

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 226  
EMPC 243/2022**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	AMANDA TURNER Plaintiff
AND	TE WHATU ORA – HEALTH NEW ZEALAND, IN RESPECT OF THE FORMER WAIRARAPA DISTRICT HEALTH BOARD Defendant

Hearing: On the papers

Appearances: E Lambert, advocate for the plaintiff  
H Kynaston and E von Veh, counsel for defendant

Judgment: 8 December 2023

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**COSTS JUDGMENT OF JUDGE J C HOLDEN**

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[1] In the Employment Court’s judgment of 21 September 2023, the Court encouraged the parties to agree on costs but said that, if that was not possible, Te Whatu Ora could apply for an order.<sup>1</sup> Agreement was not reached, and an application was made.

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<sup>1</sup> *Turner v Te Whatu Ora - Health New Zealand* [2023] NZ EmpC 158 at [88].

[2] These proceedings were provisionally assigned category 2, band B in accordance with the Court's guideline scale.<sup>2</sup> Te Whatu Ora now seeks costs in accordance with that categorisation. It confirms that its actual legal costs incurred in defending the proceedings significantly exceeded the scale costs it is claiming.

[3] The scale costs total \$26,887.50, which includes provision for second counsel (\$2,987.50).

[4] Mrs Turner does not dispute the quantum of costs submitted by Te Whatu Ora but notes she is in an impecunious position. No affidavit has been filed by Ms Turner. Nevertheless, based on the evidence heard in the substantive proceedings, I accept that she will have suffered significant financial loss because of her dismissal.

[5] Mrs Turner wishes to pay her costs on a staggered basis. She also has applied to the Court of Appeal for leave to appeal the substantive judgment out of time.

### **Te Whatu Ora is entitled to costs**

[6] The Court has a discretion as to costs.<sup>3</sup> There is no reason why Te Whatu Ora should not be entitled to costs in this matter, and Mrs Turner does not suggest otherwise.

[7] In the circumstances, I consider that an appropriate award is \$20,000. That in part reflects Mrs Turner's financial position, and also recognises that, although no doubt second counsel was useful for the defendant, Mrs Turner had just one representative and I consider Te Whatu Ora could likewise have been represented by one representative.

[8] I make no order for payment by instalments but, based on the comments of counsel for Te Whatu Ora, it seems likely that an arrangement for a staggered payment of costs could be agreed between the parties.

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<sup>2</sup> "Employment Court of New Zealand Practice Directions" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

<sup>3</sup> Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

### **Costs to be paid after Court of Appeal proceedings resolved**

[9] Although Mrs Turner has not applied for a stay of this application, I nevertheless take the application for leave to appeal into account in the order I make for payment.

[10] Should Mrs Turner's proceedings in the Court of Appeal fail, and absent any agreement between the parties, costs are to be paid by Mrs Turner to Te Whatu Ora within 30 days of the result from the Court of Appeal being advised to the parties.<sup>4</sup> If Mrs Turner succeeds in the Court of Appeal, costs will need to be revisited in any event.

J C Holden  
Judge

Judgment signed at 3 pm on 8 December 2023

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<sup>4</sup> Being either Mrs Turner's application for leave to appeal being declined, or if leave is granted, her appeal not succeeding.