

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

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

**[2020] NZEmpC 82
EMPC 24/2019**

IN THE MATTER OF	a challenge to determinations of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	YOON CHEOL HONG Plaintiff
AND	CHEVRON TRAFFIC SERVICES LIMITED Defendant

Hearing:	On the papers
Appearances:	Plaintiff in person G Pollak, counsel for defendant
Judgment:	11 June 2020

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] This judgment involves an application for costs by the defendant Chevron Traffic Services Ltd (Chevron) following unsuccessful challenges by Yoon Cheol Hong against two determinations of the Employment Relations Authority (the Authority).¹

[2] Mr Hong was completely unsuccessful and, in a judgment dated 15 April 2020, I reserved costs to enable the parties to endeavour to reach an agreement on costs.² I indicated that costs would follow the event and that the costs categorisation under the

¹ *Hong v Chevron Traffic Services Ltd* [2019] NZERA 14 (Member Campbell); and *Hong v Chevron Traffic Services Ltd* [2019] NZERA 69 (Member Campbell).

² *Hong v Chevron Traffic Services Ltd* [2020] NZEmpC 44.

Court's Guideline Scale was agreed at 2B. While Mr Hong was representing himself in the proceedings, he is legally qualified.

[3] The parties were not able to reach an agreement on costs. Accordingly, memoranda containing submissions on costs have now been received from both parties.

[4] In his submissions on costs on behalf of Chevron, Mr Pollak has claimed costs in accordance with the Court's Guideline Scale which he has calculated in a schedule, set out in his memorandum. That schedule, which shows a breakdown of attendances, totals \$20,912.50. That is the total sum claimed by the defendant.

[5] In his memorandum as to costs, Mr Hong does not dispute the defendant's entitlement to a contribution towards costs. He disputes the final item in Mr Pollak's schedule of calculations on the basis that the hearing time was 2.5 days rather than 3 days as claimed. In addition, Mr Hong has set out his financial position. He submits that his poor financial position is relevant to the assessment of costs.

[6] Mr Pollak filed a memorandum in reply in which he concedes that Mr Hong's poor financial position may be a discounting factor but that there still should be an award of costs in favour of the defendant rather than a nil award. He points out that even though Mr Hong's financial position is poor, he is in full-time employment and has sought leave to appeal the Court's judgment.

[7] The Court exercises a broad discretion in awarding costs. That discretion must be exercised on a principled basis and in the interests of justice. The establishment of the Court's Guidelines Scale was designed with the objective that costs should be predictable, expeditiously determined and consistent.

[8] In the present case there is no suggestion that either of the parties have acted unreasonably such that there should be any variation on the costs calculated under the Court's Guideline Scale. I am of the view that an orthodox approach should be adopted in calculating the contribution which should be made.

[9] Taking all matters into account and giving due regard to Mr Hong's present financial position, I consider that the appropriate contribution he should make towards the defendant's costs in respect of his unsuccessful challenges should be \$17,000. There is an order accordingly.

M E Perkins
Judge

Judgment signed at 11 am on 11 June 2020