

[3] Mr Ngawaka unsuccessfully challenged both determinations.³ Costs of that proceeding were reserved. Mr Ngawaka and Global Security have been unable to agree on them, and a further judgment is therefore required.

[4] The starting point is cl 19 of sch 3 to the Employment Relations Act 2000. That clause confers a broad discretion on the Court to award costs. It is supplemented by reg 68 of the Employment Court Regulations 2000 allowing the Court to take into account conduct which may increase or contain costs.

[5] The Court has adopted a Guideline Scale to assist in exercising this discretion.⁴ That scale is intended to support, as far as possible, the policy objective that determining costs should be predictable, expeditious and consistent. The scale does not, however, replace the Court's discretion.

[6] In this case both parties represented themselves at the hearing. Initially, however, Global Security was represented by counsel. The company's counsel prepared and filed a statement of defence and appeared at two telephone directions conferences in anticipation of which a memorandum was prepared and filed.

[7] As a consequence of one of those directions conferences, the proceeding was provisionally assigned to Category 2, Band B, in the Guideline Scale for cost purposes. By applying the scale to the steps taken by its former counsel, Global Security has sought an order that Mr Ngawaka pay it costs of \$5,019.

[8] Mr Ngawaka opposed any award of costs in favour of Global Security. He did so by maintaining his position that he was unjustifiably treated and constructively dismissed. He did not, however, question the steps taken on Global Security's behalf by its former counsel or otherwise dispute the company's calculation of the costs that might be awarded by applying the scale.

[9] Global Security was represented by one of its directors at the hearing. I consider that places the company in the same position as any other litigant which has

³ *Ngawaka v Global Security Solutions Ltd* [2022] NZEmpC 40.

⁴ "Employment Court of New Zealand Practice Directions" <www.employment.govt.nz> at No 16.

elected to represent itself and raises as an issue whether an award of costs is appropriate.⁵ In this case, however, the situation is different. Global Security is not seeking to recover anything for its own time or trouble in taking steps to resist Mr Ngawaka's claim, but it is seeking an order for a contribution to costs incurred during the period when counsel was instructed. There is no reason in principle why the company should not be able to recover costs for attendances undertaken on its behalf by counsel.

[10] Global Security's application contained copies of bills of costs rendered to it by counsel showing that the fees it paid exceeded the amount now claimed. I am satisfied that the steps taken by counsel were required and can be properly addressed in an order for costs.

Conclusion

[11] Mr Ngawaka is ordered to pay costs to Global Security Solutions Ltd in the sum of \$5,019.

KG Smith
Judge

Judgment signed at 2.15 pm on 11 May 2022

⁵ A successful litigant in person is usually entitled to recover disbursements but not costs, see *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335. See also the discussion in *Re Collier (A Bankrupt)* [1996] 2 NZLR 438 (CA) for the proposition that fees paid by way of professional assistance may be recoverable by a self-represented litigant.