

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

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

**[2023] NZEmpC 201  
EMPC 106/2022**

IN THE MATTER OF      an application for judicial review

IN THE MATTER OF      an application for costs

BETWEEN                MICHAEL REDDY  
                                 Applicant

AND                        EMPLOYMENT RELATIONS  
                                 AUTHORITY  
                                 First Respondent

AND                        HAMILTON CITY COUNCIL  
                                 Second Respondent

Hearing:                On the papers

Appearances:        A Halse, advocate for the applicant  
                                 Appearance excused for the first respondent  
                                 M Hammond and K McLuskie, counsel for the second respondent

Judgment:            17 November 2023

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**COSTS JUDGMENT OF JUDGE J C HOLDEN**

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[1] In the Court’s judgment dated 6 September 2023, leave was granted to Hamilton City Council to apply for costs.<sup>1</sup> It attempted to reach agreement with Mr Reddy but has not been able to do so. It now seeks costs based on the Employment Court of New Zealand Practice Directions, using category 2 band B. Initially, the Hamilton City Council sought an award for costs of \$19,120, but after

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<sup>1</sup> *Reddy v Employment Relations Authority* [2023] NZEmpC 147 at [20].

Mr Reddy raised some issues with the calculation, it revised the amount sought to \$18,642, calculated as follows:

<b>Item Number in Schedule<sup>2</sup></b>	<b>Step in Proceeding</b>	<b>Time Allocation</b>	<b>Cost</b>
12	Filing memorandum for first directions conference (Appearance for second defendant abiding the decision of the Employment Court and Reserving Rights) (29 April 2022)	0.4	\$956
11	Preparation for first directions conference (13 May 2022)	0.4	\$956
13	Appearance at first directions conference (13 May 2022)	0.2	\$478
13	Appearance at subsequent directions conference (3 February 2023)	0.2	\$478
2	Statement of Defence in respect of application for judicial review (22 March 2023)	1.5	\$3,585
42	Defendant's preparation of Affidavit of Daniel John Finn (22 March 2023)	2	\$4,780
44	Preparation of common bundle for hearing (27 April 2023)	0.6	\$1,434
45	Preparation for hearing (5 May 2023)	2	\$4,780
46	Appearance at hearing for sole or principal representative (5 May 2023)	0.5	\$1,195
		<b>TOTAL</b>	<b>\$18,642</b>

[2] The Hamilton City Council has confirmed that the costs sought relate solely to Mr Reddy's application for judicial review and that the costs actually incurred by the Hamilton City Council exceed the costs now sought.

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<sup>2</sup> The last four numbers have been changed to reflect this was not a challenge.

[3] Mr Reddy opposes costs being awarded to the Hamilton City Council. He says, first, that the claim of judicial review was against the first respondent, the Employment Relations Authority, not the Hamilton City Council, and second that the Hamilton City Council filed its statement of defence late and without leave. He submits that the Hamilton City Council has no entitlement to claim costs.

[4] In the alternative, Mr Reddy submits that the appropriate costs categorisation would be category 1 band A, at least in respect of some of the items for which costs are claimed.

[5] He also says the award sought would be oppressive. He points to his financial position, which he says is precarious.

### **The Hamilton City Council is entitled to costs**

[6] The Employment Court has a discretion as to costs.<sup>3</sup> The primary principle is that costs follow the event. An award should represent a reasonable contribution to costs actually and reasonably incurred.<sup>4</sup> Beyond that, the assessment of costs is a balancing act.

[7] Here, the Hamilton City Council was wholly successful in its defence of Mr Reddy's claim. It is entitled to costs. The costs being claimed align with category 2 band B, with a lesser time allocation claimed for preparation of the common bundle. Having reviewed the file, I consider lesser amounts also are appropriate for the preparation of the statement of defence and the single affidavit. I allow half a day for the statement of defence, which was quite concise, and one day for the affidavit, bringing the calculation to \$13,862.

[8] I accept that ability to pay without hardship can be a relevant consideration when making an award for costs.<sup>5</sup> I acknowledge, however, the points made by the Hamilton City Council. Mr Reddy presumably had advice that would have identified

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<sup>3</sup> Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

<sup>4</sup> *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

<sup>5</sup> *NZ Air Line Pilots Assoc IUOW v Registrar of Unions* (1989) ERNZ Sel Cas 304 (LC) at 307.

the prospects of success in these proceedings. The Hamilton City Council should not have to bear the costs of hopeless litigation embarked upon by him.

[9] In the circumstances, balancing the financial position of Mr Reddy against his lack of success in the judicial review proceedings, which ought to have been predictable, I consider an appropriate award of costs in this instance is \$11,000.

[10] Unless other arrangements are made between the parties, that sum is to be paid by Mr Reddy to the Hamilton City Council within 28 days of the date of this judgment.

J C Holden  
Judge

Signed at 4.30 pm on 17 November 2023