



Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2021](#) >> [2021] NZEmpC 182

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

Ututaonga v North Western Farms Limited [2021] NZEmpC 182 (21 October 2021)

Last Updated: 27 October 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 182](#)

EMPC 132/2021

| | |
|----------------------|--|
| 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 for costs |
| BETWEEN | RAYMOND AARON MARSHALL UTUTAONGA Applicant |
| AND | NORTH WESTERN FARMS LIMITED Respondent |

Hearing: On the papers

Appearances: S Henare, agent for applicant
E L Smith, counsel for respondent

Judgment: 21 October 2021

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] The applicant, Mr Ututaonga, was unsuccessful in his application for an extension of time to file a challenge to a preliminary determination of the Employment Relations Authority (the Authority).¹ The respondent, North Western Farms Ltd (North Western Farms), now seeks costs.

¹ *Ututaonga v North Western Farms Ltd* [\[2021\] NZEmpC 150](#).

RAYMOND AARON MARSHALL UTUTAONGA v NORTH WESTERN FARMS LIMITED [2021] NZEmpC

182 [21 October 2021]

[2] North Western Farms seeks:

- (a) \$6,250 for costs in the Authority, representing 1.5 days at the current Authority daily tariff rate;² and
- (b) an award of \$7,000 plus GST on a solicitor-client basis for actual time spent opposing Mr Ututaonga's application for an extension of time.

[3] The costs sought in the Court represent an increase on those that would be payable in accordance with the Costs Guideline Scale.³ The increased costs in the Court are sought on the grounds that:

- (a) the application was made unreasonably late;
- (b) the application included a significant amount of irrelevant and inadmissible information;
- (c) the application raised allegations of fraud, perjury and dishonesty without evidence or merit; and
- (d) the conduct of Mr Ututaonga and his agent, Mrs Henare, and the documentation filed in support of the

application unreasonably increased the amount of time required on the matter.

[4] North Western Farms have not provided a calculation of Scale costs and no costs categorisation was made. Given the level of complexity of this matter, it is appropriately categorised as Category 1A, leading to a Scale costs calculation of approximately \$3,400.

[5] Although Mr Ututaonga and his agent, Mrs Henare provided submissions in response to the application for costs, those submissions were not directed to matters the Court considers in such applications. Mr Ututaonga took exception to the way Ms

2 \$4,500 for the first day of an investigation meeting and \$3,500 for subsequent days.

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

Smith, counsel for North Western Farms, addressed Mrs Henare in her submissions.⁴ Other allegations about Ms Smith's conduct were made. Mr Ututaonga says he will not pay costs.

The Court has a discretion as to costs

[6] The Court has a discretion to order any party to pay any other party such costs and expenses as the Court thinks reasonable.⁵ It uses the Court's Guideline Scale to assist it, but that Scale does not replace the Court's ultimate discretion.⁶

[7] Costs generally follow the event and there is no reason for that not to be the case here.

No order for costs in the Authority

[8] In the Authority, North Western Farms submitted that Mr Ututaonga was out of time to raise his claims and it did not consent to him raising the claims out of time. Ultimately, the Authority found that Mr Ututaonga could pursue his claims for unpaid wages and in respect of deductions made from his final pay. He could not, however, pursue his personal grievance claims for unjustifiable dismissal or for a breach of good faith.⁷

[9] The Authority reserved costs on the preliminary matter, saying they will be determined following the conclusion of the substantive matter.⁸

[10] Although Mr Ututaonga has been dilatory in his pursuit of his claims in respect of his final pay and alleged unpaid wages, he advises he is going back to the Authority now.

4 As Ms Henare, rather than Mrs Henare.

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

6 *Xtreme Dining Ltd (T/A Think Steel) v Dewar* [2017] NZEmpC 10, [2017] ERNZ 26 at [25].

7 *Ututaonga v North Western Farms Ltd* [2020] NZERA 370 (Member E Robinson).

8 At [60].

[11] In those circumstances, it is appropriate for the Authority to continue with its process and to consider costs following the conclusion of the substantive matter, as it has indicated.

North Western Farms entitled to costs in the Court

[12] Although I have found that the correct categorisation for costs in accordance with the Scale would be Category 1A, I also accept that an increase in costs is warranted. There was a significant amount of irrelevant and inadmissible material provided by Mr Ututaonga, much of which comprised serious allegations about North Western Farms, its director and its counsel. This increased the work required for North Western Farms to respond.

[13] I do not accept, however, that the GST on North Western Farms's legal costs is payable by Mr Ututaonga. North Western Farms's legal costs would be a business expense for the purposes of taxation and so the GST would be recoverable.

[14] On balance, taking all matters into account, I make an order that Mr Ututaonga pay North Western Farms the sum of

\$4,500 for costs within 20 working days of the date of this judgment.

[15] North Western Farms has not applied for costs on its application for costs and no order is made in respect of those.

J C Holden Judge

Judgment signed at 4.30 pm on 21 October 2021

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZEmpC/2021/182.html>