

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 96/08
5086203**

BETWEEN JOSEPH DAVISON
 Applicant

AND HP PACKAGING (NEW ZEALAND)
 LIMITED
 Respondent

Member of Authority: Leon Robinson

Investigation Meeting: 30 October 2007

Determination: 17 March 2008

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Joseph Davison ("Mr Davison") claims his dismissal for redundancy is unjustifiable. HP Packaging (New Zealand) Limited ("HP Packaging") defends the claim. The parties were unable to resolve the problem between them by the use of mediation.

The facts

[2] Mr Davison has worked for HP Packaging and its predecessors since January 1987. It was his first job since leaving school. Initially he was employed as an apprentice Plastics Engineer.

[3] At the time of his dismissal Mr Davison was employed as a single stage process engineer. He was responsible for the technical operation of 18 single stage plastics processing machines. The machines convert raw plastic material into plastic bottles.

[4] Mr Davison had agreed that his terms of employment with HP Packaging would remain the same as those with HP Packaging's immediate predecessor Amcor PET Technologies. Those terms were set out in an individual contract of employment

signed by the parties on 9 October 2000. It was agreed that his service would be deemed continuous.

[5] The individual employment contract incorporated conditions of redundancy detailed in a document known as the *Site Industries Collective Employment Contract*. That redundancy provision is this:-

10 REDUNDANCY NOTIFICATION AND DEFINITION (EMPLOYEE PROVISION)

10.1 Redundancy is a condition in which Amcor PET & Closures has staff surplus to requirements due to a change in plant, methods, materials or products, or re-organisation or cause requiring a permanent reduction in the number of permanent employees.

10.2 All employees to be declared redundant shall receive not less than four weeks notice of termination of their employment. In lieu of such notice an employee shall receive four weeks wages.

10.3 Where an employee is given notice and voluntarily terminates his/her employment before the expiry notice period the employee shall not be paid for the period of notice work.

10.4 Redundancy compensation will be paid based on the following formula: four weeks pay for the first year of service or part thereof, plus an additional two weeks' pay for each year or part thereof. Pay will be at average earnings rates. A week for a shift worker is 42 hours.

10.5 For the purposes of this clause, "restructuring" in relation to the employer's business means entering into an arrangement under which all or part of the business is undertaken for the employer by another person (contracting out), or selling or transferring all or part of the business to another person.

If the employer proposes restructuring its business so that employees' work is to be performed for a new employer, the employer shall at the earliest possible opportunity:

Consult with the union regarding restructuring as it affects employees. The union accepts that some of the information supplied may be confidential.

Agree, with the new employer and the union, a communication process to employees regarding the restructure.

The employer shall use its best endeavours to negotiate with the new employer terms enabling the employees to opt to transfer employment to the new employer on the same or not less favourable terms and conditions of employment.

If the new employer does not offer an employee employment at all, or does not offer employment in the same position and on the same or not less favourable terms and conditions and with service treated as continuous, Clause 10.4 redundancy of this agreement will apply.

If the new employer does offer an employee employment in the same position and on the same or not less favourable terms and conditions and with service treated as continuous, the employee will not be entitled to redundancy compensation.

Meeting 16 November 2006

[6] At about midday on 16 November 2006 Mr Davison was advised by the manager of the engineering department Bruce Webster ("Mr Webster") that the Operations Manager Mr David Ralph ("Mr Ralph") wished to meet with Mr Davison

at 4.00pm. Mr Davison was not advised the purpose of the meeting. Mr Ralph met with five other employees in the Single Stage area individually that afternoon prior to meeting with Mr Davison.

[7] Mr Ralph and Mr Davison actually ended up meeting at about 3.40pm that day in the showroom. Mr Davison says Mr Ralph immediately said to him "*I don't want to beat around the bush Joe, you are being made redundant*". Mr Davison tells the Authority Mr Ralph then explained that the company was downsizing by concentrating on the two stage side of the business and would be downsizing the single size of the business. Mr Davison says he was taken by surprise and didn't know what to say. He says he was dumbfounded. He says Mr Ralph told him to drop his keys and cell phone to Mr Webster and take his tool box and all his possessions and leave. He says Mr Ralph also told him not to speak to anyone else. He says he followed Mr Ralph to Mr Ralph's office where he was given an undated letter after Mr Ralph signed it. The letter said this:-

Joe Davison

Dear Joe

Because of the reasons that have been discussed with you, HP Packaging is considering the redundancy of your position.

Before making any decision, we would like to take the opportunity to consider our options, including any alternatives to redundancy that you might raise. In this regard, we would like you to consider the business circumstances we have discussed with you and any options, other than redundancy, that we can take into account.

We would like to meet with you again at 10am on 23rd November 2006 to discuss any issues or options that you might raise.

In the meantime, you are directed not to attend work and not to contact other employees, suppliers or customers. We want you to concentrate your efforts on considering alternatives to redundancy. During this period you will receive your full pay and will not be prejudiced in any way, by not attending work.

If you would like to discuss any matter prior to our next meeting, please do not hesitate to contact me.

*Yours sincerely
David Ralph*

[8] Mr Davison says Mr Ralph told him to take a week to think about matters and that he would be paid in full. He tells the Authority he did not know if he said much

to Mr Ralph at all because he was in a state of shock. He says he collected his personal items his overalls, clothes and lunch box and then went to load his tool box onto his truck - a combined weight of approximately 250kg. He then left the workplace. When he got home, he says he told his wife what had happened and they decided he would contact his lawyer the following day.

[9] Mr Ralph has a very different recollection of the meeting. He says he opened the meeting by advising Mr Davison the company was considering restructuring the single stage department. He said Mr Davison's and several other positions could be affected. He tells the Authority that he did not at any stage advise Mr Davison that his position was being made redundant. He says he outlined the business reasons for the restructure. He then advised Mr Davison that he wanted him to take some time to think about the proposal and that they would meet again. He says he told Mr Davison to consider any other options he had regarding the changes that they could discuss in a further meeting. He says he told Mr Davison the company felt it was in his best interests if he had time off before the next meeting. This time off would give him time to go through the issues and prepare for the meeting rather than have to cope with his work as well. Mr Ralph denies telling Mr Davison to drop his keys and cell phone to Mr Webster. He says Mr Davison asked if he should take his tools with him and that he (Mr Ralph) told Mr Davison "Yes". He says he did so because there had been several instances of theft over the previous twelve months and he did not wish Mr Davison's tools stolen. Mr Ralph says Mr Davison did not say much at all during the meeting, that he did not question the reasons for the changes or ask anything about the process. Mr Ralph adamantly denies advising Mr Davison he was redundant or sending him away. He says he read the letter out loud and then signed it before giving it to Mr Davison.

[10] I now resolve the conflicts between Mr Davison and Mr Ralph. Firstly, Mr Ralph conceded when questioned that Mr Davison was not given a choice as to whether or not he was to remain away from his duties. Next, I regard it inherently unlikely that Mr Ralph would immediately tell Mr Davison he was redundant (and thereby dismissed) only to shortly thereafter give him a letter advising redundancy was being considered. Mr Davison did not protest or challenge Mr Ralph when the letter was read and given to him that he had already been dismissed. Nor did he do so subsequently. As well, even if such a statement was made to Mr Davison, by his later

conduct, he must be taken to have rejected the alleged repudiation. If he had been dismissed and regarded himself as such, he would not have participated in the process that followed. His subsequent participation is inconsistent with his assertion. So I find that Mr Davison was not at the start of meeting told he was redundant.

[11] The following day on Friday 17 November 2006 Mr Davison consulted his lawyer. He emailed Mr Ralph and wrote:-

Hi Dave

Thank you for your letter

Before the timeframe commences, I need to see a copy of my employment agreement and redundancy package with details of shares, superannuation, holiday and sick pay, etc so I can consider my options.

Would you please forward me a copy as soon as possible.

[12] Mr Ralph responded that same afternoon with his agreement to meet Mr Davison's request.

[13] But he did not provide the information Mr Davison had requested until 23 November 2006. He emailed Mr Davison as follows attaching a spreadsheet calculation of Mr Davison's redundancy compensation which was incomplete:-

Hi Joe

I apologise for the delay in obtaining the information that you requested. We were waiting for the figures from the Pay Roll in Wiri.

Please find attached your estimated redundancy calculations. This reflects your redundancy pay out should the proposed redundancy for your role take place.

I would like to meet with you tomorrow at 3pm at the Factory to discuss any options available with regards this proposed redundancy.

Please let me know if you require more time to review the calculations or explore possible alternatives.

Cheers

[14] On Thursday 23 November 2006 Mr Davison emailed Mr Ralph again as follows:-

Thanks for responding to my initial email, but I still require a copy of my contract, then I will discuss the issues with my lawyer and get back to you on a time I can meet with you.

[15] That same afternoon Mr Ralph responded:-

Hi Joe

Seems like the latest Employment contract is the one dated 1st October 2000. Do you have a copy of any more recent one?

If you have a fax number I can fax it to you but in the meantime I will try to courier a copy out to you. The part that is of interest to you i.e redundancy, is according to this contract covered by the Collective Employment contract.

Looks like tomorrow will be too soon for you - more than happy for next week. Please let me know.

Cheers

[16] So the meeting scheduled for Thursday 23 November 2006 did not proceed.

[17] On Friday 24 November 2006 Mr Ralph emailed Mr Davison asking to meet on Monday 27 November 2006 at 3pm.

[18] Mr Davison did not respond until the morning of Monday 27 November 2006. He wrote by email to Mr Ralph as follows:-

Hi Dave

Sarah-Jane has been back in starship all weekend so we are a bit behind. Could you please email me a copy of collective contract that I fall under today and then we can meet with you Tuesday 3pm if that is OK with you??

[19] Mr Ralph replied that same morning:-

Hi Joe

Meeting for Tuesday is fine. Will fax through Collective ASAP.

Meeting 28 November 2006

[20] At 3.00pm on Tuesday 28 November 2006 Mr Davison and his lawyer met with Mr Ralph. I accept Mr Ralph's evidence that Mr Davison and his lawyer did not raise any issues or concerns around the proposed restructuring or possible redundancy.

They did not ask any questions about the reasons why the company was making changes. I accept Mr Davison's evidence that his lawyer suggested to Mr Ralph that the company should also put forward any possible alternatives and options relating to the proposed redundancy. Mr Ralph accepted that suggestion and the meeting concluded with Mr Ralph undertaking to revert to Mr Davison the following day regarding other options the company had available.

[21] The following day on Wednesday 29 November 2006 Mr Ralph emailed Mr Davison as follows:-

Hi Joe

I have had a discussion with John Martin on alternatives and options relating to the proposed redundancy of your position.

The only alternative that we can offer is a position on Shift as a Shift Technician. The position is hourly paid and at the current going rate.

I would like to meet with you this afternoon at 3pm at the Factory to discuss this option. We have delayed these feedback meetings for a while now and we would like to reach a conclusion.

*Regards
David Ralph*

[22] Mr Davison emailed Mr Ralph a response at 7.16pm that same day as follows:-

Sorry Dave, only got home at 6.30 have forwarded the options to Greg and will arrange to meet with you as soon as Greg gets back to me.

[23] Mr Ralph responded the following morning at 8.05am on Thursday 30 November 2006 in these terms:-

Joe

Thank you for your response.

I think we are losing track of the process here. The purpose of the consultation period is for you to come back to us on concerns and issues you have about your position becoming redundant due to restructuring of the business. It is then up to the Company to respond to your concerns and issues. To date (two weeks) we have received nothing verbally or in writing from you while the company has come back to you, as promised, with an alternative. The Company has gone out of its way to allow you as much time as possible for consultation.

While we obviously want to ensure that a meeting time to suit both parties is set up, we will not delay the process indefinitely.

I want to meet with you today at 3pm and expect you to be there or else if this does not suit you contact me to arrange another time for today.

Regards

[24] Mr Davison responded at 6.49pm that evening as follows:-

We can meet you at 15.30 on Friday the 31st please let me know ASAP if this fits with your schedule.

[25] Mr Ralph responded at 7.22am the following morning on Friday 1 December 2006 as follows:-

Joe

See you are 15.30. Can you please email your concerns, issues or alternatives prior to the meeting.

Regards

[26] Mr Ralph prepared an undated letter for Mr Davison as follows:-

[27] Mr Ralph and Mr Webster met with Mr Davison and his lawyer at 3.00pm on 1 December 2006. The lawyer had earlier sent an email to Mr Ralph but Mr Ralph had not at the time of the meeting seen an attached "without prejudice" letter. The lawyer handed his "without prejudice" letter to Mr Ralph at the meeting. The Authority has not seen the "without prejudice" letter because it would be contrary to public policy for it to do so. Mr Ralph was not pleased with the contents of the letter. He immediately terminated the meeting.

[28] Mr Ralph then handed Mr Davison this undated letter.

Dear Joe

This letter follows our discussions with you in relation to your position of Single Stage Process Engineer.

As you are aware, we met with you on 23rd November 2006 and advised you in writing about the proposal to restructure the New Zealand PET business including the possibility that an outcome of the restructure could be the disestablishment of your position of Single Stage Process Engineer.

As part of our further consideration of the proposal, we asked you to consider the business circumstances we had discussed with you and for you to provide any feedback on the proposal. We also asked you to provide us with any other options that we could take into account when making our decision.

We met with you again on Tuesday 28 November to listen to your feedback and proposals. At that meeting you were accompanied by your lawyer.

We note that you did not wish to offer any suggestions or alternatives to our proposal and, instead, insisted that the company come up with the options for you to consider.

Since our first meeting with you, we have been given further consideration to our restructuring proposal and its consequences. In the circumstances we have decided, in the absence of a viable alternative, to disestablish your position.

We have considered opportunities for redeployment within the company and have identified a position of Shift Technician that we would like to offer to you. The rate of pay applicable to this position is \$26.50/hr. The other terms and conditions and shift work arrangements applicable to the position will have been discussed with you.

As the position of Shift Technician is the only alternative position available, if you decide not to accept this offer your employment will regrettably be terminated. In this event, you will receive one (1) month's ordinary pay in lieu of notice and redundancy compensation and other accrued entitlements as set out in the attached scheduled(sic).

Please do not hesitate to contact me to further discuss the positions being offered to you.

Yours sincerely

[29] Mr Ralph emailed Mr Davison on 5 December 2006 and advised:-

Joe

We have arranged to have a signed letter of response couriered out to you today. The letter will be delivered by New Zealand Couriers.

Regards

[30] Mr Davison received a letter dated 4 December 2006 by courier on 8 December 2006. The letter materially said:-

We met with you on Friday 1 December, again in the company of your lawyer, with our express intent of discussing our offer to you of the position of Shift Technician and clarifying any questions that you might have about our offer.

Rather than wanting to discuss the offer, you and your lawyer wanted only to express your dissatisfaction with the process and present the 'without prejudice' offer to terminate your employment, as mentioned above. We were disappointed with this approach. It was obvious to us that you did not want to accept our offer of the position of Shift Technician.

It is with regret that we now reiterate to you that your position of Single Stage Process Engineer has been disestablished and advise you that your employment is to be terminated, effective today.

In accordance with your employment agreement, you will receive one (1) month's ordinary pay in lieu of notice and redundancy compensation and other accrued entitlements as set out in the attached scheduled.

Joe, in relation to the process we have followed, we feel that we need to respond to your lawyers' letter. At a difficult time, when there is a need to restructure the business to significantly reduce costs, we believe that we have been open, transparent and consultative. From the time of our first meeting on 16 November, until we met with you on 1 December, 15 days has elapsed. During that time, we believe we afforded you more than reasonable opportunities to present any feedback, suggestions, options or alternatives to our restructuring proposal and to subsequently consider our offer of the alternative position of Shift Technician.

We thank you for your contribution to the PET business and wish you success with your future endeavours.

Yours sincerely

[31] Thereafter there continued correspondence between HP Packaging and Mr Davison's lawyer in relation to Mr Davison's final pay.

The merits

[32] The decision to terminate Mr Davison's employment must be carried out fairly and sensitively. That is because the *Employment Relations Act 2000* ("the Act") obliges the parties to act towards each other in good faith and additionally, the law implies in all contracts of employment a duty of fair and reasonable treatment. These are duties which both parties owe to each other. Section 4 of the Act required HP Packaging to provide to Mr Davison access to information relevant to the continuation of his employment as well as an opportunity to comment on the information before the decision was made.

[33] The test of whether a dismissal is justifiable falls to be determined according to the statutory prescribed test of justification at s103A of Act. That test is equally applicable to dismissals for redundancy. I must consider whether on an objective basis, the decisions made by HP Packaging and how they were made were what a fair and reasonable employer would have done in all the circumstances at the relevant time.

[34] Mr Ralph gives evidence that in the eighteen months prior to Mr Davison's termination, a total of sixty employees were made redundant. That suggests a very dire position indeed. He says too that the restructuring process which led to Mr Davison's termination included consultation with relevant unions, legal and human resource personnel. He also tells the Authority that staff were put on notice in early 2006 following large scale redundancies in the Production Department, that there would be further restructuring in the Engineering and Technical Departments. He says that given this degree of change, redundancies and restructuring of an extended period, the possibility of further redundancies was well known to all staff, including Mr Davison.

[35] Mr Ralph also says that Mr Davison was involved in discussions with himself and Mr Webster concerning the downscaling of the single stage production area. This included discussions concerning reduction of labour costs through the obsolescence of

older machinery and new automation. From these discussions, Mr Ralph says that Mr Davison was well aware that one of the major products in his area was being transferred to the two stage area resulting in three machines producing the product being made obsolete.

[36] Mr Ralph tells the Authority that after the purchase of the business by HP Packaging, the new owners directed the management team to rationalise production from the single stage area by cutting out low margin products and scrapping old, and expensive to maintain equipment. The two stage area is the growth area for the business. The single stage area was shrinking and a large customer was lost. There was a critical imbalance because the single stage area had two technical staff while the two stage area had eight.

[37] The restructure affecting Mr Davison's employment commenced in November 2006. Mr Ralph tells the Authority a review had been undertaken of the business in both the single and two stage areas. From that review, a proposal to reduce costs and create greater efficiencies in the single stage area was developed. The proposal included moving all day shift technicians to shift, appointing shift managers and reducing the number of technical positions in the single stage area. The proposal involved the disestablishment of five positions in the single stage area.

[38] I accept the situation put before the Authority by HP Packaging that it was not operating well and that a transfer of production from the single stage to the two stage department was required to make the business more efficient. I accept that HP Packaging had as part of its management prerogative, the right to make its business more efficient and Mr Davison had no right to ongoing employment if the business could be run more efficiently without him.

[39] Mr Davison was entitled to be treated in good faith, fairly and sensitively. Full and real consultation is a critical part of those entitlements. The purpose of consultation is to afford the employee a real opportunity to have input into the decision before the decision is actually taken. That is the essence of it. The enactment of section 4(1A)C of the Act underscores this purpose for it can only be when the employee is provided with all the relevant and pertinent information that their input is likely to be meaningful.

[40] I have concerns about the consultation with Mr Davison. Firstly, I find he was never shown the review. This information ought to have been provided to him and I find that HP Packaging was obliged to give it to him. It ought to have been provided to him for him to consider and then form the basis for subsequent discussion with him. I have no doubt that his lengthy service meant he would have been intimately acquainted with its contents and in a position to discuss and critique it intelligently. But it was never put to him and there was therefore no explicit discussion of the proposal and consequently no meaningful consultation with him. If he did not know the rationale for the proposed restructuring, he could not have challenged it. Perhaps and I consider it likely to be so, that this is why Mr Davison did not raise any issues about the matter in the meetings he had with Mr Ralph. The obligation lay with HP Packaging to provide all the relevant information to Mr Davison. It did not and that was unfair to Mr Davison.

[41] It was also unfair for Mr Ralph to adopt the position evident from his email of 30 November 2006. He demanded a meeting with Mr Davison that very same day and stated inaccurately in my view that the company had gone out of its way to allow Mr Davison as much time as possible for consultation. That contention was wrong because it was only the previous day that Mr Davison was advised of a shift technician position.

[42] It was unfair too, that Mr Davison was only informed of the rate of pay for the alternative shift technician position on 1 December 2006, although Mr Ralph's email of 29 November 2006 did express the position would be at the current going rate. I assume Mr Davison did not know what the going rate was. That information was critical for him and the failure to provide it to him meant that he was not in a position to consider his options properly. By the time he was given that information, I consider it was too late.

[43] While I accept that HP Packaging was genuinely seeking to make its business more efficient and that the restructure was genuine, I am not satisfied that HP Packaging has justified Mr Davison's particular termination for redundancy.

[44] I remain unconvinced that Mr Ralph actually or sufficiently expressed to Mr

Davison the precise justification for disestablishing the single stage process engineer position as opposed to the other positions in the single stage process area. I did not hear any evidence from any party as to this situation. I do not understand this occurring in either the meeting with Mr Davison on 16 November 2006 or 28 November 2006.

[45] I understand Mr Ralph to rely on paragraph 8 of his brief as disclosing the business reasons for the restructure and as what he told each affected employee. But there is nothing in his evidence of both the meetings with Mr Davison on either 16 November 2006 or 28 November 2006 where he explains why Mr Davison's position was potentially redundant. I accept Mr Ralph explained why there needed to be restructuring but that is a different matter from whether or not Mr Davison's position was particularly superfluous. While Mr Ralph tells the Authority five positions in the area including Mr Davison's position had to go, he does not tell the Authority why that was particularly so. Nor does he tell the Authority of an explanation to Mr Davison in that regard. So while I am satisfied there was a need for five positions to go, HP Packaging does not convince me of the basis for Mr Davison's particular redundancy. This is not explained to the Authority. It offers no evidence of an objective criteria or selection process the fair and reasonable application of which resulted in Mr Davison's selection.

[46] So while I accept there was a genuine restructuring, I conclude that Mr Davison was not treated fairly and sensitively by HP Packaging in the process of it making a decision that his particular employment was redundant, and HP Packaging does not persuade me that Mr Davison's position was particularly redundant.

Determination

[47] I have considered whether HP Packaging's actions, and how it acted were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred. I have concluded that its decision to terminate Mr Davison's employment and how it acted were not what a fair and reasonable employer would have done. **On an objective basis, I therefore determine that his dismissal is unjustifiable. He has a personal grievance and he is entitled to have the problem resolved by formal orders.**

[48] Having made those findings and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the Act to consider the extent to which Mr Davison's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find that Mr Davison did not contribute to the situation that led to his dismissal and therefore there is no basis to reduce either the nature or extent of remedies to be awarded to him.

[49] While I am satisfied that Mr Davison's dismissal results from a genuine restructuring, HP Packaging does not persuade me that his particular employment was actually redundant relative to the other positions in the single stage area. I cannot therefore conclude that his position was genuinely redundant. In that situation, it cannot be said that he has no claim to lost income because his employment would have ended.

[50] I am satisfied that Mr Davison has lost income from the time of his termination until he obtained other employment in late April 2007. I award him lost earnings based on his annual salary of \$67,690.00 for a period of 17 weeks (1 January 2007 to 1 May 2007). **I order HP Packaging Limited to pay to Joseph Davison the gross sum of \$22,129.42 as reimbursement.**

[51] Mr Davison had 19+ years service at HP Packaging and its predecessors. He tells the Authority he was very stressed through the period during which the restructure was taking place. The situation was exacerbated because he found it difficult to find other work being terminated so close to the Christmas vacation. At the same time his wife was pregnant with twins. They already had four children under seven to support and it was not at all a pleasant experience for Mr Davison to go into Christmas having lost his job and not having another one to go to. Mr Davison explains his job at HP Packaging was the only job he had since leaving school and so he felt like he was heading into the unknown when he had to find other work. He says this was a terrible feeling.

[52] Eventually Mr Davison did obtain other employment in late April 2007 working on an island called Kosrae in Micronesia as plant general manager. Unfortunately, one of Mr Davison's children fell ill suffering allergic reactions and doctors could not

identify the cause. Mr Davison had to bring his family back to New Zealand.

[53] I am satisfied that Mr Davison has suffered hurt and humiliation, loss of dignity and injury to his feelings. He is not entitled to compensation for the loss of the job itself, but he is entitled to be compensated for the effects on him of the unlawful termination. I award him compensation for that loss. Having regard to his evidence, the nature of his personal grievance and his length of service, I award him compensation of \$9,000.00. **I order HP Packaging Limited to pay to Joseph Davison the sum of \$9,000.00 as compensation.**

Costs

[54] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr Muller is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Ms O'Connell is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe without leave.

Leon Robinson
Member of Employment Relations Authority