

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2024] NZACC 024 ACR 159/22

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

Hearing: On the papers

Submissions: K Koloni for the Appellant
 J Castle for the Accident Compensation Corporation (“the
 Corporation”)

Judgment: 13 February 2024

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for costs on appeal - Part 14 District Court Rules 2014]**

Introduction

[1] The parties in this matter have settled this appeal, with the exception of costs, which have not been agreed.

Background

[2] On 6 August 2021, Dr Gil Newburn provided a neuropsychiatric report in respect of the appellant, and submitted an invoice for \$2500.

[3] On 3 March 2022, the Corporation declined to meet the cost of Dr Newburn’s invoice.

[4] The matter went to review. The Reviewer noted that a copy of Dr Newburn's instruction letter, payment request and invoice had not been provided. The Reviewer dismissed the matter on the basis that prior approval had not been sought and, while the Corporation could exercise its discretion to pay the invoice on receipt, this was not a reviewable decision under section 68 of the Accident Compensation Act 2001.

[5] On 1 September 2022, the appellant filed an appeal against the Reviewer's decision. The Corporation requested a copy of Dr Newburn's invoice.

[6] On 16 November 2022, Ms Koloni, for the appellant, submitted Dr Newburn's invoice to the Corporation for payment.

[7] On 9 December 2022, counsel for the Corporation indicated that it would arrange payment of the invoice. The substance of the appellant's appeal was therefore settled, subject to the issue of costs.

Relevant law

[8] Rule 14.1(1) of the District Court Rules 2014 provides that the award of costs is at the discretion of the Court if they relate to costs of a proceeding, or incidental to a proceeding, or a step in a proceeding.

[9] Rule 14.3(1) provides for the categorisation of proceedings in relation to costs:

Category 1 proceedings Proceedings of a straightforward nature able to be conducted by counsel considered junior.

Category 2 proceedings Proceedings of average complexity requiring counsel of skill and experience considered average.

Category 3 proceedings Proceedings that because of their complexity or significance require counsel to have special skill and experience.

[10] Schedule 5 provides that the following are the appropriate daily recovery rates for the categories of the proceedings referred to in rule 14.3:

Category 1 proceedings	\$1,270 per day
Category 2 proceedings	\$1,910 per day

Category 3 proceedings \$2,820 per day

[11] Rule 14.5(2) provides that a determination of what is a reasonable time for a step in a proceeding must be made by reference to:

- (a) band A, if a comparatively small amount of time for the particular step is considered reasonable;
- (b) band B, if a normal amount of time for the particular step is considered reasonable; or
- (c) band C, if a comparatively large amount of time is considered reasonable.

[12] Schedule 4 provides for the time allocations for each step in general civil proceedings, according to categories A, B and C.

[13] Rule 14.12(2) provides that a disbursement may only be included in a costs award to the extent that the disbursement was approved by the Court for the purposes of the proceeding, specific to and necessary for the conduct of the proceeding, and reasonable in amount.

[14] In *Carey*,¹ Grice J stated:

[91] Non-lawyer advocates will vary in their expertise and experience. The Judge should not have to go into detail in each case analysing expertise and experience and then move on to consider the assistance, which has or has not been provided. Instead a Judge should be entitled to start with a percentage based on the scale costs. If the Judge has been assisted by the non-lawyer representative in a straightforward case, it would, as a guideline, generally be appropriate to set a daily rate set at 50 per cent of the daily lawyer rate based on category 1. Under the District Court Rules, category 1 relates to “proceedings of a straightforward nature able to be conducted by counsel considered junior”.

...

[96] ... The level of qualification and skill of the advocate in ACC law would be a factor to the extent that was evident. The Judge should not be required to scrutinise the qualifications and experience of the non-lawyer representative. If a level of assistance was provided, the appropriate daily rate percentage for the non-lawyer advocate would be 50 per cent of the scheduled daily rate.

...

[120] [Substitution of 50% of Category 1 instead of Category 2 costs] reflects that [the representative] was of reasonable assistance to the Court in a straightforward appeal that was successful.

¹ *Accident Compensation Corporation v Carey* [2021] NZHC 748.

Discussion

[15] As noted above, Rule 14.1(1) of the District Court Rules 2014 provides that the award of costs is at the discretion of the Court if they relate to costs of a proceeding, or incidental to a proceeding, or a step in a proceeding.

[16] This Court, in exercising its discretion, has taken into account the submissions of Ms Koloni for the appellant and Mr Castle for the Corporation. Ms Koloni has claimed costs of \$3,820 on a 2B basis for two days. The Corporation has offered to pay costs of \$254 on a 1A basis less 50%, or alternatively costs of \$444.50 on a 1A/1B basis less 50%.

[17] In this matter, this Court finds that that the short appeal proceedings before settlement of the substantive issue were not complex. The Court therefore awards costs according to category 1 (\$1,270.00 per day, for proceedings of a straightforward nature able to be conducted by counsel considered junior). The Court finds that the commencement of appeal should be allocated to band B (a normal amount of time is considered reasonable) and the preparation of memoranda to band A (a comparatively small amount of time for the particular step is considered reasonable). In terms of the High Court's judgment in *Carey*,² because the appellant was represented by a non-lawyer, 50 per cent of the scheduled daily rate is awarded.

[18] In light of the above considerations, the Court allows the following schedule of costs, based on category 1 (with bands and units of days in brackets):

21 Commencement of Appeal	(band B: 0.5):	\$635.00
9.8, 23 Memoranda	(band A: 0.2):	\$254.00
Total costs:		<u>\$889.00</u>
Less 50 percent:		<u>\$444.50</u>

[19] Disbursements have not been itemised or claimed. However, this Court accepts the reasonable likelihood that disbursements in the nature of photocopying and fees in support of electronic communications were incurred, and so the amount of \$100 is allowed.

² *Carey*, above note 1, at [96].

Conclusion

[20] This Court directs that the Corporation pay the appellant, Ms Beauchamp, \$544.50, being costs of \$444.50 and disbursements of \$100.

A handwritten signature in dark ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller
District Court Judge