

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

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

**[2022] NZEmpC 186  
EMPC 337/2021**

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

AND IN THE MATTER    of an application for costs

BETWEEN                TEDDY AND FRIENDS LIMITED  
   Plaintiff

AND                        PHILLIP PAGE  
   Defendant

Hearing:                On the papers

Appearances:         A Schirnack and E Crowley, counsel for plaintiff  
   E Hartdegen, counsel for defendant

Judgment:             17 October 2022

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**COSTS JUDGMENT OF JUDGE B A CORKILL**

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[1]      This decision resolves a costs application which follows my judgment of 20 July 2022, when I ruled that an in-time dismissal grievance had been raised with Teddy and Friends Ltd (TFL) but that there was insufficient evidence to establish that an in-time disadvantage grievance had been raised.<sup>1</sup>

[2]      As this accorded with the conclusion reached by the Employment Relations Authority, I dismissed TFL's challenge.

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<sup>1</sup>      *Teddy and Friends Ltd v Page* [2022] NZEmpC 129.

[3] Costs had been assigned Category 1A under the Court’s Practice Directions Guideline Scale as to Costs (the Guideline Scale).<sup>2</sup> Accordingly, I stated that counsel should use their best endeavours to resolve this issue directly in the first instance, and that if they were unable to do so an appropriate application should be made.<sup>3</sup>

[4] Both parties have filed memoranda. The successful party, Mr Page, seeks costs. In summary, he asserts that his actual costs were \$22,323.42. He also says that under the Guideline Scale, the correct assessment is 5.4 days.

[5] This assessment includes an allowance for an interlocutory step. Mr Page had sought leave to file a statement of defence out of time, which having regard to his personal circumstances was granted.<sup>4</sup>

[6] It was submitted for Mr Page that in all the circumstances – particularly the extent of costs actually incurred – there should be an uplift on the Guideline Scale assessment of \$8,586 to \$15,000.

[7] TFL asserts that costs should be assessed under the Guideline Scale but puts in issue the claim for the interlocutory step, and also seeks costs relating to the filing of a costs memorandum. An outline of the steps taken to resolve costs issues is also given, to which I will return shortly.

[8] I deal first with the interlocutory step. Although there were genuine medical circumstances, as outlined by the Court in its judgment, the order granting leave was an indulgence, and not one where the costs of the application should be laid at the feet of TFL. I accept TFL’s submission in that regard. The correct scale assessment on a Category 1A basis is accordingly \$4,293.

[9] It appears to be suggested by counsel for Mr Page that actual costs were significantly greater than the allowance which would be available under the Guideline Scale. Reference is made to the provisions of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, ch 9 which specifies the reasonable

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<sup>2</sup> “Employment Court of New Zealand Practice Directions” <[www.employment.govt.nz](http://www.employment.govt.nz)> at No 16.

<sup>3</sup> *Teddy and Friends Ltd v Page*, above n 1, at [34]–[35].

<sup>4</sup> *Teddy and Friends Ltd v Page* [2022] NZEmpC 45.

fee factors that may be taken into account when a lawyer renders an invoice to a client, and that actual costs were in line with that rule.

[10] However, that is a separate matter which does not in my view justify consideration when assessing the reasonable contribution to costs which should be ordered by the Court in this case. I place those considerations to one side since the extent of those costs is a private matter between Mr Page and his lawyer.

[11] TFL seeks \$900 for preparing its memorandum as to costs, being two-thirds of the actual costs involved.

[12] It is first necessary to review the attempts made to resolve costs informally since it was the failure to reach agreement that gave rise to the formal application.

[13] The history of the attempts to resolve this issue is that, on 2 August 2022, Mr Page's lawyer sought costs apparently on the basis of the Guideline Scale of \$33,810. This figure exceeded Mr Page's actual costs by a substantial margin.

[14] TFL counter-offered by proposing costs according to scale, being \$4,293.

[15] The final step was a counter-offer by Mr Page to settle the issue for \$22,000, a little under his actual costs. The counter-offer was not accepted.

[16] I do not regard the steps taken on behalf of Mr Page as demonstrating a best endeavours attempt to resolve the issue of a contribution to costs, since no reduction was made for the application seeking leave and it was inherently unlikely the Court would order costs on a full indemnity basis.

[17] Accordingly, TFL is entitled to a contribution to the costs involved in preparing the costs memorandum, which I fix at \$400.

[18] In the result, Mr Page is entitled to costs of \$4,293; TFL is entitled to costs for preparation of the relevant memorandum of \$400. The net amount payable by it to Mr Page is therefore \$3,893.

B A Corkill  
Judge

Judgment signed at 3.15 pm on 17 October 2022