

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

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

**[2020] NZEmpC 224
EMPC 19/2018**

IN THE MATTER OF an application for the exercise of powers
under sections 142B, 142E, 142J, 142W and
142X of the Employment Relations Act 2000

AND IN THE MATTER OF an application for the exercise of powers
under s 142J(2) and apportionment of costs

AND IN THE MATTER OF an application for costs

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT
Plaintiff

AND NEWZEALAND FUSION
INTERNATIONAL LIMITED (IN
ADMINISTRATION)
First Defendant

AND SHENSHEN GUAN
Second Defendant

EMPC 2/2020

IN THE MATTER OF an application for rehearing

AND IN THE MATTER OF an application for costs

BETWEEN NEWZEALAND FUSION
INTERNATIONAL LIMITED (IN
ADMINISTRATION)
First Applicant

AND SHENSHEN GUAN
Second Applicant

AND A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Respondent

Hearing: On the papers

Appearances: R Denmead, counsel for Labour Inspector
M Lyttelton, agent for NewZealand Fusion International Ltd (In
administration)
S Guan, in person

Judgment: 11 December 2020

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] Judgments have been issued on two further matters following the Court's substantive judgment dated 11 December 2019 and a judgment on costs dated 4 May 2020.¹

[2] The first further judgment, dated 13 November 2020, dealt with an application for rehearing by NewZealand Fusion International Ltd (in administration) (NZFI) and Ms Guan.² The second further judgment, dated 19 November 2020, dealt with an application by the Labour Inspector for consequential orders under s 142J of the Employment Relations Act 2000 (the Act) against Ms Guan and an order clarifying the basis of liability of NZFI and Ms Guan under the earlier judgment on costs dated 4 May 2020.³ In the first judgment NZFI and Ms Guan were unsuccessful in their application for rehearing. In the second judgment the Labour Inspector successfully procured consequential orders against Ms Guan. An order clarifying the earlier costs judgment was also made.

[3] In each of the judgments issued, it was directed that costs should follow the event. Timetabling for the filing of submissions on costs was set in the event that the parties could not agree on costs. It is clear that no agreement could be reached. The

¹ *Labour Inspector v Newzealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525 (substantive); *A Labour Inspector of the Ministry of Business, Innovation and Employment v NewZealand Fusion International Ltd* [2020] NZEmpC 57 (costs).

² *NewZealand Fusion International Ltd (in administration) v A Labour Inspector of the Ministry of Business, Innovation and Employment* [2020] NZEmpC 195.

³ *A Labour Inspector of the Ministry of Business, Innovation and Employment v NewZealand Fusion International Ltd (in administration)* [2020] NZEmpC 202.

Labour Inspector has now made an application for costs in respect of both matters which contains submissions in support. No submissions in response have been received from NZFI or Ms Guan.

[4] The Court's discretion to award costs is derived from cl 19 of sch 3 of the Act. Unless there are grounds to depart, the Court will apply its Guideline Scale in assessing the quantum of costs.⁴ Daily recovery rates under the Guideline Scale are derived from sch 2 of the High Court Rules 2016. The rates in that schedule are based on surveys conducted within the legal profession and are then discounted by one third. As stated in *EPB Ltd v OST*,⁵ the normal approach to costs is that two thirds of actual and reasonably incurred costs by a successful party may be awarded. The Guideline Scale is designed to accord with that approach.

[5] In the present case Ms Denmead, counsel for the Labour Inspector, has submitted that Category 2 Band B of the Guideline Scale should apply with some discounting to take account of the administrative directions conferences required due to the COVID-19 pandemic. I accept that submission. Ms Denmead has provided in her submissions a schedule setting out her calculation of scale costs. These total \$19,000.50 in respect of both matters and include the costs of preparation for and attendance at a hearing before the Court.

[6] I regard Category 2 Band B as an appropriate basis for calculating costs in this case. I have analysed the details of the attendances required by the Labour Inspector and the charges for same and consider them fair and reasonable.

[7] Accordingly, there will be an order for costs against NZFI and Ms Guan in the sum of \$19,000. They are jointly and severally liable to the Labour Inspector for such costs.

M E Perkins
Judge

Judgment signed at 4 pm on 11 December 2020

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

⁵ *EPB Ltd v OST* [2020] NZEmpC 218 at [27].