

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

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

**[2023] NZEmpC 152
EMPC 52/2022**

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

AND IN THE MATTER OF an application for costs on application for
 judgment by default

BETWEEN ALLAN HALSE
 First Plaintiff

AND CULTURES SAFE NEW ZEALAND
 LIMITED (IN LIQUIDATION)
 Second Plaintiff

AND HAMILTON CITY COUNCIL
 Defendant

Hearing: On the papers

Appearances: A Halse, plaintiff in person
 No appearance for CultureSafe NZ Ltd (in liquidation)
 M Hammond, counsel for defendant

Judgment: 12 September 2023

**COSTS JUDGMENT OF JUDGE J C HOLDEN
(Costs on application for judgment by default)**

[1] The Hamilton City Council successfully defended Mr Halse’s application for judgment by default.¹ The Court found that, as the successful party, the Hamilton City

¹ *Halse v Hamilton City Council* [2023] NZEmpC 77.

Council was entitled to costs.² Having failed to reach agreement with Mr Halse, it now seeks an order for costs.

[2] The Hamilton City Council has provided a calculation of scale costs using the Employment Court Guideline Scale, Category 2, Band B.³

Item number in schedule	Step in proceedings	Time allocation	Cost
28	Filing interlocutory application – application to strike out	0.6	\$1,434
11	Preparation for first directions conference	0.4	\$956
12	Filing memorandum for first or subsequent directions conference	0.4	\$956
13	Appearance at first directions conference	0.2	\$478
30	Preparation of written submissions	1	\$2,390
Total		2.6	\$6,214

[3] The Hamilton City Council also seeks an uplift on scale costs which it says are warranted given Mr Halse’s conduct of the proceedings, and that they were an abuse of the Court process. The uplift sought is \$4,000, bringing the total costs sought against Mr Halse to \$10,214.

[4] Mr Hammond, counsel for the Hamilton City Council, has confirmed that the costs incurred exceed those now sought.

[5] Mr Halse does not raise any issue with the Hamilton City Council’s calculation of scale costs. He does, however, oppose costs being fixed at this time and requests that they be reserved and considered when judgment is issued on the substantive proceeding.

² At [23].

³ “Employment Court of New Zealand Practice Directions” <www.employmentcourt.govt.nz> at No 18.

[6] He says the application for judgment by default was an attempt to save money for both parties through bringing the substantive proceedings to an early closure. He submits that his application for judgment by default was reasonable – it was not an unreasonable, vexatious, or hopeless case. Mr Halse also submits that, as the Hamilton City Council was opposed to mediation being ordered by the Court, Mr Halse has had to continue with the proceedings when they could have been resolved in mediation.

[7] Mr Halse opposes any uplift and submits that the Hamilton City Council should have provided sworn affidavits in evidence to support its claim, with the ability for Mr Halse to cross-examine witnesses. Mr Halse seeks a hearing to enable him to test the evidence and provide further oral submissions.

The Hamilton City Council is entitled to costs

[8] While I acknowledge that there is an ongoing substantive claim, the application by Mr Halse for judgment by default was a discrete matter on which he was unsuccessful, and on which I found that the Hamilton City Council is entitled to costs.

[9] The calculation of scale costs is accepted as accurate. The sum calculated of \$6,214 is the starting point for my consideration of costs in this matter.

[10] As noted in the judgment, Mr Halse first raised the suggestion of judgment by default in a memorandum which was discussed at a directions conference in March 2023. The Court referred Mr Halse to s 179 of the Employment Relations Act 2000 and reg 7 of the Employment Court Regulations 2000. I also note that Mr Halse is an experienced advocate. He is very familiar with the pleadings process, having commenced many challenges in the Court, which he has done by filing a statement of claim in the usual way, with the defendant then filing a statement of defence. That was the process being followed in these proceedings.

[11] After Mr Halse filed his application for judgment by default, Mr Hammond wrote to Mr Halse noting the difficulties with the application and advising Mr Halse that the purpose of the letter was to give him the opportunity to withdraw his application for judgment by default and to put him on notice that, if the application proceeded further, the Hamilton City Council would be seeking an uplift in costs.

[12] Mr Halse forcibly rejected Mr Hammond's suggestion and elected to proceed with his application, which the Court found was clearly untenable and not reasonably arguable.

[13] Mr Halse was accordingly advised, not only by the Court, but by Mr Hammond, of the applicable legislation and the difficulties with his proposed application for judgment by default. It was an application that should never have been filed. It had no prospect of bringing the matter to a speedy conclusion. In short, it was, for both parties, a waste of time and money. Given the tone and content of Mr Halse's correspondence with Mr Hammond, I do not accept that mediation would have successfully resolved matters; it was reasonable of the Hamilton City Council to oppose more time being spent in that process.

[14] In exercising its discretion to make orders as to costs, the Court may have regard to any conduct of the parties tending to increase or contain costs.⁴ Mr Halse was squarely put on notice of the futility of his application. An uplift is appropriate.

[15] The costs application is straightforward; I do not need to receive evidence or hear further from either party.

[16] In the circumstances, I award the Hamilton City Council costs of \$9,300 in respect of this matter, which includes an uplift representing approximately 50 per cent of scale costs, reflecting that, in the general course, costs are intended to represent around two thirds of reasonable costs.⁵ That sum is to be paid by Mr Halse to the Hamilton City Council within 28 days of the date of this judgment.

J C Holden
Judge

Judgment signed at 11.45 am on 12 September 2023

⁴ Employment Court Regulations 2000, reg 68(1).

⁵ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [63]; *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA) at [14].