

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 107 ACR 282/21

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

Hearing: On the papers

Parties: K Koloni for the Appellant
 T Gee for the Accident Compensation Corporation (“the
 Corporation”)

Judgment: 29 June 2023

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for costs on appeal]**

Introduction

[1] This judgment relates to an appeal of the appellant in relation to costs. On 5 December 2022, the Court issued a judgment allowing the appellant’s appeal and finding that he was entitled to costs. The Court directed that, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda.¹

¹ *Fulton v Accident Compensation Corporation* [2022] NZACC 233, at [41].

Background

[2] On 21 April 2023, Ms Koloni sent an invoice to the Corporation for costs and disbursements totalling \$11,296.00. The Corporation forwarded the invoice to Mr Gee, who had acted for the Corporation in this appeal, and asked Ms Koloni to communicate with him. On 22 April 2023, Ms Koloni advised the Corporation that she did not have a contract with Mr Gee.

[3] On 27 April 2023, Mr Gee sent an email to Ms Koloni asking that correspondence relating to costs be directed to him. Ms Koloni did not reply to Mr Gee.

[4] On 17 May 2023, Mr Gee sent a further email to Ms Koloni outlining the costs and disbursements that the Corporation agreed to pay (\$1,358.25), and asking for her response. On 22 May 2023, Ms Koloni again advised the Corporation that she did not have a contract with Mr Gee.

[5] On 26 May 2023, Mr Gee for the Corporation submitted a memorandum that costs be awarded up to \$1,158.88. Ms Koloni did not provide a memorandum in response.

[6] On 21 June 2023, the Court directed that Ms Koloni had the opportunity to provide a memorandum as to costs and disbursements in response to counsel for the Corporation's memorandum, to be received by the close of 26 June 2023. The Court further directed that, if no such memorandum was provided by this time, the Court would decide on the award of costs and disbursements on the material provided to date.

[7] On 26 June 2023, Ms Koloni sent an email to the Court advising that her invoiced amount was made in accordance with District Court Rules and Regulations and a basic case rate; that she did not require proof that her client had incurred the costs outlined; that the District Court had no jurisdiction to award costs; and that her invoice needed to be paid in full without delay.

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; or
- (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 *Dickson-Johansen*,² Powell DCJ stated:

[15] ... It is clearly not appropriate for this Court to sanction the reimbursement of costs simply because they have been rendered to a claimant. In addition the Court is not only ill suited to determining what might be reasonable costs in a particular instance having regard to the economics of private legal practice, but any such attempt would impose a significant burden on judicial resources should every decision on costs require the careful consideration of this Court.

[15] In *Carey*,³ 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.

Discussion

[16] 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.

[17] In this matter, the parties are agreed that costs should be awarded according to category 1 (\$1,270 per day) and band A (a comparatively small amount of time for the particular step is considered reasonable). In terms of the High Court’s judgment

² *Dickson-Johansen v Accident Compensation Corporation* [2018] NZACC 36.

³ *Accident Compensation Corporation v Carey* [2021] NZHC 748.

in *Carey*,⁴ because Mr Fulton was represented by a non-lawyer, 50 per cent of the scheduled daily rate is awarded.

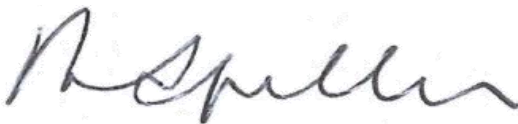
[18] In light of the above considerations, the Court allows the following schedule of costs, based on category 1 band A:

21 Commencement of Appeal (0.2):	\$254.00;
9.8, 23 Memorandum, Case conference (0.2):	\$254.00;
9.9.23 Appearance, Case conference (0.3):	\$381.00;
9.13 Preparation of bundle for hearing (0.125)	\$158.75;
24 Preparation of case on appeal (0.5):	\$635.00;
24A Preparation of written submissions (0.5):	\$635.00;
10.1 Preparation of affidavit (0.125):	\$158.75;
25 Appearance at hearing as principal counsel (0.5):	\$635.00;
Total costs (2.45 days at \$1270):	<u>\$3,111.50</u>
Less 50 percent:	<u>\$1,555.75</u>

[19] This Court notes that Ms Koloni has claimed has disbursements of \$120 for office photocopying, emails and texts. No receipts or other documents were provided in support. However, in view of the small sum being claimed, and the reasonable likelihood that disbursements in the nature of photocopying and fees in support of electronic communications were incurred, the amount of \$120 is allowed.

Conclusion

[20] This Court directs that the Corporation pay the appellant costs of \$1,555.75 and disbursements of \$120 (totalling \$1,675.75).



P R Spiller
District Court Judge

⁴ *Carey*, above note 3, at [96].