

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2022] NZEmpC 229  
EMPC 130/2019**

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN AHMED ALKAZAZ  
Plaintiff

AND DELOITTE (NO. 3) LIMITED (formerly  
known as ASPARONA LIMITED)  
First Defendant

AND DELOITTE LIMITED  
Second Defendant

AND DELOITTE (NO. 1) LIMITED (formerly  
known as DELOITTEASPARONA  
LIMITED)  
Third Defendant

Hearing: On the papers

Appearances: Plaintiff in person  
J Hardacre and D Findlay, counsel for defendants

Judgment: 9 December 2022

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**COSTS JUDGMENT OF JUDGE KATHRYN BECK**

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[1] The defendants in these proceedings successfully defended<sup>1</sup> the challenge brought by Mr AlKazaz to both a substantive determination and a costs determination of the Employment Relations Authority.<sup>2</sup>

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<sup>1</sup> *AlKazaz v Deloitte (No 3) Ltd (formerly known as Asparona Ltd)* [2022] NZEmpC 171.

<sup>2</sup> *AlKazaz v Asparona Ltd* [2019] NZERA 215 (Member Campbell) (substantive); and *AlKazaz v DeloitteAsparona Ltd* [2019] NZERA 456 (Member Campbell) (costs).

[2] The parties have been unable to agree on costs and, therefore, the defendants now apply for costs.

[3] The defendants say their actual costs in defending the claim were \$222,664.50 (excluding GST and disbursements). Copies of the invoices have been provided to the Court.

[4] The defendants say that these costs were reasonably incurred. Costs under Category 2B of the Practice Directions Guideline Scale<sup>3</sup> would be \$69,549.<sup>4</sup> However, given the circumstances of this case, they say the Guideline Scale does not reflect a reasonable contribution to costs actually and reasonably incurred.<sup>5</sup> In particular, they say that the Guideline Scale limits the costs they can seek in respect of:

- (a) discovery;
- (b) preparation of affidavit evidence in interlocutory hearings;
- (c) preparation of briefs of evidence, lists of issues, authorities and the common bundle of documents for the substantive hearing; and
- (d) preparation for the substantive hearing of two days which, given the extensive evidence before the Court and the plaintiff's varied claims, took materially longer than allowed for in the Scale.

[5] They point out that on the basis that scale costs represent only 31 per cent of their costs actually and reasonably incurred, if the Court was to adopt 66 per cent as the starting point for fixing costs the appropriate award would be \$146,945.37.

[6] Taking into account the various matters mentioned above, the defendants submit that the Court should exercise its discretion to award more than scale costs and

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<sup>3</sup> "Employment Court of New Zealand Practice Directions" <[www.employment.govt.nz](http://www.employment.govt.nz)> at No 16.

<sup>4</sup> This matter was assigned Category 2B by Judge Perkins in his minute dated 16 July 2020. The defendants have provided a breakdown of how the amount of \$69,549 is reached.

<sup>5</sup> *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA).

that an appropriate award in this case should be between \$69,549 (scale costs) and \$146,945.37.

[7] Mr AlKazaz submits that costs should lie where they fall on the basis that this was a novel or test case. He also submits that the defendants have failed to reasonably show the actual costs they incurred in relation to the Employment Court proceeding alone.

[8] He says he was self-represented throughout what he considers to be an extremely complex case with novel issues. He says he did his best to genuinely and in good faith progress his case reasonably, based on these difficult circumstances.

[9] Mr AlKazaz also submits that he achieved a measure of success in relation to proving the work he performed for the company and the accuracy of his CV. His submission is that the measure of success, combined with the novelty of the matters dealt with in the proceeding, mean that in this case costs should lie where they fall.

[10] Alternatively, he submits that any award of costs should be calculated as Band A and reduced dramatically given the fact that these proceedings resulted from derogatory comments made by a former employee of the third defendant.

[11] The Court may order any party to pay any other party such costs as the Court thinks reasonable.<sup>6</sup> It will exercise its discretion on a principled basis and in accordance with the interests of justice. The Court may consider any conduct of the parties that tends to increase or contain costs.<sup>7</sup>

[12] This was not a proceeding that involved novel questions of law. It was complex because of the range of claims made by Mr AlKazaz and the fact that the issues for determination depended on an initial finding as to the enforceability of the settlement agreement between him and the third defendant. As a lay litigant, Mr AlKazaz structured his case differently from how counsel would have approached it, but I accept that he did his best in the circumstances and made every effort to ensure that

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<sup>6</sup> Employment Relations Act 2000, sch 3 cl 19.

<sup>7</sup> Employment Court Regulations 2000, reg 68.

the Court had what it needed to determine his claims. That would not have been easy for him. However, the legal issues were not novel, and this proceeding could not be described as a test case.

[13] I accept that the invoices provided to the Court support the defendants' claim that the actual costs incurred were in the region of \$222,664.50.<sup>8</sup>

[14] While Mr AlKazaz may have considered some of the factual findings made to be favourable towards him, he was not successful in any of his claims against the defendants. In relation to the outcome of the proceeding, it is the defendants who have been entirely successful. They are therefore entitled to an award of costs.

[15] As already noted above, this is a matter that was assigned Category 2B as an appropriate classification under the Guideline Scale in relation to costs. That assignment, and the total amount reached as a result of that assignment, remains appropriate in the circumstances, particularly given that Mr AlKazaz represented himself. There is no basis to uplift to the extent sought.

[16] The exception to that is the additional costs incurred as a result of the issues that arose in relation to disclosure. Mr AlKazaz continued to pursue these issues, even after being clearly advised by Judge Perkins that the issue of disclosure had been attended to and he was to take no further steps in that regard.<sup>9</sup>

[17] I consider an uplift of \$2,000 in relation to that issue to be appropriate in the circumstances. The other matters raised by the defendants are sufficiently dealt with through the application of the Scale.

[18] The defendants have also referred to the adjournment and rescheduling of the hearing as a further matter supporting an uplift of costs. I do not agree. The need to reschedule arose as a result of Mr AlKazaz's inability to return to New Zealand due to COVID-19 restrictions. He advised the Court in good time and these were matters

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<sup>8</sup> Depending on what is included when totalling the invoices, claimable costs range from \$203,566.50 to \$241,297.08. Either way, it was substantially more than the amount they would be entitled to if the Court's Guideline Scale is applied.

<sup>9</sup> Minute, 16 July 2020 at [4].

that were outside his control. It would not be appropriate to penalise him in these circumstances. In any case, given the amount of notice provided, it is not entirely clear what additional costs are said to have been incurred by the defendants as a result of the adjournment. I do not consider that this is a factor that I need to take into account.

## **Outcome**

[19] The defendants are entitled to costs under Category 2B of the Court's Guideline Scale in the amount of \$69,549 with an uplift of \$2,000, taking the amount to \$71,549.

[20] The plaintiff was required to pay the sum of \$4,500 (the costs award in the Authority) and \$15,000 (security for costs) into the Employment Court.

[21] I order that these sums be released to the defendants and the amount of \$71,549 be reduced by \$15,000, leaving an amount payable by Mr AlKazaz of \$56,549. Payment is to be made within 21 days of the date of this judgment, subject to any alternative arrangements between the parties.

Kathryn Beck  
Judgment

Judgment signed at 4.30 pm on 9 December 2022