

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 137
5387804**

BETWEEN LIANGWEI FENG
 Applicant

AND KIWI DISCOVERY LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Rodger Pool, Counsel for Applicant
 Paul Tremewan, Advocate for Respondent

Investigation Meeting: 21 March 2013 at Auckland

Submissions received: 25 March 2013 from Applicant
 25 March 2013 from Respondent

Determination: 19 April 2013

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Liangwei Feng, claims that he was unjustifiably dismissed. Specifically Mr Feng claims that his selection for redundancy by the Respondent, Kiwi Discovery Limited (“KDL”). was not genuine.

[2] Mr Feng further claims that KDL dismissed him on the basis of redundancy although there was a suitable vacancy available and for which he had applied.

[3] KDL denies that Mr Feng’s position was not genuinely surplus to requirements, and claims that Mr Feng was justifiably dismissed on the basis of a genuine redundancy.

Issues

[4] The following issues require determination:

- a. Whether the position of Mr Feng was genuinely redundant

- b. Whether the selection criteria used by KDL were fair and reasonable
- c. Whether KDL followed a fair procedure in making Mr Feng redundant

Background Facts

[5] KDL is a predominately retail business and has two outlets operating at Auckland Airport. Mr Feng, who commenced employment as part of the Sales Staff on 30 August 2008, worked at the Kiwi Discovery store which was the largest of the outlets and regarded as KDL's 'flagship' store.

[6] Mr Feng had been issued with an individual employment agreement ("the Employment Agreement") at the commencement of his employment

[7] Mr Feng had been successful in the sales role he occupied and this had been recognised by several awards made to him by KDL. These awards included a:

- handwritten note from Mr Yong Lee, Managing Director of KDL, thanking Mr Feng for: "*the great sales of Alpaca in November 2011*";
- 'Staff Excellence Award' dated 2 December 2011 thanking Mr Feng for: "*the outstanding job you did and are doing*";
- 'Certificate of Achievement' made in recognition of Mr Feng having achieved: "*100% in the 'Mystery Shop programme'*", signed by Mr Lee and dated 18 December 2011; and
- 'Certificate of Acknowledgement' awarded to Mr Feng for "*winning the most votes in the Most Persuasive category*", signed by Mr Lee and dated 18 December 2011.

[8] Mr Feng had been promoted to the position of Team Leader on 10 January 2011. Mr Feng received three salary increases during 2011, the first upon appointment to the position of Team Leader on 10 January 2011, and two subsequent increases on 17 October 2011 and 14 November 2011.

[9] Mr Feng said he had received no formal training in the Team Leader position, although Mr Nobuya Kobayashi, Operations Manager and to whom Mr Feng reported, said that he had provided informal, on the job, training to Mr Feng.

[10] In the position of Team Leader, Mr Feng had responsibility for training new employees. Mr Feng said he had trained approximately 7 new employees during 2011 without encountering any problems.

[11] During January 2012 Mr Feng said he had undertaken the training of two new employees. Mr Feng said he had encountered difficulties in training one of the new employees, Deborah, who had kept making mistakes.

[12] Mr Feng said he had also been concerned by feedback he had received from other members of the Team that Deborah did not mix well. There had also been feedback that Deborah, who was from Taiwan, had strong political views which the Team members had been concerned that she would express to customers who were primarily from mainland China.

[13] Mr Feng said he had taken his concerns to Mr Kobayashi and had asked him for advice. Mr Kobayashi said he had offered to transfer Deborah, but before he took any action he needed to speak to her first.

[14] Mr Kobayashi said he had interviewed Deborah, who had made several allegations about Mr Feng. Following the interview with Deborah, Mr Kobayashi said he had telephoned Mr Lee, who had asked him to email him outlining the key issues.

[15] In the email which he had sent to Mr Lee on 3 February 2012, Mr Kobayashi had written:

This is the list I heard from Deborah:

He is telling staff as follows:

- *Do not work hard as our wage is cheap*
- *I have no future in this company, I am leaving and I do not care money. Many good staff already left.*
- *The company treats unfairly between Chinese customer and JP customer even CH spends a lot. JP customer gets free gift Choco by spending \$30.*
- *JP customers are too hassle, they do not spend much just buy small things.*

- *Taiwan is part of China.*
- *Nobu wishes to get rid of Benny because Benny can do better in sales and the company needs him as he is top salesman. That's why Benny reports to Yong instead of Nobu*
- *Min is workaholic so we have to slow down otherwise she will give us more jobs.*

[16] Mr Lee said he had decided to interview Deborah himself, and had reached the conclusion that either she or Benny had not been telling the truth. Mr Lee said that prior to this incident he had been concerned that there had been a problem with the leadership in the Chinese market, and he considered that Deborah's remarks had revealed that there was a serious problem. As a result he had decided to interview other employees.

[17] Mr Feng, who had been on his two day break, said he had been told by other employees that an investigation had been taking place and when he returned to work on 13 February 2012, he had been asked by Mr Kobayashi and Mr Lee to attend a meeting.

13 February 2012 Meeting

[18] Mr Feng said that at the meeting held on 13 February 2012 he had been handed a piece of A4 paper containing the allegations made about him by Deborah which had been those set out in the email from Mr Kobayashi to Mr Lee on 3 February 2012.

[19] Mr Feng said Mr Lee had looked angry and had started to read out the allegations. Following each one, Mr Feng said Mr Lee had asked him if it were true.

[20] Mr Feng said he had denied each allegation, and that he had said to Mr Lee and Mr Kobayashi that he had been employed for a long time, he appreciated KDL having made him Team Leader, and he would never have made such remarks as those alleged.

[21] Mr Feng said Mr Lee had asked him if he realised he had been at fault in the situation, and Mr Feng had said he denied he had been at fault. Mr Lee said he had believed that Mr Feng did not trust him.

[22] Mr Kobayashi said Mr Feng had denied all the allegations, and that he had been unable to reach a decision whom he believed. Mr Lee also said that he had been unable to decide which employee had been telling the truth.

[23] Mr Feng said that on two occasions following the meeting Mr Kobayashi had been to see him and asked him to apologise and admit his fault. Mr Feng said he had told Mr Kobayashi that he could not apologise for comments which he had not made.

[24] On 2 March 2012 Mr Feng said Mr Kobayashi had been to see him again, had told him that KDL needed to have the issue finished, and had asked him again to apologise and admit his fault.

[25] Mr Feng said he had refused and had told Mr Kobayashi that he no longer wished to be Team Leader. Mr Feng said Mr Kobayashi had advised him that this would be possible, but that Mr Feng's salary might be reduced due to the reduction in responsibility as a result. Mr Feng said he had stated that his salary should not be reduced as it was based upon his performance.

[26] Mr Kobayashi denied asking Mr Feng to apologise, and said that he had just wanted Mr Feng to learn from the incident, to take ownership and develop good teamwork.

[27] Mr Lee said he had known that Mr Kobayashi had been speaking to Mr Feng following the meeting on 3 February 2012, and said that he had felt frustrated and disappointed by Mr Feng.

[28] Mr Feng, who was married with a young baby, said he had been very concerned by what had occurred and he had told two members of the Team with whom he had had a close relationship that as a result he was considering standing down as Team Leader.

5 March 2012 Meeting

[29] Mr Feng said he had been asked to attend a meeting with Mr Kobayashi and Mr Lee on 5 March 2012. Mr Feng said Mr Lee had been angry and had voiced his concern that Mr Feng had discussed his no longer wanting to be Team Leader with other employees.

[30] Mr Feng said Mr Lee had stated that his salary would be reduced if he ceased to be Team Leader, and Mr Feng said he had stated that he believed his salary should not reduce as it was based upon performance.

[31] Mr Feng said that Mr Lee had then said that he would restructure KDL and Mr Feng's position would be made redundant. Mr Feng said Mr Lee had told him that he had: "*wrong logic, wrong thinking and your activities against our company*".

[32] Mr Feng said Mr Lee had then told Mr Kobayashi to have an 'emergency meeting' regarding this issue.

[33] Mr Lee said he had been upset when he had heard Mr Feng had been telling other employees that he no longer wanted to be Team Leader, and confirmed that Mr Feng had said he did not accept a salary decrease would be appropriate if he did revert to being a Sales Person.

[34] Mr Lee said that he had been angry during the meeting on 5 March 2012 and agreed that he may have told Mr Feng he had the wrong attitude.

[35] Mr Lee said that he had raised the level of Mr Feng's sick leave as a matter of concern during the meeting.

[36] Mr Lee said that the decision to restructure had not been a hasty decision, but had been made against a background of losses against budget and the realisation that the existing structure of Team Leaders had not been successful. As a result, the Team Leader positions were to be disestablished and replaced by new Shift Manager positions.

[37] On 8 March 2013 Mr Feng said he had received an email from Mr Kobayashi. The email had been addressed to several employees including Mr Feng, and reminded them that there was to be an: "*urgent/important meeting*" the following day.

[38] Mr Feng replied to the email that same day, asking what the meeting was concerning and referring to the meeting with Mr Lee on 5 March 2012 in which restructuring and redundancy had been mentioned. The response from Mr Kobayashi had been merely that: "*Yong has big concerns, and very much disappointed with current KD situation*".

9 March 2012 Meeting

[39] The advised meeting took place on 9 March 2012. Mr Feng attended the meeting as did Mr Lee, Mr Kobayashi, Ms Judy Watts, Marketing Manager, an accountant, and some other employees.

[40] Although KDL sent the affected employees minutes and a summary of the meeting, Mr Feng said that some of the comments made by Mr Lee had been omitted, however he had made his own notes of the meeting and had recorded Mr Lee advising that:

- *The Team Leader appointment was for a one year trial;*
- *Team work had been damaged;*
- *There had been a lack of the right leadership;*

- *There were communication errors;*
- *The Chinese leadership had failed;*
- *The company needed to put the right team in place, particularly in the leader position;*
- *Everyone would be redundant in four weeks;*
- *The contract will be renegotiated;*
- *Everyone who wants to stay in the company will have to go through a process to see if they get another job; and*
- *Staff who do not follow the company policy and the rule will be failed.*

[41] The KDL notes of the meeting held on 9 March 2012 record the subject of the meeting as: “*Emergency HR Meeting*” and appear to confirm the accuracy of some of the statements as recorded by Mr Feng, specifically the comment: “*What does the company look for in its employees: Right person with the right attitude*”. There are further comments recorded as being made by new employees including:

- *There seems to be no guidance*
- *Team leaders are not careful in what they say to new staff*
- *Told they don't need to work hard by senior staff*
- *No harmony between the management and new staff*

So effective 4 weeks from today, all team leaders and sales advisors positions will be redundant – these are Susan, Seki, Naoya, Kazu, Min, Benny. ... Please note that this does not mean dismissal – the staff behind these positions will go through the recruitment process again and re-employment will be based on the normal selection process.

[42] I note that the comments made by new staff have strong similarities to those made by Deborah about Mr Feng and as set out in the email from Mr Kobayashi to Mr Lee dated 3

February 2012, and on the piece of A4 paper shown to Mr Feng during the meeting on 13 February 2012.

[43] Mr Kobayashi said that on 16 March 2012 KDL had emailed the proposed new structure and positions to the affected employees and requested feedback on the proposal by 20 March 2012, however Mr Kobayashi said no feedback had been received.

[44] Mr Feng said he had not provided any feedback as he believed the comments made at the meeting on 9 March 2012 had been aimed at him and so there had been no purpose served in providing feedback.

[45] As no feedback had been received, Mr Kobayashi said KDL had emailed the affected employees on 21 March 2012, advising that as no feedback had been received the restructure would proceed, and once finalised, there would be individual meetings held.

Outcome of Restructuring Process

[46] Mr Kobayashi confirmed in an email dated 23 March 2012 that the individual meetings would be held during the week commencing 26 March 2012. Mr Feng said his meeting with Mr Lee, Mr Kobayashi and Ms Watts took place on 30 March 2012.

[47] Mr Feng said he had expressed interest in one of the jobs available, this being the PM shift role which he believed to be the same as his existing position. Mr Feng said Mr Lee had informed him that he had a poor attitude and that he took too much sick leave.

[48] Mr Lee said at the Investigation Meeting that if Mr Feng had been appointed to the PM shift role, he would not have been successful in performing the role due to the problems they had experienced with his appointment as a Team Leader, which had been a mistake.

[49] Mr Lee confirmed that during the meeting with Mr Feng he had commented that Mr Feng had a '*don't care*' attitude.

[50] Mr Feng said that the meeting had concluded with him being advised that a decision would be made the following week.

[51] Approximately 15 minutes after he had left the meeting, Mr Feng said he had telephoned Mr Nobayashi and asked that, in the event that his application for a PM shift was not successful, he wanted to be considered for a normal sales position because it would be very difficult for him to find a job and he had a family to feed.

[52] Mr Feng said Mr Kobayashi had told him that he could not make any decision, but he would pass the message on to Mr Lee.

[53] Mr Kobayashi said that he and Ms Watts assessed the applicants for the PM shift roles against certain criteria; however Mr Feng said he had not been advised of the selection criteria prior to the individual meeting on 30 March 2012.

[54] Ms Watts said she had been asked to observe the relevant employees at work, and confirmed that she had been aware that there were 'issues' with Mr Feng's performance.

[55] On 5 April 2012 Mr Feng said he had a meeting with Mr Kobayashi in a café at Auckland Airport. Mr Feng said Mr Kobayashi had informed him that his application for the PM shift leader position had been unsuccessful.

[56] Mr Feng said he had again asked to be permitted to work as a normal sales person. Mr Feng said Mr Kobayashi's response had been that KDL had already considered this request, and Mr Feng was to: "*re-apply again through the normal channels*".

[57] Mr Feng said Mr Kobayashi had informed him that his last day was to be 6 April 2012 and had proceeded to give him advice on what Mr Kobayashi considered he had done wrong.

[58] Mr Nobayashi confirmed at the Investigation Meeting that he and Mr Feng had had quite a lot of discussion and that Mr Feng had stated that he believed KDL did not trust him. Mr Nobayashi stated that Mr Feng's attitude had been a problem, and there had been a gap between his way of thinking and KDL's way of thinking.

[59] Mr Nobayashi said he had asked Mr Feng to work until 7 April 2012 as the roster had been in place until that date and Mr Feng had agreed to do so. Mr Feng agreed that he had confirmed he would be professional and complete the rostered shifts; however after the meeting he had been too distressed to continue working after 5 March 2012.

[60] Mr Feng said he had asked Mr Kobayashi if KDL would provide him with a reference and Mr Kobayashi said he would do so, informing prospective employers that Mr Feng was good at sales but too young and sometimes could not communicate well with other employees.

[61] Mr Nobayashi said Mr Feng had not subsequently contacted Ms Watts which was the '*normal channel*' for recruitment.

[62] Mr Feng's employment with KDL had terminated on 6 April 2012. On 12 October 2012 Mr Feng had filed a Statement of Problem with the Authority.

Determination

Was the position of Mr Feng genuinely redundant?

[63] The Court of Appeal in *GN Hale & Son Ltd v Wellington Caretakers IUOW*¹ clarified that:

An employer is entitled to make his business more efficient, as for example by automation, abandonment of unprofitable activities, re-organisation or other cost-saving steps, no matter whether or not the business would otherwise go to the wall. A worker does not have a right to continued employment if the business can be run more efficiently without him.

[64] The onus of proving that there were genuine commercial grounds for redundancy rests upon the employer.

[65] Mr Lee explained at the Investigation Meeting that the restructuring had not been a hasty decision, but had been made in circumstances of a realisation that the existing Team Leader positions had not been successful and of losses against budget, providing financial evidence in support of this assertion.

[66] Mr Lee's explanation that the decision to restructure had not been a hasty one I find to be undermined by the fact that the email sent to the employees by Mr Kobayashi on 8 March 2012 referred to an "*urgent/important meeting*" and by the KDL notes of the meeting on 9 March 2012 which are headed "*Emergency HR Meeting*".

[67] Moreover I find that Mr Lee's instruction to Mr Kobayashi to have an 'emergency meeting' in regard to the proposed restructuring, made at the conclusion of the meeting with Mr Feng on 5 March 2012, to have arisen in circumstances in which Mr Lee had been upset with Mr Feng whom he had accused of having: "*wrong logic, wrong thinking*".

[68] Accordingly I consider that these facts infer that, whilst there had been financial losses, the decision to restructure arose as a direct result of the interactions with Mr Feng rather than having a financial imperative.

¹ [1991] 1 NZLR 151

[69] I find support for this conclusion in that, whilst Mr Lee said that the Team Leader positions had not been successful, the only evidence that the Team Leader positions had not been successful appeared to be the comments made by a new employee concerning Mr Feng.

[70] Moreover, there was no evidence produced which substantiated KDL's assertion that the PM Shift Leader position was not, as claimed by Mr Feng, the same as the previous Team Leader position performed by Mr Feng.

[71] In these circumstances I find that the restructuring exercise was primarily motivated by the concerns held by Mr Lee about Mr Feng rather than by a commercial impetus.

[72] I determine that KDL has not discharged the onus of proving that there were genuine commercial reasons for the redundancy of Mr Feng.

Were the selection criteria used by KDL fair and reasonable?

[73] Application of selection criteria falls within an employer's exclusive management prerogative. However it is appropriate that the Authority should investigate whether KDL applied the selection criteria in a fair and reasonable manner, whether it acted in good faith during the selection process, and whether it acted without regard to irrelevant criteria.

[74] The selection criteria used by KDL appear to be based on having the: *Right person with the right attitude*' as recorded in the notes of the meeting on 9 March 2012.

[75] I observe that the notes of the 9 March 2012 meeting indicate that '*the Right person*' is one who does not exemplify the problems identified with the existing Team Leader positions. These problems as identified during the 9 March 2012 meeting I note mirror the complaints made by the new employee, Deborah, about Mr Feng, and which were discussed with Mr Feng on at least two occasions.

[76] Mr Feng had denied the allegations against him at the meeting on 13 February 2012, however he had believed that Mr Lee did not trust him.

[77] The subsequent conduct of KDL, in particular that of:

- Mr Nobayashi asking Mr Feng on two subsequent occasions to apologise;
- Mr Lee, who had confirmed that he had known about Mr Kobayashi's conversations with Mr Feng, stating that he had felt frustrated and disappointed at Mr Feng's continued refusal to apologise; and

- Mr Lee commenting at the meeting on 9 March 2012 that Mr Feng had “*wrong logic, wrong thinking*” and the reference to “*your activities against our company*”,

I find to confirm Mr Feng’s belief that Mr Lee had not trusted him.

[78] The decision not to appoint Mr Feng to the PM Shift Leader position which he believed to be the same as the Team Leader position he currently performed, appeared to be based on the view held by Mr Lee that Mr Feng would not be successful in that role due to the alleged problems Mr Feng had in the Team Leader position.

[79] I find that the decision not to appoint Mr Feng to the PM Shift Leader position to have been influenced by the allegations made against Mr Feng which he had denied, and for which he had refused to apologise.

[80] Mr Lee also stated that Mr Feng’s sick leave had been taken into consideration in arriving at the decision not to appoint Mr Feng to the PM Shift Leader position, however there is no indication that sickness absenteeism would form part of the selection process indicated in the notes of the meeting on 9 March 2012.

[81] There had been no evidence that Mr Feng had not been performing satisfactorily in the Team Leader position prior to the allegations of a new employee about him. Indeed, since his appointment as Team Leader he had received two salary increases, the latter of which had been made on 14 November 2011, just prior to the allegations made by Deborah in January 2012.

[82] No disciplinary action had been taken against Mr Feng in relation to the allegations against him, nor had any disciplinary action been taken against him in regard to the sickness absence issue.

[83] I find that KDL had not been acting in good faith when considering Mr Feng’s selection for redundancy, but had selected Mr Feng for redundancy on the basis of its frustration and dissatisfaction with his continued refusal to apologise for something of which he felt wrongly accused.

[84] I determine that the selection criteria used by KDL were not fair and reasonable.

Did KDL follow a fair procedure in making Mr Feng redundant?

[85] Section 103A of the Employment Relations Act 2000 (“the Act”) sets out the test of justification:

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 considering whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[86] Other provisions of the Act govern questions of justification for dismissal and, in particular, by reason of redundancy. Section 4 of the Act addresses the requirement for parties to the employment relationship to deal with each other in good faith.

[87] Mr Feng had been very successful in a sales staff position; indeed he was the recipient of several awards from KDL confirming this and signed personally by Mr Lee.

[88] Mr Feng had made Mr Kobayashi aware on 2 March 2012 that he no longer wished to be a Team Leader, and had confirmed this in the meeting with Mr Lee and Mr Kobayashi on 5 March 2012; however Mr Feng had at that stage insisted that his salary not be reduced accordingly.

[89] Following the meeting on 30 March 2012 Mr Feng had made it clear to Mr Kobayashi that he would accept a sales staff position as an alternative to having no job at all. At that stage there was no longer any indication on Mr Feng’s part that he would not accept a reduction in his salary.

[90] At the meeting at Auckland Airport on 5 April 2012 Mr Feng had again asked Mr Kobayashi if he could work as a normal sales person. Mr Kobayashi had responded that Mr Feng was to re-apply for a position.

[91] Evidence provided at the Investigation Meeting confirmed that KDL had existing vacancies for sales staff sales positions both at the time of Mr Feng’s employment and thereafter.

[92] I consider that the fair and reasonable employer is under a duty to consider redeployment in such a situation as that of Mr Feng rather to have made Mr Feng redundant²

²*Ning (neil) Wang v Hamilton Multicultural Services Trust* [2010] NZEmpC 142

[93] I find that KDL did not act as a fair and reasonable employer in advising Mr Feng, an existing employee and a known successful Sales Staff employee, to re-apply for a Sales Staff position, especially in circumstances in which Mr Feng had made clear his willingness to take such a position without a stipulation as to maintaining his salary level as a Team Leader rather than be made redundant.

[94] I determine that KDL did not follow a fair procedure in making Mr Feng redundant.

[95] I determine that Mr Feng has been unjustifiably dismissed by KDL.

Remedies

[96] Mr Feng has been unjustifiably dismissed and is entitled to remedies.

Lost wages

[97] I have found Mr Feng's employment to have been unjustifiably terminated by KDL with effect from 6 April 2012. Mr Feng said that he tried to mitigate the effects of the loss of his employment by looking for alternative employment.

[98] In *Allen v Transpacific Industries Group Ltd (t/a "Medismart Ltd")*³ Chief Judge Colgan commented that the obligations of a dismissed employee making a loss of earnings claim are as follows:

...dismissed employees are not only under an obligation to mitigate loss but to establish this in evidence if called upon. This will require, in practice, a detailed account of efforts made to obtain employment including dates, places, names, copies of correspondence and the like.

[99] In *Radius Residential Care Limited v McLeay*⁴ the Employment Court observed in relation to the employee's obligation to mitigate loss that: "*The Court should not be left to speculate or guess.*"

[100] Mr Feng provided a list of prospective employers to whom he had applied. I find that this list is not detailed as I would have preferred, however I take into consideration the fact that Mr Feng has found it difficult to obtain alternative employment due to his honesty in telling prospective employers why he is in the position of seeking employment, and also the fact that Mr Feng had found casual work, albeit not until November 2012.

³ (2009) 6 NZELR 530

⁴ Unreported [2010] NZEMPC 149

[101] I order that KDL pay Mr Feng an amount equal to 3 months lost wages pursuant to s 128(2) of the Act.

Interest

[102] The Authority has the power to award interest pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum⁵.

[103] I order that KDL pay interest in accordance with clause 11 of the Second Schedule of the Act on the amount awarded to Mr Feng as lost wages.

Compensation for Hurt and Humiliation under s 123 (1) (c) (i).

[104] Mr Feng is also entitled to compensation for humiliation and distress. I find that in respect of his unjustifiable dismissal, Mr Feng has experienced humiliation, loss of dignity and injury to feelings.

[105] In respect of the dismissal grievances, KDL is to pay Mr Feng the sum of \$7,000.00, pursuant to s 123(1) (c) (i) of the Act.

Contribution

[106] I have considered the matter of contribution as I am required to do under s124. Mr Feng did not contribute to the situation which gave rise the personal grievance. There is to be no reduction in remedies.

Costs

[107] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave

Eleanor Robinson
Member of the Employment Relations Authority

⁵ Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)