

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 132 ACR 298/21

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

Hearing: On the papers

Submissions: K Koloni for the Appellant
 P McBride for the Accident Compensation Corporation

Judgment: 8 August 2023

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

Introduction

[1] The substantive matter in this appeal relates to the decision of a Reviewer dated 18 November 2021. The Reviewer dismissed Ms Mollet’s applications for review:

- (a) of the Corporation’s decision dated 23 June 2020 suspending Ms Mollet’s entitlement to weekly compensation; and
- (b) claiming that the Corporation had failed to make a decision on weekly compensation entitlements.

[2] On 11 July 2023, the Court delivered a judgment which found that:

- (a) In view of the Corporation's decision to revoke its earlier suspension decision of 23 June 2020, and (in principle) restore Ms Mollet's entitlement to weekly compensation, the appeal regarding suspension of weekly compensation is dismissed.
- (b) The Reviewer's decision not to allow costs of a second review application is confirmed, and so the appeal in regard to these costs is dismissed.

[3] In relation to the costs of this appeal, the Court found that Ms Mollet is entitled to costs. In this regard, the Court noted that Ms Mollet's efforts to challenge the Corporation's decision of 23 June 2020 had been ongoing for the past three years. During this time, the Corporation continued to oppose Ms Mollet's challenge, through to the first hearing of this appeal in May 2023 and beyond. It was only on the last working day before the scheduled further hearing that Ms Mollet received the Corporation's decision revoking the 23 June 2020 decision. Ms Mollet is therefore entitled to costs up to and including the reconvened hearing of this appeal on 10 July 2023.

[4] The Court directed that: Ms Koloni, for Ms Mollet, provide a memorandum on costs by 17 July 2023; Mr McBride, for the Corporation, provide a memorandum in response by 24 July 2023; and the Court would then make a determination on costs on the papers.

[5] On 17 July 2023, Ms Koloni provided an invoice totalling \$22,658, which included costs of \$22,538 (calculated on a 2B basis) and disbursements of \$120.

[6] On 19 July 2023, Mr McBride filed a memorandum submitting that the material provided by Ms Koloni indicated the absence of any proper basis for any claim by Ms Mollet.

[7] On 26 July 2023, the Court directed that Ms McBride provide a schedule of costs that the Corporation considered could be reasonable to be awarded to Ms Mollet.

[8] On 28 July 2023, Mr McBride filed a memorandum with a proposed schedule of costs and disbursements (copied to Ms Koloni), submitting that the Corporation did not oppose an award to Ms Mollet of up to \$1199.50 if the Court in its discretion considered this appropriate.

Relevant law

[9] 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.

[10] 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.

[11] 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

[12] 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.

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

[14] 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.

[15] 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.

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. This Court, in exercising its discretion, has taken into account the invoice of Ms Koloni, for Ms Mollet, and the memoranda of Mr McBride for the Corporation.

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

[17] In this matter, this Court finds 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 in *Carey*,² because Ms Mollet 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 (with units of days in brackets):

21 Commencement of Appeal (0.2):	\$254.00;
9.8, 23 Memoranda (0.2):	\$254.00;
9.9 Appearance at Case conference (0.3):	\$381.00;
24A Preparation of written submissions (0.5):	\$635.00;
25 Appearance at hearings (0.75):	\$952.50;
Total costs (1.95 days at \$1270):	<u>\$2,476.50;</u>
Less 50 percent:	<u>\$1,238.25</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, Ms Mollet, costs of \$1,238.25 and disbursements of \$120 (totalling \$1,358.25).



P R Spiller
District Court Judge

Solicitors for the Respondent: McBride Davenport James

² *Carey*, above note 3, at [96].