

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

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

**[2022] NZEmpC 220  
EMPC 1/2021**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	SHAH ENTERPRISE NZ LIMITED First Plaintiff
AND	SAPAN JAGDISHBHAI SHAH Second Plaintiff
AND	A LABOUR INSPECTOR OF MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Defendant

Hearing: On the papers

Appearances: No appearance for plaintiffs  
G La Hood, counsel for defendant

Judgment: 1 December 2022

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**COSTS JUDGMENT OF JUDGE J C HOLDEN**

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[1] This judgment resolves an application for costs made by the Labour Inspector in respect of the challenge brought by Shah Enterprise NZ Ltd (Shah Enterprise) and Mr Shah.<sup>1</sup>

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<sup>1</sup> *Shah Enterprise NZ Ltd v A Labour Inspector of Ministry of Business, Innovation and Employment* [2022] NZEmpC 177.

[2] The memorandum from the Labour Inspector applying for costs was filed on 13 October 2022 and provided to Mr Meys, who represented Shah Enterprise and Mr Shah in these proceedings.

[3] Mr Meys has advised the Court that he does not have instructions to file a costs memorandum. No memorandum has been received by the Court from, and no contact has been made by, Shah Enterprise or Mr Shah directly.

[4] The Court has a broad discretion in awarding costs.<sup>2</sup> It has provided a guideline scale to assist in its exercise.<sup>3</sup> As noted in the Practice Directions, the scale is intended to support the policy objective that the determination of costs is predictable, expeditious and consistent.<sup>4</sup>

[5] The Labour Inspector claims costs and disbursements as follows:

	<b>Step</b> (per cl 19 of sch 3 of the Employment Relations Act 2000, and Schedule 2 of the High Court Rules 2016)	<b>Time allocation</b> (days or part days)	<b>Recovery rate</b>	<b>Amount claimed</b>
1	Commencement of defence to challenge by defendant	0.5	\$2,390	\$1,195
2	Filing memorandum for first or subsequent directions conference	0.2	\$2,390	\$478
3	Preparation for Case Management Meeting	0.2	\$2,390	\$478
4	Preparation of written submissions	1.5	\$2,390	\$3,585 <sup>5</sup>
5	Preparation of defendant's briefs	2	\$2,390	\$4,780
6	Preparation of bundle for hearing	0.6	\$2,390	\$1,434
7	Filing memorandum for first or subsequent case management conference	0.4	\$2,390	\$956

<sup>2</sup> Employment Relations Act 2000, sch 3, cl 19.

<sup>3</sup> "Employment Court of New Zealand Practice Directions" <[www.employment.govt.nz](http://www.employment.govt.nz)> at No 16.

<sup>4</sup> At (4).

<sup>5</sup> The figure in the Labour Inspector's table was \$2,987.50.

8	Filing memorandum relating to application for evidence to be heard by audio-visual link	0.5	\$2,390	\$1,195
9	Preparation for hearing	2	\$2,390	\$4,780
10	Appearance at hearing for sole/principal representative at hearing (27-29 April 2022)	3	\$2,390	\$7,170
	<i>Total Court costs</i>	10.9	\$2,390	\$26,051 <sup>6</sup>
11	Employment Relations Authority investigation meeting	0.3	\$2,390	\$717 (without uplift)
	<i>Total costs</i>			\$26,768
	<i>Disbursements – application to the Employment Relations Authority filing fee</i>			\$71.56
				<b>\$26,839.56</b>

[6] As can be seen, the table includes a sum for the Employment Relations Authority’s investigation meeting based on the recovery rate in the Court. That is less than would be the calculation if the Labour Inspector had used the Authority’s relevant daily tariff of \$4,500.

[7] Further, although the Labour Inspector says the calculation is based on Category 2B, the table provided is a little unclear. A number of the amounts in the table have been calculated based on less time than Category 2B allows.<sup>7</sup> It also is unclear why 1.5 days is sought for the preparation of written submissions; this was not an originating application; the only interlocutory matter was the request for evidence to be given via AVL, which is covered in line 8 of the Labour Inspector’s calculation. These matters largely cancel each other out, however, so I use the table as provided by the Labour Inspector, with just the arithmetic error from line 4 corrected.

[8] In the proceedings in the Court, Shah Enterprise and Mr Shah were unsuccessful in respect of the wages claim. The Court also ordered penalties, but at a

<sup>6</sup> Arithmetic corrected.

<sup>7</sup> Labour Inspector calculation, lines 1, 2, 3, 6.

lower level than had been ordered in the Authority. However, neither Shah Enterprise nor Mr Shah attended the Authority's investigation meeting and so gave no evidence and made no submissions to the Authority in respect of penalties. Accordingly, I do not consider it appropriate to reduce costs because of the limited success that Shah Enterprise and Mr Shah had in respect of penalties in the Court.

[9] Although the Labour Inspector suggested an uplift was warranted for the Authority investigation, he ultimately says the amount in the table represents a fair contribution to the Labour Inspector's costs. I agree. There is therefore an order that the plaintiffs are to pay costs of \$26,768 together with disbursements of \$71.56, bringing the total to \$26,839.56. Unless otherwise agreed between the parties, that sum is to be paid by Shah Enterprise and/or Mr Shah to the Labour Inspector by Friday 27 January 2023.

J C Holden  
Judge

Judgment signed at 3.30 pm on 1 December 2022