

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

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

**[2020] NZEmpC 90
EMPC 320/2019
EMPC 321/2019**

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	an application as to costs
BETWEEN	SUSAN MARGARET KENNEDY Plaintiff
AND	THE CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Defendant

Hearing:	On the papers
Appearances:	A Halse, advocate for plaintiff H Kynaston, L Grey and S R Clark, counsel for defendant
Judgment:	25 June 2020

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] Having been successful in the substantive challenges brought by Ms Kennedy,¹ the Chief Executive of Oranga Tamariki – Ministry for Children (Oranga Tamariki) seeks costs of \$17,111.75, across both proceedings, on a “discounted 2B” basis.

[2] Oranga Tamariki does so even though it does not have any intention currently of enforcing any order of costs against Ms Kennedy and would only do so on reasonable notice.

¹ *Kennedy v The Chief Executive of Oranga Tamariki – Ministry for Children* [2020] NZEmpC 58.

[3] While Ms Kennedy says she is obliged to Oranga Tamariki for the confirmation that there is no intention currently to enforce any costs order against her and that it would seek to do so only on reasonable notice, she is disappointed that Oranga Tamariki has raised the matter of costs before her substantive case is fully resolved.

[4] She notes her difficult financial position and her health issues. These also are noted by Oranga Tamariki and are the reason it does not currently intend to enforce any costs order.

[5] Ms Kennedy does not raise any issues with Oranga Tamariki's costs calculation, which totals a little over \$3,000 less than scale costs on a 2B basis and is less than Oranga Tamariki's actual costs.² One reason for Oranga Tamariki seeking the lesser amount is that, although it filed two statements of defence, it only seeks the amount it was invoiced for both statements of defence. It also does not seek a sum for preparation for the directions conference, as the preparation was not significant.

[6] The amount sought is appropriate given the factual and legal issues that had to be addressed in the proceedings. I also take into account that Oranga Tamariki offered to let costs lie where they fell if Ms Kennedy withdrew her proceedings, but Ms Kennedy rejected that offer.

[7] Accordingly, there is an order for costs against Ms Kennedy for \$17,111.75. There is no order for costs in respect of the application for costs.

J C Holden
Judge

Judgment signed at 10.30 am on 25 June 2020

² "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 16.