

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 65
EMPC 397/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	AHMED ALKAZAZ Plaintiff
AND	COGNIZANT NEW ZEALAND LIMITED (FORMERLY ENTERPRISE IT LIMITED) Defendant

Hearing:	On the papers
Appearances:	Plaintiff in person R Bryant, counsel for defendant
Judgment:	27 April 2023

COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

[1] This judgment deals with an application for costs following the Court's judgment of 22 October 2020. In that decision, the Court dismissed Mr AlKazaz's challenge to a determination of the Employment Relations Authority where the Authority declined to reopen an investigation.¹ Costs had been reserved on the challenge because Mr AlKazaz was pursuing a challenge to a costs determination of the Authority. That challenge has now been dealt with.²

¹ *AlKazaz v Enterprise IT Ltd* [2020] NZEmpC 171.

² *AlKazaz v Enterprise IT Ltd* EmpC Auckland 397/2019, 11 October 2022.

[2] At the outset, and in accordance with usual practice, these proceedings were provisionally assigned a costs categorisation of 2B.³ This occurred at a directions conference following discussion with the parties.⁴ The defendant seeks a contribution to costs calculated accordingly, which it says amounts to \$36,567.00. It submits further that an uplift in costs may be considered appropriate having regard to Mr AlKazaz's conduct.

[3] Mr AlKazaz opposes the company's application. While he accepts that the proceedings were assigned a costs categorisation of 2B, he says that a categorisation of 2A would more appropriately reflect the nature and extent of the attendances reasonably required to respond to the challenge. He disagrees that an uplift is warranted. Rather, he says that there should be a reduction having regard to a number of matters.

[4] I start with the costs categorisation issue. As I pointed out in my earlier judgment dealing with costs on Mr AlKazaz's costs challenge, I do not exclude the possibility that there may be circumstances in which the original categorisation might appropriately be adjusted.⁵ Having reviewed the file I am not satisfied that an adjustment (from Band B to Band A) is required. I proceed on that basis.

[5] I next deal with Mr AlKazaz's submission that costs are not designed as a punishment for unsuccessful litigants. I agree with that submission. However, that does not mean that a successful litigant ought not to be entitled to a reasonable contribution to their costs and, at times, recovery of their full costs.

[6] Mr AlKazaz correctly points out that the Court's Guideline Scale is not intended to undermine the Court's discretion in awarding costs.⁶ The Guideline Scale expressly states that the Court may depart from it in appropriate cases.

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

⁴ *AlKazaz v Enterprise IT Ltd* EmpC Auckland 397/2019, 14 May 2020 at [15].

⁵ *AlKazaz v Enterprise IT Ltd* [2022] NZEmpC 224 at [6].

⁶ Employment Relations Act 2000, sch 3 cl 19.

[7] The Guideline Scale refers to offers to settle proceedings as a factor that may be relevant when assessing costs. Mr AlKazaz says that he made offers to resolve his challenge which were unreasonably rejected by the company and which ought to be taken into account.

[8] The correspondence Mr AlKazaz relies on is annexed to his submissions. Some of the correspondence was exchanged well before the challenge was filed. It cannot have been directed at settling a proceeding that did not exist, and I accordingly put it to one side. Some of the correspondence was exchanged on a without prejudice basis. That too must be put to one side as it is privileged, and the company is not prepared to waive privilege on it.⁷ I do not consider correspondence relating to a request to defer the determination of costs pending the outcome of perjury proceedings in the High Court to be relevant to the issue of costs now before the Court. I have considered whether an offer advanced by Mr AlKazaz to settle all disputes on a walk-away basis, which was rejected, ought to be taken into account. While I accept that such offers may be taken into consideration,⁸ I do not think the offer was unreasonably declined. By the time it was made (and rejected) the company had already incurred significant costs responding to the challenge.

[9] It follows that I do not accept that the correspondence referred to provides a basis for reducing the contribution to costs that might otherwise be ordered.

[10] I have reviewed the steps that the defendant says it took in the proceedings. I consider that an adjustment is appropriate in respect to the preparation of briefs of evidence. Only one brief was filed and served. I allow 1 day, rather than 2.5 days, for that step. I am otherwise satisfied that each of the steps identified in the defendant's application were reasonably taken and the claimed costs in respect of them reasonably incurred. This leads to adjusted scale costs of \$32,982.00

[11] I do not propose to uplift costs in respect of the steps taken to set aside witness summons. I consider that scale costs reflect an appropriate contribution in relation to

⁷ *Blakesfield Ltd v Foote (No 2)* [2016] NZHC 1354, [2016] NZAR 1112 at [14]–[20].

⁸ *Elisara v Allianz New Zealand Ltd* [2020] NZEmpC 13, [2020] ERNZ 20 at [9].

that. I do, however, accept counsel for the company's submission that a counteroffer made by the company to settle the proceedings (in response to Mr AlKazaz's walk-away offer) ought to be taken into account in assessing costs. The offer was unreasonably declined and supports an uplift in costs.

[12] The sum of \$34,000.00 is currently being held by the Court as security for the company's costs. Standing back, I consider that this figure represents a fair contribution to costs, including having regard to the uplift I have referred to.

[13] Mr AlKazaz asks that the execution of any costs ordered against him be stayed until the conclusion of proceedings in the High Court. The defendant opposes such a request. While I am prepared to treat Mr AlKazaz's request as an application for a stay, I do not consider that it would be appropriate to grant one. The company is entitled to a contribution to the legal costs it has incurred in this long-running matter. It ought not to be required to wait for an additional, uncertain, period of time to receive it. More generally, it is in the broader interests of justice to bring this matter to an end.

[14] The request for a stay is declined. The Registrar is directed to make payment of the \$34,000.00 to the company.

[15] The defendant did not seek costs on its application for costs and none are ordered.

Christina Inglis
Chief Judge

Judgment signed at 9.00 am on 27 April 2023