



Employment Court of New Zealand

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Young v Port of Tauranga Limited [2025] NZEmpC 84 (30 April 2025)

Last Updated: 5 May 2025

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2025\] NZEmpC 84](#) EMPC 51/2024

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority AND IN THE MATTER OF an application for costs

BETWEEN STUART YOUNG

Plaintiff

AND PORT OF TAURANGA LIMITED

Defendant

Hearing: On the papers

Appearances: No appearance for the plaintiff

J Delaney, counsel for the defendant

Judgment: 30 April 2025

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] In my judgment dated 17 January 2025, I allowed the Port of Tauranga to apply for costs if they could not be agreed between the parties.¹ Costs have not been agreed and the Port now applies for an order.

[2] Stuart Young has applied for leave to appeal the judgment. That application was accepted for filing by the Court of Appeal on 1 April 2025, well outside the 28-day period provided for in [s 214\(2\)](#) of the [Employment Relations Act 2000](#). Therefore, he also must obtain leave to apply out of time.

¹ *Young v Port of Tauranga Ltd* [\[2024\] NZEmpC 2](#) at [\[66\]](#).

STUART YOUNG v PORT OF TAURANGA LIMITED [\[2025\] NZEmpC 84](#) [30 April 2025]

[3] Mr Young has made no submissions in respect of costs. When this was raised with Mr Young's representative, Ms Lambert, it seems she thought that the filing of the application for leave to appeal automatically stayed the proceedings, which is not the case. On 4 April 2025, the Court advised Ms Lambert that, in the absence of a stay, costs will be determined. She was told that if Mr Young wished to apply for a stay, he was to do so within seven days of that date. No application for a stay has been filed.

[4] Accordingly, this judgment deals with the Port's application for costs.

[5] The Court has a broad discretion as to costs.² It is, however, assisted by the guideline scale, which is intended to support, as far as possible, the policy objective that the determination of costs is predictable, expeditious and consistent.³

[6] Mr Delaney, counsel for the Port, notes that in a joint memorandum dated 18 April 2024, the parties agreed that the appropriate costs categorisation for the proceedings under the guideline scale was category 2B. He says, and I accept, that remains appropriate.

[7] Mr Delaney's calculation of costs is:

Item Description

Days

2

Commencement of defence by defendant

1.5

**Amount at Daily rate of
\$2,390**

\$3,585

11

Preparation for first directions conference

0.4

\$956

12

Filing memorandum for first or subsequent

directions conference x 2

0.8

\$1,912

20

Notice to admit facts (preparation of agreed

statement of facts)

0.8

\$1,912

35

Preparation of briefs of evidence

2.0

\$4,780

² [Employment Relations Act 2000](#), sch 3, cl 19; and [Employment Court Regulations 2000](#), reg 68.

³ "Employment Court of New Zealand Practice Directions" at No 18.

36

Preparation of list of issues, agreed facts,

authorities and common bundle

2.0

\$4,780

38

Preparation for hearing

2.0

\$4,780

39

Appearance at hearing for sole or principal

counsel

3.0

\$7,170

40

Appearance at hearing by second representative

1.5

\$3,585

TOTAL COSTS

\$33,460

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[8] The Port also seeks \$212.74 as disbursements to cover the expenses for preparing the bundle of documents.

[9] In his submissions, Mr Delaney submits that it was appropriate for the claim under item 20 to be made as it relates to the agreed statement of facts prepared by counsel for the Port. However, item 36 includes time for the preparation of agreed facts. The claim for item 20 is therefore not accepted.

[10] I accept, however, that as the Port prepared the common bundle and list of issues, as well as the agreed facts, it was appropriate for the time allocation for those matters to be two days, rather than the one day usually allowed for a defendant.

[11] Finally, at item 40, the Port seeks an allowance for the appearance of second counsel. As Mr Delaney acknowledges, the default position is that provision is made for only one counsel in a proceeding; for category 2 cases, there must be some exceptional feature to justify a second counsel allowance.⁴

[12] Nevertheless, he submits that the broadly-pleaded nature of the claim required preparation for multiple potential areas of evidence, cross-examination, and submission, and that second counsel had institutional knowledge of previous evidence provided by a witness introduced late by Mr Young.

⁴ *Prattley Enterprises Ltd v Vero Insurance New Zealand Ltd* [2017] NZHC 1599, (2017) 23 PRNZ

484 at [44]-[45].

[13] I have no doubt that second counsel provided valuable assistance to the Port and to the Court, particularly in view of the issues identified by Mr Delaney in the application for costs. On balance, I consider that it is appropriate to recognise that by allowing \$1,500 for item 40 in the costs calculation.

[14] The remainder of the costs and disbursements sought are reasonable and accepted.

[15] Accordingly, Mr Young is ordered to pay the Port of Tauranga \$29,463 as costs, together with \$212.74 for disbursements, leading to a total of \$29,675.74. Unless otherwise agreed between the parties, that sum is to be paid within 28 days of the date of this judgment.

Judgment signed at 11.30 am on 30 April 2025

J C Holden Judge