

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2026] NZERA 58  
3381423

BETWEEN JASON BLANKENAAR  
Applicant

AND BOATSPRAY LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Hayley Johnson, advocate for the Applicant  
Tim Oldfield, counsel for the Respondent

Investigation Meeting: 17 December 2025 in Auckland

Submissions and/or further evidence 17 December 2025 from the Applicant and from the Respondent

Determination: 04 February 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Jason Blankenaar, claims that he was unjustifiably dismissed by the Respondent, Boatspray Limited (Boatspray).

[2] Boatspray denies that Mr Blankenaar was unjustifiably dismissed and claims he was justifiably dismissed for serious misconduct.

**The Authority's investigation**

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Blankenaar, his father Stephen Blankenaar, and Maxwell Mullin.

[4] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Brian Kent and Simon Manning.

[5] Oral and written submissions were received from Ms Johnson for the Applicant and from Mr Oldfield for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Issue**

[7] The issue requiring investigation is whether or not Mr Blankenaar was unjustifiably dismissed by Boatspray.

### **Background**

[8] Boatspray is a full service boat painting and maintenance business located in the Half Moon Bay Marina in Auckland (the Marina) where it leases premises. It employs between six and twelve employees and provides painting, antifouling, and applying of PropSpeed, which is a type of antifoul, to metal boat parts below the waterline.

[9] Most of Boatspray's customers have boats berthed in the Marina. The work is mainly carried out on boats which are hauled out of the water onto the hardstand. The work is performed on vessels anywhere on the hardstand, either inside or outside, in covered work bays and sheds and inside Boatspray's dedicated 22m extraction spray booth.

[10] Mr Manning, Director, said it is extremely rare for Boatspray to work on boats in the water because of the risk of contaminants entering the water or fouling other vessels and the difficulty of the contaminants containment.

[11] He explained that performing on-water work on boats afloat in the Marina is a highly sensitive issue due to ongoing concerns by the Marina management and boat owners about contamination of neighbouring vessels and the sea. As a result he said Boatspray staff do not carry out unsupervised on-water preparation and painting work in the Marina.

#### *Mr Blankenaar's employment June 2023*

[12] Mr Blankenaar responded to an advertisement placed by Boatspray and was interviewed by the Manager Mr Kent, and also by Mr Manning at a second interview. He was offered a job and initially was employed as a Trainee Marine Painter/Labourer on 14 April 2023. His employment became permanent on 14 June 2023.

[13] Mr Blankenaar was provided with an individual employment agreement which included the following clauses:

#### **Duties, Responsibilities and Performance Standards**

You will faithfully and diligently perform the duties and responsibilities of your role ...

### **15 Non-Competition and Protection of Boatspray's interests**

During the course of your employment with Boatspray, you will not, without the prior written consent of Boatspray be directly or indirectly involved in any other business which conflicts with any business of Boat spray.

If, within the final 6 months of your employment with Boatspray, you are engaged in the development of a product, processing or delivery system, or methodology, you will not, without the express permission of Boatspray, canvass, solicit, interfere with or entice away any person who at any time during your employment with Boatspray was:

- A Boatspray employee, contractor or director; or
- A Boatspray customer

### **19 Termination of Employment**

”  
The Company may terminate your employment effective immediately and without payment of notice for serious misconduct. In the event that reason is given to suspect that serious misconduct has arisen in the course of employment the Company reserves the right to suspend you on ordinary pay while an inquiry is being conducted.

[14] Mr Blankenaar's job description included the following statements under the heading 'Role Purpose':

All staff play a key role in representing the company in the wider industry, with suppliers and with clients.

Work with existing and prospective customers to maximise customer satisfaction and sales levels.

Represent and promote Boatspray's services and quality as the leading marine industry provider of its type at all times.

[15] Mr Kent said that on 26 February 2024 Mr Blankenaar telephoned him requesting to meet. They did so the following day when Mr Blankenaar explained he was experiencing financial difficulties and asked if there was overtime available and enquired about opportunities for training.

[16] Mr Kent said they talked about a formal marine painting apprenticeship programme which was due to commence in early 2024, but Mr Blankenaar explained that he was unable to commit the time to it at that time.

[17] Mr Kent said Mr Blankenaar spoke about carrying out weekend work on boats at the Marina, and he explained that Boatspray did not allow that as it conflicted with work carried out by Boatspray.

[18] Mr Kent said he suggested that Mr Blankenaar look for work away from the Marina in other areas such as in bars or in construction.

*Work on Mr Mullin's boat November 2024*

[19] Mr Blankenaar received a telephone call on 22 November 2022 from Mr Mullin who said Mr Blankenaar had been recommended to him by a mutual friend. Mr Mullin explained that he was contacting Mr Blankenaar for advice as he was repainting his boat.

[20] Mr Blankenaar said the person who had referred him to Mr Mullin was a close friend and a fellow Freemason, who had told Mr Mullin that Mr Blankenaar could provide him with advice on repainting his boat. He said he had been happy to do so.

[21] At that time Mr Blankenaar was unaware that Mr Mullin was a previous customer of Boatspray which had completed ten jobs on his boat. In December 2020 Mr Kent had provided, at Mr Mullin's request, an estimate for a full repaint of his boat which was berthed in the Marina.

[22] On 23 November 2024 Mr Blankenaar said he met Mr Mullin on his boat who explained that he planned to sand his flybridge using a roller and a specific product. Mr Blankenaar said that he had no experience of either the technique or the product Mr Mullin intended using, so he asked to assist 'hands-on' to help Mr Mullin and to gain experience.

[23] Mr Blankenaar said Mr Mullin mentioned that Boatspray had carried out some work on the boat previously and Mr Blankenaar told him he worked for Boatspray. He said Mr Mullin offered to pay him for his time, but he refused to accept payment because Mr Kent had told him in February that doing boat-related paid work outside of his work at Boatspray would be a conflict.

[24] Mr Blankenaar said he did not intend to breach Boatspray policy and he believed that he was permitted to help friends or family for free.

[25] Mr Blankenaar said he carried out work on Mr Mullin's boat on several occasions, on two of these occasions he was wearing a t-shirt with the Boatspray logo on it.

[26] On 28 November 2024 Mr Kent said he received an email from the Manager of the Marina Hardstand noting that Boatspray staff had been seen working on a boat in the Marina at the weekend. The email stated:

We note that Boatspray staff have been working in the Marina on the weekend and after hours. Please remind the guys to be very tidy, and environmentally aware of their surroundings.

[27] Mr Kent said he was surprised to receive the email because Boatspray had no work in the Marina at that time, and he had not been approached, or had authorised, for any work to be done.

[28] He forwarded the email to Mr Manning who said they were very surprised by the email since none of the Boatspray staff had been working outside normal working hours.

[29] Mr Manning asked Mr Kent to contact the Marina management and ask to view their CCTV footage. Mr Kent viewed the CCTV footage and confirmed that it was Mr Blankenaar who was working on Mr Mullin's boat and that he was wearing Boatspray uniform on some occasions.

[30] Mr Manning said he sought advice on how to proceed from the Employers and Manufacturers Association (the EMA). He and Mr Kent decided to meet with Mr Blankenaar on 6 December 2024 when Mr Manning would be in the office, but Mr Blankenaar did not attend work on that day and the meeting was postponed to 9 December 2024.

*First meeting with Mr Blankenaar 9 December 2024*

[31] Mr Manning and Mr Kent met with Mr Blankenaar on 9 December 2024 and informed him that the Marina management had made them aware that one of their employees had been working on Mr Mullin's boat after hours and they had been able to identify that he was the person from CCTV footage.

[32] Mr Manning said he explained that it was seen that Mr Blankenaar was performing preparation and painting work on the weekends of 23 – 24 November and 7 – 8 December 2024. He told Mr Blankenaar that he did not have permission to do the work, that it was prohibited in his contract, the owner was a Boatspray customer and that staff working on existing or potential customers' boats undermined Boatspray's business.

[33] Mr Blankenaar was told it was not a disciplinary meeting, but that there might be one and he would be entitled to have a support person at that meeting, He was asked if he wanted to say anything.

[34] Mr Manning said Mr Blankenaar agreed he was the person identified and stated he was working on a boat in the Marina to 'help a mate'. Mr Blankenaar said it was not work because he was doing the work as a favour to a fellow Freemason, that Freemasons "do not deal in money" and that they could check his bank accounts. Mr Blankenaar said that he was 'paying it forward for the Freemasons' when explaining what had occurred.

[35] Mr Blankenaar said he was told that he would be suspended on pay while the matter was investigated.

[36] After the meeting Mr Blankenaar said he telephoned Mr Mullin to ask for advice and Mr Mullin advised him to record his meetings or take detailed notes.

[37] Mr Manning confirmed the meeting outcome in a letter dated 9 December 2024 which stated:

**Investigation into possible misconduct**

At the meeting held today with you, Brian Kent and myself, we discussed information and our resulting concerns regarding your conduct ... whereby it appears on several occasions ... you have been working in the marina outside business hours, carrying on preparation and/or painting work on Hasta La Vista.

...

We consider this a potential disciplinary matter as it may be a breach of clause 15 of your employment agreement. We have initiated an investigation to obtain all facts relevant to this/these incidents.

**Suspension**

Due to the concerns discussed with you today, that such behaviour by an employee would bring about a breakdown in trust and that this activity would harm the proprietary interests of Boatspray, we invoke our rights to suspend you on ordinary pay while this investigation is being conducted, as noted in clause 19 of your employment agreement.

We acknowledge that this was discussed with you during today's meeting, at which you were given the opportunity to comment on your proposed suspension ...

No decision has yet been made, however, if this allegation proves to be a matter of serious misconduct, termination of your employment is a potential outcome. ...

Following completion of the investigation ... you will be invited to a meeting ... to discuss our findings and the next steps. You may invite a support person to attend this meeting with you ... I also ask that you get in touch with any reasonable request to change the day/time of this meeting.

[38] Mr Manning said after the meeting he took further advice from the EMA. He felt that he and Mr Kent understood what had occurred because Mr Blankenaar had confirmed all of their own findings, including the boat and customer involved, the multiple occurrences, and Mr Blankenaar indicated that he was aware that the employment agreement contained restrictions on this activity.

[39] Mr Mullin provided a written statement to Mr Blankenaar describing the work he had done for him and the circumstances which surrounded it.

[40] Mr Blankenaar said he sent a text message to Mr Kent asking when the follow-up meeting would be held on 10 December 2024, and Mr Kent advised him it would be held on 12 December 2024. Mr Blankenaar said the short notice meant he could not arrange a support person for the meeting.

[41] Mr Blankenaar also sent an email message to Mr Kent at 4.46 p.m. on 10 December 2024 in which he stated:

You both mentioned that a possible meeting might be arranged by Wednesday the 11<sup>th</sup> December as per our brief meeting.

It is 4.38 pm on the 10<sup>th</sup> day December and I personally haven't had any communication from either Brian Kent or Simon Manning, At this late stage cannot confirm a supportive person.

Please let me and our team if Thursday 12<sup>th</sup> suits?

[42] Mr Kent confirmed that he received a text message from Mr Blankenaar in which Mr Blankenaar told him he could not arrange a support person for a meeting on 11 December and asked if the meeting could be held on 12 December 2024 to which he and Mr Manning agreed.

*Second meeting with Mr Blankenaar 12 December 2024*

[43] The second meeting took place on 12 December 2024 attended by Mr Manning, Mr Kent and Mr Blankenaar who was not accompanied by a support person.

[44] Mr Blankenaar said that he asked if he could record the meeting, but this request was refused so he took handwritten notes. He explained what had happened, being that:

- (i) he had offered advice to a friend;
- (ii) he only helped Mr Mullin to gain experience;
- (iii) Mr Mullin had provided all the equipment and had no intention of using Boatspray for the work; and
- (iv) he had refused any payment for the work because he knew this to be against company policy.

[45] Mr Manning said he summarised the results of Boatspray's investigation and the work Mr Blankenaar had carried out on Mr Mullin's boat. He summarised that work of that nature was specifically prohibited under the Employment Agreement, and that Boatspray considered his actions to be serious misconduct, to have broken trust in their relationship, and that Mr Blankenaar's actions could harm the proprietary interests of Boatspray.

[46] Mr Manning said he also referred to the meeting Mr Kent and Mr Blankenaar had in February 2024 in which it had been explained that work on boats including in and around the Marina was not permitted.

[47] Mr Blankenaar was provided with an opportunity to respond and provided the letter from Mr Mullin which confirmed their relationship and the dates, times and type of work Mr Blankenaar did on his boat. Mr Manning said both he and Mr Kent read the letter which confirmed that there was no dispute as to the facts of what had occurred.

[48] However the letter did state that Mr Mullin and Mr Blankenaar were not friends as Mr Blankenaar had previously stated, and that they had only met because Mr Mullin had requested help with the painting of his boat.

[49] Mr Manning said he explained that any activity such as that carried out by Mr Blankenaar could not only negatively impact on Boatspray but also on the welfare and livelihood of the people who worked there.

[50] Mr Blankenaar said that he was told his employment was being terminated immediately, and Mr Manning handed him a signed letter of termination.

[51] Mr Manning denied that the letter confirming Mr Blankenaar's dismissal had been signed before the meeting was held. He said it had been drafted and placed in his desk. Since no new information had been provided by Mr Blankenaar during the meeting, he retrieved it from his desk after the meeting concluded and signed it.

[52] The letter dated 12 December 2024 stated:

...

We have now completed this action and conclude based upon the substantial evidence sourced (noted below) and by your own admissions, that you have carried out preparation work and/or painting work on Hasta La Vista. ...

The client/owner of the Hasta La Vista has previously engaged Boatspray's services over several years and for multiple jobs and had also requested a quote that included repainting the same or similar areas of the vessel that are currently being painted. This quote was not progressed by them at that time which is therefore, even if considered by you as a "favour", in conflict with Boatspray's business and is a matter of serious misconduct. Your actions could harm the proprietary interests of Boatspray and have led to a breakdown in trust between us.

In reference to clause 19v of your IEA, in the matter of serious misconduct, this letter is formal notice that your employment is terminated immediately with Boatspray ....

### **Was Mr Blankenaar unjustifiably dismissed by Boatspray?**

[53] Mr Blankenaar claims that he was unjustifiably dismissed by Boatspray.

[54] Boatspray considered the actions carried out by Mr Blankenaar to be in breach of the Employment Agreement and to be serious misconduct. Serious misconduct justifying summary dismissal is not capable of precise definition, rather it is a question of fact and degree. In *BP Oil New Zealand Ltd v Northern Distribution Union* the Court of Appeal stated:<sup>1</sup>

For a discussion of the kind of conduct that will justify summary dismissal it is unnecessary to look further than this Court's judgment in *BP Oil NZ Ltd v Northern Distribution Workers Union* [1989] 3 NZLR 580. Definition is not possible, for it is

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<sup>1</sup> *BP Oil New Zealand Limited v Northern Distribution Union* [1992] 3 ERNZ 483 at 487.

always a matter of degree. Usually what is needed is conduct that deeply impairs or is destructive of that basic confidence or trust that is an essential of the employment relationship

[55] Mr Blankenaar did not consider that his actions had breached the Employment Agreement.

[56] The Employment Agreement stated: ‘You will faithfully and diligently perform the duties and responsibilities of your role’ .... It also stated at clause 15:

During the course of your employment with Boatspray, you will not, without the prior written consent of Boatspray be directly or indirectly involved in any other business which conflicts with any business of Boat spray.

[57] During the period of Mr Blankenaar’s employment Mr Mullin was not a current customer, however Mr Mullin did tell him about the previous work that Boatspray had conducted for him at the outset of their involvement. Consequently I find that Mr Blankenaar was aware that the work he was doing for Mr Mullin could conflict with the business of Boatspray.

[58] Mr Blankenaar was also aware from his conversation with Mr Kent that he was not to undertake work on boats in the Marina. His evidence was that he understood this to be paid work.

[59] Payment can be made not only in financial terms but by conferring a benefit. Mr Blankenaar told Mr Kent and Mr Manning that he was ‘ paying it forward for the Freemasons’ which I find would constitute a non-financial benefit.

[60] Moreover even if Mr Blankenaar had misunderstood from his conversation with Mr Kent that only paid work was prohibited, he was expected to act in good faith during the period of his employment with Boatspray. This was expressly stated in the Employment Agreement. He was also prohibited from engaging in any work that conflicted with the business of Boatspray.

[61] In accordance with his job description, Mr Blankenaar would have been aware that he was representing Boatspray to clients and suppliers, and that his role purpose was to: “work with existing and prospective customers to maximise customer satisfaction and sales levels”.

[62] Mr Mullin had been a previous customer of Boatspray. He was a prospective customer in that there was a quote provided by Boatspray, albeit dating back to 2020.

[63] Mr Mullin was not an active Boatspray customer during Mr Blankenaar's employment, however he was made aware by Mr Mullin that he was going to carry out the work himself for which Boatspray had provided a quotation. That work involved painting the flybridge.

[64] Despite knowing this, Mr Blankenaar carried out some of the work for which Boatspray had quoted in breach of the requirements of the Employment Agreement and the duties he owed to Boatspray as an employee.

[65] Mr Blankenaar did not mention this work to Mr Kent or to Mr Manning, despite being aware of the circumstances of Boatspray having quoted for the work. Even though Mr Mullin had decided not to proceed with the quotation, Mr Blankenaar was expected as an employee of Boatspray to "represent and promote Boatspray's services ... at all times." I find that in carrying out the work himself in the knowledge of the Boatspray quotation he was not acting in good faith as a Boatspray employee.

[66] Whilst carrying out the work on Mr Mullin's boat, Mr Blankenaar was identified as a Boatspray employee and Boatspray was contacted by the Marina Manager which was its landlord.

[67] I find it significant that at no stage had Mr Blankenaar told Mr Kent or Mr Manning that he was going to be carrying out work on Mr Mullin's boat. In addition some of that work took place over the weekend which he knew Mr Kent had told him was not allowed.

[68] In carrying out the work Mr Blankenaar used skills he had gained during his employment with Boatspray. Whilst of itself that is not an act of a breach of good faith, I note also that there was a non-monetary benefit accruing to Mr Blankenaar.

[69] I find that the work Mr Blankenaar carried out had the potential to create problems for Boatspray because of the risk of contaminants seeping into the Marina for which it would be held responsible since one of its employees had been identified as carrying out the work. This could not be considered as promoting Boatspray's "quality as the leading marine industry provider of its type".

[70] I find that Mr Blankenaar's actions resulted in Boatspray losing trust and confidence in him as an employee .

[71] A fair and reasonable employer will not only have substantive justification for a dismissal decision, it will follow a fair and reasonable process.<sup>2</sup> A reasonable process will follow the steps set out in s 103A(3) of the Act which involve Boatspray”

- a) Investigating the allegations against Mr Blankenaar;
- b) Raising the concerns it had with him;
- c) Giving him a reasonable opportunity to respond to the allegations; and
- d) Genuinely considering any explanation he may have made before reaching the decision to dismiss.

[72] As stated by Chief Judge Goddard in *Madden v New Zealand Railways*:<sup>3</sup>

... it is not a question of the Tribunal deciding, on the evidence presented to it, whether the employee has been guilty of serious misconduct, ... but whether, on the evidence the employer gathered following a fair, honest, and adequate process, the employer had reached a conclusion that was just and fair at the time and thereafter treated the employee in a way that was fair and reasonable in the circumstances.

### *Suspension*

[73] Boatspray suspended Mr Blankenaar during the meeting on 9 December 2024. Mr Blankenaar’s evidence was that he was not consulted prior to the suspension decision being made.

[74] I note that the letter of 9 December 2024 states that Mr Blankenaar was consulted prior to the decision to suspend being made. I note that Mr Blankenaar did not dispute that statement in the letter.

[75] In *Graham v Airways Corporation of New Zealand Ltd*, the Employment Court noted that there is no immutable rule requiring an employee to be told about the proposal to suspend without giving the employee an opportunity to persuade the employer not to do so.<sup>4</sup>

[76] There was an express provision in the Employment Agreement at clause 19 which allowed Boatspray to suspend an employee if there was a suspicion of serious misconduct.

[77] The decision to suspend Mr Blankenaar was made following the allegations being put to Mr Blankenaar and his confirming what had taken place in regard to the work on Mr Mullin’s boat. At that stage I find that Boatspray had a suspicion that serious misconduct may have taken place.

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<sup>2</sup> Employment Relations Act 2000 s 103A.

<sup>3</sup> *Madden v New Zealand Railways Corporation* [1991] 2 ERNZ 690.

<sup>4</sup> *Graham v Airways Corporation of New Zealand Ltd* [2005] ERNZ 587 at [104].

[78] I find that this was a situation in which, given the serious nature of the suspicion, Boatspray had the contractual right to, and could, suspend Mr Blankenaar without giving him the opportunity to comment on that decision first.

#### *Process*

[79] I find that Boatspray did follow a fair process. It investigated the allegation that Mr Blankenaar had been painting Mr Mullin's boat (which he had confirmed when informed of the allegation) by viewing the CCTV footage recorded by the Marina management in which it was possible to identify Mr Blankenaar as the person who had been carrying out the work.

[80] The allegations had been raised by Mr Blankenaar at the meeting on 9 December and a date arranged for a formal disciplinary meeting to which Mr Blankenaar was invited to have a support person.

[81] Mr Blankenaar claims that there was insufficient time for him to arrange a support person by the scheduled date of the meeting on 12 December 2024.

[82] I do not find that this was a defect in the process for two reasons: firstly in the letter dated 9 December 2024 Mr Blankenaar was asked to get in touch with "any reasonable request to change the day/time of this meeting", and secondly, Mr Blankenaar emailed Mr Kent on 10 December 2024 explaining that he would have not sufficient time to arrange a support person for 11 December and asking if the meeting could be rescheduled from 11 to 12 December 2024, which request was granted.

[83] Mr Blankenaar had the opportunity to provide an explanation during the meeting on 12 December 2024. He provided a letter from Mr Mullin which Mr Manning and Mr Kent read. Their decision not to interview Mr Mullin in person I find was not unreasonable given the facts were clear as was Mr Blankenaar's response to the allegations.

[84] It was incumbent on Boatspray to genuinely consider Mr Blankenaar's explanation.

#### *Defects in the process*

[85] No adjournment was held during the meeting on 12 December 2024 to consider the appropriate outcome. In addition Mr Manning had pre-prepared the termination letter prior to the meeting held on 12 December 2024 which infers that the decision to end of Mr Blankenaar's employment was made without genuinely considering his response.

[86] An employer will frequently have a view on what has occurred and the appropriate outcome prior to a disciplinary meeting with an employee. What is required is that the employer

retains an open mind when listening to the employee's explanation and to reaching a different view.

[87] Mr Manning's evidence was that the facts of what had occurred had been clear, and Mr Blankenaar had himself confirmed them on 9 December 2024. The CCTV footage and the letter from Mr Mullin had further confirmed what had occurred. There was no new information provided by Mr Blankenaar during the meeting on 12 December 2024. The letter from Mr Mullin did not change the facts of what had occurred but did clarify that it was not a friend that Mr Blankenaar had been assisting as he had given them to understand.

[88] Mr Manning's evidence was also that the termination letter had not been signed until the conclusion of Mr Blankenaar's explanation.

[89] Boatspray was a small employer. pursuant to s 103A(5) of the Act, the Authority must not hold a dismissal to be unjustifiable solely because of process defects if the defects were minor and did not result in Mr Blankenaar being treated unfairly.

[90] Having carefully considered the matter, I find that the defects were minor and did not result in Mr Blankenaar being treated unfairly.

[91] I determine that Mr Blankenaar was not unjustifiably dismissed by Boatspray.

### **Costs**

[92] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[93] If they are not able to do so and an Authority determination on costs is needed Boatspray may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Blankenaar would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and Kented.

[94] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[95] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>5</sup>

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>5</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].