP LIMITED [2023] NZEmpC 42 [16 March 2023]

[3] The parties have not been able to agree costs and have filed memoranda.

[4] The defendants submit that, as they were the successful parties, they are entitled to costs of \$23,900 with disbursements of \$2,325. They note that their actual costs were \$26,304 with disbursements of \$2,325.

[5] The defendants also observe that the challenge was initially set down for a two-day hearing on 3 and 4 May 2022 but that the hearing was adjourned to 14 and 15 June 2022 as a result of the plaintiff attempting to call a witness without having filed a brief of evidence for her. The defendants submit that these changes necessitated the revision of their evidence and associated bundle of documents. However, no increase of costs is sought.

[6] The plaintiff submits that the costs sought are unreasonable. He argues that:

- (a) costs have already been paid in the Authority and that the costs sought amount to “double charging”;
- (b) the defendants “benefited from multiple illegal activities”; and
- (c) the defendants chose the interpreter unilaterally without consulting him and he was dissatisfied with the interpretation and so should not have to contribute to the costs.

[7] Finally, he states that he is unemployed and submits that he should only be required to pay the defendants’ legal costs in instalments of \$10 per week. However, he has not provided any evidence as to his inability to pay an award of costs.

Law

[8] The starting point for costs in the Court is cl 19 of sch 3 to the [Employment Relations Act 2000](#). That provision confers a broad discretion as to costs and is augmented by reg 68(1) of the [Employment Court Regulations 2000](#), which enables the Court to have regard to the conduct of the parties tending to increase or contain

costs. A guideline scale has been adopted to guide the setting of costs.³ As the guidelines make clear, the scale is intended to support (as far as possible) the policy objective that the determination of costs be predictable, expeditious and consistent. However, the guideline scale is not intended to replace the Court’s ultimate discretion as to costs.

Analysis

[9] In a minute of 16 November 2021, this matter was provisionally assigned Category 2B for costs purposes under the guideline scale. The unorthodox financial relationship between the parties means that it is appropriate to treat this as a Category 2 matter, requiring a representative of average skill and experience. However, given the overall simplicity of the issues, I consider it appropriate to treat this as a band A matter rather than a band B matter.

[10] Costs on a Category 2A basis are as follows:

| Step | Particulars | Allocated Days at \$2,390 | Amount |
|--------------------|---|------------------------------|----------|
| 2 | Filing defence to challenge | 0.5 | \$1,195 |
| 11 | Preparation for directions conference | 0.2 | \$478 |
| 12 | Preparing Memorandum for directions conference 16.11.21 | 0.2 | \$478 |
| 13 | Appearance at directions conference 16.11.21 | 0.2 | \$478 |
| 36 | Preparation of briefs | 1 | \$2,390 |
| 38 | Preparation of common bundle | 0.5 | \$1,195 |
| 39 | Preparation for hearing | 1.5 | \$3,585 |
| 40 | Appearance at hearing 3.5.22 and 14–15.6.22 | 2.5 | \$5,975 |
| Total Costs | | 6.6 | \$15,774 |

3. “Employment Court of New Zealand Practice Directions” www.employmentcourt.govt.nz at No 16.

[11] Additionally, I consider that the defendants are entitled to a further increase of half a day in respect of the plaintiff’s conduct which led to the adjournment. This will increase the total costs to 7.1 days at \$2,390, which comes to \$16,969. This is slightly under two-thirds of actual costs. I consider this sum to be reasonable in the circumstances.

[12] Turning to consider the issue of disbursements, Mr Chen claims that he was not consulted about the interpreter and that he was deprived of the right to choose an interpreter. However, he was free to seek an independent interpreter but did not do so. Further, he benefitted from the services of the interpreter who assisted both parties. I consider that the interpreter provided helpful and professional services to the Court. Mr Chen did not raise any issues at the time. It is reasonable that he covers the cost of the interpreter.

[13] Finally, Mr Chen submits that he is unemployed and that he should only be required to pay any award of costs by instalments of \$10 per week. He has not provided any evidence that he cannot afford to pay any costs award. I note his evidence in Court during the substantive hearing was that he was in a sufficiently secure financial position and that the

scheme put in place, allegedly to obtain the benefit of the Government KiwiSaver subsidy,⁴ therefore made no sense, as it was not worth it for him. Further, if he only paid the costs and disbursements awards in instalments of \$10 per week, he would still be making payments in 37 years.

[14] That said, Mr Chen's application to pay by instalments is not unreasonable and has not been opposed by the defendants. I consider that payment by instalments of

\$200 per week is appropriate.

Outcome

[15] Mr Chen is ordered to pay the defendants \$19,294, being a contribution to costs

4 As argued by the defendant.

of \$16,969 and disbursements of \$2,325. This may be paid in instalments of no less than \$200 per week.

Kathryn Beck Judge

Judgment signed at 4.50 pm on 16 March 2023

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