

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 182
EMPC 428/2022**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN PACT GROUP
 Plaintiff

AND CAREY ROBINSON
 Defendant

Hearing: On the papers

Appearances: F McMillan, counsel for plaintiff
 R Jamieson and I O’Sullivan, advocates for defendant

Judgment: 27 October 2023

COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

[1] This judgment deals with an application for costs following the Court’s judgment of 5 October 2023, dismissing Pact Group’s challenge against a determination of the Employment Relations Authority.¹ I encouraged the parties to agree costs but indicated that I would receive memoranda if agreement did not prove possible. While the parties have sought to resolve costs (and have largely done so) there is one sticking point, which this judgment deals with.

[2] At the initial case management conference it was agreed that these proceedings were appropriately assigned category 2B for costs purposes. That remains the

¹ *Pact Group v Robinson* [2023] NZEmpC 173.

position, and neither party suggests otherwise. Costs calculated on a 2B basis amount to \$26,290. The defendant seeks a contribution to the costs associated with the appearance of a second representative during the course of the hearing. The plaintiff opposes an allowance for these costs. It says that the challenge was of average complexity, that the lead advocate (Mr Jamieson) represented the defendant well and that there were no factors which would justify the appearance of a second representative.

[3] The Court may allow costs for the appearance of additional representation at hearing where it considers it appropriate to do so.² Mr Jamieson submits that it would be appropriate to make such an allowance in this case because of the volume of material that was put before the Court, the fact that the hearing touched on an evolving area of law, the significant consequences for Ms Robinson of an adverse outcome, and the assistance he gained from having Mrs O’Sullivan present as second representative for the duration of the hearing.

[4] It is open to parties to choose to be represented by more than one representative but it does not automatically follow that those choices result in an additional cost to the unsuccessful party. The High Court has recognised that the need for a second representative in Category 2 cases has considerably reduced due to modern trial practices.³ The Court will have regard to the nature of the proceeding and the complexity involved, including of the issues, evidence and number of witnesses before the Court.⁴ Ultimately, the Court is guided by what it objectively considers to be a fair contribution to costs in the particular circumstances.

[5] While I accept that Mrs O’Sullivan added value to the conduct of the defendant’s case, I do not consider that (on a case such as this) it was reasonably required. I am satisfied that scale costs allowing for one representative only reflects a fair contribution to the defendant’s costs. Accordingly, costs associated with the appearance of second representation are not allowed.

² “Employment Court of New Zealand Practice Directions” <www.employmentcourt.govt.nz> at No 18.

³ *Nomoi Holdings Ltd v Elders Pastoral Holdings Ltd* (2001) 15 PRNZ 155 (HC) at [18]–[19].

⁴ At [21]; and *Brady v Presbyterian Church of Aotearoa New Zealand* [2013] NZHC 2300 at [2].

[6] The plaintiff is ordered to pay the defendant the sum of \$26,290. This is to be paid within 20 working days of the date of this judgment.

Christina Inglis
Chief Judge

Judgment signed at 2.20 pm on 27 October 2023