

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI**

**[2021] NZEmpC 184  
EMPC 230/2020  
EMPC 353/2020**

IN THE MATTER OF challenges to determinations of the  
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN VERNON COETZEE  
Plaintiff

AND OAMARU MEATS LIMITED  
Defendant

Hearing: On the papers

Appearances: V Coetzee, plaintiff in person  
L Laming and H Nimmo, counsel for defendant

Judgment: 27 October 2021

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**COSTS JUDGMENT OF JUDGE K G SMITH**

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[1] Oamaru Meats Ltd has applied for costs following Vernon Coetzee's unsuccessful challenge to a determination of the Employment Relations Authority.<sup>1</sup> Mr Coetzee had attempted to set aside a settlement agreement entered into between him and Oamaru Meats.

[2] Costs of the proceeding were reserved. The parties were unable to settle costs and Oamaru Meats has applied for them to be determined.

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<sup>1</sup> *Coetzee v Oamaru Meats Ltd* [2021] NZEmpC 137.

[3] The starting point for considering the costs of a proceeding is cl 19 of sch 3 to the Employment Relations Act 2000. That clause gives the Court a broad discretion about costs. To assist in exercising that discretion the Court has a guideline scale intended to support, as far as possible, the policy objective that determining costs should be predictable, expeditious and consistent.<sup>2</sup> The scale applies the appropriate daily rate at the time considered reasonable for the steps reasonably required in relation to the proceeding. The scale is not, however, intended to replace the Court's discretion.

[4] This proceeding was provisionally assigned Category 2B. That assessment was not revisited in the parties' submissions and I am satisfied it is appropriate.

[5] Oamaru Meats calculated scale costs of \$21,151.50 as shown in the following table:

		Days	\$
<b><i>Commencement</i></b>			
2	Commencement of defence to challenge by defendant	2	\$4,780.00
<b><i>Case Management</i></b>			
10	Preparation for first case management conference (including discussion about discovery)	0.4	\$956.00
11	Filing memorandum for first or subsequent case management conference or mentions hearing	0.4	\$956.00
13	Appearance at first or subsequent case management conference	0.3	\$717.00
<b><i>Preparation for witness hearing</i></b>			
33	Preparation of briefs, list of issues, authorities, and agreeing common bundle	2	\$4,780.00
33A	Additional allowance for whichever party prepared common bundle	0.5	\$1,195.00
33B	Preparation for hearing	2	\$4,780.00
<b><i>Appearances at witness hearing</i></b>			

<sup>2</sup> "Employment Court of New Zealand Practice Directions" <[www.employment.govt.nz](http://www.employment.govt.nz)> at No 16.

34	Appearance at hearing for sole or principal counsel	1.25	\$2,987.50
			<b>\$21,151.50</b>

[6] The scale used in Oamaru Meats' calculation was from the High Court Rules 2016. Using this Court's guideline the adjusted figure for the claimed steps in the proceeding is \$20,912.50. A party seeking costs is not able to claim more than has actually been spent regardless of what the calculation under the guideline might suggest. For that reason, Oamaru Meats claimed a contribution based on its actual costs, initially stated as being \$17,250 for legal fees and disbursements of \$1,141.30.

[7] The company's claim included GST and disbursements for a non-specific service charge. Those matters were drawn to the company's attention and resulted in an amended claim. The GST and service charge were removed reducing the costs claim to \$15,366.90 (\$15,000 towards fees incurred and the balance for disbursements). I would round that sum to \$15,300.

[8] Mr Coetzee is opposed to any order being made against him. In doing so he did not dispute Oamaru Meats' calculations or that each of the steps in the litigation it claimed was appropriate. His grounds of opposition were based on:

- (a) being unaware that, if he was unsuccessful, the costs might be as much as is now claimed; expecting that they might have been similar to what was ordered by the Authority; and
- (b) financial hardship that should lead to no award being made.

[9] Mr Coetzee included comments in his submissions about his former advocate, but those matters are not relevant to the claim for costs. His lack of awareness of the extent of his possible exposure to costs is also not relevant and can be put aside.

[10] What underpins Mr Coetzee's response to the claim for costs is that his income is exceeded by outgoings. That situation has come about from a combination of circumstances involving expenses incurred in relocating to New Plymouth, unexpected additional expenses caused by recent COVID-related lockdowns and his

family's income being adversely affected by an injury his wife has suffered that is not covered by ACC.

[11] In the financial statement Mr Coetzee provided he listed his present income and expenditure. He earns \$40 per hour with the ability to work overtime at penal rates. The outgoings he described include rent, electricity, food, repayment of two loans, and incidental expenditure. While he acknowledged some relocation assistance was provided by his new employer it did not offset all of his additional expenses.

[12] Ms Laming, counsel for the defendant, anticipated Mr Coetzee's submissions about his financial position and submitted that there was no proper reason to decline to make an order. She drew attention to:

- (a) the fact that Mr Coetzee is highly skilled and has a well-paid job; and
- (b) at no time was Mr Coetzee unemployed; he left Oamaru Meats and took up a new position immediately before relocating to New Plymouth.

[13] Ms Laming argued that the broader public interest, and the interests of Oamaru Meats, outweigh Mr Coetzee's present financial circumstances. She also submitted that there is a difference between being entitled to an order for costs and taking steps seeking immediate payment.

[14] Ms Laming relied on the observations in *Tomo v Checkmate Precision Cutting Tools* and in *Scarborough v Micron Security Products Ltd*.<sup>3</sup> In *Scarborough* the Court noted that there may be a number of reasons why a successful party would seek a costs judgment despite the unsuccessful party not being able to satisfy it immediately.<sup>4</sup> The Court in that case observed that the successful party might decide against taking enforcement action or, instead, wait to see what develops in the future such as the possibility of the unsuccessful party's circumstances changing.

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<sup>3</sup> *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2, [2015] ERNZ 196; *Scarborough v Micron Security Products Ltd* [2015] NZEmpC 105, [2015] ERNZ 812.

<sup>4</sup> At [38].

[15] In *Scarborough* the Court observed that substantially reducing, or eliminating, costs liability, on the basis of the unsuccessful party's financial position at that point in time when it was assessed, denies the successful party the ability to make decisions about whether, and when, to seek to enforce an award it might otherwise be entitled to. I agree with those observations.

[16] I do not accept that Mr Coetzee's circumstances are such that either no award of costs should be made or, alternatively, that the amount that might otherwise be ordered should be reduced. Mr Coetzee is and has always been in regular employment. His income suggests an ability to pay and the circumstances impacting on his financial position appear temporary. In any event his financial statement included allowances for discretionary spending that indicate a present ability to pay, even if that is over time.

[17] I am satisfied that an order ought to be made.

[18] Finally, the costs order in the Authority was stayed pending the resolution of this proceeding.<sup>5</sup> That stay is now set aside.

## **Conclusion**

[19] Mr Coetzee is ordered to pay Oamaru Meats the sum of \$15,300.

[20] There is no order for the time and attendances taken to prepare the application for costs.

K G Smith  
Judge

Judgment signed at 11 am on 27 October 2021

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<sup>5</sup> *Coetzee v Oamaru Meats Ltd* [2021] NZEmpC 4.