

[3] Enterprise IT seeks \$20,000 in costs, which represents an uplift on costs as calculated on a category 2B basis in accordance with the Employment Court Practice Directions.³ Enterprise IT submits that it is entitled to an uplift as Mr AlKazaz's conduct tended to increase costs. It also notes that Mr AlKazaz consented to paying \$20,000 as security for Enterprise IT's costs.⁴ Enterprise IT's actual costs exceed \$20,000.

[4] Enterprise IT's calculation of scale costs is \$13,742.50.

[5] Mr AlKazaz opposes the application and submits that costs should lie where they fall. In any event, he considers that the appropriate category for the proceedings under the Practice Direction is category 1A. He submits that, although he was unsuccessful in his application for an extension of time, the Court recognised some points in his favour and the judgment represented an indulgence of Enterprise IT. He points out that he initiated these proceedings in good faith in an effort to, in his view, achieve justice and rectify the damage to his reputation. He also says that, in agreeing to pay \$20,000 as security for costs, he was not accepting that costs at that level was appropriate. Finally, he notes that costs are not to be used as a punishment and that here, as a litigant in person, he simply made a technical mistake in his approach to his litigation.

[6] Mr AlKazaz had applied for a stay of the costs matter pending the determination of his application for a stay in a related matter (EMPC 397/2019) or the conclusion of proceedings he had in the High Court, whichever was resolved first. The Employment Court has since made its decision on the related application for a stay.⁵ In those circumstances, the application for a stay on costs in these proceedings was withdrawn.

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

⁴ *AlKazaz v Enterprise IT Ltd (No 4)* [2021] NZEmpC 164.

⁵ *AlKazaz v Enterprise IT Ltd* [2022] NZEmpC 137.

The Court's approach to costs

[7] The Court may order any party to pay any other party such costs as the Court thinks reasonable.⁶ The Court's discretion is exercised on a principled basis and in accordance with the interests of justice. Costs usually follow the event so that an unsuccessful party must make a reasonable contribution to the costs incurred by the successful party.⁷ The Court may consider any conduct of parties that tends to increase or contain costs.⁸

[8] The Practice Directions in place assist the Court when it is exercising its discretion and supports the policy objective that determining costs should be predictable, expeditious and consistent.⁹

Enterprise IT entitled to costs

[9] Enterprise IT was successful in its opposition to Mr AlKazaz's application for an extension of time. There was no 'indulgence'. It is entitled to costs.

[10] I do not accept, however, that Mr AlKazaz has previously acknowledged that \$20,000 was the appropriate amount for costs by agreeing to pay that sum as security for costs. I accept he did so for pragmatic reasons to keep his case moving.

[11] These proceedings are appropriately allocated category 2B in accordance with the Practice Directions.

[12] Enterprise IT's table contained some errors. In particular, it claims costs for obtaining judgment without appearance on the three interlocutory applications (step 34). These are not accepted. With costs being allocated for the preparation of written memoranda, and nothing being required between that and judgment being issued, there is no basis for further costs to be awarded for obtaining judgment without an appearance. Further, Enterprise IT only allowed for 0.3 days for filing an

⁶ Employment Relations Act 2000, sch 3 cl 19.

⁷ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA).

⁸ Employment Court Regulations 2000, reg 68.

⁹ "Employment Court of New Zealand Practice Directions" <www.employment.govt.nz> at No 16.

interlocutory application (step 28) or notice of opposition (step 29); the scale allows 0.6 days for those steps.

[13] The Court's calculation of scale costs is:

Application to challenge ERA determination out of time

Item	Step	Time	Cost (2B) \$
29	Filing opposition to interlocutory application	0.6	1,434
30	Preparation of written submissions	1	2,390
32	Appearance at hearing	0.5	1,195
	Total	2.1	\$5,019

Application to adduce further evidence

Item	Step	Time	Cost (2B) \$
29	Filing opposition – by memorandum	0.6	1,434
	Total	0.6	\$1,434

Application to recall

Item	Step	Time	Cost (2B) \$
29	Filing opposition – by memorandum	0.6	1,434
	Total	0.6	\$1,434

Application to exclude or strike out evidence

Item	Step	Time	Cost (2B) \$
28	Filing interlocutory application	0.6	1,434
42	Filing affidavit in support	0.3	717
11	Preparation for first directions conference	0.4	956
12	Filing memorandum for first directions conference	0.4	956
13	Appearance at first directions conference	0.2	478
30	Preparation of written submissions	1	2,390
	Total	2.9	\$6,931
Total @ \$2,390 per day			\$14,818

[14] Enterprise IT acknowledges that its actual costs on the application to exclude evidence were less than scale costs. There have, however, been further costs incurred in relation to Mr AlKazaz's application for a stay.

[15] I further acknowledge and accept that Mr AlKazaz's conduct of these proceedings has unduly resulted in more costs being incurred by Enterprise IT than would be usual. Mr AlKazaz's conduct of his case required a greater level of communication and responsiveness from Enterprise IT than would ordinarily be the case.

[16] With these factors in mind, I find that costs of \$16,000 are payable by Mr AlKazaz to Enterprise IT.

[17] No costs are ordered in respect of the application for costs.

[18] The Court currently holds \$20,000 together with interest for security for costs. The Registrar is directed to pay \$16,000 to Enterprise IT and the remainder is to be repaid to Mr AlKazaz.

J C Holden
Judge

Judgment signed at 3.30 pm on 15 August 2022