

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

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

**[2024] NZEmpC 34
EMPC 9/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs on applications for security for costs and stay of proceedings
BETWEEN	DE KAI LU First Plaintiff
AND	YUZHEN QIU Second Plaintiff
AND	REBECCA YOUNG Defendant

Hearing:	On the papers
Appearances:	First plaintiff in person and as agent for second plaintiff P Mathews, advocate for defendant
Judgment:	1 March 2024

**COSTS JUDGMENT OF JUDGE KATHRYN BECK
(Application for costs on applications for security for costs
and stay of proceedings)**

[1] Pursuant to the Court’s judgment dated 14 July 2023, leave was granted to the defendant, Ms Young, to apply for costs.¹ Ms Young seeks costs based on the Employment Court of New Zealand Practice Directions, using category 1, band A.²

¹ *Lu v Young* [2023] NZEmpC 111 at [32].

² “Employment Court of New Zealand Practice Directions” <www.employmentcourt.govt.nz> at No 18.

[2] She submits that scale costs on a 1A basis would provide costs in the order of \$2,385. However, her actual costs incurred are \$1,750 (plus GST). It is that amount that she seeks, plus adjustment for GST as she is not GST registered. The total amount sought is therefore \$2,012.50.

[3] Mr Lu, the first plaintiff, agrees that the appropriate costs category is 1A. He, however, takes issue with Ms Young's calculation and says the appropriate amount, based on the guideline scale, would be \$954 as follows:

28	Filing interlocutory application	0.3
34	Obtaining judgment without appearance	0.3
0.6 x \$1,590		\$954

[4] However, in his calculations he does not allow for Ms Young filing an opposition to his unsuccessful application for a stay of proceedings, or the preparation of written submissions in support of her own successful application for security for costs and in defence of his unsuccessful application for a stay.

[5] By my calculation, based on 1A, Ms Young would be entitled to \$3,021 as follows:

28	Filing interlocutory application	0.3
29	Filing opposition to interlocutory application	0.3
30	Preparation of written submissions	0.5 x 2
34	Obtaining judgment without appearance	0.3
1.9 x \$1,590		\$3,021

[6] However, as already noted above, Ms Young's actual costs were less than the amount set by the scale. It is these that she seeks.

[7] While it is uncommon to award actual costs, in this instance, given the relatively modest amount sought, I consider this is an appropriate case for actual costs to be awarded. Actual costs may be awarded in these circumstances and the usual test for an award of indemnity costs is not applicable.³ Increased or indemnity costs may have been appropriate in any case given that the plaintiffs' application for a stay was wholly without merit, they are not pursuing their proceedings (although have not taken the formal step of discontinuing),⁴ and they have put Ms Young to significant cost from her perspective.⁵

[8] The amount sought is fair and reasonable. Ms Young is entitled to costs in the amount of \$1,750.

[9] In relation to Ms Young's request for an adjustment due to not being registered for GST, an uplift on costs may be allowed to recognise GST where a party is not GST registered and therefore unable to recover the GST paid on their legal costs.⁶

[10] I accept that, as Ms Young is not registered for GST, she is entitled to an uplift to include GST on the costs award. That brings the award to \$2,012.50.

[11] Mr Lu says that, due to financial difficulties, the plaintiffs could only afford to pay \$50 per week. No financial information was provided in support of this submission. Accordingly, there is no basis on which the Court could make any orders in relation to time payment. Of course, if the parties wish to reach an agreement as to how and when costs will be paid, they may do so.

³ See for example *Reid v Ngāti Rangi Trust* [2021] NZEmpC 56.

⁴ The plaintiffs have advised the Registry that they will not be paying the security for costs ordered.

⁵ See generally *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400; *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA).

⁶ *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282, (2016) 23 PRNZ 260 at [6]–[12].

Outcome

[12] Unless otherwise agreed between the parties, the plaintiffs must pay \$2,012.50 to Ms Young within 21 days of the date of this judgment. For the avoidance of doubt, their liability for costs is joint and several.⁷

Kathryn Beck
Judge

Judgment signed at 10.30 am on 1 March 2024

⁷ See *Direct Auto Importers (NZ) Ltd v Labour Inspector of the Ministry of Business, Innovation and Employment* [2018] NZEmpC 39 at [18].