

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 88
5323113

BETWEEN KANE BURTON-BROWN
Applicant

A N D WD & ME RUSSELL
LIMITED
Respondent

Member of Authority: K J Anderson

Representatives: R Bryant, Counsel for Applicant
K Stretton, Counsel for Respondent

Investigation Meeting: 11 August 2011 at Tauranga

Submissions Received: 26 August 2011 and 19 September 2011 from Applicant
12 September 2011 from Respondent

Date of Determination: 8 March 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Mr Kane Burton-Brown presents several claims to the Authority for determination:

- (a) A claim for unpaid monies in the total sum of \$8,361.54. This sum has two components:
 - (i) Commission payments of \$5,900; and
 - (ii) Payment in lieu of notice (four weeks) \$2,461.54.
- (b) Holiday pay on the above arrears at 8%; \$668.92;

- (c) Alleged breaches of clauses 34.2, 34.5, 34.6 and 36.1 of the Employment Agreement;
- (d) A breach of good faith pursuant to s.4 of the Employment Relations Act 2000;
- (e) An allegation that Mr Burton-Brown was disadvantaged in his employment by an unjustifiable action or actions by his employer.

[2] In the event that the Authority upholds Mr Burton-Brown's claims he seeks various remedies including penalties to be ordered against the respondent and \$5,000 compensation in relation to the disadvantage personal grievance.

[3] Conversely, the respondent denies that there is validity to any of the claims and rejects them in their entirety.

Background facts and evidence

[4] The respondent company, WD & ME Russell Ltd (the Company) had been trading since February 2005 as Eco Insulation (WBOP), under the ownership and direction of Mr Warren Russell and Mrs Monique Russell-Groothuis. There had been substantial growth through the owner's apparent efforts.

[5] In early March 2008, due to the growing demands of the business, Mr and Mrs Russell employed Mr Burton-Brown to assume the responsibility for sales management of the business. An employment agreement (the Agreement) was signed by both parties on 3 March 2008. Relevant to the matters before the Authority, a schedule to the Agreement provides that Mr Burton-Brown was to be paid a "*base retainer*" of \$32,000 per annum and commissions on the basis of "*30% of increase in gross profit.*"

[6] Mrs Russell-Groothuis, who has a financial management background, explained in her evidence to the Authority that the commission was worked out on gross profit growth and that gross product profit is calculated by taking the sales figure for the month and deducting cost of sales. The cost of sales includes the expenses directly related to achieving those sales.

[7] Also relevant to the matters to be determined is clause 39 of the Agreement:

Variation

This agreement may be amended or varied at any time with the consent of both parties.

[8] In relation to the status of the schedule and appendices attached to the Agreement, clause 38 provides that:

Complete agreement

This agreement including the schedule and the attachment headed “Resolving Employment Relationship Problems” is the entire agreement of the parties and replaces any previous terms and conditions of employment or understandings.

[9] It appears that by May 2008 the business was becoming inundated with the work that was available. Somewhere about the second week of May 2008, a meeting took place between Mr Russell and Mrs Russell-Groothuis (the Russells) and Mr Burton-Brown for the purpose of discussing how the extra work available would be managed. The evidence of Mrs Russell-Groothuis is that Mr Burton-Brown acknowledged that he did not have time to service the additional work and the possibility of employing new sales staff was discussed. However, because there was some uncertainty about how long the influx of work would last, it was decided that Mr Ross Phillips, the head installer for the business, would assist with the sales workload, as well as Mr Russell making some input in regard to sales.

[10] Mrs Russell-Groothuis says that any sales generated by Mr Phillips and Mr Russell would still be included in the 30% commission calculations for Mr Burton-Brown and hence there was no requirement to amend the payment schedule of the employment agreement.

[11] Nonetheless, Mrs Russell-Groothuis says that there was some discussion about how to “*offset*” the cost to the company in regard to the time and resources used by Mr Phillips and Mr Russell in achieving the sales that were additional to those achieved by Mr Burton-Brown.

[12] The evidence of Mrs Russell-Groothuis is that in regard to offsetting the cost to the company, pertaining to the resources used by Mr Phillips and Mr Russell in achieving the additional sales, it was suggested by Mr Burton-Brown that 5% of the sale value could be deducted as an expense, which should cover the costs incurred by

the two men, including their time and vehicle expenses. Mrs Russell-Groothuis says that:

We agreed that we could include this in the cost of sale calculation and coded it through the referral system code to keep things simple. Kane [Mr Burton-Brown] was happy with this arrangement and even said 'this should work well for now'.

[13] There is little evidence from Mr Burton-Brown regarding the discussion at the meeting in May 2008. His only response to the Authority is that, in his view, Mr Phillips and Mr Russell were always contributing to the overall sales achieved by the company and that the only thing that changed was: “*We got busier.*”

The first complaint from Mr Burton-Brown

[14] The evidence for Mr Burton-Brown is that when he received his pay slip for the month of May 2008, showing the sales for the month and his commission entitlement, he noticed the deduction of the sum of \$1,333.00 from the total sales income figure which had the net effect of reducing the commission he was paid.

[15] Mr Burton-Brown says that he contacted Mr Russell by telephone and raised the matter of the deduction of the amount of \$1,333.00. The evidence of Mr Burton-Brown is that: “*Mr Russell got very defensive and told me that was it.*”

[16] Mr Burton-Brown says that he felt “*very intimidated and bullied*” but he also felt he did not have any option but to “*shut up and take it.*”

[17] The recollection of Mr Russell about the conversation is quite different. His evidence is that there was a brief conversation and that Mr Burton-Brown referred to receiving his pay slip and commission for the last month and that he wanted to get more details on it now that the referral fee had taken effect. Mr Russell says that he informed Mr Burton-Brown that he should talk to Mrs Russell-Groothuis about the calculations as he [Mr Russell] had nothing to do with the payroll. Mr Russell denies that he was intimidating or bullying during the discussion. Having observed the general demeanour of Mr Russell, I conclude that it is more probable than not that Mr Burton-Brown has essentially misrepresented the discussion. The further evidence of Mr Russell is that following the discussion in June 2008, Mr Burton-Brown did not raise any further comments or complaints with him regarding commission payments and as far as Mr Russell was aware everything was fine.

[18] Mrs Russell-Groothuis explained to the Authority that the figure of \$1,333.00 represented 5% of the sales achieved by Mr Phillips and Mr Russell for May 2008, being the cost factor that was suggested by Mr Burton-Brown and agreed to at the meeting in May 2008. Mrs Russell-Groothuis also told of meeting with Mr Burton-Brown and it was agreed that for forthcoming months, she would create an area at the bottom of the commission calculation sheet to show the amount of the sales that had been achieved by Mr Phillips and Mr Russell. Mrs Russell-Groothuis also gave an undertaking to give Mr Burton-Brown a report that would show the clients names that had been involved with Mr Phillips and Mr Russell. The evidence of Mrs Russell-Groothuis is that Mr Burton-Brown seemed very happy with this and asked if he could get these reports every month and this was duly agreed to.

[19] Mrs Russell-Groothuis attests that from then she did not hear anything further from Mr Burton-Brown in regard to how the commission was calculated and he “*seemed happy*” and in fact “*delighted*” each month in how much commission he was making, to the extent that he was earning more than she and Mr Russell were making combined.

[20] Having viewed the overall evidence pertaining to the commission payments due to Mr Burton-Brown, I find that it is more probable than not that it was agreed at the meeting in May 2008 that a flat rate of 5% would be deducted from the sales figures achieved by Mr Phillips and Mr Russell, to take account of the costs incurred by the Company associated with achieving those sales. It is difficult to understand why Mr Burton-Brown would now object to the 5% deduction as it is not 5% of his commission payments, rather it is 5% of the sales achieved by Mr Phillips and Mr Russell and it seems to me that Mr Burton-Brown must have obtained quite some benefit from the extra sales achieved by the efforts of the two other men, given that the figures show that they contributed significantly to the total sales achieved for the company. And, of course, Mr Burton-Brown continued to be paid the 30% commission calculation as agreed to in his employment agreement.

Proposed sale of the business and other issues

[21] On 25 March 2009, Mr Burton-Brown was informed by Mr Russell that he had received a conditional offer from a potential purchaser for the business. Mr Burton-Brown subsequently met the purchaser of the business, Mr Jock Caddigan. The evidence of Mr Russell is that on 25 March 2009, he informed Mr Burton-Brown

that the sale of the business was anticipated to be completed on 1 May 2009 and therefore Mr Burton-Brown would no longer be employed by the company. Mr Russell says that he reassured Mr Burton-Brown that Mr Caddigan had expressed an interest in keeping all the staff in place so that things could hopefully continue.

[22] The evidence is that Mr Russell was spending most of his time in Hamilton, rather than Tauranga, where the business was based. The evidence of Mr Russell is that by late April 2009, he had put an operations manager in place in Hamilton and so returned to Tauranga to help finalise the sale of the business and assist with the changeover. Mr Russell says that upon his return to Tauranga he was shocked to find how stressed Mrs Russell-Groothuis was as she had been working long hours as Mr Burton-Brown was also busy and he had been relying on Mrs Russell-Groothuis to “*pick up the slack*” for him.

[23] Mr Russell attests that he spoke to Mr Burton-Brown on several occasions about the workload and indicated that Mr Burton-Brown should employ someone, such as a personal assistant, to assist him in order to allow Mrs Russell-Groothuis to carry out her own work. While the evidence is a little unclear, it appears that due to the workload that was coming into the business, some tension arose between the Russells and Mr Burton-Brown. It seems that Mrs Russell-Groothuis had been attempting to meet with Mr Burton-Brown for the purpose of a performance review and to go through the backlog of quotes and talk about the overall workload that had accumulated. However, it seems that Mr Burton-Brown had been avoiding a meeting with Mrs Russell-Groothuis, albeit she had scheduled such for 22 April 2009 and Mr Burton-Brown was aware of this.

[24] Upon Mr Russell becoming aware of the difficulty that Mrs Russell-Groothuis was having in regarding to meeting with Mr Burton-Brown, he instructed her to withhold the sum of \$900 from Mr Burton-Brown’s payment entitlements, the rationale apparently being that this would attract Mr Burton-Brown’s attention and prompt the discussion, where other methods had failed.

[25] The evidence of Mrs Russell-Groothuis is that an undertaking had been given to Mr Caddigan that prior to the sale of the business being finalised, there would be a discussion with Mr Burton-Brown about some matters that Mr Caddigan had expressed concerns about during the due diligence process that had been undertaken. However, the evidence of Mr Burton-Brown is that sometime in April 2009,

Mr Russell gave him a proposed new commission structure to peruse. Mr Burton-Brown says that he reviewed the proposed structure and proposed something different, but this alternative was ignored by Mr Russell. In his evidence to the Authority, Mr Burton-Brown refers to him attending a meeting on 22 April 2009 and saying to Mr Russell at that meeting that he felt that Mr Russell was bullying him and that the response of Mr Russell was to confirm that he was bullying Mr Burton-Brown. However the weight of the evidence is that while there was a meeting scheduled for 22 April 2009, it does not appear to have taken place. This is evidenced by the opening sentence of a letter to Mr Burton-Brown from the Russells, that is also dated 22 April 2009:

It is unfortunate that you chose not to have a meeting with us today despite the time being booked out on your calendar and a reminder on your return to office.

[26] There are further matters referred to in this letter which I will return to shortly, but given that it appears that the meeting on 22 April 2009 did not occur, the evidence from Mr Burton-Brown, in regard to another allegation of being bullied by Mr Russell, is not plausible.

[27] Indeed, according to the evidence of the Russells, it may have been Mr Burton-Brown that engaged in intimidating behaviour on the evening of 22 April 2009, in relation to the \$900 that had been withheld from him.

[28] The evidence of Mrs Russell-Groothuis is that on the evening of 22 April, she was working late in her office when Mr Burton-Brown called in on his way home. Mrs Russell-Groothuis attests that upon her return from going out to get some dinner, Mr Burton-Brown:

... started shouting and swearing and being abusive. I was very scared and I did not know how to handle his behaviour and so told him to speak to Warren [Mr Russell] because he had said to make the deduction. I was distraught after Kane [Mr Burton-Brown] left, he had literally backed me up in a corner of the office which was bloody scary.

[29] Upon Mr Burton-Brown leaving her office Mrs Russell-Groothuis contacted Mr Russell and indicated that she wanted to call the Police in regard to Mr Burton-Brown's behaviour.

[30] Mr Burton-Brown denies that the incident was as intimidating as Mrs Russell-Groothuis portrays. But the collaborative evidence of Mr Russell is that he received a telephone call from his wife at about 8:00p.m. on the evening in question and that she was upset and wanted to call the Police. Mr Russell says that he persuaded his wife not to call the Police and then rang Mr Burton-Brown who he says: “... *had a go at me too, swearing and making threats as he was upset about the deduction of the \$900 from his pay.*” It appears that the \$900 in question was subsequently paid to Mr Burton-Brown within the next day or so.

[31] Via the letter dated 22 April (as referred to earlier) but apparently written on 23 April 2012, Mr Burton-Brown was informed of the various concerns his employers had including:

- (a) Mr Burton-Brown’s role as a sales manager and his general lack of performance in that role;
- (b) Poor judgment in regard to the choice of interviewees pertaining to a new sales representative position;
- (c) That the workload that was being placed on other staff was unacceptable.
- (d) The problems with ‘requests’ and performance requirements not being completed.
- (e) A list of duties that were being performed by Mr Russell and Mrs Russell-Groothuis that should have been performed by Mr Burton-Brown or paid for by him (via the commission structure) as a cost to the Company.
- (f) The amount of commission payments that Mr Burton-Brown was receiving albeit others were carrying out some of his duties.
- (g) An accusation that Mr Burton-Brown had made about his employers cheating him and running false books.
- (h) Complaints from customers and others in regard to sales calls not being returned; and a substantial energy company threatening to revoke their contract with the company.

[32] The letter concluded:

Due to all these areas of your poor performance, as a company we are receiving daily complaints from customers, losing quotes because of slow contact, losing jobs due to lack of follow up, all of which means we have potentially lost tens of thousands of dollars in sales which is inexcusable!!

You have seriously let the company down. As you will be aware we are working in with the new owner, to ensure that your re-employment terms will be favourable to you, but he has been made aware on the areas of your poor performance. Furthermore we have suggested that he does regular performance reviews and adjust your commission accordingly. We wished to discuss with you yesterday and help you to put a proposal together for the new owner. What he wishes to see was the same thing that we initially did, which was for you to run the whole sales side of the business, incorporating the full job description, as this is where your value lies as a sales manager. You need to prove that within your GP percentage commission structure you have the ability to manage a sales team and all sales related promotions to drive his business ahead to where it needs to be.

[33] It appears that there was some discussion with Mr Burton-Brown about the content of the letter but his response was more formally presented in a letter from his solicitor (and brother in law) dated 24 April 2012. It concluded thus:

Kane [Mr Burton-Brown] will honour the terms of his employment contract with you and he will liaise directly with the new owner of the business as to the terms of his continued employ. In light of the baseless and potentially defamatory statements made about Kane in your letter he has no faith in your ability to settle a contract on his behalf. For the avoidance of doubt, Kane has not necessarily decided to continue his employ with the new business.

We look forward to hearing from you in relation to the information and payments we have requested. Obviously, Kane intends to issue proceedings against you but would appreciate a response from you before doing so.

[34] The Russells responded by a further letter dated 6 May 2009, but it appears that nothing was really resolved with Mr Burton-Brown prior to the new owner taking over the business, apart from the fact that Mr Burton-Brown received payment of the \$900 that had been previously withheld from him; hence ending that particular matter.

Termination of Mr Burton-Brown's employment

[35] On or about 28 April 2009, it was confirmed to Mr Burton-Brown in writing that the business had been sold and that his last day of employment with WD & ME Russell would be 30 April 2009. The relevant content of the letter is:

As you are aware the business has been sold and you have met the new owner Jock Caddigan. We have requested that Jock offer employment to all the current staff and I understand he has had several meetings with you and that discussions are continuing in regard to your possible employment in the new business. We are hopeful that you will all be taken on, however it is Jock's prerogative

as the new owner to make the final decision in regard to your future employment.

As previous [sic] discussed, Jock will take over the business on 1 May 2009. Therefore we confirm that your last day of employment with us as your employers will be 30th April 2009. Leave entitlements will be transferred across to the new business. Commission payments will be paid once the final figure has been calculated.

[36] The evidence about the possibility of Mr Burton-Brown being employed by the new owner of the business, Mr Caddigan, is somewhat unclear. Mr Burton-Brown says that he met with Mr Caddigan on or about 30 April 2009 and was informed by him that he would not be employing Mr Burton-Brown. However a letter (undated) from Mr Caddigan to Mr Burton-Brown records that:

I offered you employment on the same terms and conditions as the employment you have with the Russells. You have come back to me in your email today with a counter offer, under which you would be an independent contractor. Your counter offer is not acceptable. I withdraw my offer to employ you, and negotiations are at an end.

[37] The evidence of Mr Russell is sometime in April 2009 he received a concerned call from Mr Caddigan in regard to Mr Burton-Brown (allegedly) adopting an “*aggressive manner*” during his contract negotiations with Mr Caddigan. Mr Russell says that he “*promoted and encouraged*” Mr Caddigan to employ Mr Burton-Brown as he was a very good sales person. Mr Russell says that on the last day of owning the business (30 April 2009) Mr Burton-Brown came into the office about 9:00p.m, put some papers and a key on the table and walked out. Mr Russell says that he had “*no idea*” what was going on then. It seems that there was no further communication between Mr Burton-Brown and the Russells until he raised his claims more than a year later via a letter dated 24 August 2010 from a new lawyer. Among other things, this letter raised a personal grievance alleging that Mr Burton-Brown had been unjustifiably dismissed. That claim is not before the Authority, most probably because it was considerably out of time pursuant to s.114 of the Employment Relations Act 2000.

[38] The evidence is that Mr Burton-Brown started up a similar business, Greensheep Insulation Solutions. Mr Burton-Brown’s company, Greensheep Limited, was incorporated on 24 June 2009, very shortly after he left the employment of the

respondent; which tends to belie Mr Burton-Brown's evidence that: "... *the bullying by Mr Russell has caused me a lot of anguish over the past three years.*"

Analysis and conclusions

A. The claim for commission payments - \$5,900

[39] The basis of this claim appears to go back to May 2008 when the parties entered into some discussion about the increased workload that was occurring. In particular how the sales should be managed. On balance I accept the evidence of Mrs Russell-Groothuis that Mr Burton-Brown proposed that a cost factor of 5% should be recognised relative to the sales achieved by Mr Phillips and Mr Russell, in order to recognise the cost to the company of achieving those sales, and that this proposal was implemented by mutual agreement.

[40] I also find that upon having the calculations explained to him by Mrs Russell-Groothuis in June 2008, Mr Burton-Brown accepted that explanation and had no further issue with the payment of commissions again until the sale of the business was proposed in March 2009, when shortly after, a change to the commission structure was proposed by Mr Russell, albeit changes did not take effect due to the sale of the business. But in any event, the employer was entitled to propose changes to the commission levels pursuant to clause 7.2(e) of the employment agreement. It provides that:

The levels of commission to be paid are subject to review by the employer from time to time. Such review shall be negotiable and shall be binding upon you. You shall be given one month's notice of any change to the commission rate.

[41] It seems that Mr Burton-Brown has failed to acknowledge and/or recognise that he obtained a considerable benefit from the increased sales achieved by Mr Phillips and Mr Russell as there was no change to the 30% figure that was originally agreed to in his employment agreement. Indeed, I find that it is more probable than not that Mr Burton-Brown was quite happy to reap the benefits of the efforts of Mr Phillips and Mr Russell in regard to the increased sales that were achieved.

[42] I find that there is no merit in Mr Burton-Brown's claim for unpaid commissions and hence his claim fails in its entirety.

B. *The claim for payment of four weeks notice and a breach of clauses 34.5 and 34.6 of the employment agreement.*

[43] Mr Burton-Brown advances this claim pursuant to clause 34.2 of the employment agreement. It provides that in the event of the employee's position becoming redundant, then the employee:

Will be given four weeks notice of termination of employment arising from the redundancy ...

[44] There is no doubt that Mr Burton-Brown was entitled to be given four weeks' notice of the termination of his employment with WD and ME Russell Limited due to the sale of the business. The employment agreement also provides at clause 34.5 and 34.6 that the company will fulfil certain obligations in regard to employees and a third party, in the event of a transfer or sale of the business.

[45] Mr Burton-Brown claims that his employer breached these provisions, but I do not accept that this is so. Rather I find that all reasonable steps were taken by Mr Russell to ensure that Mr Burton-Brown was employed by Mr Caddigan, despite Mr Burton-Brown's attitude toward the Russells at various times. Indeed it appears that Mr Burton-Brown was something less than accommodating in regard to retaining his employment with the new owner, but that is not something that can be sheeted home to the Russells.

[46] Nonetheless, there is an issue regarding whether Mr Burton-Brown received four weeks notice of the termination of his employment by the company. The evidence is that Mr Burton-Brown first became aware of the proposed sale of the business on 25 March 2009. Mr Burton-Brown was also aware that the new owner of the business, Mr Caddigan, would be taking over the business, effective from 1 May 2009, following a meeting with the Russells and Mr Caddigan, which subsequently included Mr Burton-Brown. The evidence of Mrs Russell-Groothuis is that:

Once the sale was confirmed after this meeting I gave notice to all employees, including Kane [Mr Burton-Brown], with their payslips the next Monday.

[47] It seems that the sale of the business became unconditional on 27 March 2009 and that Mr Burton-Brown would have received formal notice with his payslip on Monday 30 March 2009, with further written confirmation on 27 April 2009. The

earlier written notice has not been produced to the Authority but I accept as reliable the evidence of Mrs Russell-Groothuis that it was issued to Mr Burton-Brown. Also Mr Burton-Brown had been engaged in discussions with Mr Caddigan about the terms of his transfer to the new ownership from shortly after 25 March 2009.

[48] On the weight of the overall evidence, I find that it is more probably than not that Mr Burton-Brown received four weeks formal notice of the termination of his employment with WD & ME Russell Limited and indeed, he was fully aware, from at least 25 March 2009, of such an eventuality. I reject his claim to the contrary.

C. *The claim of unjustified disadvantage*

[49] Mr Burton-Brown advances this claim on two fronts. First, he alleges that there was a failure to consult with him in regard to the termination of his employment with WD & ME Russell Limited. This matter has largely been canvassed in my earlier finding in regard to the claim of a failure to give appropriate notice. The evidence is that Mr Burton-Brown was consulted in regard to the change of ownership and the effect on his continued employment with WD & ME Russell Limited.

[50] I conclude that he was fully aware, as of 25 March 2009, of what was going to occur and exactly why. Furthermore, he had the opportunity to fully participate in the transfer process, including discussions with Mr Caddigan and the possibility of transferring his employment to the new owner accordingly. Regrettably an agreement was not able to be reached about that.

[51] I find that Mr Burton-Brown is unsuccessful with his claim on this front.

[52] Second, Mr Burton-Brown alleges that he was bullied and intimidated during his employment, with particular reference to the withholding of the payment of the sum of \$900 and the issuing of the letter dated 22 April 2009.

[53] The stance adopted by Mr Russell in regard to withholding the sum of \$900 was not appropriate; and he has acknowledged such, in addition to apologising to Mr Burton-Brown at the time. But I do not find that there was any unfair or unreasonable treatment of Mr Burton-Brown to the extent that a personal grievance can be upheld. Rather, it is evident that all parties were under considerable stress at the time. This was manifested in the form of difficulties coping with the increased business that had

become available to the company and the associated difficulty for all concerned, including Mr Burton-Brown, of coping adequately with this.

[54] For Mr Russell, there were also personal difficulties, relating to the health of a close family member, which eventually led to a decision to sell the business.

[55] In summary, I conclude that these were stressful times for all concerned which was reflected in the less than appropriate behaviour by the Russells and Mr Burton-Brown at times. However, I do not find that Mr Burton-Brown was bullied or intimidated in his employment. On the contrary, having witnessed the demeanour of Mr Burton-Brown, it was obvious to me that he is of a robust and confident nature, as befits a competent sales person, and most capable of making his point when necessary. In contrast, I observed Mr Russell to be of a quiet and measured, albeit firm, demeanour, hence it is most unlikely that Mr Burton-Brown was treated in the manner that he alleges.

[56] In summary, I find that Mr Burton-Brown does not have a personal grievance on either of the fronts that he has brought forward for determination.

Determination

[57] For the reasons set out above, I find that Mr Burton-Brown has failed to provide sufficient evidence to convince the Authority of the merits of his claims and hence they are unsuccessful in total.

Costs

[58] Costs are reserved. The parties are invited to resolve the matter of costs if they can. In the event a resolution cannot be reached, the respondent has 28 days from the date of this determination to file and serve submissions with the Authority. The applicant has a further 14 days to file and serve submissions.

K J Anderson

Member of the Employment Relations Authority