



# Employment Court of New Zealand

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## Robinson v Pacific Seals New Zealand Ltd [2015] NZEmpC 162 (18 September 2015)

Last Updated: 23 September 2015

### IN THE EMPLOYMENT COURT WELLINGTON

#### [\[2015\] NZEmpC 162](#)

EMPC 175/2014

IN THE MATTER OF    an application for costs

BETWEEN                ALAN ROBINSON Plaintiff

AND                        PACIFIC SEALS NEW ZEALAND LTD  
                                 Defendant

Hearing:                On the papers filed on 5, 12 and 19 August  
                                 2015

Appearances:    T Kennedy, counsel for the plaintiff  
                                 J Tannahill, counsel for the defendant

Judgment:            18 September 2015

### COSTS JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The defendant applies for costs in relation to the plaintiff's unsuccessful challenge,<sup>1</sup> his unsuccessful application for a rehearing<sup>2</sup> and attendance at a Judicial Settlement Conference. The plaintiff submits that there should be no award of costs. The parties were encouraged to agree costs but have been unable to do so.

[2] The Court has a broad discretion as to costs.<sup>3</sup> While broad, the discretion is to be exercised judicially and in accordance with principles. The primary principle is that costs follow the event.<sup>4</sup> The usual starting point in ordinary cases is two-thirds of actual and reasonable costs. From that starting point factors that justify either an

increase or a decrease are assessed.

<sup>1</sup> *Robinson v Pacific Seals New Zealand Ltd* [2014] NZEmpC 99.

<sup>2</sup> *Robinson v Pacific Seals New Zealand Ltd* [2015] NZEmpC 84.

<sup>3</sup> *Employment Relations Act 2000*, Sch 3, cl 19.

<sup>4</sup> *Victoria University of Wellington v Alton-Lee* [2001] NZCA 313; [2001] ERNZ 305 (CA) at [48].

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[3] The application for costs stumbles at the first hurdle. That is because there is nothing before the Court to indicate whether the defendant has actually incurred any costs in defending the challenge or the application for rehearing,<sup>5</sup> despite this omission being squarely pointed out by Ms Kennedy, counsel for the plaintiff, in a memorandum on costs<sup>6</sup> and despite a reply to that memorandum being filed on behalf of the defendant.

[4] I am not satisfied that it is appropriate to make any order as to costs in the circumstances. I am unable to determine whether the defendant has incurred any costs and, if so, what any such costs have been. That, in turn, makes it impossible to assess what a reasonable contribution to costs might be.

[5] The defendant's application for costs is accordingly dismissed.

Judge

Judgment signed at 11.30 am on 18 September 2015

5 It is not the practice of the Court to order costs in relation to the voluntary attendance of parties at a Judicial Settlement Conference and no authority or basis for departing from such an approach was identified.

6 Referring to the general approach to costs in this Court and citing *Eastern Bay Independent Industrial Workers Union Inc v Pedersen Industries Ltd* AC11A/09 27 April 2009 in support of her submission that no costs ought to be ordered in the defendant's favour.

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