

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

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

**[2024] NZEmpC 68
EMPC 310/2023**

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

AND IN THE MATTER OF an application for costs

BETWEEN STONEWOOD GROUP LIMITED
 Plaintiff

AND VGP
 Defendant

Hearing: On the papers

Appearances: A Wilson, counsel for the plaintiff
 D Gelb, advocate for the defendant

Judgment: 2 May 2024

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] This judgment resolves an application for costs brought by the defendant, VGP, after the plaintiff, Stonewood Group Ltd, discontinued its challenge to a costs determination of the Employment Relations Authority.¹

[2] VGP submits that these proceedings are appropriately categorised as category 2B under the Court’s guideline scale.²

¹ *VGP v Stonewood Group Ltd* [2023] NZERA 435 (Member English).

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

[3] Their calculation of scale costs is:

STEP	DESCRIPTION	ALLOCATED DAYS (BAND B)
2	Commencement of defence to challenge by defendant	1.5
11	Preparation for first direction conference	0.4
12	Filing memorandum for first directions conference 21 October 2023	0.4
12	Filing memorandum for second directions conference 16 February 2024	0.4
12	Filing memorandum for third directions conference 21 February 2024	0.4
12	Filing memorandum for fourth directions conference 26 February 2024	0.4
13	Appearance at first directions conference 24 October 2023	0.2
13	Appearance at second directions conference 19 February 2024	0.2
30	Preparation of written submissions	1.0
31	Preparation of bundle for hearing	0.6
35	Defendant's preparation of affidavits	2.0
Total		7.5

[4] At the category 2 recovery rate of \$2,390 per day, this leads to an award of \$17,925. GST is omitted from scale costs calculations; costs are often referred to as “GST neutral”.³ VGP’s actual costs, however, only totalled \$11,345.90, including

³ *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282, (2016) 23 PRNZ 260 at [7].

GST. VGP is not registered for GST purposes, a factor that suggests an uplift in costs is appropriate to take GST into account.⁴ Accordingly, \$11,345.90 is sought.

[5] Stonewood Group submits the appropriate costs categorisation is category 1A. It adopts VGP's items but uses time allocations for band A. At the category 1 recovery rate of \$1,590 per day, that leads to an award of \$6,042 (GST neutral). Stonewood Group submits that is the appropriate award.

The Court has a discretion as to costs

[6] The Court's guideline scale is intended to assist the Court. It does not bind the Court, which ultimately has a discretion as to what costs are reasonable in the circumstances.⁵

[7] Here, the parties agree on the steps that were required for these proceedings. Mr Gelb, advocate for VGP, has attached to his memorandum the invoices sent to VGP. They indicate Mr Gelb's hourly rate and the amount of time spent on various tasks.

[8] While there is no criticism of the work set out in the invoices, some of it is administrative work that one might expect to be undertaken at a lower hourly rate than that of a principal.

[9] Overall, I consider that costs of \$10,000 (inclusive of an uplift to recognise that VGP is not registered for GST purposes) is a fair sum in these proceedings.

⁴ *Judea Tavern Ltd v Jesson* [2017] NZEmpC 120, [2017] ERNZ 726 at [12]; and relying upon *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC*, above n 3. See too *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 159 at [37].

⁵ Employment Relations Act 2000, sch 3 cl 19.

[10] Accordingly, Stonewood Group Limited is ordered to pay VGP \$10,000 as a contribution to their costs, with that sum to be paid within 14 days of the date of this judgment.

J C Holden
Judge

Judgment signed at 10 am on 2 May 2024