

[3] At the hearing of the appeal on 29 June 2022, Mr Hawes-Gandar addressed the Court briefly after the appellant's submissions. He told the Court that the Corporation abided the Court's decision. He made no further submissions.

[4] Mr Nant, general manager of the second respondent, Anderson O'Leary Limited, made submissions on behalf of his company in support of the reviewer's decision.

[5] In his submissions on costs, Mr Nant says:

At the initial case management conference, the company confirmed that it intended to support ACC's neutral position as first respondent.

[6] However, the submissions he presented at the appeal hearing were not supportive of a neutral position, they were adversarial.

[7] For the purposes of this costs application Mr Nant has provided the Court with emails that were exchanged with ACC's counsel before the hearing of the appeal including one indicating that he was a little confused as to ACC's position.

[8] Also provided is an email reply from Mr Hawes-Gandar to the effect that ACC had the right to be heard on the appeal.

[9] In this Costs Judgment, my jurisdiction is confined to the question of the award of costs relating to the appeal. I have no jurisdiction to rule on what may or may not have been agreed between Mr Nant and Mr Hawes-Gandar as to the conduct of the appeal.

[10] Given the fact that Mr Hawes-Gandar told the Court that the Corporation abides the Court's decision, given also the fact that at the case management conference prior to the hearing of the appeal, it was recorded that the Corporation was taking a neutral position, I find, as this was the case at the hearing of the appeal, that no costs award may be made against the Accident Compensation Corporation.

[11] Any misunderstandings as to what was intended to occur at the appeal, between the Accident Compensation Corporation and Anderson O'Leary Limited is a matter between those two parties and outside the parameters of this decision.

[12] The appellant having been successful, is entitled to an award of costs.

[13] This is determined under rule 14 and schedule 4 of the District Court Rules.

[14] For the purpose of rule 14.2(b), I classify these proceedings as category 1. The matter on appeal was essentially a factual one, - whether the injury by accident actually occurred. The proceedings were of a straightforward nature, able to be conducted by counsel considered junior.

[15] The duration of the appeal hearing was approximately one hour.

[16] In his submissions, Mr Hinchcliff provides time allocations. The Court accepts all of those allocations, except the allocation under item 24A, being the preparation of written submissions. A time allocation of one and half days is excessive - .75 of a day is allowed.

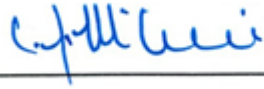
[17] Likewise, the cost of \$180 for the disbursements described as "time and expense of travel to Court and two times to the post office, courier the bundle two times to the Court", is also excessive. Disbursements relate to expenses incurred, not the time involved in carrying out activities; \$90 is therefore allowed.

[18] Mr Hinchcliff also seeks costs for the drafting of submissions for costs.

[19] I allow him \$200 for this pursuant to item 20 of schedule 4.

[20] The result is that, with the reduction from 1.5 days, to .75 of a day for preparation of written submissions, a total of 2.65 days is allowed for the items listed in Mr Hinchcliff's appendix. At the category 1 daily rate of \$1,270, this amounts to \$3,365.50. Added to this is \$90 for disbursements and \$200 for the appellant's costs submissions.

[21] This results in a total for costs and disbursements of \$3,655.50. This sum is awarded in favour of the appellant against Anderson O'Leary Limited.



Judge C J McGuire
District Court Judge

Solicitors: ACC and Employment Law, for the appellant
Medico Law, for the first respondent.