

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUHAHI**

**[2020] NZEmpC 95
EMPC 250/2017**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for costs
BETWEEN	GEORGINA RACHELLE Plaintiff
AND	AIR NEW ZEALAND LIMITED Defendant

Hearing: On the papers

Appearances: G Rachelle, plaintiff in person
A Caisley, counsel for defendant

Judgment: 1 July 2020

COSTS JUDGMENT OF JUDGE K G SMITH

[1] On 17 December 2019 Georgina Rachelle’s claim against Air New Zealand Ltd, alleging a personal grievance, was dismissed.¹ Costs were reserved. Costs have not been agreed and Air New Zealand has applied for them.

[2] Clause 19 of sch 3 to the Employment Relations Act 2000 empowers the Court to award costs. Costs are discretionary. Any award has to be made on a principled basis, and in accordance with the interests of justice. Since January 2016 the Court

¹ *Rachelle v Air New Zealand Ltd* [2019] NZEmpC 191.

has used a Guideline Scale to assist in exercising the discretion.² Furthermore, reg 68 of the Employment Court Regulations 2000 allows the Court to take into account the behaviour of any party that increases costs or contains them.

[3] Air New Zealand was completely successful in resisting Ms Rachelle's claim and it is entitled to an award of costs. Attached as Appendix A to this judgment is a copy of the schedule prepared by Mr Caisley, Air New Zealand's counsel, calculating the company's claim using the Guideline Scale.

[4] Mr Caisley's schedule is divided in two because of a recent change to the applicable recoverable daily rate in the guideline. Until 1 August 2019 that rate was \$2,230 per day. After that date the rate rose to \$2,390.³

[5] The proceeding required extensive interlocutory steps all of which were necessary because of the way Ms Rachelle's claim was presented. That is illustrated to some degree by the fact that, by the time of the hearing in December 2019, the statement of claim had evolved into a fifth iteration. Unfortunately, the repleaded claim remained opaque.

[6] The steps taken before 1 August 2019 amount to 13.1 days. At the daily rate then applying the claim is for \$29,213. For the steps taken after 1 August 2019 the steps taken amount to 5.2 days. At the daily rate of \$2,390 the claim is for \$12,428. Air New Zealand also claimed for 1.25 days for presenting its case at the hearing. The total claim comes to \$44,628.50.

[7] Ms Rachelle is opposed to any costs orders being made. The grounds of her opposition are unclear. In response to Air New Zealand's claim she filed a memorandum purporting to be a reply, but its content was a copy of her submissions to the Court of Appeal in support of an unsuccessful application for leave to appeal.⁴ She has taken no further steps to make any costs submissions, but has had ample time to do so.

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

³ The Guideline Scale applies the daily rate from the High Court Rules 2016, sch 2.

⁴ *Rachelle v Air New Zealand Ltd* [2020] NZCA 266.

[8] Mr Caisley confirmed that Air New Zealand's actual costs exceeded the sum now claimed. I am satisfied that the steps taken by the company were necessary to respond to Ms Rachelle's claim and the amount sought for costs is reasonable, but it should be rounded to \$44,000.

[9] Finally, Ms Rachelle was ordered to pay security for costs in the sum of \$10,000. That sum has been held by the Registrar of this Court on interest-bearing deposit pending further order and can now be released to at least partly satisfy this judgment.⁵

Outcome

[10] Ms Rachele is ordered to pay to Air New Zealand costs of \$44,000.

[11] The funds held by the Registrar as security for costs, together with accumulated interest, is to be paid to Air New Zealand.

[12] There has been no application for the costs associated with preparing the application for costs and, therefore, no further award is made.

K G Smith
Judge

Judgment signed at 11.20 am on 1 July 2020

⁵ *Rachelle v Air New Zealand Ltd* [2018] NZEmpC 41.

Appendix A

Date	Step	Description	Band B	Category 2 Costs Recoverable daily rate (\$2230)
30/10/17	2	Commencement of defence to challenge by defendant	1.5	3345
30/10/17	11	Preparation for first directions conference	0.4	892
23/11/17	12	Filing Memorandum for first or subsequent directions conference	0.4	892
27/11/17	13	Appearance at first or subsequent directions conference	0.2	446
15/12/17	12	Filing Memorandum for first or subsequent directions conference	0.4	892
22/02/18	29	Filing opposition to interlocutory application [plaintiffs application for urgency]	0.6	1338
22/02/18	28	Filing interlocutory application [defendant's application for security for costs and/or stay of proceedings]	0.6	1338
22/02/18	28	Filing interlocutory application [defendant's application for strike out and further and better particulars]	0.6	1338
14/03/18	12	Filing Memorandum for first or subsequent directions conference	0.4	892
19/03/18	13	Appearance at first or subsequent directions conference	0.2	446
06/04/18	30	Preparation of written submissions [defendant's application for further and better particulars]	1	2230
26/04/18	30	Preparation of written submissions [defendant's application for security for costs and/or stay of proceedings]	1	2230
07/06/18	13	Appearance at first or subsequent directions conference	0.2	446
21/06/18	30	Preparation of written submissions [defendant's application for strike out]	1	2230
22/06/18	28	Filing interlocutory application [defendant's amended application for further and better particulars]	0.6	1338
22/06/18	30	Preparation of written submissions [defendant's amended application for further and better particulars]	1	2230
15/10/18	13	Appearance at first or subsequent directions conference	0.2	446

30/10/18	28	Filing interlocutory application [defendant's application for strike out]	0.6	1338
27/11/18	30	Filing of written submissions [defendant's application for strike out]	1	2230
11/04/19	12	Filing Memorandum for first or subsequent directions conference	0.4	892
15/04/19	13	Appearance at first or subsequent directions conference	0.2	446
17/07/19	12	Filing Memorandum for first or subsequent directions conference	0.4	892
23/07/19	13	Appearance at first or subsequent directions conference	0.2	446
Date	Step	Description	Band B	Category 2 Costs Recoverable daily rate as from 1 August 2019 (\$2390)
04/09/19	13	Appearance at first or subsequent directions conference	0.2	478
	36	Defendant's preparation or briefs	2	4780
	37	Defendant's preparation of list of issues, agreed acts, authorities and common bundle	1	2390
	39	Preparation for hearing	2	4780
03/12/19- 04/12/19	40	Appearance at hearing for sole or principal representative [time occupied by the hearing measured in quarter days]	1.25 [0.25 x 5]	2987.50
Total: \$44,628.50				