IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2012] NZERA Christchurch 102
5357980

BETWEEN	GARY GOODMAN Applicant	
A N D	ROONEY LIMITED Respondent	EARTHMOVING

Member of Authority:	David Appleton
Representatives:	Georgina Burness, Advocate for Applicant Roger Brown, Counsel for Respondent
Investigation meeting:	12 April 2012 and 16 May 2012 at Timaru
Submissions Received	12 April 2012 and 16 May 2012 from Applicant and Respondent
Date of Determination:	25 May 2012

DETERMINATION OF THE AUTHORITY

A. The Applicant was not unjustifiably dismissed and accordingly his personal grievance fails.

B. The Respondent's counterclaim succeeds, and the Applicant must pay the Respondent the sum of $9,310.48.

C. Costs are reserved.

Employment relationship problem

[1] Mr Goodman claims that he was unjustifiably dismissed on or around 19 July 2011. He claims lost wages, compensation for distress in the sum of $8,000 and his

legal costs. The respondent counterclaims against Mr Goodman for having caused damage to a company vehicle in the amount of $10,707.

The events leading to the dismissal

[2] Mr Goodman was employed by the respondent as a truck driver, and had commenced employment with the respondent in around April 2008. Mr Goodman had been issued with an employment agreement but had refused to sign it because the remuneration clause had been left blank. Mr Goodman agreed, however, that he was bound by the terms of the respondent's Code of Conduct which stated the following in respect of the use of drugs and alcohol.

> *Drunkenness and Use of Drugs*
>
> *Employees may not bring alcohol or non prescribed drugs onto Company premises. Working while influenced by alcohol or non prescribed drugs is not permitted. Breach of this provision will be seen as serious misconduct.*

[3] On 25 May 2011, Mr Goodman had two minor accidents. The first occurred while he was backing his trailer into the premises of a local business, causing minor damage to a vehicle. The second occurred while he was working in a forest, when he was struck by another vehicle while his truck was stationary. Incident reports were completed for both incidents and Mr Goodman was not disciplined for either.

[4] On the morning of Friday 10 June 2011, Mr Goodman had a more serious accident in Otago involving his truck and trailer, which was fully laden with lime. He had turned left from Horse Gully Road onto State Highway 83 near Peebles (also known as the Georgetown-Pukeuri Road) and intended to turn right into Gibson Road, a distance which Google Maps shows as around 700 metres. Before turning right, however, he came across a tractor, pulling a bailer, travelling in the same direction.

[5] Mr Goodman's evidence was that the tractor had been travelling at about 30 km per hour and so Mr Goodman indicated and overtook the tractor, believing that he had time to return to his own side of the road before turning right into Gibson Road. Mr Goodman's evidence was that, unfortunately, while Mr Goodman was still on the right hand side of the road, approaching the brow of a hill, a car appeared, coming towards him. Mr Goodman believed that he did not have time to complete the manoeuvre and therefore turned right into Gibson Road faster than he had originally

intended, continuing to indicate, but skidded into a tree on the corner of State Highway 83 and Gibson Road.

[6] Mr Goodman was uninjured, but damage had been caused to the front of the Mercedes Benz truck which required the purchase of parts by the respondent in the sum of $10,707.05 (including GST).

[7] Following this accident, Mr Goodman was required to undergo a drug and alcohol test and was then stood down for the remainder of the day. The evidence from Mr Gary Rooney, a director of the respondent, who had required Mr Goodman to undergo the test, was that, when he had heard that Mr Goodman had had the accident, he had assumed that Mr Goodman had been under the influence of alcohol because he had smelt alcohol on Mr Goodman's breath the evening before. As it turned out, the test, conducted by way of a urine sample, was negative for alcohol but was positive for cannabinoids, showing 289 nanograms per millilitre of urine. The test result indicates that the reference range was less than 50 nanograms of cannabinoids per millilitre of urine.

[8] A disciplinary meeting took place on 18 July 2011, which was recorded on Mr Goodman's mobile phone. This recording was available for the Authority to listen to. The respondent says that it decided to dismiss Mr Goodman because he made an admission during the disciplinary meeting that he regularly ate cannabis. Mr Goodman strongly denies he made such an admission.

The issues

[9] A number of alleged flaws were cited by Mr Goodman's advocate as having resulted in the dismissal being unjustifiable. These alleged flaws are as follows:

a. there had been unreasonable delays between the accident and the dismissal;

b. errors in the letter inviting Mr Goodman to the disciplinary meeting had caused unfairness to him;

c. Mr Goodman had been prevented from having a support person present;

d. the respondent had failed to provide to Mr Goodman a full copy of the test result;

e. the respondent had failed to verify independently the test result;

f. the decision to dismiss had been predetermined; and

g. the respondent had not been justified in relying on what it said was an admission of regular cannabis use by Mr Goodman.

[10] It is also necessary to consider whether Mr Goodman had breached express or implied terms of the employment agreement between the parties giving rise to an award of contractual damages against him.

The findings

[11] The Authority must apply the test of justification set out in section 103A of the Employment Relations Act 2000 in determining whether a dismissal is justifiable or not. Section 103A states as follows:

> *(1) 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).*
> *(2) 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.*
> *(3) In applying the test in subsection (2), the Authority or the court must consider—*
> *(a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and*
> *(b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and*
> *(c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and*
> *(d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*
> *(4) In addition to the factors described in subsection (3), the Authority or the court may consider any other factors it thinks appropriate.*
> *(5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were—*
> *(a) minor; and*
> *(b) did not result in the employee being treated unfairly*

Addressing the specific allegations of unfairness as asserted by Mr Goodman, I find as follows.

Had there been unreasonable delays between the incident and the dismissal?

[12] Mr Goodman's advocate asserts that there were unreasonable delays between the accident on 10 June and the dismissal on 19 July, which makes it unjustifiable. She also points to the fact that Mr Goodman had been allowed to drive both after the accident and after the positive drug test had been received by the respondent, suggesting that neither were initially regarded as serious by the respondent. She also argued that this fact put the company itself in breach of its own Code of Conduct.

[13] The respondent says that the drug test result had not become available to the respondent until around 10 days after the accident. Mr Rooney says that Mr Goodman had been allowed to continue to drive in the intervening period, from the following Monday, 13 June 2011, because he had regarded Mr Goodman as a professional driver who would have allowed himself to get clean of the influence of the cannabis over the intervening weekend.

[14] When the test result had finally been received by the respondent, Mr Goodman was informed orally that it had shown a positive result for cannabis but the company continued to allow him to drive. There was a conflict of evidence as to whether Mr Goodman had been told that he would be subject to a disciplinary meeting following the receipt of the positive drug test. The evidence of Mr Matheson, area manager of the Waimate branch of the respondent, was that he had told Mr Goodman twice that there would be such a meeting. Mr Goodman's evidence was that he had not been told that there would be a disciplinary meeting.

[15] A further conflict of evidence between the parties arising from the respondent's assertion that Mr Goodman had been *bragging* that he had *got away with it*, following the positive test result. Mr Matheson's evidence was that it was because of this *bragging* that he had told Mr Goodman, for the second time, that he would be facing an investigation. Mr Goodman's evidence was that he had not been *bragging* as alleged.

[16] Although the positive test result had been received by the respondent in around mid-June, it was not until 14 July 2011 that the respondent wrote to

Mr Goodman requiring him to attend a meeting on 18 July to discuss his *breach of the Code of Conduct and the serious accident* [he was] *involved in on 25 May 2011*.

[17] The reason given by the respondent for the delay that had elapsed between the receipt by it of the positive drug result and the disciplinary meeting was that the manager responsible for disciplinary matters had left the company on 20 May 2011 and that his replacement, Mr Graeme Wilkins, had not commenced until 11 July 2011. Mr Rooney's evidence was that he had asked Mr Wilkins to attend to the outstanding disciplinary matter as a matter of urgency. I accept that evidence as being the cause for the delay in holding the disciplinary meeting.

[18] I do not believe that these delays make the dismissal unjustifiable and the conflicts of evidence outlined above do not make any material difference to that conclusion. I accept Mr Rooney's evidence that he had to make a decision whether to allow Mr Goodman to drive or not whilst they were waiting first for the test result and then for the appropriate manager to start employment to hold the disciplinary meeting and believe that the decision to allow Mr Goodman to drive was reasonable. I also do not believe that the delay of five weeks would have changed the outcome of the disciplinary matter in any way. In the overall scheme of things, five weeks is not an unacceptable period of time to wait under the circumstances that prevailed at the time.

Had errors in the letter inviting Mr Goodman to the disciplinary meeting caused unfairness to him?

[19] The date of the accident cited in the letter inviting Mr Goodman to the disciplinary meeting was incorrectly stated as 25 May 2011, the date of the two previous minor accidents. This incorrect date was repeated throughout the letter. The letter did, however, refer to the urine sample that had been taken from Mr Goodman after the accident of 10 June, and the positive result.

[20] The recording of the meeting shows that it had commenced with the parties speaking at cross purposes about which accident was being referred to, which Mr Matheson corrected reasonably quickly. Once it had been discovered that the wrong date had been alluded to, the meeting should ideally have been adjourned and Mr Goodman should have been given the opportunity to prepare with the correct accident in mind, in the event that this error had prejudiced him. Having already waited five weeks between the accident and the disciplinary meeting, it would not

have caused the respondent undue prejudice to have given Mr Goodman that opportunity.

[21] However, having listened to the tape of the disciplinary meeting, Mr Goodman did not seem in any way prejudiced by the error and quickly understood which accident was being referred to. Indeed, in my view on the evidence, it is likely that Mr Goodman knew all along which accident was being referred to because of the reference to the failed drug test.

[22] I therefore do not believe that this error caused Mr Goodman any material prejudice and so did not render the dismissal unjustifiable.

Had Mr Goodman been prevented from having a support person present?

[23] The letter inviting Mr Goodman to attend the disciplinary meeting concluded by stating *In the circumstances, we suggest that you bring along a support person and/or representative.*

[24] Mr Goodman states that he did not have time to arrange a support person or representative over the weekend that fell between 14 and 18 July 2011, and that he had asked at the disciplinary meeting whether the company secretary could attend for him. He says that he had been told *that would not be necessary* and that he had therefore asked if he could record the meeting on his mobile phone, which Mr Wilkins and Mr Matheson (the two company representatives at the disciplinary meeting) agreed to.

[25] By contrast, the evidence of Mr Matheson and Mr Wilkins is that they had asked Mr Goodman on the morning of 18 July whether he had wanted a support person and that he replied that he did not as he was going to record the meeting instead.

[26] It is not easy for me to decide on the evidence whose version of events in this respect is the truthful one. However, even if I accept Mr Goodman's evidence, it would appear that Mr Goodman's main concern was to have had somebody present at the disciplinary meeting to make a note of it rather than to speak up on his behalf, as it would not have been appropriate to have asked the company secretary to have spoken up on his behalf in any event. Given that that note taking role was fulfilled by his recording the disciplinary meeting, I do not find that, even if he had been refused the

company secretary as his representative, he had been unduly prejudiced by that refusal. It would have been a different matter if he had asked for a legal adviser or employment advocate to have attended on his behalf and been refused, but that was not the case. Mr Goodman did also confirm that he did not ask the company for further time in which to find a representative.

Was unfairness caused by the respondent's failure to provide to Mr Goodman a full copy of the test result?

[27] Ideally, the respondent should have provided to Mr Goodman a full copy of the test result. Mr Goodman's evidence, which I believe, was that he had been handed a copy of only the first page of the test result, together with an accident report relating to one of the accidents on 25 May. This, however, is not a serious error on the part of the company as it did give to Mr Goodman the important part of the test result which showed the reading of 289 nanograms of cannabinoids per millilitre of urine.

Did the respondent's failure to verify the test result independently cause unfairness?

[28] A further error by the respondent arises from its failure to verify the test result independently. At the bottom of the first page of the test result, which was supplied to Mr Goodman, the following warning appears:

> *Confirmatory testing is strongly recommended for all positive samples. Please contact the laboratory if required. Samples will be stored for 2 weeks, and requests for confirmatory testing should be made within this time.*

[29] The second page of the test result, which was not given to Mr Goodman at the time of the disciplinary meeting, stated the following:

> *Our laboratory is not accredited to the level of the current Australasian Standard (AS/NZS 4308) to perform these tests for employment or evidential purposes. We are accredited for routine diagnostic or non-evidential samples.*

[30] All of the witnesses for the respondent agreed that they had not given any thought to the warnings that were stated on this test result. If it were the case that Mr Goodman had been dismissed because of the positive result, a failure to have a confirmatory test carried out would have resulted in me finding a significant error in their process. However, Mr Rooney's evidence, which I accept, was that

Mr Goodman had been dismissed, not for the positive reading, but because he had stated in the disciplinary meeting that he usually ate cannabis. Therefore, whilst the company should have carried out confirmatory testing, its failure to do so did not, in my view, prejudice Mr Goodman as the test result alone did not result in dismissal. In addition, Mr Goodman had admitted that he had smoked a cannabis joint four days earlier. This probably accounted for the positive test result, and suggests that the test result was not materially inaccurate in any event.

Was the decision to dismiss predetermined?

[31] Mr Rooney's evidence was that he had initially intended to issue Mr Goodman with a final written warning as a result of the accident and positive drug test but that when Mr Matheson and Mr Wilkins had reported to him immediately after the disciplinary meeting that Mr Goodman had admitted eating cannabis on a regular basis, he had changed his mind. This does not suggest predetermination. In addition, if the decision had been predetermined, it is unlikely that the respondent would have allowed Mr Goodman to have worked between the positive test result and the dismissal.

Had the respondent been justified in relying on what it said was an admission of regular cannabis use by Mr Goodman?

[32] I listened carefully to the recording of the disciplinary meeting, and although it was not crystal clear in quality throughout, it was clear enough to hear and understand the vast majority of the words spoken. During the recording, Mr Goodman can be heard stating that he had smoked a cannabis joint during the Queen's Birthday weekend, four days before the accident, and that he was surprised that it had stayed in his system for so long. He said that he did not agree that he would have been driving under the influence of cannabis on the morning of Friday, 10 June and that he did not consume cannabis on a regular basis. He stated, more than once, that he was a recreational user, using cannabis at odd times, and in his own time.

[33] The recording then indicates that Mr Goodman referred to his late father going blind through glaucoma in his 60s and that his father's clinical consultant had suggested to Mr Goodman that the consumption of cannabis could keep the condition, which was hereditary, at bay. Mr Goodman told the disciplinary meeting that the

specialist had, however, declined or been unable to prescribe cannabis for Mr Goodman.

[34] To a question put to him by Mr Wilkins as to how he was going to remedy the situation in future, the recording that was made available to the Authority showed that Mr Goodman replied as follows:

> *Well, I don't usually smoke it, I usually eat it as a way of consuming it. It still does get into my system, yeah. I'm going to have to cease and get medical advice for treatment of the glaucoma instead.*

[This may not be an exact verbatim report of what Mr Goodman stated, as the recording is not entirely clear at that point, but I am entirely satisfied that this passage accurately records the gist of Mr Goodman's words.]

[35] The evidence of the respondent was that the decision to dismiss Mr Goodman had been made on a joint basis, as between Mr Wilkins and Mr Matheson, but with Mr Rooney (who was not at the meeting) having the final say. Mr Rooney's evidence was that he had intended to issue Mr Goodman with a final written warning as a result of the accident and positive drug test but that Mr Matheson and Mr Wilkins reported to him immediately after the disciplinary meeting that Mr Goodman had admitted eating cannabis on a regular basis and he had believed that this admission made the matter so serious that he could not risk continuing to employ Mr Goodman.

[36] Mr Goodman strongly disagreed that he had made such an admission and stated that, when he had been speaking at the disciplinary meeting and had used the words cited above, he had made a mistake and had meant to say that he *used to usually eat* it rather than smoke it. His evidence to the Authority is that it has been several years since he has eaten cannabis.

[37] Whilst it may or may not be the case that Mr Goodman has not eaten cannabis for several years, it is clear to me that the words used by him in the disciplinary meeting as recorded clearly suggested that he was a regular consumer of cannabis, by eating it, at that time. This is suggested not only by his use of the words *I usually eat it as a way of consuming it*, but also by his reference to him saying that he was *going to have to cease and get medical advice for treatment of glaucoma*. These statements were made in the present and future tenses respectively, not the past tense.

[38] On this basis, I believe that it was entirely reasonable for Mr Wilkins and Mr Matheson to have understood that Mr Goodman had admitted consuming cannabis regularly, by way of eating it. No other reasonable conclusion could have been reached by them.

The overall justifiability of the dismissal

[39] Turning to the issue of whether it had been reasonable for the respondent to have concluded that Mr Goodman had committed serious misconduct and should be dismissed on the basis that he was someone who *usually ate cannabis*, Mr Rooney gave evidence about the importance of complying with rigorous health and safety standards, especially in light of the fact that the respondent's drivers operated large trucks and heavily loaded trailers travelling on the roads of the South Island. To learn that one of his trusted truck drivers was apparently a regular user of cannabis, whether by smoking it or eating it, would have legitimately caused Mr Rooney serious concerns as to the suitability of Mr Goodman's continued employment. Whilst Mr Rooney could have given Mr Goodman a final written warning, or asked him to take another test, as was suggested by Mr Goodman's advocate, I believe that, in all the circumstances, a fair and reasonable employer could also have dismissed Mr Goodman.

[40] I therefore find that Mr Goodman's dismissal was not overly harsh, as claimed by his advocate, and that it was substantially and procedurally justifiable.

The Counterclaim

[41] Section 62 of the Act allows the Authority, in any matter related to an employment agreement, to make any order that the High Court or District Court may make under any enactment or rule of law relating to contracts. The action seeking such an order must be commenced in the Authority no later than 6 years after the date on which the cause of action arose (s 142 of the Act). The counterclaim was not, as claimed by Mr Goodman's advocate, lodged out of time. Whether it was reasonable to have lodged it is not something I need to decide. The counterclaim is entirely lawful under the Act.

[42] In order to be able to claim damages from Mr Goodman the respondent must show there has been a breach of a contractual duty from which the damage flowed. Although there was no signed agreement between the parties, there was obviously a

contractual arrangement governing the relationship. This contractual arrangement comprised express terms, terms incorporated by statute and terms implied by various mechanisms.

[43] There is a pertinent contractual term that has been recognised for many years as being implied into all employment relationships; namely that the employee will exercise reasonable care in the discharge of his duties. That negligence by the employee resulting in damage to the employer can be recovered by the employer. *Lister v Romford Ice and Cold Storage Co Ltd* [1957] AC 555 HL. (It should be mentioned that the Court of Appeal in *Katz v Mana Coach Services* [2011] NZCA 610 (2 December 2011) recently questioned, *obiter,* whether an employer could recover damages from an employee where the employee has been negligent in the performance of his duties, but until a higher court has determined otherwise, *Lister* remains good law).

[44] A crucial witness relating to the respondent's counterclaim, Mr Galloway, was unexpectedly unavailable at the investigation meeting on 12 April 2012 and so the investigation meeting was reconvened on 16 May 2012 to accommodate his evidence. Mr Galloway's evidence is crucial as he was the only eyewitness to the accident that caused the damage to the Mercedes Benz truck which is the subject of the counterclaim.

[45] Mr Galloway has been driving trucks for over 25 years and had been following Mr Goodman's truck and trailer in his own truck on the morning of the accident after Mr Goodman had turned onto state highway 83 from Horse Gully Road. Mr Galloway's evidence was that he saw Mr Goodman overtake the tractor, which he thought was driving around 50 km an hour, and that Mr Goodman may have been driving around 70 km an hour when he did so. He said the road was wet.

[46] Mr Galloway said, however, that the roads had been in good condition and had not been covered in gravel, as has been asserted by Mr Goodman. Mr Galloway had also not seen the car approaching, which Mr Goodman had said had caused him to turn suddenly. In Mr Galloway's opinion, the accident had been entirely Mr Goodman's fault, and Mr Goodman should not have undertaken the manoeuvre on a wet road with so little time before he had to turn.

[47] Mr Goodman asserts that the front tyres on the truck had been worn, although not illegally so, and that Mr Matheson, who had attended the accident afterwards, had pointed out that they were also cracked. He said that the brakes on the trailer had also been soft. He attributed the accident, partially at least, to these factors. Mr Matheson denies that he had said that the tyres had been cracked.

[48] The respondent showed to the Authority VTNZ documents which showed that the truck and trailer had both passed their safety inspections prior to the accident, the truck in January and the trailer in April. The respondent also produced invoices from Beaurepaires that indicated that one front tyre on the truck had been replaced in November 2010 and that the truck had driven around 20,000 kms between then and the accident. Mr Goodman asserted that the truck had been fitted with new front tyres shortly after the accident.

[49] Whilst a lot of discussion took place about the truck's tyres and the trailer's brakes, and whether gravel had been present on the corner of Gibson Road, I find Mr Galloway's evidence the most powerful. In his view, the manoeuvre was inherently dangerous and should not have been undertaken, even in a truck and trailer with perfectly good tyres and brakes and with no loose gravel on the road. Mr Galloway does not work for the respondent, and his independence as a witness was not challenged by Mr Goodman.

[50] I am also cognisant of the fact that Mr Goodman attempted to overtake a tractor on a stretch of wet road with a fully laden trailer, which would have weighed in the region of 40 tonnes, when he knew he had to turn right in less than 700 metres. Mr Goodman conceded he knew the road well, and so cannot reasonably claim that the turning came up unexpectedly. Although he partly blames the accident on the fact that a car came over the brow of the hill, causing him to have to turn suddenly as he was on the wrong side of the road, that indicates to me that the manoeuvre was undertaken when he could not seen far enough ahead in any event to overtake safely. I do not need to conclude whether Mr Goodman had been under the influence of cannabis at the time of the accident as the manoeuvre was inherently hazardous and was not one that a competent and experienced employee should have undertaken.

[51] All in all, I am satisfied that Mr Goodman was significantly at fault in causing the accident, which in turn caused damage to the truck belonging to the respondent.

That in turn caused it financial loss, as the cost of the replacement parts needed for repair was less than the respondent's insurance excess of $10,000.

[52] I am satisfied that Mr Goodman was negligent, in breach of his implied duty towards his employer. I am also satisfied that Mr Goodman is directly responsible for the losses caused by that negligence, and that the losses are not too remote from Mr Goodman's negligent actions.

[53] The respondent claims that it is owed the sum of $10,707.05, being the cost to the respondent of buying parts to repair the truck. A detailed invoice was presented to the Authority detailing the parts that needed to be purchased and Mr Goodman confirmed that the parts detailed on the invoice appeared to be appropriate for the damage that he was aware had been caused to the truck. Mr Goodman's advocate suggested on the second day of the investigation meeting that some of the items on the invoice were questionable, but I believe there is no cogent reason to doubt that all the items were properly required to repair the damage to the truck. I therefore accept the invoice as accurately representing the loss incurred by the respondent.

[54] However, the figure claimed by the respondent includes GST, which the respondent is able to set off in its tax returns against GST it receives on its sales and income. I do not believe that it is appropriate to require Mr Goodman to pay to the respondent the GST inclusive sum. The GST exclusive sum is $9,310.48 and this is the sum that I order Mr Goodman to pay to the respondent.

Costs

[55] Costs are reserved. Mr Goodman's advocate is to indicate to the Authority and to counsel for the respondent within 7 days of the date of this determination whether Mr Goodman is in receipt of legal aid.

[56] If Mr Goodman is in receipt of legal aid, and the respondent intends to seek costs against him, it is reminded that Section 45(2) of the Legal Services Act 2011, dealing with the liability of legally aided persons for costs, states that

> *No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that there are exceptional circumstances.*

[57] In *Wadley v. Salon D'Orsay Ltd* [1998] 1 ERNZ 369, the Employment Court construed the expression *exceptional circumstances* as meaning *quite out of the ordinary*.

[58] Any claim for costs should be made by lodging and serving a memorandum within 28 days of the date of this determination, after Mr Goodman's advocate has indicated Mr Goodman's legal aid status as directed. Mr Goodman will have a further 28 days within which to respond in writing.

David Appleton
Member of the Employment Relations Authority