

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 45  
5425038

BETWEEN                      KAREN HAMILTON  
   Applicant  
  
A N D                              KELLY                      CHAMBERS  
   LIMITED  
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Peter Moore, Advocate for Applicant  
   Raelene Kelly, Counsel for Respondent  
  
Investigation Meeting:        8 November 2013 at Dunedin  
  
Submissions Received:        13 December 2013 and 21 February 2014 from  
   Applicant  
   14 February 2014 from Respondent  
  
Date of Determination:        25 March 2014

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**DETERMINATION OF THE AUTHORITY**

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- A     I have found that the parties entered into a binding agreement under which the applicant compromised her rights to bring a personal grievance related to her redundancy.**
- B     The director of the respondent has said that she will make payment under that agreement and if there is difficulty with that then I reserve leave for either party to return to the Authority.**
- C     The applicant is owed the sum of \$930 being unpaid employer contributions to KiwiSaver and I have ordered payment of interest on that amount from 29 June 2012.**

**D I have reserved costs and failing agreement have set a timetable for an exchange.**

**Employment relationship problem**

[1] Karen Hamilton commenced working with Kelly Chambers Limited (Kelly Chambers) as an administrative support person in January 2011. Kelly Chambers is a duly incorporated company having its registered office in Dunedin and carrying on business as barristers.

[2] The director of Kelly Chambers and principal barrister is Raelene Kelly. At the time that Ms Hamilton was employed with Kelly Chambers, there was one other employee, barrister Kimberly Jarvis.

[3] On 14 March 2012, Ms Hamilton was advised that her position was to be terminated for reason of redundancy with two weeks' notice.

[4] Ms Hamilton says that she was unjustifiably dismissed from her employment and/or was disadvantaged by the failure to properly consult with respect to the redundancy and the failure of Kelly Chambers to make various payments she says are owing to her.

[5] Kelly Chambers does not accept that Ms Hamilton was unjustifiably dismissed and says that her employment was terminated on notice for genuine reasons of lack of work and financial hardship. It says that it reached a binding termination agreement with Ms Hamilton by virtue of which Ms Hamilton cannot now pursue personal grievances. Further that the termination agreement was subsequently repudiated by Ms Hamilton but such repudiation was not accepted by Kelly Chambers. It says that Ms Kelly says that notwithstanding Kelly Chambers was no longer trading and has no assets; she is willing to make payment in terms of the agreement as a sign of good faith.

[6] Kelly Chambers says alternatively that the personal grievance claims were raised outside of the 90 day period and it does not consent to them being raised out of time.

[7] Ms Hamilton seeks the following:

- A finding that she was unjustifiably dismissed;
- An order for payment of \$552 being wages for overtime and an underpayment in her final pay;
- An order for payment of the balance of a full notice period of four weeks in the sum of \$1,500;
- Reimbursement of lost wages;
- Compensation for humiliation, loss of dignity and injury to feelings in the sum of \$12,500;
- An award of \$930 for unpaid KiwiSaver and \$5,000 for the grievance arising from the non-payment of this sum.

[8] There is a different make up of remedies sought if, in the alternative, the Authority was to find that there was no unjustified dismissal but rather unjustified disadvantage. Two separate awards of \$5,000 are sought under s.123 (1)(c)(i) of the Employment Relations Act 2000 (the Act) for a lack of proper consultation regarding the redundancy and for grievances arising from non-payment of sums claimed.

[9] In relation to both sets of remedies interest is claimed as are costs.

### **Issues**

[10] The Authority is required to resolve the following issues:

- (a) Was there a binding agreement entered into between Kelly Chambers and Ms Hamilton that compromised Ms Hamilton's rights to pursue a personal grievance?
- (b) If there was a binding agreement, then does the KiwiSaver claim fall outside that agreement?
- (c) If there was no binding agreement then did Ms Hamilton raise a personal grievance that she was either unjustifiably disadvantaged or dismissed within the statutory time period of 90 days?

- (d) If Ms Hamilton did raise a personal grievance then was she unjustifiably dismissed or disadvantaged in her employment?
- (e) If it is found that Ms Hamilton has a personal grievance, what remedies is she entitled to, is she entitled to employer KiwiSaver contributions and overtime payments?

**Was there a binding agreement entered into between Kelly Chambers and Ms Hamilton?**

[11] There is an issue about whether Ms Hamilton had a written individual employment agreement with Kelly Chambers. There was at an early stage discussion between Ms Kelly and Ms Hamilton about her terms and conditions of employment and no real dispute about them. I am not satisfied that Ms Hamilton was presented with the document attached to the statement of problem as exhibit E which was unsigned and headed *individual employment agreement*.

[12] The reason that I have concluded that is that Ms Kelly said that she could not recall whether Ms Hamilton was shown and/or signed the agreement. Ms Hamilton is adamant that she neither saw nor signed a written individual employment agreement. I accept Ms Hamilton's evidence about that as more likely and find that Ms Kelly was in all likelihood mistaken that she had shown Ms Hamilton the document provided to the Authority. In conclusion I find that there was no written individual employment agreement entered into between Ms Hamilton and Kelly Chambers.

[13] Ms Kelly explained the background to the decision that Ms Hamilton's position was redundant was a lack of ongoing work together with financial issues. In September 2011, Ms Kelly said there was a significant trial, the Auckland trial, at the end of which Kelly Chambers had a reduced workload and needed more work. There was another trial (the Black trial) in February 2012 and then only one trial set down which was settled during the Black trial.

[14] Ms Kelly said further that in or about February 2012, two clients defaulted in their payment of fees and the fees were of a significant nature. After the Black trial Ms Kelly became quite unwell and was required to have bed rest following her doctor's advice. She made the decision at that time that the company should no longer trade.

[15] Ms Hamilton accepted, when questioned by the Authority, that it had become very quiet in the office and there was no more work coming in. She recalled Ms Kelly talking to her about *floods and droughts* of work being likely, because of the nature of the work of barristers.

[16] When questioned by Ms Kelly, Ms Hamilton said that it was unusual how much down time there was in January/February 2012, although she said it was always quiet when Ms Kelly was out of the country and at other times. She agreed that Ms Jarvis and Ms Kelly had talked about needing more work.

[17] Ms Hamilton accepted under questioning that the reasons for her redundancy were genuine. I also have to be satisfied of that. Objectively assessed there was no evidence before me to suggest that the reasons advanced by Ms Kelly for the proposed redundancy of Ms Hamilton's position were not genuine.

*Notification of redundancy to Ms Hamilton*

[18] On 14 March 2012, Ms Kelly advised Ms Hamilton that her position was redundant. Ms Kelly told Ms Hamilton that it was a terrible thing to do and she had been dreading it. Ms Hamilton could not recall any specific discussion about the financial state of the company. I have no reason not to accept her evidence and find the exchange in all likelihood focussed on the lack of forward work. Ms Hamilton asked for four weeks' notice. Ms Kelly was only prepared to give two weeks' notice, explaining the company was unable to afford an additional two weeks.

[19] Ms Hamilton said she was not fit to return to work the next day as she was upset and did not sleep well.

[20] On Friday, 16 March when Ms Hamilton returned back to Kelly Chambers, she received written confirmation of her termination dated 15 March 2012 in the form of a letter from Ms Kelly. The letter expressed regret about the distress and disruption caused to Ms Hamilton. It referred to business downturn making it impossible to continue to employ someone in Ms Hamilton's role when there was no work for her to do which would have enabled payment. The letter confirmed that the date of termination was Wednesday, 28 March 2012 at 4pm unless a request was made for an earlier finish date.

[21] Ms Hamilton agreed it is likely that she told Ms Kelly on 14 March 2012 that she had already been looking for jobs and the confirmation of termination letter provided that Ms Hamilton could attend at job interviews during work hours.

[22] Ms Hamilton described the announcement of redundancy as *a bolt from the blue* and said that what was particularly annoying was that she had been offered a job not so long previously and had declined it. She said that she would not have done so if she had known that her role was in jeopardy.

*Ms Hamilton raised issues about the redundancy*

[23] On Thursday 22 March 2012 Ms Hamilton after thinking about the situation and getting some advice emailed Ms Kelly at about 8.24am with her concerns. The contents of that email may become important if the Authority gets to the point of having to consider whether personal grievances were raised and gives insight to the background that led to settlement discussions. The email referred to six issues which Ms Hamilton said she wanted to discuss with Ms Kelly. I shall set them out below.

- (i) The first was that Ms Hamilton did not have an employment agreement in response to the suggestion in the letter of termination that she did.
- (ii) The second was that two weeks' notice was not fair and there was a request to extend notice to four weeks. Ms Hamilton noted that she would rather not work her notice out.
- (iii) The third issue was the absence of consultation. There was reference to two recent emails Ms Hamilton had sent to Ms Kelly before she was advised of her redundancy in which she had said she had no work to do and Ms Kelly had responded with it *can't be helped*.
- (iv) The fourth issue was that as part of a fair process there had not been an open minded approach to alternatives to redundancy such as redeployment and provision of counselling and career advice.
- (v) The fifth issue was about payment of the overtime hours.
- (vi) The sixth issue was an expression of disappointment in the way that the matter had been dealt with and that Ms Hamilton felt that she was not respected and undervalued.

[24] Ms Kelly spoke to Ms Hamilton in the morning of 22 March 2012 about the email and said they would meet during the day to discuss it. That meeting did not take place and Ms Kelly sent an email to Ms Hamilton after she had left work for the day apologising for not having a meeting as something urgent had arisen. She stated in the email that Ms Hamilton knew the outlook was bleak and that it was regrettable that she could not deal with the issue sooner but was ill after the Black trial and as soon as she could she came into the office. Whilst Ms Kelly agreed that redeployment might be appropriate she wrote that was not possible at Kelly Chambers. She confirmed that the downturn was not Ms Hamilton's fault and advised that she did not intend to claw anything back for *pre-paid* leave. She also stated that there had been a signed employment agreement.

[25] Ms Hamilton emailed a response to Ms Kelly on that same day. She did not agree that she knew the situation was bleak and said that even if Ms Kelly was ill she could have telephoned or emailed. She categorically denied that she had an employment agreement.

[26] A meeting was then arranged for the following day 23 March 2012 at 11.00am. Ms Hamilton was invited to bring her lawyer or any other person with her.

[27] There is a dispute about what happened at the meeting attended only by Ms Hamilton and Ms Kelly. Ms Kelly said that it was agreed the meeting would be without prejudice although for the purposes of the Authority meeting did not suggest that the Authority could not hear evidence about the meeting. In any event the main evidence the Authority heard about concerned a disagreement about whether Ms Hamilton had received/signed an employment agreement. There were two issues in dispute about what was said during that meeting. I will turn to those again only if I find that Ms Hamilton has not compromised her rights under an agreement to pursue her personal grievance. I am however satisfied that Ms Hamilton had legal advice at the time of settlement discussions.

#### *Offers made and chain of correspondence*

[28] By email dated 28 March 2012, Ms Kelly made an offer to Ms Hamilton. The offer was expressed to be an open offer. It provided:

*I will forego any claim to set off holidays taken in advance against wages owed and agree to dispense with the requirement that you*

*work throughout the notice period if you agree that that is an end to any existing or potential dispute between us. I would further agree to provide you with a reference if you require it, and propose that we mutually agree not to do or say anything which could have the effect of harming the other's reputation.*

[29] Ms Kelly set out in her email that the offer was open for acceptance until 4pm on Friday, 30 March 2012, *or longer if you require more time, by agreement.*

[30] By email dated 29 March 2012, Ms Hamilton advised Ms Kelly that she had been out of town at a funeral and was meeting with her lawyer the next day. She also noted that Ms Kelly's email made no mention of the overtime hours owing and had presumed that the offer included that.

[31] By email dated 2 April 2012, Ms Hamilton advised Ms Kelly of the following. She had taken advice about her position. Whilst she was advised there were remedies she could pursue, she wished to resolve the matter on an amicable and practical basis. She then set out that she would accept, noting that all figures were gross; payment of overtime due to her of \$412.50, the balance of moneys due from 19 to 28 March 2012 (8 days) to be paid of \$1,200 and finally any entitlement to be waived to deduct the value of leave taken in advance from any sum due. The email provided that the sums would be payable as compensation under s.123(1)(c)(i) of the Act and a settlement agreement would be entered into to give effect to those terms which would be prepared by her lawyer.

[32] By email dated 9 April 2012, Ms Kelly advised in the following way:

*Although I don't know the specific amounts, that is all fine with me.  
Is your lawyer drawing the agreement?*

*What happened then?*

[33] By email dated 20 April 2012 Ms Hamilton attached a settlement agreement under s.149 of the Employment Relations Act 2000 (the Act) drafted by her solicitor to Ms Kelly confirming her understanding that it is signed by both of them and then is signed off by a mediator. She asked for comments.

[34] By email dated 26 April 2012 Ms Kelly wrote to Ms Hamilton firstly asking if she was asking for a reference and confirming that she would provide one. Secondly she set out some issues about the draft agreement. The first issue that it was *slightly*

*odd* in that *we have not had a mediator* and who then was expected to sign it off. There is also reference to a concern that the payment is not taxed as it is wages although Ms Kelly wrote that if Ms Hamilton's lawyer said she was wrong about that she *would gladly co-operate*. Ms Kelly redrafted the settlement agreement in part although left in the reference to the mediator. There were two changes made. The first was a change from .... *matters discussed in mediation to the course of reaching this settlement*. The second was the deletion of the word *compensatory* and reference to 123(1)(c)(i) of the Employment Relations Act 2000 and instead referring to section 123 (1) of the Act. There was no change made to the amount to be paid as expressed in Ms Hamilton's lawyer's settlement agreement.

[35] Ms Hamilton sent two emails to Ms Kelly about the implications of s.149 after discussing with her lawyer. The first sent on 30 April advised that Ms Kelly's *changes need to be undone* because although *there was no formal mediation, the agreement is executed as if there was, and is ultimately signed off by a mediator from DOL to give it legal effect*. It also referred to the reference to compensatory sum and s.123 (1) (c) (i) needing to remain so the payment is tax free.

[36] On 4 May 2012 Ms Kelly was given an ultimatum in an email from Ms Hamilton that the settlement agreement previously forwarded remains open until 5.00pm on Tuesday 8 May 2012 with funds paid no later than 5.00pm on 10 May 2012 otherwise Ms Hamilton wrote she would pursue the other remedies open to her.

[37] On 10 May Ms Kelly wrote to Ms Hamilton and expressed confusion about the role of the mediator and queried why a non-mediated agreement would not do. She wrote that if Ms Hamilton's lawyer could indicate some basis for confidence that his/her suggestion is both necessary and accepted practice that would be helpful in *moving this forward*.

[38] On 11 May 2012 Ms Hamilton responded to Ms Kelly with some more information about the proposed s.149 agreement.

[39] Ms Kelly did not respond. Her evidence was that the information did not satisfy her concerns about the form of the proposed agreement.

[40] On 18 May 2012 Ms Hamilton sent a further email to Ms Kelly advising that her lawyer was pressing her to make a decision to pursue further remedies regarding the termination of her employment. Ms Hamilton asked Ms Kelly to respond by

21 May about whether she was agreeable to the settlement proposed in the email of 2 April and contained in the draft agreement emailed on 20 April 2012. If that was the case then Ms Hamilton asked for confirmation that payment in full would be made by no later than 22 May 2012.

[41] Ms Kelly did not respond.

[42] Mr Moore was then instructed and advised Ms Kelly in a letter dated 15 June 2012 that he was now acting for Ms Hamilton. He set out the issues that Ms Hamilton had arising from the termination of her employment. Ms Kelly responded to Mr Moore by letter dated 19 June 2012 and amongst other matters advised that matters arising from Ms Hamilton's employment had already been the subject of agreement.

[43] It appeared a point was reached around mid-July 2012 when Ms Kelly was prepared to sign the s.149 settlement agreement on behalf of Kelly Chambers. Ms Hamilton at that stage and indeed from the end of May proceeded on the basis that there was no binding agreement. Mr Moore confirmed that in a letter to Ms Kelly dated 6 July 2012 .... *our position is very firmly that there has been no agreement reached and that all matters are therefore on the table.* Ms Kelly continued to maintain that there was a binding agreement.

[44] Mediation took place between the parties. There is a dispute as to whether it was held in November 2012 or January 2013. The evidence seems to support November 2012. It was not in any event until 10 July 2013 that proceedings were lodged with the Authority.

[45] Participating in mediation is not necessarily inconsistent with having a binding agreement. The Authority cannot in any event make any inquiry about what occurred.

### *Conclusion*

[46] Mr Moore submits that Ms Hamilton's email of 2 April 2012 amounted to a counter offer because it referred to the amount Ms Kelly offered being payable as compensation under s.123 (1) (c) (i) of the Employment Relations Act 2000 and also to a settlement agreement being entered into to give effect to those terms which would be prepared by her lawyer. Mr Moore submits that it was clear that the words used by

Ms Hamilton *settlement agreement* referred to an agreement under s.149 of the Employment Relations Act 2000.

[47] He submits that the counter offer was not accepted because Ms Kelly did not sign the agreement provided to her under s.149 of the Employment Relations Act 2000 to be signed off by a mediator. He further submits that Ms Hamilton made two new offers with firm deadlines for signing and performance on 5 and 18 May 2012, the latter having a deadline of 21 May 2012. He submits that as of 21 May 2012 Ms Hamilton's offer simply expired.

[48] The main exchanges against which to assess whether there was a meeting of the minds are those contained in emails sent between Ms Kelly and Ms Hamilton on 28 March, 2 April and 9 April 2012 which followed from the face to face discussion on 23 March 2012 and after Ms Hamilton expressed written concerns about the redundancy process.

[49] The first email of 28 March 2012 contains an open offer from Ms Kelly on the basis that Ms Hamilton agreed that it was an end to any existing or potential dispute between them.

[50] In between that email and the next one of 2 April 2012 Ms Hamilton queried that there was no mention of the overtime hours and writes that she has presumed the offer includes this. Ms Kelly does not confirm that in writing.

[51] On 2 April 2012 the email from Ms Hamilton to Ms Kelly confirms that she had taken further advice as to her position. She records that she has been told that there are remedies she can pursue but wishes to resolve the matter on an amicable and practical basis. She set out what she would accept and this includes the overtime figure. She advises that she will need to be able to tell prospective employers that her position came to an end through redundancy. She writes additionally that all sums would be payable as compensation under section 123(1)(c)(i) of the Employment Relations Act 2000 and that *a settlement agreement would be entered into to give effect to those terms which would be prepared by my lawyer.*

[52] I agree with Mr Moore that this response goes beyond simple acceptance of Ms Kelly's offer. In light of Ms Kelly's email on 9 April 2012 I find that the counter proposal by Ms Hamilton was accepted including that the payments Ms Hamilton asked for were to be paid as compensation under s.123 (1)(c) (i) of the Act. There

was some confusion on the part of Ms Kelly after 9 April and a request by her for clarification as to how the payment of wages could be tax free. That concern though was only mentioned once and accompanied by a willingness to co-operate with such a payment if she was wrong. A party wanting clarification or even being mistaken about a matter does not necessarily mean agreement was not reached in the first place or that there was some uncertainty with the agreement reached. I do not find here that agreement was not reached about that matter.

[53] The issue that I need to pause and reflect on in determining whether there was a binding agreement is whether it was the clear intention of the parties that the agreement was conditional on, or subject to, a formal settlement agreement under s.149 before the parties be bound. The focus by Mr Moore on it being under s.149 was no doubt because there was no issue with an ordinary agreement being drawn up by Ms Kelly.

[54] Mr Moore submits that the agreement was never binding because Ms Kelly did not agree to the proposal that there be a written settlement agreement under the s 149 process. He submit that the words *settlement agreement* in the context of the proposed offer imply the procedure under s.149 of the Act. I do not find in the absence of a clear intention between Ms Hamilton and Ms Kelly that the s.149 process be used means it would be reasonable to imply such a term. It is further not necessary to imply such a term although an often used process for settlements in the employment area reached outside of mediation. Further it is not so obvious that it goes without saying.

[55] This situation is distinguishable from *Abernethy v Dynea New Zealand Limited* (No 2) [2007] ERNZ 462. In that case it was found that the parties intended from the outset to submit any oral agreement reached to the s.149 procedure under the Employment Relations Act 2000. This meant that any agreement reached between the negotiating parties was subject to the plaintiff's representative reducing the terms to a written record of settlement and there was no binding accord until the process had been completed.

[56] The evidence and the relevant documents do not support a clear intention that the agreement was not binding on the parties unless there was approval and signing of a settlement agreement under the s.149 process of the Act. The email of 2 April 2012 does not go that far. What was agreed to by Ms Hamilton and Ms Kelly

was clear and already in writing. The settlement agreement in the circumstances was machinery as Ms Kelly submitted. It was to give effect to terms agreed but not expressed as a term itself.

[57] I find that the parties reached a binding agreement on 9 April 2012 on the basis contained in Ms Hamilton's email of 2 April 2012. There was a meeting of the minds. Although there was no formal settlement document it did not entitle the parties to conclude that they could avoid their obligations under the agreement that I find they reached.

[58] There was consideration to support the agreement. Ms Kelly agreed not to deduct almost 8 days annual leave taken in advance from Ms Hamilton's final pay in return so it was not simply payment of existing entitlements. An important part of the agreement for Ms Kelly was an end of existing or potential disputes about the redundancy. She knew that Ms Hamilton claimed to have a right to pursue remedies related to the redundancy. Ms Hamilton had had legal advice before she made her proposal on 2 April under which, when accepted by Ms Kelly on 9 April she compromised her rights to pursue a personal grievance about her redundancy.

[59] In conclusion I find that Kelly Chambers and Ms Hamilton entered into a binding agreement on 9 April 2012 when Ms Kelly accepted what was proposed in Ms Hamilton's email of 2 April 2012.

[60] For completeness I do not agree with Ms Kelly's submissions that Ms Hamilton repudiated the agreement. There was nothing exceptional about the proposed form of settlement agreement and it is not Ms Hamilton's fault that Ms Kelly was unfamiliar with this type of agreement. Ms Hamilton did attempt on more than one occasion to provide information to Ms Kelly about the s.149 process. There was no evidence to support that there was a *procedural ruse* proposed by Ms Hamilton or her legal advisor.

[61] The end result though is that Ms Hamilton cannot now pursue her personal grievance in respect of the redundancy as I have found she compromised her rights to do so by virtue of the binding agreement reached with Ms Kelly in April 2012. I do not therefore need to consider whether she raised her personal grievance about the redundancy within 90 days.

[62] There was no attempt by Ms Hamilton to enforce it, because she took the stance that no binding agreement had been reached. It was objectively assessed simply put to one side by Ms Hamilton. There was no performance of the agreement by Kelly Chambers.

[63] Ms Hamilton is entitled to payment of the amounts agreed to in the termination agreement. Ms Kelly has said that she would attend to payments and should do so as soon as possible.

[64] If there are difficulties with that matter then I reserve leave for either party to return to the Authority.

### **KiwiSaver**

[65] The KiwiSaver issue sits outside the binding agreement I have found. It was not within the parties' contemplation at that time. It appears that for whatever reason the employer's contribution was mainly unpaid.

[66] The failure to pay the employers contribution was raised as a personal grievance. There were issues as to whether it was done so within 90 days.

[67] The Authority is a body designed to deal with matters in a practical way. If the Authority was to find a personal grievance of disadvantage in these circumstances the most appropriate remedy would be to make an award for reimbursement of money which should have been paid together with interest. I would not have found a basis for an award of compensation.

[68] The claim can also be considered as a default in payment of money owing to an employee other than wages under s.131 of the Act even if it has not been raised as a personal grievance within the statutory time frame. I intend to approach it in that way.

[69] Ms Kelly thought the failure to pay may have been an oversight and that agreement could be reached to reimburse the money. There is no mention that I could find of this in her final submissions.

[70] I find there has been a failure to pay the employer contribution to KiwiSaver in most pay periods to Ms Hamilton.

[71] The amount claimed was \$930. Ms Kelly did not necessarily dispute this amount and the evidence supported a proper basis for this amount.

[72] I order Kelly Chambers Limited to pay to Karen Hamilton the sum of \$930.00 being the employer's contribution to KiwiSaver.

[73] The Authority may, under clause 11 of the second schedule to the Employment Relations Act 2000, if it thinks fit order the payment of interest at the rate prescribed under section 87(3) of the Judicature Act 1908. I intend to do so from the time that Mr Moore first raised the issue with Ms Kelly on 29 June 2012 until the date of payment.

[74] I order Kelly Chambers Limited to pay interest on the sum of \$930 at the rate of 5% per annum from 29 June 2012 until the date of payment.

#### **Costs**

[75] I reserve the issue of costs. Agreement may be able to be reached failing which I will timetable for an exchange of submissions. Mr Moore has until 8 April 2014 to lodge and serve submission as to costs and Ms Kelly has until 29 April 2014 to lodge and serve submissions in reply.

Helen Doyle  
Member of the Employment Relations Authority