

**NOTE: This determination
contains an order prohibiting
publication of certain information
at [3]**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2026] NZERA 115
3304260

BETWEEN XDC
Applicant

AND ALLIED INVESTMENTS
LIMITED
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Tyrone-Jay Barugh for the Applicant
Richard Roil for the Respondent

Investigation meeting: On the papers

Submissions received: 27 January and 17 February 2026 from the Applicant
10 February 2026 from the Respondent

Date: 27 February 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] XDC seeks a stay in relation to costs proceedings in the Authority. In December 2025, the Authority issued a determination as to XDC's personal grievance claims.¹ In that determination, the Authority declined XDC's personal grievances.

¹ *XDC v Allied Investments Limited* [2025] NZERA 798.

[2] Allied Investments Limited (Allied) oppose the stay application. It lodged a memorandum on costs on 23 January 2026. I understand XDC's position to be that they seek an order staying any potential costs proceedings until their challenge under s 179 of the Employment Relations Act 2000 (the Act) in the Employment Court has been finally disposed of. In the event a stay is not granted XDC requests 14 days from the date of the determination making that finding to lodge their opposition to costs.

[3] There is an interim non-publication order prohibiting non-publication of XDC's name and identifying details pending further order of the Court.² The Authority's non-publication order also prohibited non-publication of the name of one other.³

Application for stay of proceedings

[4] Section 180 of the Employment Relations Act 2000 (the Act) provides that the making of an election under s 179 to challenge an Authority determination in the Court does not operate as a stay of proceedings unless the Court or the Authority makes such an order.

[5] It is submitted on XDC's behalf that if they are successful in the Court then the principal that costs follow the event will be triggered at that point and that there is a real chance of success on challenge for a number of reasons such that an award of costs by the Authority at this stage would be futile.

[6] It is also submitted that the balance of convenience favours the granting of a stay. This is because there would be little impact on Allied Security from the granting of a stay. Allied Security's financial position being that it is a company with a large number of employees means a costs award would have a negligible impact on it. XDC is also said to be impecunious and in reality there is no real prospect of any immediate financial benefit to Allied Security.

[7] On the other hand having costs determined at this stage would have a significant impact on XDC. Enforcement will cause financial hardship and it would be prejudicial to XDC having to deal with that while a de novo hearing of the challenge is underway. It is also submitted there is a real prospect Allied Security will take aggressive

² *XDC v Allied Investments Ltd* [2026] NZEmpC 1

³ Above n1.

enforcement action against XDC and a risk that this threat will be used to apply pressure to XDC to agree to a less favourable settlement of the proceedings including the Employment Court challenge. XDC is also said to be vulnerable to Allied Security requesting the issue of a bankruptcy notice from the High Court given that XDC would be in no position to pay. The associated consequence of having a debt of \$8,000.00 to their name when there is a real prospect any costs order may later be set aside by the Employment Court is said to be unduly severe.

[8] The submissions for XDC conclude that the balance of convenience is tilted significantly in favour of the granting of a stay of the Authority's determination of costs. There is negligible benefit to Allied Security against the very real risk of undue pressure on XDC in settlement negotiations. A further submission was received on XDC's behalf drawing the Authority's attention to recent Employment Court judgments⁴ that are relevant and emphasised that a fact specific approach is required meaning there can be no firm presumption either way. The Authority must decide the issue on the merits of the case.

Submissions opposing the application for a stay of proceedings

[9] Submissions on behalf of Allied Security confirmed the relevant case law and tests. It noted the Authority's usual practice is to determine costs even when a challenge in the Employment Court is pending. Reference was made to the Authority's well settled approach to costs, that costs are tariff based, modest and not punitive. Costs follow the event and the successful party is ordinarily entitled to costs.

[10] Allied Security says it has not been demonstrated the pending challenge will be rendered nugatory absent a stay of the Authority's costs determination and reminded the Authority that the fact of a challenge does not justify a stay under the Act.⁵

[11] The Authority and Courts have repeatedly recognised the principle that a successful party should not be lightly deprived of the fruits of judgment. The need to

⁴ *McDermott v Peninsula Group NZ Ltd (formerly Employsure Ltd)* [2025] NZERA 588, *Labour Inspector of MBIE v Elements Therapeutic Massage Limited* [2025] NZEmpC 281, *Gate Gourmet New Zealand Ltd v Sandhu* [2021] NZEmpC 2- at [6], and *Ian v Scott Technology NZ Ltd t/a Rocklabs* [2018] NZEmpC 58.

⁵ Employment Relations Act 2000, s 180.

preserve the appellants position must be balanced against the respondent's right to enforce. It is submitted that Allied Security is entitled to the immediate benefits of a costs determination.

[12] It is also noted on Allied Security's behalf that financial hardship on its own is not decisive and there are examples in cases in the employment jurisdiction where despite financial hardship costs awards have been made.

Conclusion

[13] While it is often the case that the Authority's practice is to determine costs while a challenge is pending, the submission on XDC's behalf that each case must be considered on its own merits is a point well made.

[14] I note XDC was ultimately unsuccessful in the Authority, but applicants are able to test dismissals and personal grievance claims in the Authority, however, they do so with the knowledge that if they are unsuccessful, an award of costs may be made against them. Costs awards in the Authority are modest and not to be punitive.

[15] A number of the impacts on XDC set out in submissions are speculative and as such little weight can be placed on those. The vulnerability said to be of concern to XDC arising from enforcement of a costs order in the circumstances of impecuniosity are also speculative but I note that the fact an unsuccessful party is under financial stress or in circumstances that involve impecuniosity can be relevant, although not determinative when considering costs.

[16] I also note the prejudice said to occur to XDC if the stay is not granted and a costs award is made is minimised in the circumstances of this case because XDC can amend their statement of claim in the Court to include a challenge to the costs determination if they wish or either party can file a separate challenge to the costs determination.

[17] With that in mind and balancing the conflicting considerations between Allied Security's entitlement as the successful party to a consideration of costs and the need

to preserve XDC's position in case the challenge in the Employment Court is successful, I find the balance falls in favour of Allied Security.

[18] I decline to order a stay of proceedings for costs in the Authority.

[19] XDC has 14 days from the date of this determination to lodge a memorandum in reply in response to the costs memorandum lodged by Allied Security.

Sarah Kennedy - Martin
Member of the Employment Relations Authority