

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

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

**[2020] NZEmpC 57
EMPC 19/2018**

IN THE MATTER OF	an application for the exercise of powers under sections 142B, 142E, 142J, 142W and 142X of the Employment Relations Act 2000
AND IN THE MATTER OF	an application for costs
BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Plaintiff
AND	NEWZEALAND FUSION INTERNATIONAL LIMITED First Defendant
AND	SHENSHEN GUAN Second Defendant

Hearing: On the papers

Appearances: R Denmead, counsel for plaintiff
M Lyttelton, agent for first defendant
S Guan in person

Judgment: 4 May 2020

COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

[1] The plaintiff has applied for costs against the defendants following the Court's judgment issued on 11 December 2019.¹

¹ *A Labour Inspector of the Ministry of Business, Innovation and Employment v New Zealand Fusion International Ltd* [2019] NZEmpC 181.

[2] The parties were encouraged to agree costs. That did not prove possible. While counsel for the Labour Inspector has filed submissions in support of the application for costs in accordance with timetabling orders made by the Court, neither defendant has taken any steps to do so. Mr Lyttleton, who represents the first defendant company, has advised the Court that his client is focussed on the application for a rehearing and does not propose to file any submissions on costs. Ms Guan, the second defendant, has chosen not to be heard on costs.

[3] Costs generally follow the event and there is no reason why they should not do so in this case. The Labour Inspector succeeded in her application for orders from the Court, including for unpaid wages and holiday pay against the first defendant, and penalties and a banning order against both defendants. The first defendant was ordered to pay \$530,350; the second defendant was ordered to pay \$150,000.

[4] The proceedings were provisionally assigned Category 2B for costs purposes under the Court's Practice Direction Guideline Scale for costs.² That remains the appropriate categorisation. Applying the daily recovery rate applicable at the relevant time (namely \$2,230)³ to the steps reasonably required in these proceedings results in a contribution to costs of \$44,377. I accept that this figure represents a fair contribution to the plaintiff's costs in the circumstances of this case.

[5] The plaintiff seeks full disbursements. These include the costs associated with bringing witnesses (the complainant employees on whose behalf the proceedings were brought) from overseas for the hearing, interpreter costs, and hearing and filing fees. Based on the material before the Court, disbursements amount to \$21,005.04. I am satisfied that the claimed disbursements were reasonably necessary for the conduct of the proceedings, are reasonable in amount and ought to be allowed.⁴

[6] The defendants are ordered to pay the plaintiff the total sum of \$65,380 (rounded down), comprising \$44,377 by way of contribution to costs and \$21,005.04

² Employment Court Practice Directions at 18 <www.employmentcourt.govt.nz/legislation-and-rules>.

³ High Court Rules 2016, sch 2 was amended on 1 August 2019, replacing the previous specified daily recovery rate of \$2,230 but these proceedings fell within the time period covered by the pre-1 August 2019 rate.

⁴ High Court Rules, r 14.12(2)(c)–(d).

by way of reimbursement of disbursements. This sum is to be paid to the plaintiff within 15 working days of the date of this judgment.

Christina Inglis
Chief Judge

Judgment signed at 10 am on 4 May 2020