IN THE DISTRICT COURT
AT WELLINGTON

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

[2021] NZACC 138 ACR 280/19

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

Hearing: On the papers

Appearances: Mr B Hinchcliff for the appellant
Ms F Becroft for the respondent

Judgment: 14 September 2021

RESERVED JUDGMENT OF JUDGE C J McGUIRE ON COSTS

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[1] In this case, both counsel have filed memoranda in respect of costs. A number of items are agreed. This judgment is confined to dealing with those items that are not agreed.

Preparing of Case on Appeal

[2] Mr Hinchcliff has claimed half a day for this case, which amounts to $955.00, according to scale 2. Mr Hinchcliff has also claimed $764 being .4 of a day for preparing a bundle for hearing.

[3] It is the Corporation's submission that each of these steps under cl 24 and cl 9.13 of the time allocations in Schedule 4 to the District Court Rules describe the same activity.

[4] Reference is made to *Reilly v ACC*[1] where Judge Sinclair agreed that only step 24 should be awarded. The Court notes that a case on appeal includes the relevant documentary exhibits and agrees with the Corporation that cost items 9.13 and 24 cover the same work.

[5] Mr Hinchcliff says that preparing the case on appeal includes:

[a] Reviewing the bundle and authorities so that evidence is presented in Court in a logical order. Opening statements are prepared, and order for evidence and summaries of the individual evidence is organised.

[b] Respondent's submissions and authorities are understood and comments are prepared relating to these.

[6] Mr Hinchcliff also refers to having to file a memorandum with the Court on 15 July in response to the Corporation's clinical advisory panel report of 31 March 2020. He also refers to a second clinical advisory panel report filed by the Corporation and that this had not been agreed or discussed between the parties before filing. I do not find Mr Hinchcliff's explanation persuasive. He has not demonstrated that in this case the items, 9.13 and 24 cover separate and distinct things. The items he refers to fall properly under preparing a case on appeal for which a half day, namely $955 has been allowed.

[7] The next matter is the claim under paragraph 9.8 of the 4th Schedule, being the sum of $477.50 (.25 of a day) for filing and serving a memorandum in anticipation of a judicial conference.

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1 *Reilly v Accident Compensation Corporation* [2010] NZCA 272.

[8] Mr Hinchcliff says a joint memorandum was filed on 16 June 2020 in anticipation of a judicial case conference and that he spent two hours in preparation for this, noting that an understanding of the issues and evidence was required.

[9] Ms Becroft submits that this is a case of double dipping given that Mr Hinchcliff is already claiming $382 or .2 of a day for case management.

[10] She says a joint memorandum was drafted by counsel for the respondent, amended by counsel for the appellant and then filed by counsel for the respondent.

[11] Mr Hinchcliff notes that some jurisdictional issues were corrected in the memorandum in question. He also notes that in preparation for the filing of the joint memorandum an understanding of the issues and evidence was required.

[12] Once again it does appear that the two items claimed, namely case management under paragraph 23 and filing and serving a memorandum in anticipation of a judicial conference under paragraph 9.8 cover the same issues.

[13] While plainly an understanding of the issues and evidence was required, that is inherent in claims under a number of categories including the half day claimed under paragraph 21 being the commencement of the appeal. Accordingly, Mr Hinchcliff's claim in this regard is limited to .25 of a day or $477.50 under paragraph 9.8 for filing and serving a memorandum in anticipation of a judicial conference.

[14] The final matter relates to disbursements. $425 is claimed.

[15] Ms Becroft points out that rule 14.2 of the District Court Rules says a disbursement means an expense paid or incurred for the purposes of the proceeding which would ordinarily be charged or separately from professional services in a solicitor's bill of costs and include:

- Court fees;
- Expenses for serving documents;
- Expenses for photocopying required documents;

- Expenses incurred in providing or complying with discovery by electronic means in accordance with these rules; and
- Expenses in conducting a conference by telephone or video link.

[16] Mr Hinchcliff points out that during some of the time of the appeal process, the appellant was incarcerated in the Auckland South Corrections Facility at Wiri. He says he had to meet the appellant at the prison to obtain signed documents including the District Court Authority to Act. He says that the time spent travelling to the facility, waiting at the facility for entry and returning to the office was 3 hours.

[17] He also says that communication with the appellant over the telephone was costly for the appellant. He says that more than usual photocopying was required as the appellant was not able to receive electronic communications. Letters needed to be sent to the appellant.

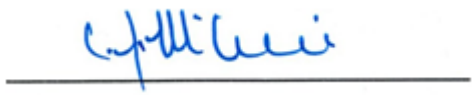
[18] Rule 14.12 of the District Court Rules deals with disbursements and it includes a non exclusive list of disbursements. It is defined as "an expense paid or incurred for the purposes of the proceeding which would ordinarily be charged for separately from professional services in a solicitor's bill of costs".

[19] While Ms Becroft notes that travel time is not included specifically in Rule 14.12, in the circumstances of this case it is a proper disbursement given the unusual circumstances of the appellant being incarcerated. In the ordinary course counsel are entitled to expect that the client would attend at their office. Plainly Mr Hinchcliff incurred expense having to travel to and from the prison and there was also the waiting time at the prison.

[20] It would have been helpful if disbursements had been tabulated with some particularity as the figure claimed of $425 was a significant one. However I conclude that the figure claimed, while substantial, can be justified for the reasons that Mr Hinchcliff has now provided, reasons that should have been provided in the first place.

[21] The net result of this judgment is that the claims for case management of $382 and for preparation of bundle for hearing of $382 are declined. That then reduces the amount of Mr Hinchcliff's claim from $6,919 to $6.154 for which judgment is given.

[22] As Mr Hinchcliff has been partially successful, he will be entitled to costs of $200, reduced from $300 on account of his initial failure to explain his disbursement figure.



Judge C J McGuire
District Court Judge

Solicitors: ACC and Employment Law, Auckland for the appellant
Medico Law Limited, Auckland for the respondent