

[2] It calculates costs in accordance with the Court’s guideline scale:²

	Step	Band B (days)
2	Commencement of defence to challenge by defendant	1.5
11	Preparation for first directions conference	0.4
12	Filing memorandum for first or subsequent directions conference	0.4
13	Appearance at first directions conference	0.2
30	Preparation of written submissions (interlocutory applications)	1
31	Preparation of bundle for hearing (interlocutory applications)	0.6
32	Appearance at hearing for sole or principal representative (interlocutory applications)	0.25
Total		4.35 days
At \$2,390 per day		\$10,396.50

[3] It advises its actual costs totalled \$10,692 (excluding GST), which it submits were reasonable and necessary. It submits that there is no reason to depart from scale costs.

[4] In opposing an order for costs, Dr Bird relevantly submits that, under the circumstances, it is not fair and equitable to order costs against him. He says he was attempting to enforce his rights against the actions of a powerful employer with deep pockets. Dr Bird points to the imbalance of power between employers and employees generally. He asserts that while the amount sought is “petty cash” for the University of Waikato, it represents a massive financial burden on him. There is no evidence before the Court as to Dr Bird’s financial position.

[5] Dr Bird’s primary submission is that costs should lie where they fall, but if that submission is rejected, he submits in the alternative that the costs sought are excessive

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

for the work carried out. He also submits that no costs should be payable for the preparation of the application for costs.

The Court has a discretion as to costs

[6] The Court has a broad discretion as to costs.³ The guideline scale that has been adopted is intended to support (as far as possible) the policy objective that the determination of costs is predictable, expeditious and consistent. The guideline scale is not, however, intended to replace the Court's ultimate discretion as to costs.⁴

[7] The general principle is that costs follow the event; that is, the successful party is usually entitled to costs.

University of Waikato is entitled to costs

[8] There is no reason why the University of Waikato should not be entitled to costs.

[9] However, although the guideline suggests costs of \$10,396.50, based on a 2B categorisation, in the circumstances of this case, a more modest amount is appropriate. While the case was provisionally assigned category 2B for costs purposes, it probably sits somewhere between a 2A and a 2B categorisation. My assessment is that costs of \$7,500 are appropriate.

[10] Further, while costs on applications for costs are sometimes awarded, that is not the general position. In the present proceedings, there was only an exchange of emails before the University filed its application, which was not complicated. There is no basis for an award of costs for the application for costs.

³ Employment Relations Act 2000, sch 3 cl 19.

⁴ "Employment Court of New Zealand Practice Directions", above n 2, at No 16(4).

[11] In conclusion, Dr Bird is to pay the University of Waikato \$7,500 as a contribution to the University's costs. That payment is to be made within 14 days of the date of this judgment.

J C Holden
Judge

Judgment signed at 3 pm on 29 March 2023