



# Employment Court of New Zealand

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## Cooper v Phoenix Publishing Limited [2020] NZEmpC 12 (21 February 2020)

Last Updated: 26 February 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 12](#)

EMPC 120/2019

IN THE MATTER OF      an application under [ss 138\(6\)](#) and  
                                  [140\(6\)](#) of the [Employment Relations Act](#)  
                                  2000

AND IN THE MATTER    of an application for wasted costs

BETWEEN                MAREE COOPER  
                                  Plaintiff

AND                        PHOENIX PUBLISHING LIMITED  
                                  Defendant

Hearing:                On the papers

Appearances:        G Ogilvie, advocate for plaintiff  
                                  No appearance for defendant

Judgment:             21 February 2020

INTERLOCUTORY (NO 3) JUDGMENT OF JUDGE K G SMITH

(Application for wasted costs)

[1] The plaintiff has applied for a wasted costs order following the adjournment of the hearing in this proceeding on 19 December 2019.

[2] Ms Cooper has applied for orders under [s 140\(6\)](#) of the [Employment Relations Act 2000](#) because she says that her former employer, Phoenix Publishing Ltd, has failed to comply with a compliance order made in the Employment Relations Authority.

[3] The hearing was set down as a formal proof because Phoenix Publishing had failed to take steps in the proceeding. Belatedly, on the morning of the hearing, the defendant applied for leave to defend the proceeding and supported that application

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with an affidavit from its Director, Bronwyn Rawson. Among the subjects addressed in Ms Rawson's affidavit was a claim that the company had not been served with the proceeding. That claim meant the hearing could not proceed and it was adjourned.

Phoenix Publishing's application has now been struck out.<sup>1</sup>

[4] Ms Cooper applied for an order that she be reimbursed for the wasted costs for preparing for, and attending, the hearing. The claim is very modest; she seeks \$40.60 for mileage for the return trip from her home to the Court in Tauranga where her evidence was to be given and \$391 for her representative's preparation for the hearing. The combined total is \$431.60.

[5] In a minute of 3 February 2020 I directed that, if Phoenix Publishing wished to be heard on this application for wasted

costs, it was required to file submissions no later than 4 pm on Wednesday 19 February 2020. The company did not file submissions.

[6] This Court has a wide discretion to award costs. Wasted costs usually address two situations; where expenses have been incurred for work that will have no further benefit to the case of the party claiming those costs, or where it will be duplicated to prepare for a trial in future.<sup>2</sup>

[7] I am satisfied that Ms Cooper has been forced to incur expense that will need to be repeated to conclude this proceeding and has, therefore, been wasted.

[8] Phoenix Publishing is ordered to pay to Ms Cooper costs of \$431.60.

K G Smith Judge

Judgment signed at 3.30 pm on 21 February 2020

1 *Cooper v Phoenix Publishing Ltd* [2020] NZEmpC 11.

2. See *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 11, [2017] ERNZ 35 at [13]; referring to *Burgess v Monk* [2015] NZHC 1881 at [15].

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