

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

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

**[2020] NZEmpC 15
EMPC 147/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for costs
BETWEEN	STEVEN JOBBITT Plaintiff
AND	4 SEASONS INDOOR OUTDOOR LIVING (2014) LIMITED Defendant

Hearing:	On the papers
Appearances:	W Reid, advocate for plaintiff A Sharma, counsel for defendant
Judgment:	27 February 2020

COSTS JUDGMENT OF JUDGE K G SMITH

[1] Steven Jobbitt’s proceeding against 4 Seasons Indoor Outdoor Living (2014) Ltd was struck out.¹ Costs were reserved and, in the absence of agreement about them, a timetable for submissions was directed.

[2] The parties cannot agree on costs. For 4 Seasons, Ms Sharma submitted that costs of \$5,880 should be ordered. While purporting to rely on the Court’s Guideline Scale, the only support for this claim was the disclosure of Ms Sharma’s hourly

¹ *Jobbitt v 4 Seasons Indoor Outdoor Living (2014) Ltd* [2019] NZEmpC 198.

charge-out rate multiplied by the hours worked. A further \$750 was claimed for the preparation of the costs application.

[3] Mr Reid, who acts for Mr Jobbitt, opposed the company's claim as excessive, given how little was required to prepare for and present the strike out arguments. He submitted that the amount that ought to be ordered was \$3,000 and that there should be no award for preparing the costs application. He did not say how this amount had been calculated or why it was considered by the plaintiff to be a reasonable sum to order him to pay.

[4] The Court has a broad discretion about costs.² The discretion must be exercised in the interests of justice and in accordance with established guidelines and may take into account conduct that increases or contains costs. Since January 2016, the discretion has been assisted by a Guideline Scale.³ That guideline was intended to support, as far as possible, the policy objective that fixing costs should be predictable, expeditious and consistent.⁴

[5] The usual approach is that costs follow the event so 4 Seasons can reasonably expect an order in its favour. But the costs claim provided little information to assist in reaching a conclusion about what to award. No reference was made to the steps in the guideline, and the Court was not invited to consider which category of costs ought to apply; the submissions merely referred to "Band B, and B and C", without elaboration. Similarly, Mr Reid's submissions did not address the issue of which category of cost, or band, should be applied.

[6] This proceeding was reasonably straightforward. The company did not file a statement of defence, instead applying to strike out the claim. The steps that ought to be taken into account to gain assistance from the guideline are those that relate to applying to strike out, preparing for and participating in a telephone conference, preparing submissions and attendance at the hearing. Assuming Category 2, Band B, was to apply those steps would produce a sum of about \$5,855 as follows:

² Employment Relations Act 2000, sch 3 cl 19.

³ Employment Court Practice Directions at 16 (<www.employmentcourt.govt.nz/legislation-and-rules>).

⁴ See *Xtreme Dining Ltd v Dewar* [2017] NZEmpC 10 at [25].

Steps Taken	Band B	Category 2	Total
Application to strike out	0.6	\$ 2,390	\$ 1,434
Preparation for Telephone Directions Conference	0.4	\$ 2,390	\$ 956
Telephone Directions Conference	0.2	\$ 2,390	\$ 478
Defendant's Submissions	1	\$ 2,390	\$ 2,390
Hearing (1 hour)	0.25	\$ 2,390	\$ 597.50
	2.45		\$ 5,855.50

[7] Comparing the costs claim with this assessment using the guideline suggests an order might be made at or near what has been sought. However, I am not persuaded that awarding costs of that amount would be just in the circumstances. The defendant's application was succinct, as was the plaintiff's response. The plaintiff's submissions were short, seeking to apply conventional principles without significant elaboration. The defendant's submissions were equally short and did not require anything beyond a basic response. The submissions were considered in advance of the hearing which lasted approximately 1 hour.

[8] Considering what was required, and how the defendant's application was presented, an award at the claimed level would be overly generous. Likewise, the plaintiff's proposal to pay \$3,000 is too low. Taking a pragmatic approach, I consider \$4,000 is appropriate.

[9] The final matter is the application for costs to prepare the memorandum seeking costs. The memorandum was brief. Most of it contained information that ought not to have been included, disclosing offers that were made between the parties in attempting to agree on costs (which offers were not taken into account in this decision). The assessment of costs in that memorandum was confined to a short paragraph containing Ms Sharma's calculation. In those circumstances, although it was necessary for 4 Seasons to seek an order, this is not an appropriate case to award a further amount for costs for the memorandum that was filed.

Outcome

[10] Mr Jobbitt is ordered to pay costs to 4 Seasons of \$4,000.

K G Smith
Judge

Judgment signed at 9.15 am on 27 February 2020