

**ATTENTION IS DRAWN TO THE CURRENT ORDERS FOR
NON-PUBLICATION OF PARTIES' NAMES**

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

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

**[2020] NZEmpC 192
EMPC 84/2019
EMPC 24/2020
EMPC 25/2020
EMPC 26/2020
EMPC 27/2020
EMPC 28/2020**

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	applications for leave to extend time to file challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	application for orders preventing solicitors continuing to represent the defendant in these proceedings
AND IN THE MATTER OF	an application for costs
BETWEEN	H First Plaintiff
AND	C Second Plaintiff
AND	RPW Defendant

Hearing: On the papers

Appearances: C Sawyer, counsel for plaintiffs
S Hood, counsel for defendant

Judgment: 13 November 2020

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] On 4 September 2020 a judgment was issued declining challenges commenced by the plaintiffs.¹ These challenges were in respect of two determinations of the Employment Relations Authority (the Authority).² In addition, the judgment dismissed applications by the plaintiffs for leave to extend time to file further challenges and for an order preventing the defendant's solicitors from continuing to act.

[2] In respect of costs on the challenges and the applications, a direction was made that costs should follow the event. The defendant was held to be entitled to an award of costs against the plaintiffs. Timetabling was set to enable the parties to file submissions on the quantification of costs. Such submissions have now been filed.

[3] In his submissions on costs, Mr Hood, counsel for the defendant, has set out matters material to the issue of costs, and provided a calculation under Category 2B of the Court's guideline scale of costs.³ This calculation amounts to \$31,070, which includes an allowance of \$1,434 for preparation of submissions on costs. The filing of such submissions was necessary as it was clear, and as stated in the substantive judgment, that the plaintiffs were unlikely to reach agreement with the defendant on costs. This attitude has been confirmed by the tenor of the submissions now filed by Ms Sawyer, counsel for the plaintiffs. In the circumstances, the claim for preparation of submissions on costs is reasonable.

[4] Mr Hood, based on reg 68 of the Employment Court Regulations 2000, seeks increased costs in view of the conduct of the plaintiffs in the proceedings. Mr Hood points to the belated applications by the plaintiffs seeking leave to challenge earlier determinations of the Authority and an order of the Court preventing the defendant's

¹ *H and C v RPW* [2020] NZEmpC 141.

² *RPW v H (No 6)* [2019] NZERA121 (Member Larmer); *RPW v H* [2019] NZERA 367.

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

solicitors from continuing to act. These applications were filed after the Court had reserved its decision following hearing of the challenges and timetabling for written closing submissions was proceeding. These further applications required further attendances from solicitors and counsel for the defendant, were misguided and would have substantially and unnecessarily added to costs. Increased costs are accordingly appropriate.

[5] Mr Hood submits that a global uplift in costs of 30 per cent is appropriate. This would result in an increase of the scale calculation to \$40,391.

[6] Ms Sawyer in her submissions re-traverses issues dealt with in the substantive judgment. She raises the fact that judicial review proceedings are pending in the Court of Appeal. She claims that the applications for leave and for an order disqualifying the defendant's solicitors were necessary. She does not deal specifically with quantum of costs. Not being assisted by her in this respect, I am left with having to infer that, apart from disputing the claim for increased costs, Ms Sawyer does not dispute the scale calculations made by Mr Hood.

[7] I consider that the applications for leave to extend the time to file challenges and to have the defendant's solicitors prevented from continuing to act, unnecessarily prolonged these proceedings and increased costs. The applications were so clearly without merit that their purpose could only be assessed as an attempt to create difficulties and obfuscate the issues raised in the challenges, which dealt only with issues of quantification of penalties and costs in the Authority. Increased costs are appropriate in this case.

[8] Since Ms Sawyer, on behalf of the plaintiffs, does not dispute the calculation made by Mr Hood, I will accept that calculation. I consider that there should be an increase to take account of the plaintiffs' conduct in the proceedings as previously set out. Such increase should be 20 per cent. This increases Mr Hood's scale calculation of \$31,070 to \$37,284. I will round this down to \$37,000.

[9] Accordingly, the plaintiffs are ordered to pay costs to the defendant in the sum of \$37,000. Such payment is to be made within seven days of the date of this judgment.

M E Perkins
Judge

Judgment signed at 10.30 am on 13 November 2020