

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 021 ACR 264/20

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

Hearing: On the papers

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

Judgment: 3 February 2022

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for costs, Accident Compensation Act 2001 (“the Act”)]**

Introduction

[1] This judgment concerns costs relating to Ms Stewart’s appeal which was upheld by the Court.¹ In a judgment on 10 October 2022, the Court noted that, having succeeded on the primary issue, Ms Stewart was entitled to costs; and that, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda.

[2] Ms Koloni, for Ms Stewart, submitted an invoice to the Corporation, which was then forwarded to counsel for the Corporation. On 22 November 2022, counsel

¹ *Stewart v Accident Compensation Corporation* [2022] NZACC 197.

for the Corporation sought details of the costs and disbursements incurred. Ms Koloni did not respond. On 30 November 2022, counsel for the Corporation wrote to Ms Koloni offering the payment of \$920.75. On 6 December 2022, Ms Koloni replied by asking counsel to provide a copy of the contract her company had with counsel. On 15 December 2022, counsel for the Corporation filed a memorandum with the Court submitting that Ms Stewart could be entitled to an award of costs of up to \$920.75.

[3] On 19 December 2022, the Court directed as follows. Ms Stewart or Ms Koloni will file a memorandum as to costs by 16 January 2023. If this memorandum is filed by then, the Court will allow the Corporation an opportunity to respond. If the memorandum is not filed by the due date, the Court will then proceed to decide on the issue of costs on the basis of Mr McBride's preliminary submissions. No memorandum was filed by 16 January 2023 or in the further time up to this judgment.

Relevant law

[4] Rule 4.1.1 of the District Court Rules 2009 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.

[5] Rule 4.3 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.

[6] Schedule 3 of the Rules provides for sub-categories A, B and C of the above categories, according to estimated time allocations. Rule 4.5.2 provides that a determination of what is a reasonable time for a step in a proceeding must be made by reference to: band A, if a comparatively small amount of time for the particular step is considered reasonable; band B, if a normal amount of time for the particular

step is considered reasonable; or band C, if a comparatively large amount of time is considered reasonable.

[7] Rule 4.6.1(a) provides for the award of actual costs (indemnity costs), but this is subject to Rule 4.6.4 which outlines the exceptional circumstances in which such costs may be awarded.

[8] In *Carey*,² 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.

[9] In *Russell v Taxation Review Authority*,³ Fisher J stated:

[27] In my view an expense will be separately recoverable as a disbursement under item 11 of the Third Schedule if: (i) it is not already subsumed within the compensation allowed for professional time; (ii) it was specific to the conduct of the particular proceedings; (iii) it was necessary in the sense that failure to incur the expense would have prejudiced the proper conduct of the proceedings; and (iv) the rate at which it was charged was reasonable.

Discussion

[10] In light of the above legal considerations, the Court allows the following schedule of costs as per category 1A (the daily recovery rate being \$1270), reduced by 50 percent. The Court has not been provided with the details of any disbursements in connection with this appeal, despite the opportunity to do so.

² *Accident Compensation Corporation v Carey* [2021] NZHC 748.

³ *Russell v Taxation Review Authority* (2000) 14 PRNZ 515, followed in *Campbell v Accident Compensation Corporation* [2013] NZACC 197 at [26].

Commencement of Appeal (0.2)	\$254.00
Memorandum for Judicial Conference (0.2)	\$254.00
Initial Case Management Conference (0.3)	\$381.00
Preparation of Written Submissions (0.5)	\$635.00
Appearance at Hearing (1/4 day) (0.250)	\$317.50
Total Costs	<u>\$1841.50</u>
Reduced by 50%	<u>\$920.75</u>

Conclusion

[11] Ms Stewart is awarded costs totalling \$920.75.



P R Spiller
District Court Judge

Solicitors for the Respondent: McBride Davenport James