

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 628
3057752

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| BETWEEN | JOSH DAVIES Applicant |
| AND | BITWIZ EDUCATION LIMITED Respondent |

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| Member of Authority: | Eleanor Robinson |
| Representatives: | Alex Kersjes, Advocate for the Applicant Enzo Wang, Representing the Respondent |
| Investigation Meeting: | 31 October 2019 at Auckland |
| Submissions and/or further evidence | 31 October and 1 November 2019 |
| Determination: | 1 November 2019 |

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Josh Davies, claims that he was unjustifiably dismissed and unjustifiably disadvantaged by the Respondent, Bitwiz Education Limited (Bitwiz).

[2] Mr Davies further claims that he is owed unpaid wages, holiday pay and KiwiSaver by Bitwiz.

[3] Bitwiz denies that it unjustifiably dismissed Mr Davies and claims that he underperformed during his employment as a result of which they justifiably dismissed him.

[4] Bitwiz denies that it owes Mr Davies any monies in respect of unpaid wages, holiday pay and KiwiSaver and claims it has complied with all its obligations to pay to Mr Davies the monies owing to him.

Issues

[5] The issues for determination are whether or not Mr Davies was:

- (a) Unjustifiably dismissed by Bitwiz;
- (b) Unjustifiably disadvantaged by Bitwiz;
- (c) Owed any monies or statutory entitlements by Bitwiz.

The Authority's investigation

[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.

Background

[7] Bitwiz is an educational organisation providing tutorial services to school children and employing approximately 15 tutors, the majority of whom are university students. Its sole Director and Shareholder is Ms Binbin Wang. Mr Enzo Wang is Ms Wang's husband and was the General Manager during Mr Davies' period of employment with Bitwiz.

[8] Mr Davies applied for a job with Bitwiz via Student Job Search on 26 April 2018. He was interviewed and offered a position as a Youth Programming Tutor commencing employment with Bitwiz on 21 May 2018. He met with Mr Wang at the start of the induction process.

[9] Mr Davies was not provided with an individual employment agreement until late October 2018. It provided that he would be paid \$21.00 per hour and would be rostered for ten hours per week (the Employment Agreement).

[10] Mr Davies said he enjoyed his job and working with the students and stated that he had a close relationship with Mr Wang.

[11] Mr Davies said he did not sign the Employment Agreement because he disagreed with some of the terms it contained because it appeared to be a standard format template which required adaptation to his position. He tried to discuss these items with Mr Wang but without success prior to the departure for China on 2 December 2019 and as a result he had not signed it.

[12] Mr Davies said that his normal hours of work were 35 per week, although he often worked in excess of 40 hours.

[13] On 24 October 2018 he received a WeChat message from Mr Wang which advised him that: "As discuss before, due to your good performance we would like to rise your salary from 20 NZD/h to 22.68 NZD/h (inc. 8% leave pay). This will take effect from 22/10/2018."

Disciplinary Issues

[14] Mr Wang claimed that prior to a business trip to China in early December 2018 Mr Davies was underperforming in the area of providing feedback on student performance. This was a result of parent complaints which had been investigated and Mr Wang said he had communicated his concern about the unacceptable delay in fulfilling the feedback deadline expectations to Mr Davies on several occasions.

[15] Mr Wang said that two verbal warnings had been provided to Mr Davies, the last of the two on 30 November 2018 when he had told Mr Davies that this warning would be the last warning and unless he improved and completed feedback reports within two days of all classes his employment would not be continued.

[16] Mr Davies denied receiving any formal warnings during his employment although he agreed that there had been an informal chat about the completion of the feedback forms on 30 November 2017.

[17] Mr Davies denied that there had been any warning that his employment was in jeopardy, and there had been no reason for him to suspect that was the case given that he had recently received a salary increase.

[18] No written notes of the meeting were made and there was no written confirmation of the outcome provided to Mr Davies.

July 2018 China student trip conditions

[19] Mr Davies had attended a Bitwiz student trip to China in July 2018. Prior to that trip he said the tutor coaches had been told that they would not receive salary during the duration of the trip, but they would have a holiday at the end of the trip. Accommodation and expenses would be paid by Bitwiz.

[20] Mr Davies said that the tutor coaches had accepted non-payment for that trip because there would be an opportunity to take a holiday whilst in China. However when they had arrived in China they had been expected to work full days until midnight for which they had received no payment.

December 2018 student trip to China

[21] In December 2018 Bitwiz organised another trip to China, the purpose of which was for the Bitwiz students to compete in a robotics competition. Mr Davies was included as part of the academic team which accompanied the students. The Bitwiz team left New Zealand on 2 December 2018.

[22] Mr Wang said there had been a meeting during the evening of 1 December 2018, the night before the party left for the trip to China. The trip to China in December 2018 was an optional programme that employees of Bitwiz could choose to opt into as tutor coaches to the students at Bitwiz who were participating in a robotics competition in China.

[23] Mr Wang said it was made clear in group meetings prior to the trip that the following conditions would apply to any Bitwiz employees who wanted to participate in the trip:

- (a) Employees who participated in the trip as coaches would not be paid their ordinary wages;
- (b) Instead of wages, Bitwiz would pay for the cost of accommodation, flight tickets, food and miscellaneous expenses for the coaches who participated in the trip.

[24] Mr Davies said that the fact that the tutor coaches would not be paid on the trip had not been discussed at the meeting and because he was aware that the parents of the participating students were paying for the trip he had expected to be paid his wages whilst there, especially as he would be working during the competition period.

[25] Mr Jared Chaytor, a previous employee of Bitwiz, said that he did not recall payment of wages whilst on the trip being discussed at the meeting on 1 December 2019, but he expected to be paid because he had been working throughout the period of the competition.

[26] There had been a three day period of holiday leave to be taken at the end of the competition, and Bitwiz agreed to cover the cost of accommodation for that, but Mr Chaytor said he did not expect to be paid for that period between the end of the competition on 9 December 2018 and the return flight to Auckland on 12 December 2018.

Events 9 December 2018

[27] During the trip Mr Wang said the core duty of all the tutor coaches on the trip was to be present at events at which Bitwiz students were participating in order to support them and required to be present to support Bitwiz students in the finals of the competition. However, despite these instructions Mr Davies failed to show up until near the end of the final round on 9 December 2018.

[28] Mr Davies said that on most mornings of the trip the students and tutors had travelled by bus to the competition stadium leaving at 8.00 a.m. to arrive by 9.00a m.

[29] On the basis that his students did not have a competition on 9 December 2018 Mr Davies said his understanding from Mr Wang was that he could arrive at the competition with

the students at 9.00 a.m. that day. However, he was awoken by a WeChat message from Mr Wang at 7.15 a.m. and asking him to be on the 7.20 a.m. bus to the competition.

[30] He did not have sufficient time available to make the 7.20 a.m. bus and said he had arrived at the competition stadium at 10.00 a.m. which was an hour after the competition had started. Mr Davies had caught a ride to the venue with a parent and was feeling anxious when he arrived late.

[31] When he arrived at the competition stadium, Mr Davies said Mr Wang immediately told him that he wanted to speak to him and took him to the side of the room which was quite crowded with students, their parents and tutors whereupon Mr Wang began to shout and yell at him.

[32] Mr Wang said he had taken Mr Davies to a secluded corner of the room to ensure privacy and he did not believe that their conversation would have been overheard.

[33] Mr Chaytor said that whilst he could not see Mr Wang and Mr Davies, and he could not distinguish any words, he did hear shouting and yelling, the majority of which was from Mr Wang.

[34] Mr Wang said Mr Davies' attitude when he spoke to him was confrontational and that Mr Davies had sworn at him which led to him terminating Mr Davies' employment with Bitwiz.

[35] Mr Davies had recorded his conversation with Mr Wang (Enzo), which included the following exchange:

...

Enzo: "So why kids need you, you are not here?"

Josh: "Sorry? Why do the – (interrupted)"

Enzo: "The kids need you, but you are not here. You are part of the team but you are not here"

Josh: "yes, I understand that, but – (interrupted)"

Enzo: "But who tell you you come at 10 o'clock"

Josh: It was your message, - (interrupted)"

Enzo: I say Tony, I said Tony and Eddie:

Josh: Yeah, so you sent that 10 minutes before you wanted me to be here. I think that is a little unreasonable. Right? So the last – (interrupted)"

Enzo: (unintelligible"

Josh: So the last three days – (interrupted)

Enzo: “If you don’t like to be here you go away”

Josh: “Yup. So the last three days we’ve been at the bus at 7.50. This morning, just after 7 o’clock, Jared and I haven’t even woken up yet, because our alarm – we know we have until 7.50 – (interrupted)

Enzo: (unintelligible)

Josh: Please let me finish the fucking sentence. We get to the bus at 7.50, we allow ourselves half an hour to get ready. You message before our alarms go off telling us to be there.”

....

Enzo: “Okay you are free now”

Josh: “I am free? What does that mean? Please elaborate”

Enzo: “Yeah”

Josh: “What does that mean?”

Enzo: “Yeah. No one need here need your help. Because you are not here you are not needed anymore.”

Josh: “What does that mean? Please tell me, ...in no uncertain (interrupted)”

Enzo: “You are fired!”

Josh: “I am fired?”

Enzo: “No! You are not fired because you haven’t signed the contract.”

Josh: “So I’m not fired but I don’t work here anymore?”

Enzo: “Yeah”.

[36] Mr Davies said he had felt humiliated and insulted in front of all his co-workers, parents and students as well as members of the public. He had asked Mr Wang why he was being dismissed and what had he done to warrant his losing his employment, but Mr Wang did not respond.

[37] Mr Davies said after Mr Wang had told him “you are free” he wandered out of the competition stadium and into the streets. He contacted the New Zealand Embassy in China because he had no money apart from some loose change so he walked back and then caught a train to the hotel where he immediately started packing his personal items.

[38] Mr Davies said Mr Wang had cancelled his accommodation and for the first night some of the parents paid for Mr Davies to stay in a hotel. For the remaining nights the company was in China, he slept in co-workers’ rooms as he had no money to afford his own accommodation.

[39] Mr Davies said he had also been concerned that Mr Wang would cancel his flight back to New Zealand on 12 December 2018, but this did not eventuate.

[40] Mr Wang said that he had not cancelled the accommodation for Mr Davies in Shenzhen which was the destination chosen by the tutor coaches for the three day leave period, and had booked a three bedroom room in a good hotel for Mr Davies, Mr Chaytor and another tutor.

[41] Mr Chaytor said that the room had only been booked in his name and that of the other tutor and there were only two beds in it. They had obtained additional blankets from the hotel and Mr Davies had slept on the floor of the room allocated to Mr Chaytor and the other tutor until leaving Shenzhen

Request for written reasons for dismissal

[42] Following the discussion with Mr Wang at the competition venue, Mr Davies had sent a WeChat message to Mr Wang dated 9 December 2018 stating “This is a request for a formal letter outlining my employment termination. You legally have 14 days to reply.” Mr Davies did not receive a response to this WeChat message.

[43] On 16 December 2018 Mr Davies sent a further WeChat message to Mr Wang saying:

Hi Enzo, hope holiday programme is going well. Just wondering when I can expect to see my final paycheck? Just a reminder it should include

- Pay from 26 November to 9 December
- Accrued leave 8% of all my earnings
- Reimbursement for purchases (I think it's around \$50 still owing)
- And the \$100 I got in the raffle

Cheers
Josh

[44] On 17 December 2018 Mr Davies emailed Bitwiz with the heading “Employment Termination” and stated:

Hi Enzo

As per my WeChat messages, I am requesting a formal letter outlining the termination of my employment from Bitwiz Education Limited. As I initially requested this on the 9th December, you have six days to reply, as shown on the Employment NZ website (<https://www.employment.govt.nz/ending-employment/dismissal/>).

In addition I ask again when my final pay will be received, and what the final official day of my employment will be recorded as. I look forward to your response.

[45] Mr Davies said Mr Wang had given him 1,000RMB which is the equivalent to NZD\$200 for expenses. He had believed the \$200 was part of the money Mr Wang had told

them they would get to cover expenses during the competition period whilst in China, which they would not be required to reimburse.

[46] Mr Wang said that prior to the trip Bitwiz had lent Mr Davies RMB equivalent to the value of NZ\$561.02 in cash to cover spending money while he was in China. It was made clear to him that this money was expected to be repaid after the coaches returned to New Zealand. At this stage the money has not been returned by Mr Davies.

[47] Mr Wang said that because Mr Davies ceased to be an employee of Bitwiz, Bitwiz had cancelled his individual accommodation but did not cancel the flight tickets.

Was Mr Davies unjustifiably dismissed by Bitwiz?

[48] Mr Davies was dismissed from his employment with Bitwiz on 9 December 2018. Justification for dismissal is stated in the Employment Relations Act 2000 (the Act), which at s 103A sets out the Test of Justification as being:

S103A Test of Justification

- i. For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).
 - 1) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[49] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. An employer must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

Substantive Justification

[50] Bitwiz claims that Mr Davies acted in a way that constituted serious misconduct by acting in an insubordinate manner by failing to arrive in a timely manner at the competition on 9 December 2018 and by swearing at Mr Wang during the discussion which took place. Bitwiz further claim that the decision to dismiss Mr Davies was justified as a result of the performance concerns which had resulted in two verbal warnings to him.

[51] There is no evidence that Bitwiz held a formal disciplinary process with Mr Davies in respect of performance concerns, although I accept that there may have been an informal chat about feedback report completion.

[52] There is no evidence that Mr Davies was made aware that his employment would be in jeopardy as a result of any performance concerns. Therefore there is no justification on that basis for the dismissal.

[53] I accept that Mr Davies did not arrive at the competition in a timely manner on 9 December 2018 but this one instance would not justify dismissal as serious misconduct, particularly if it arose from a genuine misunderstanding on the part of an employee.

[54] I observe from the transcript of the recording made by Mr Davies on 9 December 2018 that he did not swear at Mr Wang, but rather swore during the course of what was a heated discussion. I find that this would not constitute serious misconduct.

[55] I find that there is a lack of substantive justification for the dismissal on 9 December 2018.

Procedural Justification

[56] in accordance with s 103A (3) of the Act, Bitwiz was required to carry out a fair investigation and follow a fair procedure. The Authority must also consider whether:

- (a) ... the employer sufficiently investigated the allegations against the employee ...
- (b) ... the employer raised the concerns that the employer had with the employee ...
- (c) ... the employer gave the employee a reasonable opportunity to respond to the employer's concerns ...
- (d) ... the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee ...

[57] I note also that employers and employees are under a duty of good faith to behave towards each other in good faith pursuant to s 4 of the Act. In accordance with s 4(1A)(c) an employer who is proposing to make a decision that will, or is likely to have, an adverse effect on the continuance of an employee's employment is required to provide the affected employee with:

- (i) Access to information relevant to the continuation of the employees' employment, about the decision, and
- (ii) An opportunity to comment on the information to their employer before a decision is made.

[58] Bitwiz's evidence is that there were performance issues with Mr Davies raised during his employment, issuing him with verbal warnings.

[59] Mr Davies denies receiving any warnings, whether verbal or otherwise. There are no written warnings or other evidence of 'other issues' before the Authority that resulted in disciplinary outcomes; and there is no evidence supporting him having received advice that failure to improve might result in the termination of his employment.

[60] There was no procedure followed prior to the issue which occasioned his dismissal on 9 December 2018, namely his failure to attend the competition in China in a punctual manner on 9 December 2018. Specifically:

- There is no evidence that Bitwiz carried out any investigation into the reasons for Mr Davies' late attendance at the competition prior to dismissing him;
- Mr Davies was not advised of the concerns Bitwiz had concerning his non-attendance prior to the meeting with Mr Wang;
- Mr Davies was not provided with a reasonable opportunity to respond to the allegations; and
- There is no evidence that Mr Wang gave any consideration to any explanation Mr Davies might provide.

[61] Whilst minor flaws which did not result in an employee being treated unfairly would not render a dismissal unjustifiable, in this case I find the flaws in the procedure adopted by the Bitwiz were more than minor.

[62] In all the circumstances at the relevant time I find that dismissing Mr Davies was not a decision a fair and reasonable employer could have taken.

[63] I determine that Mr Davies was unjustifiably dismissed by Bitwiz.

Is Mr Davies owed unpaid wages by Bitwiz?

[64] Mr Davies claims he was not paid his wages during the period 26 November to 9 December 2018.

[65] Mr Davies final payslip is for the period ending 25 November 2018 but there was no further payment after that date until his employment was ended summarily on 9 December 2018.

[66] Wage and time records provided by Bitwiz support payment having been made to Mr Davies for the period 26 November to 2 December 2018 and I accept that there are no monies owed for that week.

[67] Whilst Bitwiz claim that employees agreed not to be paid during the December China trip and provided untested email evidence from some employees confirming that agreement, this was denied by Mr Davies and both he and Mr Chaytor had an understanding that they would be paid their wages for the period of the competition when they were working.

[68] I accept that Bitwiz had a different understanding, especially as it was paying accommodation not just for the competition, but for the three day leave period following, but there is no written agreement by Mr Davies confirming his agreement not to be paid wages during the competition period.

[69] Employees are to be paid wages when they become payable pursuant to s 4 of the Wages Protection Act 1983 . However an employer may make deductions from any lawful purpose pursuant to s 5, but only with the written consent of the employee.¹Mr Davies did not consent to any deduction being made in writing.

[70] There was no written consent not to be paid by Mr Davies who carried out work benefitting the employer during the period 2 to 9 December 2018, and I determine that Mr Davies is entitled to be paid for that period.

Remedies

[71] Mr Davies has been unjustifiably dismissed and he is entitled to remedies.

Unpaid Wages

[72] Bitwiz did not pay Mr Davies for the last week of his employment and he is entitled to monies for this period.

[73] **I order that Bitwiz pay to Mr Davies the sum of \$ \$793.80 gross as unpaid wages for the period 2 to 9 December 2018 (calculated as 35 hours per week x \$22.68 per hour x 1 weeks).**

Unpaid Holiday pay

[74] Mr Davies is claiming unpaid holiday pay.

¹ Wages Protection Act 1983 s5(1)(a)

[75] During the period 22 November to 9 December 2018, Bitwiz claim that holiday pay was paid to Mr Davies on a 'pay as you go basis'.

[76] 'Pay as you go' is permitted for two categories of employees: those on fixed term agreements, and those who work intermittently or on a casual basis. However it is a condition of 'pay as you go' that it must be agreed to in the employment agreement.²

[77] The Employment Agreement provided to Mr Davies was not signed by either party and therefore a condition under which 'pay as you go' can be made is not valid.

[78] Mr Davies is entitled to a holiday pay entitlement for the period of his employment of \$1,424.07 gross (calculated as 8% of total gross earnings of \$17,800.98). From that amount is to be deducted the payment of \$694.76 paid to Mr Davies.

[79] **I order that Bitwiz pay to Mr Davies the sum of \$729.32 gross as holiday pay entitlement pursuant to s 24 of the Holidays Act 2003.**

Kiwisaver

[80] **I order Bitwiz to pay to Mr Davies the employer's contribution towards Kiwisaver at 3% which is \$534.03.**

Lost Wages

[81] Mr Davies said that he had sought other employment a few weeks after his employment with Bitwiz had ended due to the scarcity of available work available for students during December. He obtained employment on 18 February 2019.

[82] **I order Bitwiz to pay Mr Davies the sum of \$7,938.00 gross (calculated as 10 weeks at \$793.80 gross per week x 10 weeks) pursuant to s 28(3) of the Act.**

Compensation

[83] Mr Davies suffered considerable anxiety and distress at the loss of his employment, not just at the fact of the dismissal itself but also that this was compounded by the fact that he found himself stranded in a foreign country without accommodation or funds.

[84] Considering the range of awards in cases of this kind I consider an award of compensation of \$25,000.00 to be appropriate.

² Holidays Act 2003 s 28(1)(a) and (b)

[85] **Bitwiz is ordered to pay Mr Davies the sum of \$25,000.00 as compensation pursuant to s 123(1)(c) (1) of the Act.**

Contribution

[86] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[87] I find no contributing conduct by Mr Davies and there will be no reduction in the remedies ordered.

Penalties

[88] The Applicant is seeking penalties in respect of: (i) the failure to provide an employment agreement pursuant to s63 of the Act; (ii) the failure to provide wage and time records pursuant to s 130 of the Act; and (iii) the failure to provide written reasons for dismissal pursuant to s 120 of the Act.

[89] Penalties for breaches of various sections of the Act render a company liable to penalties up to a maximum amount of \$20,000.00 per penalty.

[90] In deciding whether to impose a penalty and, if I decide to, deciding how much that penalty should be, I need to consider the factors in s 133A of the Act and the approach as set out by the Employment Court in *Boorsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*.³

[91] The purpose of penalties is punitive. They are not imposed to remedy the applicant's loss, but to punish the person who has breached a duty under the Act and to condemn that behaviour.

[92] One of the objects of the Act is to promote the effective enforcement of employment standards. Provision of an employment agreement in a timely manner ensures both parties are aware of the agreed terms and conditions of employment. There is a duty to maintain wage and time records and provide these on request, and an employee is entitled to receive written reasons for their dismissal.

[93] Failure to fulfil these requirements represents a failure to maintain minimum employment standards, prejudiced Mr Davies' ability to calculate the wages owed to him following his dismissal, and did not assist him to understand the reasons for his dismissal.

³ *Boorsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*. [2016] NZEmpC 143

Identify the nature and number of statutory breaches

[94] There are three statutory breaches identified, each merit a penalty to a maximum amount of \$20,000.00. This is a potential total penalty of \$60,000.00.

Step Two- assess the severity of the breaches

[95] The aggravating factors include the fact that Mr Davies was relatively new to the workforce and entitled to be provided with an employment agreement in a timely manner, to have access to the wage and time records for ensuring he could calculate payments due to him after his employment was abruptly ended, and to have written reasons for a dismissal he did not comprehend as justified.

[96] Ameliorating factors on the part of Bitwiz include the fact that it did provide a written employment agreement to Mr Davies and did engage in a meeting with him to discuss his concerns even though these were not resolved before 2 December 2018 when the parties left for China.

[97] Wage and time records were provided for the investigation meeting and I take into account that the legal representative acting on its behalf at the inception of this matter had withdrawn. As a consequence I accept that Bitwiz was unaware of the Authority's instructions regarding the wage and time records.

[98] I consider that the penalty amount should be reduced to 20% in the case of each breach.

The Respondent's financial circumstances

[99] The Respondent's financial position is precarious. I have viewed the Financial Statements provided by Bitwiz and accept that the company is not financially viable at present.

[100] In the circumstances, the penalty amounts should be reduced to \$1,000.00 per breach.

Proportionality

[101] In considering the level of penalties awarded in similar cases decided since *Preet* and considering the impact on the Applicant in this case, I consider the appropriate level of the penalties in this matter to be (i) \$500.00 in respect of the breach of s 63 of the Act; (ii) \$300.00 in respect of the breach of s130 of the Act, and \$500.00 in respect of the breach of s 120 of the Act.

Should any part of the penalty be paid to Mr Davies?

[102] Mr Davies has been compensated for all his losses. The purpose of penalties is to deter, not to compensate. The penalties imposed are to bring home to Bitwiz the importance of maintaining the employment standards in New Zealand which should be well known to all employers given the length of time they have been in place.

[103] I order Bitwiz to pay the full penalties amount of \$1,300.00 to the Authority for transfer to a Crown Bank Account.

Costs

[104] Costs are awarded on the usual tariff basis on the Authority on the basis of a one day investigation meeting.

[105] I order that Bitwiz pay to Mr Davies the sum of \$4,500.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

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