

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2024] NZACC 44

ACR 7/24

UNDER THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF
THE ACT

BETWEEN HOWARD, MAREE
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: On the papers

Submissions: The Appellant is self-represented (assisted by J Howard)
P McBride for the Accident Compensation Corporation (“the
Corporation”)

Judgment: 6 March 2024

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Costs of appeal]**

Introduction

[1] This is a claim for costs and disbursements in relation to an appeal in which the Corporation was successful.

Background

[2] The substantive matter in this appeal was the decision of a Reviewer dated 1 December 2023. The Reviewer dismissed an application for review of the Corporation’s email dated 2 August 2023, on the basis that this was not a reviewable decision under the Act.

[3] On 28 February 2024, the Court delivered its judgment,¹ which found that:

[38] ... the Reviewer correctly found that the Corporation's email of 2 August 2023 was not a reviewable decision under the Act. The decision of the Reviewer dated 1 December 2023 is therefore upheld. This appeal is dismissed.

[4] In relation to the costs of this appeal, the Court stated:

[39] It is now nearly 10 years ago since the Supreme Court finally confirmed that there was no further right of appeal against the decision to suspend Ms Howard's entitlements on 11 November 2010. Ms Howard's subsequent attempts to relitigate this matter have been repeatedly described by the Courts as an abuse of process. As a result, past Courts (notably Powell DCJ and Courtney J) have found that the Corporation is entitled to an award against Ms Howard for costs and reasonable disbursements.

[40] For the same reason, this Court directs that the Corporation is entitled to costs and reasonable disbursements arising out of the present appeal. The Court directs that the Corporation is to file submissions on the appropriate amount of costs and disbursements sought within 10 days of the release of this judgment. Ms Howard will have 10 days to respond, following which the Court will determine the issue.

[5] On 4 March 2024, Mr McBride, for the Corporation, provided a memorandum as to costs and disbursements, totalling \$1,766.55.

[6] On 5 March 2024, Ms Howard provided an email response to the Corporation's memorandum, requesting the Court to exercise its discretion, and, in the circumstances, not award costs against her.

Relevant law

[7] 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. Rule 14.2(1)(a) provides that the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds.

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

¹ *Howard v Accident Compensation Corporation* [2024] NZACC 41.

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.

[9] 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

[10] 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.

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

[12] 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.

Discussion

[13] As noted above, the award of costs is at the discretion of the Court if they relate to costs of a proceeding. This Court, in exercising its discretion, has taken into account the memorandum of Mr McBride for the Corporation, and the email of Ms Howard.

[14] This Court notes that Ms Howard has stated that the amount of costs claimed would have a significant adverse impact on her and her husband, and they have pursued their appeal because of the considerable significance of the case to them. However, the default position in terms of the District Court Rules is that the party who fails with respect to a proceeding should pay costs to the party who succeeds. Notwithstanding the considerable body of judicial pronouncements against the position taken by Ms Howard, she has persisted in the present appeal, and has once again failed. Ms Howard is therefore liable to pay costs to the Corporation, who has succeeded in this appeal.

[15] As to the quantification of costs to be awarded, this Court finds that the present proceedings could have justified an award of costs according to category 2 (\$1,910 per day, for proceedings of average complexity requiring counsel of skill and experience considered average) and band B (a normal amount of time for the particular step is considered reasonable).

[16] However, the Court notes that counsel for the Corporation has claimed costs according to category 1 (\$1,270 per day, for proceedings of a straightforward nature able to be conducted by counsel considered junior) and band A (a comparatively small amount of time for the particular step is considered reasonable). This Court is therefore prepared to accept the award of costs on a 1A basis, while noting the strong possibility of a higher award of costs being made in the event of any future similar proceeding brought by Ms Howard.

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

22 Preparation of response to appeal (0.2):	\$254.00;
24 Preparation of case on appeal (Bundle) (0.5):	\$635.00;
24A Preparation of written submissions (0.5):	\$635.00;
Total costs (1.2 days at \$1270):	<u>\$1,524.00</u>

[18] Counsel for the Corporation has claimed disbursements of \$214.65 for printing/copying of Bundles, and \$27.50 for couriers. This Court finds that these

disbursements are specific to and necessary for the conduct of the proceeding, and reasonable in amount.

Conclusion

[19] This Court directs that Ms Howard pay to the Corporation costs of \$1,524.00 and disbursements of \$242.55 (totalling \$1,766.55).

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

P R Spiller
District Court Judge

Solicitors for the Respondent: McBride Davenport James.