IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2015] NZERA Auckland 195
5454296

	BETWEEN	NICOLA JARDEN Applicant
	AND	NKD LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Simon Greening for the Applicant Phillipa Muir for the Respondent
Investigation Meeting:	10 April 2015
Determination:	29 June 2015

DETERMINATION OF THE AUTHORITY

A. Nicola Jarden was disadvantaged by unjustifiable actions by NKD Limited.

B. Ms Jarden's resignation was not a constructive dismissal.

C. In settlement of her personal grievance for its unjustified actions NKD Limited must pay Ms Jarden the sum of $2000 compensation under s123(1)(c)(i) of the Employment Relations Act 2000.

D. Costs are reserved.

[1] Nicola Jarden worked in NKD Limited's business – a women's clothing store in Remuera – from March 2013. She resigned from that employment on 6 February 2014. In the letter sent by her legal representative giving notice of that resignation, Ms Jarden claimed the end of her employment was really a constructive dismissal.

Her decision was said to be "*solely caused*" by NKD Limited having breached duties owed to her in circumstances where it was reasonably foreseeable she would resign as a result.

[2] NKD Limited disputed that description. Instead it said Ms Jarden had "*abandoned her employment*" after refusing to meet to discuss two concerns raised with her on 20 December 2013. One concern was apparent discrepancies between the hours of work recorded by Ms Jarden on some of her timesheets and the times that security alarm records showed she had entered the store premises on various mornings. The other concern was whether Ms Jarden could account for the whereabouts of $200 cash she had received from a customer (and receipted) but which was said to be missing from the store's petty cash tin.

[3] At 4.27pm on 20 December 2013 NKD Limited's director, Nichola Keast, had asked Ms Jarden by text to attend "*a meeting regarding your employment*" at 9am the next morning, Saturday 21 December. Ms Jarden was due to start work that morning at 10am.

[4] Ms Jarden replied twice to Ms Keast's text. She first asked for more information about the purpose of the meeting. Her second reply text said Ms Keast had not given her a reasonable opportunity to arrange a support person to come with her at 9am on the following morning. It also asked if she was still required to work that day. Ms Keast replied that Ms Jarden was "*not required to work*" until the matters of concern were discussed and asked her to consider meeting on Sunday, 22 December or Monday, 23 December or Tuesday, 24 December.

[5] Ms Jarden responded with a further text later in the evening of 20 December in which she wrote:

> *Unfortunately I will be with family in the South Island from Sunday 22nd December to 13th January. Could we please schedule this meeting for after this date?*

[6] On the evening of 21 December Ms Keast sent Ms Jarden an email setting out some details about her concerns over the timesheets and missing cash. Attached or included in that email was a copy of the alarm records to which Ms Keast referred. Her email stated that if Ms Jarden was not available to meet before she went on holiday, she should send a text when she returned to Auckland so a meeting time

could be arranged. It concluded with the statement: "*In the meantime you are not required to come to work (nor will you be paid) until we can meet.*"

[7] Ms Jarden responded to Ms Keast's 21 December email on 24 December. She noted that Ms Keast was already aware she was in the South Island with family for the Christmas break and said she was unable to meet until she returned to Auckland in early January. Ms Jarden wrote that she understood the seriousness of the allegations made and set out a reply to both concerns raised by Ms Keast. She accepted lapses of punctuality in her starting times but said she had not "*underworked*" as she had worked through her breaks or stayed later to ensure her working hours matched or exceeded the hours stated on her timesheets. She also recounted details of receiving two $100 notes from a customer, writing a receipt and leaving the money in the store's cash tin. She asked for "*a quick response*" and to be paid for hours worked on 17 and 19 December.

[8] By email on 15 January 2014 Ms Keast responded that she had a number of unanswered questions and proposed a further date to meet. In the following days Ms Keast, at Ms Jarden's request, sent another email setting out her outstanding questions and had copies of some time sheets delivered to Ms Jarden's address. There was some dispute in the evidence whether those time sheets had also been sent earlier or were not sent until 4 February but Ms Jarden accepted, during the Authority's investigation meeting, that she had received that material on 30 January.

[9] By letter on 4 February Ms Jarden's legal representative raised a personal grievance alleging she was unjustifiably suspended, was not provided with relevant information necessary to respond to the concerns raised with her, and was not paid for hours worked before Christmas. The letter also proposed mediation. By email Ms Keast responded that mediation was "*premature*" and asked for a meeting with Ms Jarden on 7 February. Ms Jarden's representative then replied with the 6 February letter of resignation containing the allegation of constructive dismissal.

[10] A statement of problem was lodged in the Authority on 1 April 2014 and the matter was referred to mediation which occurred in August 2014 without resolving the matter. An amended statement of problem was lodged in November 2014 and the matter was then scheduled for investigation.

The Authority's investigation

[11] In investigating Ms Jarden's personal grievance application I considered written and oral evidence, given under oath, from her and Ms Keast along with relevant documents provided by the parties. Those documents included emails and texts exchanged by both women, time sheets signed by Ms Jarden, and alarm records for the store premises at which Ms Jarden had worked. At the investigation meeting both women answered questions from me and the representatives had the opportunity to ask additional questions. The parties' representatives provided closing submissions on the issues for determination.

[12] Those issues were:

(i) Was Ms Keast's decision to suspend Ms Jaden from duties and pay on 21 December 2013 what a fair and reasonable employer could have done in all the circumstances at the time?

(ii) Did NKD Limited breach duties owed to Ms Jarden (in respect of fair dealing over concerns raised on 21 December) and, if so, was it then reasonably foreseeable that Ms Jarden would resign in such circumstances (so that, in law, her resignation was a constructive dismissal)?

(iii) If Ms Jarden was unjustifiably disadvantaged by her suspension and/or constructively dismissed, what remedies should be awarded, considering:

(a) Lost wages (claimed for the period from 13 January to 4 February 2014 only); and

(b) Compensation under s123(1)(c)(i) of the Employment Relations Act (subject to evidence on humiliation, loss of dignity and injury to feelings)?

(iv) Whether any remedies awarded required reduction due to blameworthy conduct by Ms Jarden that contributed to the situation giving rise to her grievance; and

(v) Should either party contribute to reasonably incurred costs of representation incurred by the other party?

[13] As permitted by s174 of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received but has

stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Was the suspension justified?

[14] Ms Jarden submitted she was unlawfully and unfairly suspended by Ms Keast on 21 December 2013. NKD Limited submitted that, while "*technically*" Ms Jarden may have been suspended, it was not what Ms Keast had intended as she understood Ms Jarden's employment status was as a 'casual' who could be rostered off from further work.

[15] Those arguments required consideration of Ms Jarden's actual employment status. Ms Keast's witness statement described Ms Jarden's position as "*part time and casual*". There was no concluded and signed employment agreement. Ms Jarden was given two agreements to consider during her employment – the first referring to the role as being "*envisaged on a casual basis*" and a second one with a heading reading "*casual individual employment agreement*". Although the latter document stated her hours and days of work would be "*entirely at the Employer's discretion*", her actual pattern of work for NKD Limited from March to December 2013 was sufficiently regular and continuous to establish the employment as ongoing rather than casual. While that differed from the label given to it by Ms Keast, substance – that is what actually happened – prevails over form.[1] Although Ms Jarden's starting and finishing times were adjusted on some days in some weeks, Ms Jarden generally worked three week days and on a Saturday, unless she was ill or on leave. Her starting time on week days was generally the same – at 7.30am in summer months and at 8am in winter months. Her finishing times were typically between 4pm and 5pm on those week days. Her Saturday hours typically started at 10am or 11am and ended by 3pm.

[16] Properly analysed Ms Jarden's role was, in fact, carried out on a part-time, on-going basis rather than the 'casual' footing Ms Keast described.

[17] Against that background Ms Keast, in fact, suspended Ms Jarden twice.

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[1] Section 6 of the Employment Relations Act 2000 (the Act) and *Rush Security Services Limited v Samoa* [2011] NZEmpC 76 at [20] and [27] and *Jinkinson v Oceania Gold (NZ) Limited* [2009] ERNZ 225 at [37].

[18] Firstly, Ms Keast's text on 20 December stating Ms Jarden was "*not required*" for work the next day suspended her from a day's work that she was expected (and already engaged) to do. This was true even if, contrary to my conclusion, Ms Jarden's actual status was that of a 'casual' employee. Being expected to work on the Saturday, she was entitled to be treated fairly in respect of any decision by her employer that would result in her being prevented from doing so.[2]

[19] Secondly, the words of Ms Keast's 21 December email were an unequivocal act of suspension from normal duties and pay for Ms Jarden. It was also for the uncertain period from that date until a meeting occurred to discuss Ms Keast's concerns.

[20] The Employment Court has summarised the test of whether such acts of suspension are justified in this way:[3]

> *In the absence of an express contractual provision authorising suspension, it will only be in unusual cases that it is justifiable. The fact that an employer may have reason to suspect that an employee has engaged in misconduct, or even serious misconduct, does not of itself justify suspension while those concerns are investigated. To justify suspension, an employer must have good reason to believe that the employee's continued presence in the workplace will or may give rise to some other significant issue.*
>
> *Just as in the case of dismissal, a decision to suspend an employee will normally only be justifiable if it is made as a result of a fair process. The minimum requirement for a fair process is that the employee be told that suspension is being considered and the reasons why, and then given a proper opportunity to be heard on that issue before a decision is made.*

[21] Even on the assumption that the terms of the two unexecuted employment agreements given to Ms Jarden were effective, there was no express contractual provision authorising her indefinite and unpaid suspension. The first of those agreements included a term allowing suspension "*on pay pending an investigation into any suspected misconduct*". However that agreement was supposedly superseded by a subsequent 'casual' employment agreement that contained no such or similar clause. If the provision of the earlier agreement legitimately continued to apply, Ms

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[2] See the analysis of the Employment Court in respect of actions by an employer during a period of casual employment in *Rush Security Services Limited v Samoa* [2011] NZEmpC 76 at [32] and [33].

[3] *Singh v Sherildee Holdings Ltd t/a New World Opotiki* (EC Auckland AC53/05, 22 September 2005) at [91] and [93]. See also *Graham v Airways Corp of New Zealand* [2005] ERNZ 587 at [104].

Jarden was not paid for or during the period of suspension so the term was not honoured in any event.

[22] The allegations of possible dishonesty – about inaccurate timesheets and the receipted but missing cash – were not, in all the circumstances, sufficiently good reasons to justify Ms Jarden's open-ended, unpaid suspension in the manner imposed by Ms Keast on 21 December. Although Ms Jarden was expected to work at the store on a sole charge basis for extended periods, other possible and practical means could have been consider to monitor her activities on a short-term basis while the allegations were investigated – such as getting her to phone Ms Keast from the store on her arrival and departure – rather suspending her from work entirely.

[23] However a more fundamental flaw and lack of 'good reason' in the suspension Ms Keast declared on 21 December was that it was entirely unnecessary for the period from 22 December to 13 January. Ms Keast knew from earlier, informal discussion with her that Ms Jarden had an airline ticket booked to leave Auckland on 22 December. Ms Keast also knew from Ms Jarden's text on the evening of 20 December (and probably from earlier discussions too) that Ms Jarden would not be back in town until 13 January. Until that date there was no need to 'suspend' Ms Jarden from work as she would not have been in Auckland to do any work anyway.

[24] Had Ms Keast advised Ms Jarden that she was considering suspending her from 13 January onwards, and given her an opportunity to comment before making a decision on that proposal, she may have met the minimum requirement for a fair process. Instead Ms Keast's decisions to suspend Ms Jarden from working on 21 December and thereafter (by the 20 December text and the 21 December email) were really to achieve the effect of not paying Ms Jarden for work done on 17 and 19 December and for work that she would otherwise have done on 21 December.

[25] The justification for Ms Keast's action in respect of Ms Jarden's pay had to be considered – under the statutory test – on the circumstances at the time. The relevant factors were what Ms Keast knew, what she had yet to explore and check in respect of her concerns, and NKD Limited's contractual and statutory obligations to Ms Jarden.

[26] Although the second employment agreement given to Ms Jarden allowed (again, assuming the unexecuted agreement was effective) for deductions of

overpayments from subsequent wages, Ms Keast had yet to conclusively establish, at the time that she made the decision (on 21 December) to withhold Ms Jarden's pay, that Ms Jarden had been overpaid. Without having met with Ms Jarden and considered what she may have to say or show about the hours that she had actually worked, NKD Limited did not have a sufficiently investigated basis on which to refuse or withhold wages for the days Ms Jarden had worked on 17 and 19 December. Ms Keast's action in withholding Ms Jarden's pay was inconsistent with NKD Limited's obligations under s 4 of the Wages Protection Act 1983 (to pay the entire amount of wages when they are due) and did not comply with s 6 of that Act that allows recovery of overpayment of wages in certain circumstances. At the time Ms Jarden was entitled to her pay even if – after hearing from her in a later meeting about the facts of the timesheets, actual hours worked and the alarm records – Ms Keast could reasonably have come to a conclusion that Ms Jarden had been paid on earlier occasions for more time than she had properly worked (and particularly time where she was late for work, regardless of whether the time was late 'made up for').

[27] As a result the decisions to suspend Ms Jarden from further work – communicated to her on 20 and 21 December – and to 'suspend' her pay were unjustified actions by NKD Limited. The defects in how Ms Keast made those decisions – by not giving Ms Jarden a proper opportunity to comment before she did so – were not minor and, at the very least by withholding pay Ms Jarden was entitled to receive at the time – resulted in Ms Jarden being treated unfairly.[4]

Was Ms Jarden's resignation really a constructive dismissal?

[28] In claiming her employment ended by constructive dismissal Ms Jarden had the onus of proving that NKD Limited (through Ms Keast's actions) caused her resignation by breaching duties owed to her, with those breaches being sufficiently serious to make it reasonably foreseeable that she would resign.[5] The conduct of the parties looked at as a whole – whether that is described as context, consideration of all the circumstances or looking at all the facts – is relevant to the assessment of the seriousness of any established breaches and what could have been reasonably foreseen of a worker's likely response.

[4] Section 103A(5) of the Act.
[5] *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1 ERNZ 168 (CA) at 172.

Breaches of duties

[29] For reasons already given Ms Jarden established that her suspension was imposed, and pay withheld from her, in a manner that breached duties owed to her. However the other alleged breach concerning the provision of relevant information by NKD Limited needed to be considered more closely. Whether it was a causative factor for Ms Jarden's resignation needed to be considered on the basis of the circumstances *at the time* she gave notice of resignation.

[30] Ms Jarden failed to establish that NKD Limited had not provided her with relevant information by the time she decided to resign.

[31] While there was an erratic air to how some information was provided, Ms Keast had provided a copy of the alarm records (on 21 December) and – on the same day Ms Jarden asked for it (16 January) – sent her a list of the outstanding questions Ms Keast wanted to ask her when they met.

[32] Ms Keast also gave evidence of three occasions on which she had attempted to provide Ms Jarden with requested copies of timesheets. Although Ms Jarden accepted throughout (from at least 24 December) that she had "*overlooked punctuality*" on a number of occasions, the details from timesheets over several months were necessary to properly compare those records with times of entry and exit to the premises shown on the security alarm records. For her defence of not having "*underworked*" Ms Jarden also needed to be able to accurately compare her recorded finishing times as well as starting times. It was not important to the admitted fact of having given some inaccurate information on her time sheets but it was important to the degree of difference over whether Ms Jarden had really 'short changed' her employer by claiming pay for more time than she had really been at work.

[33] Ms Keast's evidence was that she first had copies of timesheets delivered to Ms Jarden on 30 December, although Ms Keast knew Ms Jarden was out of town at time and Ms Jarden said she had not receive that material at her Auckland apartment. Another occasion was on 17 January but Ms Jarden denied having received the material on that occasion either. However Ms Jarden accepted she had received a packet of timesheets hand-delivered to her on 30 January. It was after that delivery Ms Jarden had her lawyer give notice of resignation (conveyed in the 6 February

letter) and she could not fairly say that – by that time – her employer was breaching a duty to her by withholding requested, relevant information.

The seriousness of those breaches as a cause of Ms Jarden's response

[34] Whether the two established breaches of duty in how NKD Limited treated Ms Jarden – through Ms Keast's actions of unjustifiably suspending her and not paying her for some days worked (despite her request to be paid) – were so serious they caused Ms Jarden to resign had to be considered in the overall context.

[35] How Ms Keast had dealt with the suspension and pay were failures in respect of the wider "*duty binding an employer, if conducting an inquiry into possible dishonesty by employee, to carry out the inquiry in a fair and reasonable manner*".[6] It created an atmosphere of suspicion between both parties – from Ms Jarden that she would not be treated fairly in any meeting and decision by Ms Keast, and from Ms Keast's perspective (as paraphrased in during NKD Limited's oral closing submissions) that she was being "*fobbed off*" and once "*barriers were put up*" about providing information and delaying meetings "*it morphed into something bigger*". The cumulative impact of how Ms Keast handled the matter from the outset, whether that was her intention or not, created a situation with which Ms Jarden could arguably not be expected to tolerate.

[36] However there were other aspects of the circumstances at the time at which Ms Jarden decided to resign – or, at least, to communicate that decision by the letter of 6 February to her former employer – that suggested motivations other than the seriousness of breaches of duties owed to her.

[37] The timesheets and alarm records – read together – disclosed what Ms Jarden accepted in her evidence to the Authority investigation were at least 12 occasions where she had recorded earlier starting times then when she actually started work. On each occasion she had missed her train to work or had other "*transportation difficulties*". She also accepted that she did not have evidence to confirm her explanation that she had made up that time by working later or through her breaks on those days. In that respect, she was aware from information available to her from 30 January (and before 6 February) that, to some extent, the 'writing was on the wall'

[6] *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd* (1985) ERNZ Sel Cas 136, 140-141 (CA).

about the likely conclusion Ms Keast would draw and communicate in any disciplinary meeting she would attend. While there was significant doubt that Ms Keast could have fairly concluded Ms Jarden was responsible for the money said to be missing from the shop's cash tin, the available documentation confirmed what Ms Jarden had admitted about her timekeeping as early as her email of 24 December, which included this statement: "*I accept I have overlooked my punctuality of my sign in time on my time sheet*".

[38] Even assuming Ms Jarden's explanation of making up some or all of that time was correct, a fair employer could have proceeded with disciplinary action (with dismissal within the range of available reasonable outcomes) because Ms Jarden also accepted she was in a position of trust, in sole charge of opening of the shop on time on those mornings, and had not told Ms Keast about being late on most of those 12 admitted occasions (either verbally or from what she wrote on her timesheet as her actual starting time). The store included a small takeaway coffee making facility for which Ms Keast wanted to build up custom – from passers-by heading to the nearby train station or driving along the busy suburban road that ran past the premises – and Ms Jarden being late to open undermined the prospects for that aspect of the business.

[39] The same could not be said of the allegation regarding the missing cash. It was an allegation that required evidence as compelling as the charge was serious.[7] It was inherently unlikely to have been established in any event given that Ms Jarden had provided a receipt to the customer for the cash, given Ms Keast an explanation of having received it, and the access that other people who may have been in the store meanwhile had to the tin (including three members of Ms Keast's family, other employees and, possibly, customers).

[40] Ms Jarden could, however, have opted to 'clear the air' by attending the proposed 7 February meeting with Ms Keast. Her explanation was that she had been "*absolutely willing*" to meet with Ms Keast once she had the information from the timesheets. However once she had that information, she resigned on 6 February. The motivation – as a matter of context and circumstances – was in part that, during the week she resigned, Ms Jarden applied for and was appointed to another job that she

[7] *Honda NZ Limited v NZ Shipwrights Union* ERNZ Sel Cas 855 at 858 (CA) and *NZ Shipwrights Union v Honda NZ Limited* [1989] 3 NZILR 82, 85 (LC).

started the next week. She said she needed to take that step because she could not continue to live without any income. Her lack of income in January, however, was not solely because she had been suspended from work at NKD Limited's store. Ms Keast's evidence, which I have accepted, was that Ms Jarden would not have worked at the store in January in any event. The January month was typically 'slow' as most customers were away on summer holidays and Ms Keast usually ran the store herself in those weeks.

[41] Taking those aspects of the context or circumstances into account, I have concluded Ms Jarden's resignation was either premature (as she could attended the 7 February meeting and 'cleared the air' so that even if her employment did end then it could have been on better terms) or was motivated by her realisation that the issue over late opening of the store (and not having told Ms Keast about all of those occasions) meant that it was unlikely that her employment could continue in those circumstances in any event.

[42] As a question of fact I have concluded Ms Jarden's resignation was not caused by the seriousness of NKD Limited's breaches so that it was reasonably foreseeable that she would resign in those circumstances, but by a mix of factors (including the consequences of her previous performance of her work) that did not amount, in substance, to a constructive dismissal.

[43] However, even if I had concluded a constructive dismissal was established, the resignation resulted both from breaches of duty and some degree of realisation by Ms Jarden about the likely outcome of what were lawful employer inquiries about her time sheets and actual time keeping. Resignation for a mixture of reasons may impact on remedies in one or both of two ways – firstly, the amount of any distress compensation awarded (under s123(1)(c)(i) of the Act) must be referable only to the harm done by the employer's breach of duty and, secondly, where the worker's reaction of resignation resulted in part due to his or her own conduct or actions, that contributory behaviour might require a reduction (under s124 of the Act) of any compensation awarded.[8] In Ms Jarden's case, I considered the eventual level of any remedy finally awarded would, after that exercise of assessment and reduction, end up being more or less the same dollar amount whether the compensation was for a

[8] *New Zealand Institute of Fashion Technology v Aitken* [2004] 2 ERNZ 340 at [64].

constructive dismissal or for, what I concluded was established, the unjustified disadvantage of being suspended in December 2013.

Remedies

[44] Having concluded that Ms Jarden was unjustifiably disadvantaged before she resigned (by being suspended and having her pay withheld in late December 2013) but not constructively dismissed (by her resignation in early February 2014), it was not necessary to consider her lost wages claim. However if it had been, the evidence did not establish that she would have worked for NKD Limited during January 2014. I accepted Ms Keast's evidence that Ms Jarden would not have been rostered to work in the store during those quiet weeks in any event, so it was not established that Ms Jarden could have expected to have worked for and been paid by NKD Limited in those weeks if she had not been suspended.

[45] Ms Jarden's claim for compensation for humiliation, loss of dignity and injury to her feelings had to be assessed only in relation to the unjustified disadvantage caused by her suspension and the withholding of pay due to her. I accepted her evidence of the distress caused to her. She felt embarrassed by not having money she expected to have to pay her rent and by having to rely on friends and family. I have not taken account of her evidence that felt "*shocked and disappointed*" by the accusation of falsifying her timesheet, given her earlier admission to Ms Keast about overlooking punctuality and her later evidence to the Authority about what the timesheets and alarm records showed of times when she was late opening the store but about which she had not always told Ms Keast.

[46] Solely in relation to NKD Limited's unjustified actions in suspending Ms Jarden, without prior consultation or appropriate opportunity to comment and by withholding her pay, I concluded the appropriate level of compensation under s123(1)(c)(i) of the Act was $2000.

[47] If a wider grievance regarding constructive dismissal had been established, the issue of her undisclosed instances of lateness and inaccurate timesheets would have required a reduction for contributory behaviour from what likely would have been a higher amount of compensation for unjustified dismissal. However the situation that

gave rise to the personal grievance established, on only the narrower ground of unjustified action by NKD Limited, was not the result of something Ms Jarden did. She was entitled to ask on 20 December for the information she requested about the purpose of the meeting Ms Keast wanted her to attend on 21 December and she was out of Auckland from 22 December for several weeks on a summer holiday that Ms Keast knew about in advance. No real purpose was served by the suspension Ms Keast imposed from 20 or 21 December, except to cause Ms Jarden some distress and doubt and to experience some financial embarrassment.

Costs

[48] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[49] If they are not able to do so and an Authority determination on costs is needed Ms Jarden may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum NKD Limited would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[50] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors required an adjustment upwards or downwards.[9] Unless there was a 'without prejudice' settlement offer to take into account, the amount of a costs award to Ms Jarden for the 'event' of having succeeded in establishing a personal grievance for unjustified disadvantage at an investigation meeting that took around three-quarters of a full day would likely be $3000.

Robin Arthur
Member of the Employment Relations Authority

[9] *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820.