New Zealand Employment Relations Authority Decisions

Davidson v Great Barrier Airlines Limited (Auckland) [2016] NZERA 605; [2016] NZERA Auckland 403 (9 December 2016)

Last Updated: 12 January 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2016] NZERA Auckland 403
5604449

BETWEEN ANNA DAVIDSON Applicant

AND GREAT BARRIER AIRLINES LIMITED

Respondent

Member of Authority: Robin Arthur

Representatives: Greg Bennett, Advocate for the Applicant

Margaret Robins, Counsel for the Respondent

Investigation Meeting: 8 December 2016

Submissions: On costs by memorandum from the Respondent on 27

November 2016 and by memorandum from the Applicant on 28 November 2016. On a penalty matter by memorandum from Mr Bennett on 6 November 2016 and in person from Mr Bennett on 8 November 2016.

Determination: 9 December 2016

DETERMINATION OF THE AUTHORITY ON COSTS AND PENALTY

A. Anna Davidson must pay Great Barrier Airlines Limited (GBAL)

$7000 as a contribution to its costs.

B. Greg Bennett must pay $4000 as a penalty for obstructing and delaying an Authority investigation, with $2000 of the penalty to be paid to GBAL and $2000 of the penalty to be paid to Ms Davidson.

[1] On 4 November 2016 the Authority issued a determination dismissing Anna

Davidson's claim that she was constructively dismissed by Great Barrier Airlines

Limited (GBAL).[1] Two issues were reserved for further determination. Firstly, costs

1 *Davidson v Great Barrier Airlines Limited* [2016] NZERA Auckland 362, now under challenge in

Employment Court matter 316/2016.

were reserved, if that issue could not be resolved by the parties. Secondly, further investigation and determination was required

on whether a penalty should be imposed on Ms Davidson's representative, Greg Bennett, and Mr Bennett's assistant, Sonia Ryder for actions or omissions that delayed or obstructed the Authority's investigation

of Ms Davidson's application.2 Mr Bennett had already been advised earlier, on 22

July 2016, that the Authority would consider, on its own motion, whether a penalty against him under s 134A of the Act was appropriate. The liability for such a penalty arises under the following provision of the Employment Relations Act 2000 (the Act):

134A Penalty for obstructing or delaying Authority investigation

(1) Every person is liable to a penalty under this Act who, without sufficient cause, obstructs or delays an Authority investigation, including failing to attend as a party before an Authority investigation (if required).

(2) The power to award a penalty under subsection (1) may be exercised by the Authority—

(a) of its own motion; or

(b) on the application of any party to the investigation.

[2] The parties had not resolved the issue of costs and GBAL lodged a memorandum seeking costs. Ms Davidson, through her representative Mr Bennett, lodged a reply. GBAL's memorandum disclosed that, prior to the Authority's investigation meeting about Ms Davidson's personal grievance, GBAL made offers on a "without prejudice save as to costs" basis to settle with her. The offers were declined. As Ms Davidson was not successful in her constructive dismissal claim, it was necessary to consider what effect those settlement offers should have on the level of costs to be awarded to GBAL for its successful defence against her claim.

[3] On the penalty issue Mr Bennett and Ms Ryder were offered the opportunity to be heard, either by way of written submission or in person at an investigation meeting. Mr Bennett opted for an investigation meeting and a notice for the meeting was issued. Mr Bennett lodged a memorandum on 6 December and appeared in person at the investigation meeting held on 8 December to hear from him on the penalty issue.

[4] Ms Ryder did not respond or appear personally. She is Mr Bennett's wife and

carries out office administration tasks for Mr Bennett's business that trades under the

name of Abbey Employment Law Specialists. Mr Bennett said Ms Ryder was not a

2 *Davidson,* above n 1, at [48] – [54].

paid secretary or a paid legal professional. He said any actions by her in this matter were at his instruction and were his responsibility.

[5] GBAL chose not to attend the investigation meeting on the penalty matter and did not wish to see any supporting documents Mr Bennett lodged for it. GBAL was content for the Authority "to make such award as it saw fit".

The penalty issue

[6] The penalty issue was logically decided first as any amount awarded could be relevant to the costs award.3

What s 134A of the Act means

[7] Two elements must be satisfied to warrant a penalty under s 134A of the Act. Firstly, there must have been a delay or an obstruction of the Authority's investigation. Delay relates to whether an event is late or postponed. To obstruct means to "be in the way of" or to prevent or to hinder.4 Secondly, the lateness, postponement or hindering must have occurred "without sufficient cause". This concerns whether the cause or reason given for what happened, or did not happen, to

obstruct or delay the investigation was good enough, adequate or satisfactory. It requires a broad assessment of the circumstances and why someone liable to the penalty had acted or failed to act as she or he had done.

The actions delaying and obstructing the investigation

[8] On 11 March 2016 the parties' representatives attended an Authority case management conference held by telephone. Following discussion with them timetable directions were issued for the parties' representatives to lodge witness statements in advance of an investigation meeting to be held on 1 June 2016. Mr Bennett was expected to lodge statements from three identified witnesses (including Ms Davidson) by 18 April 2016. On 20 April an Authority Officer sent Mr Bennett an email because the statements had not been lodged. The email asked Mr Bennett to "promptly advise the current situation or circumstances so I can refer this information to the Member for his further direction if necessary". Mr Bennett responded within an

hour:

3 *Fox v Hereworth School Trust Board* [2013] NZERA Auckland 159 at [9].

4 Concise Oxford English Dictionary (11th ed, 2004).

Apologies, the witness statements will [be] with you today. I had to respond to an urgent matter for [another Authority Officer] at the same time [as] finalising the Employment Court pleadings that arose whilst I was away from Auckland. They will be with you shortly after lunch.

[9] The following morning Ms Ryder sent an email to the Authority Officer attaching a document bearing the title: "Brief of Evidence – Anna Davidson" with the message: "Please find attached the BOE for Ms Davidson. She will be the only witness".

[10] GBAL's representative then lodged witness statements from three witnesses in accordance with timetable directions. Those directions had also provided an opportunity for Ms Davidson to then lodge a reply witness statement by 23 May, but none was lodged.

[11] On 25 May, at the request of the Chief of the Authority, Mr Bennett met with the Chief and another Authority member to discuss concerns regarding his practice as a representative on matters lodged in the Authority. Mr Bennett advised the Chief of some health issues he had. One outcome of the meeting required Mr Bennett to provide contact details for parties he was representing so communications from the Authority could be copied to those parties at the time of being sent by the Authority to Mr Bennett. Another was that Mr Bennett would hand over a number of files to another representative, who was identified as a solicitor in a suburban law firm.

[12] By 30 May Mr Bennett had not provided the agreed contact details, despite a reminder email from an Authority Officer on 27 May. A reply to the 27 May email, sent on Monday 30 May by Ms Ryder, included the following request: "The IM for Davidson is sought to be adjourned if it has not already been done". The investigation meeting was due to be held in two days' time, on Wednesday 1 June. After seeking comment from GBAL's representative, in which GBAL objected to a postponement, the investigation meeting was postponed.

[13] On 31 May Ms Davidson contacted the Authority by telephone and spoke to the Authority Officer managing the file for her application. It became apparent that Ms Davidson was not aware that a notice of an investigation meeting for 1 June had been issued in March, some 11 weeks earlier. Ms Davidson later forwarded to the Authority Officer email exchanges she had with Ms Ryder. One email from Ms Davidson to Ms Ryder, dated 2 May, said she had not heard from Mr Bennett since

December 2015 when he told her the matter should proceed to the Authority. A

statement of problem was lodged on her behalf on 22 December 2015 but by 2 May

2016 Ms Davidson was not aware of that. She asked Ms Ryder: "Have we made application to the Authority?" Ms Ryder's reply said she would get Mr Bennett to call Ms Davidson the next day.

[14] An email from Ms Davidson to Ms Ryder dated 29 May indicated she had still not heard from Mr Bennett, despite the promised 3 May call. Ms Davidson said she had heard "through a source" at GBAL that "my case is to be heard on Wednesday, 1st of June". She asked Ms Ryder to confirm whether that was so.

[15] Ms Ryder's reply, bearing the time and date of 10.30pm on Sunday, 29 May, said: "That is incorrect re the date. I will ensure that Greg calls you tomorrow".

[16] Ms Ryder's reply was incorrect. At the time of her email no request for adjournment of the 1 June investigation meeting had been made. The request was made by email on the morning of 30 May.

[17] At Ms Davidson's request the Authority Officer had, on 3 June, sent her copies of an email sent by the Authority on 14 March issuing the notice of investigation meeting for 1 June and a Member's Minute issued on 14 March after the

11 March case management conference. She was also sent a copy of the witness statement (labelled as a brief of evidence from Ms Davidson) that Ms Ryder had sent to the Authority on 21 April and copies of the witness statements of GBAL witnesses lodged on 13 May.

[18] Ms Davidson's email in reply, also sent on 3 June, included the following comment:

I have just been over the documents and I am not happy at all with the statement apparently done by me which it was not and I never even saw this before it was lodged as some of the statement is incorrect.

[19] In a subsequent email, on 7 June, Ms Davidson advised the Authority Officer she was "in the process of obtaining new counsel". When the Authority Officer made further inquiries about progress on that process Ms Davidson advised, by email on 15

July, that Mr Bennett was still her representative.

[20] A case management conference was then scheduled, for 22 July, at which Ms Davidson was represented by Mr Bennett and the solicitor who Mr Bennett had arranged to attend to Authority matters. During the 22 July conference call Mr Bennett said he took "full responsibility" for Ms Davidson not being provided with information about the earlier investigation meeting date and for the witness statement lodged in her name that she had not seen. A new investigation meeting date was set. Arrangements were made for Ms Davidson to provide a witness statement, to be seen and confirmed by her before it was lodged in the Authority. GBAL was given leave to lodge revised witness statements, in light of what Ms Davidson might say in her statement.

Further statements were subsequently lodged by two of the three GBAL witnesses.

Was there "sufficient cause" for the obstruction and delay?

[21] From the foregoing account it was clear Mr Bennett's actions or omissions had delayed and obstructed the Authority investigation. He had not told Ms Davidson of any of the arrangements made by the Authority for investigation of her application. A witness statement she had not seen or approved was lodged and, on discovering that was so, a new statement had to be prepared and lodged. When, two days before the investigation meeting scheduled for 1 June, Ms Davidson asked what was happening, she was told that there was no such meeting. If Ms Davidson was told the truth, even at that late stage, she would have the option of going ahead with the 1 June investigation meeting, either representing herself or with hurriedly arranged assistance. Instead the meeting was postponed for what were said to be health reasons of Mr Bennett.

[22] Mr Bennett was given the opportunity to provide evidence about his health at the relevant times. He provided two letters from his GP, one dated 1 December 2016 and one dated 2 June 2016. The latter letter included notes from consultations, with a different doctor at the same practice, on two days. On 1 September 2015 Mr Bennett was described as having "depression/burnout" and on 12 May 2016 "work stress/burnout". Mr Bennett said I could also talk to his GP. I told him I would not, for two reasons. Firstly, he was given adequate opportunity to provide as much supporting medical information as he wished prior to the 8 December investigation meeting. Secondly, Mr Bennett advised that his GP was opposed to releasing any further notes. Mr Bennett also asked that his medical information not be released or

referred to in any detail in the determination on the penalty issue but said it was "fine"

to refer to work related stress, burnout, and depression related to burnout.

[23] Mr Bennett said he had around 50 to 60 files open at any one time during

2015 and in the early part of 2016. When he saw a doctor in September 2015 he was told to take time off work. Mr Bennett said he ignored the advice. He said the doctor was more forceful when he went back to him on 12 May 2016 and he subsequently took time off.

[24] Mr Bennett said, in dealing with Ms Davidson's application, he "screwed up because I was suffering". He said that if the Authority imposed a penalty on him he would "appeal it to the Employment Court because I know that it would be grossly unjust". In his written memorandum he suggested that imposing a penalty under s

134A would be penalising him for "getting sick".

[25] The question for determination was not whether a penalty should be imposed on Mr Bennett for suffering ill-health but whether the reason he gave for the actions or omissions by him that had hindered the Authority's investigation were "without sufficient cause". It involved considering the extent to which the reason (of ill health) he gave had caused, and was a sufficient explanation for, the delay or obstruction. For the following reasons I concluded the delay and obstruction that resulted from what he had, or rather had not, done at various times was without sufficient cause.

[26] Firstly, the delay and obstruction did not arise solely from Mr Bennett being ill. On his account of events, it occurred because he was experiencing diagnosed symptoms of burnout, from at least September 2015, which to some degree affected his capacity to properly attend to the needs of clients he had undertaken to represent. In Ms Davidson's case, at least, he did not take the proper steps that could be expected from someone trading as an "employment law specialist" to advise the Authority of his difficulty and he made no proper arrangements to have someone else take over dealing with her application. Parties, witnesses, representatives and Authority members will fall ill from time to time and adjustments will then need to be made to timetables and to personnel dealing with a matter. The Authority needs to be told of the true state of affairs in order to be able to make those adjustments. Taking on (and trading on) the status of a representative in an employment law matter comes with considerable responsibility to the person or business being represented. Whether

that is a worker upset and desperate at the loss of a job or an employer and its managers anxious over the disruption and potential cost to its enterprise, each relies and depends on their representative acting conscientiously on their behalf. Where a representative cannot do so, from an abundance of other commitments or due to illness, the client should be able to expect to be told the true state of affairs and helped to find assistance elsewhere. There were other representatives, whether lawyers or other skilled advocates, to whom Ms Davidson could readily have been referred if Mr Bennett had advised her of his difficulty.

[27] Secondly, Mr Bennett's capacity was not so impaired by his illness that he could not attend to other matters. The publicly-available records of Authority determinations and Employment Court decisions show Mr Bennett continued to attend to the needs of other clients by appearing at Authority investigations and Court hearings and lodging submissions during the relevant months of 2016. What happened was, at least in part, the result of some choices he made. While the emotional and cognitive exhaustion characteristic of 'burnout' may have affected his

judgement and contributed to a 'depersonalisation' in his attitude to others,5 Mr

Bennett had elected not to follow his doctor's advice in September 2015, had not informed Ms Davidson of any difficulties, and had attended to the needs of other clients. In that sense, his illness alone was not sufficient explanation of what had happened to

cause the delay or obstruction.

[28] Thirdly, the omissions in attending to the demands of the Authority's investigation of Ms Davidson's application were not so rare a feature of Mr Bennett's practice that they could only be explained by his illness. While Mr Bennett objected to that proposition, two instances on the public record illustrated the point.

[29] The Authority has previously considered imposing a s 134A penalty on Mr Bennett, after an investigation in 2012.6 In that case costs were increased against Mr Bennett's client due to conduct that included failing to comply with timetable directions and failing to provide information prior to the investigation meeting which

the Authority had identified as relevant to its investigation.[7] While the Authority, on

5 https://www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-862/what-to-do-about-burnout.

6 *Taiapa v Te Runanga O Turanganui A Kiwa t/a Turanga Ararau Private Training Establishment*

[2012] NZERA Auckland 289 (Member Larmer).

7 At [10].

that occasion, then declined to also award a penalty against Mr Bennett, its determination included the following observation:8

The Authority records its concern about the manner in which Mr Bennett conducted this matter. However, I am also mindful that, largely due to the co-operation of [the respondent], the original [investigation meeting] date for this matter was not adjourned. That was notwithstanding [the applicant's] repeated timetable breaches and Mr Bennett's ongoing failure to respond in a timely manner to the Authority's and [the respondent's] attempts to contact him about these proceedings.

[30] In a determination on costs for an investigation carried out in July 2015, the Authority reduced the level of a costs award to Mr Bennett's client because of what was described as "inadequate service" by him as someone trading as an employment law specialist.9 The determination include following observations:10

There is a question as to whether Mr McCormick could reasonably have been charged fees (and therefore incurred costs) for all the preparation work in light of the apparent failure to lodge lost wages evidence (which Mr McCormick's evidence said was in part because Mr Bennett had forgotten to bring material provided).

...

What was clear from Mr Bennett's own account was that he did receive some documentary information from Mr McCormick about job inquiries. It was not provided to the Authority either before or at the investigation meeting. If what Mr Bennett got from Mr McCormick on 16 July was, as he said, inadequate, it was not then sufficiently followed up to marshal better evidence in time for the 27 July investigation meeting.

The result of the failure to provide the mitigation evidence was that Mr McCormick missed out on a lost wages award that he might otherwise have got ...

[31] The fourth, and final, reason for concluding the delay and obstruction by Mr Bennett occurred without sufficient cause related to the period of time over which the various omissions occurred. A single omission may have more readily explained and illness accepted as sufficient cause. In Ms Davidson's case however, she was not told her statement of problem was lodged on 22 December 2015; she was not sent GBAL's statement in reply lodged and served on 10 February 2016; she was not told

of the Authority's s 11 March case management conference or sent the Minute about it

8 At [24].

9 *McCormick v Compass Communications Limited* [2015] NZERA Auckland 293 at [16] (Member

Arthur).

10 At [4], [14] and [15].

issued on 14 March; she was not told an investigation meeting had been notified for 1

June; she was not told of or sent the witness statement lodged in her name on 21 April and she was not sent GBAL's witness statements after they were lodged on 13 May. Each document referred to was available to Mr Bennett and Ms Ryder in electronic form and easily capable of being forwarded to Ms Davidson. As Ms Davidson's later communication with the Authority showed, she was an email user and able to read documents sent as PDF attachments.

Liability to a penalty

[32] Having found the delay and obstruction was without sufficient cause, Mr Bennett was liable to a penalty under s 134A of the Act. The failures that caused the delay and obstruction occurred either side of 1 April 2016. The criteria applied when determining

the amount of any penalty for events before that date were developed through case law.11 After that date s 133A of the Act set out the relevant matters, in a non-exhaustive list drawn in part from the language of the earlier case law. For the purpose of this determination there was no significant difference.

[33] As already noted the failures to provide Ms Davidson with information about progress on her case, culminating in postponement of the first scheduled investigation meeting, occurred over a number of months. They were not 'intentional' but amounted to significant negligence by someone trading as an "employment law specialist". Harm caused included the further anxiety and delay for Ms Davidson, left in the dark for five months over progress in her application, and the additional cost and worry for GBAL while participating in an Authority investigation that was then longer than expected. While the relationship between Ms Davidson and Mr Bennett was commercial, as client and advocate, she relied on his expertise and advice while she sought to address an employment relationship problem, including when she resigned and raised a personal grievance for constructive dismissal. It was Ms Ryder who sent Ms Davidson's notice of resignation to GBAL.

[34] While Mr Bennett accepted "responsibility" for the failures that hindered the Authority's investigation, it could not be said he demonstrated any real remorse. Rather he thought it "unjust" that his responsibility should result in any real

consequence. There were strong public interest factors favouring a penalty that

11 *Xu v McIntosh* [2004] NZEmpC 125; [2004] 2 ERNZ 448 at [47] and [48] and *Tan v Yang and Zhang* [2014] NZEmpC 65 at [32].

deterred representatives from failing to make sensible, prompt alternative arrangements if they could not properly attend to the needs of clients who relied on them.

What is the appropriate level of penalty?

[35] The appropriate level of penalty had to be assessed against the range of penalties previously imposed under s 134A. They are few.

[36] In *Tex Onsite v Hill* the Authority imposed a penalty of $10,000.12 The respondent was found to have acted seriously, deliberately and obstructively by failing to comply with an Authority direction to produce a USB memory device, by later reformatting the device so the information on it was deleted, and by "posting inappropriate comments on LinkedIn while matters were being investigated by the Authority".

[37] In *Woods v United Cleaning Services Limited* the Authority imposed a penalty of $8000 for the respondent's repeated and continual refusal to comply with directions to provide information relevant to its investigation (a client list).13 The order required half the penalty to be paid to the Crown and half to be paid to the applicant.

[38] In *Yam v Future Print & Design Limited* the Authority imposed a penalty of

$1000 on an employer that did not respond to or engage in an Authority investigation regarding compliance with a binding mediator's recommendation made under s 149A of the Act.14 The full amount of the penalty was directed to be paid to the applicant.

[39] In *Wano v Skellerup Rubber Services Limited* the Authority imposed a penalty

$3000 for failing to follow timetable directions and not attending an investigation meeting.15 The applicant failed to adhere to timetable directions for lodging witness statements for an investigation meeting, both on its originally scheduled date and then when it was set for a later day. His representative hung up the telephone during a directions conference held to discuss the delays. The applicant did not attend the

investigation meeting.

12 [2016] NZERA Auckland 25.

13 [2014] NZERA Auckland 177.

14 [2013] NZERA Auckland 142.

15 [2011] NZERA Auckland 514.

[40] In *Manoharan v The Chief Executive of Waiariki Institute of Technology (No*

2) the Authority imposed a penalty of $6000 on the respondent's chief executive because he had instructed staff not to assist the applicant in providing information that may have been relevant to settlement or determination of the applicant's grievance.16

[41] Mr Bennett's maximum liability to a penalty for obstructing or delaying the investigation was $10,000. The failures in communication that, together, amounted to an obstruction and resulted in the delay were a single course of conduct to be treated as a single breach.17

[42] On the factors canvassed above, and assessed in comparison to the cases outlined, the breach was sufficiently serious to

warrant a penalty at 40 per cent of the maximum. It was an amount large enough to bring home to Mr Bennett the delay and obstruction was unacceptable and to deter others from similar conduct.

[43] There was no information about Mr Bennett's ability to pay a penalty of

$4000 or suggesting he could not.

[44] The amount was proportionate with the penalties imposed in other cases mentioned and also with the level of costs awarded under the Authority's daily tariff. Some proportionality with costs was relevant in the present matter because a penalty, or part of it, could stand in place of some part of the costs award. This was appropriate because, as GBAL fairly noted in its costs memorandum, Ms Davidson should not have to bear extra costs incurred by GBAL as the result of the failures by her representative, of which she was also a victim.

Who should the penalty be paid to?

[45] Under s 136 of the Act the Authority may order all or some of any penalty to be paid to "any person". In this case it was appropriate to apportion the penalty equally between GBAL and Ms Davidson, as both parties were harmed by the obstruction and delay. Mr Bennett must pay $2000 of the $4000 penalty imposed

under s 134A to GBAL and the other $2000 to Ms Davidson.

16 [2011] NZERA Auckland 497.

17 See steps applied in *Borsboom v Preet PVT Limited* [2016] NZEmpC 143 at [137]- [151].

[46] GBAL was put to extra cost in preparing for the postponed investigation. Two of its witnesses needed to prepare new witness statements once there was a witness statement lodged that was actually from Ms Davidson. GBAL's counsel carefully identified the directly related extra legal costs, for drafting and attendances, as totalling $1529. The amount of $2000 paid as a penalty covers that cost with a very modest margin for additional inconvenience caused, which included one of GBAL's witnesses rearranging international work and travel commitments.

[47] The order of payment of $2000 of the penalty to Ms Davidson may appear artificial given that it may amount to little more than a notional offset against whatever fees she may have been obliged to pay Mr Bennett for his services. However she was let down by her representative. The payment of some of the penalty addresses, at least symbolically, the wrong done to her too.

Costs

[48] GBAL sought an award of costs totalling $12,000 with that amount including any portion of a penalty awarded to it. Invoices submitted with its costs memorandum showed GBAL incurred costs of representation totalling $18,592.

[49] GBAL submitted the Authority's notional daily tariff of $3500, for a proceeding begun before 1 August 2016, should be adjusted upwards due to Ms Davidson's "unreasonable rejection" of settlement offers before the investigation meeting.

[50] The other factor that might have warranted an uplift, the extent to which Mr

Bennett's conduct had increased GBAL's costs, has been addressed through the s

134A penalty.18

[51] GBAL made four offers to settle Ms Davidson's claim on a "without prejudice save as to costs" basis. Each proposal offered a reference, agreement on how the parties would describe her departure from GBAL, and a payment. The payments were for a combination of distress compensation and legal fees: $8250 on 7 April; $10,250 on 2 August; $12,000 on 19 August; and on 12 September, the $12,000 offer to

reduce by $2000 a day from 13 September until extinguished on 18 September.

18 *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820.

Correspondence from Mr Bennett to Ms Robins showed the various offers were rejected on 2 August, 17 August, 19 August and 13 September.

[52] As a starting point Ms Davidson was liable to pay GBAL costs of $3500 for the one-day investigation meeting held on 22 September 2016. The Authority is required to take a "steely" approach to costs when an unsuccessful party has turned down an offer to settle that would have put it in a significantly better position than achieved in the Authority's determination.19

[53] In Ms Davidson's case she could have accepted GBAL's offer to pay her

$12,000. Instead she ended up with nothing and GBAL had a legal bill totalling more than $18,500. It was a situation that warranted a doubling of the daily tariff, requiring Ms Davidson to pay GBAL $7000 as a reasonable contribution to its costs. Ms Davidson had secured a new job in another sector of the aviation industry by the time of the investigation meeting. She was not without means to contribute to GBAL's costs. GBAL, after recovering costs of $7000 from Ms Davidson and the penalty of

$2000 to be paid to it by Mr Bennett, would still be ‘out of pocket’ for around $9500 spent on legal fees but this was less than the cost of up to $12,000 it had been prepared to spend to resolve the matter earlier.

Robin Arthur

Member of the Employment Relations Authority

19 *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [109] and *Bluestar Print Group (NZ) Ltd v*

Mitchell [2010] NZCA 385 at [20].
