

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2022] NZACC 176 ACR 174/20

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	ISMAIL ROBIN Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: On the papers

Submissions: S Beacham for the appellant
 A Miller and R Mould for the respondent

Judgment: 12 September 2022

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for costs, Accident Compensation Act 2001]**

Introduction

[1] In this matter, Mr Robin appealed against the decision of a Reviewer dated 29 July 2020. The Reviewer had dismissed an application for review of the Corporation's decision dated 9 September 2019 declining Mr Robin cover for a work-related gradual process injury of right carpal tunnel syndrome. In a judgment dated 14 June 2022, this Court allowed the appeal, and set aside the review decision. The Court directed that Mr Robin was entitled to costs, and, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda.

[2] In the event, the parties agreed that the actual disbursements be covered, but did not reach an agreement as to costs. On 22 August 2022, Ms Beacham provided submissions claiming costs on a category 3C basis, and provided an annexure of actual costs totalling \$8,700. Ms Beacham submitted that the Court should exercise its discretion and not apply the 50% reduction to the costs award (on the basis of the *Carey* judgment below) to ensure that her actual costs were covered, particularly in light of her legal qualifications and experience.

[3] On 7 September 2022, A Miller and R Mould, for the Corporation, provided submissions in support of an award of costs based on category 1B, less 50 percent on the basis of the *Carey* judgment, amounting to \$2032. Counsel submitted that Ms Beacham provided reasonable assistance to the Court in a straightforward appeal which was successful, and that there was no basis on which to depart from the general principles in *Carey*.

Relevant law

[4] Rule 4.1.1 of the District Court Rules 2009 provides that the award of costs is at the discretion of the Court if they relate to costs of a proceeding, or incidental to a proceeding, or a step in a proceeding.

[5] Rule 4.3 provides for the categorisation of proceedings in relation to costs:

Category 1 proceedings Proceedings of a straightforward nature able to be conducted by counsel considered junior.

Category 2 proceedings Proceedings of average complexity requiring counsel of skill and experience considered average.

Category 3 proceedings Proceedings that because of their complexity or significance require counsel to have special skill and experience.

[6] Schedule 3 of the Rules provides for sub-categories A, B and C of the above categories, according to estimated time allocations. Rule 4.5.2 provides that a determination of what is a reasonable time for a step in a proceeding must be made by reference to: band A, if a comparatively small amount of time for the particular step is considered reasonable; band B, if a normal amount of time for the particular

step is considered reasonable; or band C, if a comparatively large amount of time is considered reasonable.

[7] Rule 4.6.1(a) provides for the award of actual costs (indemnity costs), but this is subject to Rule 4.6.4 which outlines the exceptional circumstances in which such costs may be awarded.

[8] In *Carey*,¹ Grice J stated:

[91] Non-lawyer advocates will vary in their expertise and experience. The Judge should not have to go into detail in each case analysing expertise and experience and then move on to consider the assistance, which has or has not been provided. Instead a Judge should be entitled to start with a percentage based on the scale costs. If the Judge has been assisted by the non-lawyer representative in a straightforward case, it would, as a guideline, generally be appropriate to set a daily rate set at 50 per cent of the daily lawyer rate based on category 1. Under the District Court Rules, category 1 relates to “proceedings of a straightforward nature able to be conducted by counsel considered junior”.

...

[96] ... The level of qualification and skill of the advocate in ACC law would be a factor to the extent that was evident. The Judge should not be required to scrutinise the qualifications and experience of the non-lawyer representative. If a level of assistance was provided, the appropriate daily rate percentage for the non-lawyer advocate would be 50 per cent of the scheduled daily rate.

Discussion

[9] The issue in this case is the amount of costs that should be awarded to Ms Beacham, the advocate for Mr Robin.

[10] This Court acknowledges that Ms Beacham has legal qualifications, skills and experience that are valuable to the role of an advocate in the ACC jurisdiction; and, to this end, the Court proposes to allow a higher allocation of costs than to a lay advocate without such qualifications, skills and experience.

[11] However, in deciding on the extent of costs to be awarded to Ms Beacham, this Court is required to exercise its discretion in terms of the District Court Rules on costs (as noted above), and is guided by the judgment (above) of the High Court in

¹ *Accident Compensation Corporation v Carey* [2021] NZHC 748.

Carey.² Having carefully weighed up the submissions of Ms Beacham and the submissions of counsel for the Corporation, this Court prefers the latter as being in accord with the District Court Rules on costs and the judgment of the High Court in *Carey*.

[12] In light of the above considerations, the Court allows the following schedule of costs. The Court proceeds on the basis that the Corporation has agreed to cover disbursements for which invoices have been provided.

Commencement of Appeal:	\$635.00;
Case Management:	\$254.00;
Preparing Case on Appeal:	\$635.00;
Preparation of Written Submissions:	\$1,905.00;
Appearance at Hearing:	\$635.00;
Total Costs \$4064.00 x 60%:	<u>\$2,438.40.</u>

Conclusion

[13] Ms Beacham is awarded costs, in addition to agreed disbursements, totalling \$2438.40.



P R Spiller
District Court Judge

Solicitors for the Corporation: Claro.

² Above, note 1.