

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 777
3355003

BETWEEN JAY JAY
Applicant
AND C3 LIMITED
Respondent

Member of Authority: Sarah Kennedy-Martin
Representatives: Applicant in person
Patrick Anderson, counsel for the Respondent
Investigation Meeting: 14 and 15 August 2025 in Tauranga
Submissions Received: 14 August, 1 September and 1 December 2025 from the
Applicant
14 August, 29 August and 1 December 2025 from the
Respondent
Determination: 1 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jay Jay was employed as a Plant Operator/Mafi Driver by C3 Limited (C3) at the Port of Tauranga from October 2023 until his dismissal on 13 June 2024. C3 provides logistics and cargo handling services. Mr Jay was dismissed for serious misconduct after an employment investigation into his refusal to follow an instruction from a Stevedore Foreperson to move a trailer.

[2] Mr Jay says there were no grounds for his dismissal and it was not a fair decision to reach in the circumstances because he was the subject of workplace bullying and that was relevant to the matter he was dismissed for. The instruction to move the trailer came about because another person left a trailer there and they should have moved the

trailer. Mr Jay says this was part of a pattern of bullying conduct towards him. He also says he raised concerns about bullying on more than one occasion and these were not investigated or taken into account when his conduct was investigated. He seeks compensation and lost wages.

[3] C3 said the decision to dismiss Mr Jay was substantively and procedurally justified. C3 investigated the incident with an open mind and concluded Mr Jay's refusal to follow an instruction from the Foreperson, in the circumstances of a working port and a safety sensitive work place, was serious misconduct. Given Mr Jay's comments during the investigation meeting that he would not do anything differently if a similar incident occurred in the future, C3 says the decision to summarily dismiss Mr Jay was appropriate.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Mr Jay. On behalf of C3, statements were provided from Rex Fuller, Branch Manager, Shilo West, Mafi driver, Caleb Rarere, Operations Manager, Olivia Carter, Human Resources advisor, Niall King, Stevedore Foreperson, Hamish McLean, Mount Manganui Manager and Holly Fuller, Stevedore Foreperson. All witnesses answered questions under oath or affirmation. The parties provided oral and written closing submissions.

[5] An interpreter of the Finnish language attended by AVL and assisted the Authority at the investigation meeting.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[7] The issues requiring investigation and determination are:

- (a) Was Mr Jay's dismissal unjustified?
- (b) Were concerns about bullying raised by Mr Jay with C3?
- (c) If so, did C3 take appropriate steps to address those concerns?

- (d) If C3 is found to have acted unjustifiably by dismissing Mr Jay what remedies should be awarded to him?
- (e) If not unjustifiably dismissed, was Mr Jay disadvantaged by C3's actions?
- (f) If any remedies are awarded, should they be reduced for blameworthy conduct by Mr Jay that contributed to the situation giving rise to his grievance?

Background

[8] In October 2023, Hamish McClean, Mount Manganui Manager, was recruiting for Mafi Operators and he employed Mr Jay. On 20 November 2023, during a pre-shift safety meeting, some of the C3 operators raised that they were struggling to understand his communications and Mr Jay but asked him to be patient with them. Mr Fuller, who was Stevedore Operations Manager, also spoke with Mr Jay around the same time about his radio communications. It had been raised by others because of difficulty understanding what was said.

[9] On 24 November 2023, Mr Jay complained to Mr McLean the radio communications he was hearing were unprofessional, predominantly because they were not about work and involved a lot of swearing. Because Mr Jay said he wanted to remain anonymous Mr McLean gave a general reminder to all staff that communications over the radio must be professional and should only relate to work.

[10] Over the next few weeks Mr Jay says he was on the receiving end of bullying conduct that involved one person targeting him. Mr Jay submitted a written hazard or incident report on 17 March 2024 saying this person was standing in front of gangs every shift purposely. This was causing a safety issue and it was hindering the Berth Master from doing their job. Mr Jay had also reported it to the foreperson.

[11] It transpires that this was a health and safety incident report form. These were available to staff to report near misses or incidents and they were put into a box. The normal process was for these to be collected and reviewed and discussed with relevant supervisors so corrective action or further enquiries could be undertaken if necessary. C3 has no record of this hazard report.

[12] Things continued and Mr Jay's evidence was of things becoming worse for him. He felt isolated. He tended not to eat in the meal room on breaks and kept to himself. On about 15 April Mr Jay told Caleb Rarere, Operations Manager, that he was having difficulty with an individual. It was explained to Mr Rarere that this person did not co-operate with him and this was disruptive to Mr Jay's work. Mr Rarere spoke to this person and instructed him to ensure he was co-operative and followed standard operating procedures.

[13] Mr Rarere asked the ship foreperson and duty manager to monitor the situation and keep an eye out for any workplace friction between the staff involved and report any concerns. No concerns were reported and Mr Rarere thought the issues had resolved.

[14] On 12 May 2024, Mr Jay submitted a second hazard report. It records he was verbally abused by two colleagues over the radio and asks can someone please stop this. On receipt of this Mr Rarere followed up and spoke with Mr Jay. The process that would be followed to investigate his complaint was explained and it was noted he would need to record a statement and provide further details if he wanted to make an official complaint. Mr Jay sent a text message on 17 May saying he no longer wanted to make the complaint. He thanked Mr Rarere for his response to the hazard report and acknowledged that action had been taken.

[15] C3's Harassment and Bullying Prevention Policy (the policy) requires managers and supervisors to ensure all staff understand the policy and understand what inappropriate behaviours may amount to harassment and bullying. If they are approached by someone with concerns about bullying they should act promptly, sensitively and take all practicable steps to prevent hazardous behaviours from continuing.

[16] The process for an alleged bullying issue is to speak to the individuals involved to ascertain the details of the allegation. Should there be substance to the allegation and the complainant wishes to pursue the matter then a formal investigation would be conducted. Written details would be obtained for an investigation meeting. At the conclusion of the investigation, a disciplinary meeting may be held and an outcome determined. Even though Mr Jay did not want to progress his complaint Mr Rarere took a further step because he wanted to ensure any potential bullying was addressed in

accordance with the policy and that all involved were aware of their obligations to ensure C3 provided a workplace where people felt safe. He gave staff copies of C3's Code of Conduct and the policy and had informal discussions with all involved.

[17] On 29 May 2024, an incident occurred that ultimately led to Mr Jay's dismissal. Holly Fuller, Stevedore Foreperson, was supervising Mr Jay and other staff during a vessel loading. There was a request over the radio for Mr Jay to move an empty trailer to make room for a loaded trailer to be transported alongside the vessel underneath the crane so logs could be lifted into the vessel. Observing that Mr Jay remained stationary in his truck and that he had not responded over the radio to the request Ms Fuller tried three or four times over the radio to make contact with Mr Jay but he did not answer her. When he did answer, he asked why the other employee could not pull his own empty trailer. Ms Fuller asked Mr Jay directly to move the trailer and he refused. There was some more dialogue but Mr Jay refused to follow Ms Fuller's instruction. Another Stevedore Foreperson heard the exchange and asked Mr Jay again to move the trailer.

[18] Things came to a head when another Stevedore Foreperson told Mr Jay to either pull the empty trailer or go home. Mr Jay was observed driving off the berth and did not return to for the rest of his shift. Someone else came off the vessel and moved the empty trailer. Operations had halted because the empty trailer was holding up the movement of the vehicles and trailers and the flow of logs from the wharf and onto the vessel.

[19] From Mr Jay's perspective this was not his trailer to move and in the exchange over the radio he had asked why he had to move it and why the rules had to change all the time. Mr Jay said he refused because this was part of the targeted behaviour he had been subjected to. Mr Jay did not disagree the workplace was a safety sensitive worksite or that the Stevedore Foreperson has oversight of operations including safety, but has consistently maintained that the bullying behaviour justified him not following Ms Fuller's or the other Stevedore Forepersons' instructions.

[20] The incident had occurred at approximately 2.00am and was reported to Mr Fuller later that morning. He logged an incident report. Mr Jay also sent a text to Mr Rarere that highlights his perspective about what happened:

Like I have tried to say he will never stop. 2.05amish... this is beyond my understanding... mean person. I got offered to leave early by Holly, so I parked up at 2.11am. incident is on camera most likely. who is this guy and why is he not leaving me alone.

[21] A disciplinary investigation was started in relation to Mr Jay's conduct. Statements were gathered. Mr Jay received a letter dated 4 June inviting him to attend a disciplinary meeting. All the statements were attached. Initially Mr Jay was of the view he had not received all the statements but he accepted at the investigation meeting that he had. The allegations at a high level were:

- exhibiting disrespectful behaviour over the radio;
- refusing to follow a reasonable instruction from both the other employee and Ms Fuller who was the Stevedore Foreperson on 29 May 2025;
- Leaving the shift;
- Breach of the Code of Conduct by failing to follow standard operating procedures that resulted in serious safety, error or damage situation.

[22] The disciplinary meeting took place on 6 June 2024. There was no question the conduct had occurred but Mr Jay's perspective was that his actions were justified because it was the other employee's job to move the trailer out of the way. He did not consider he had been disrespectful to Ms Fuller in not responding to her over the radio or following her instruction. Mr Jay told the Authority he expected to get a warning and was shocked that after a short adjournment he was advised the preliminary outcome was summary dismissal. The letter on 10 June 2024 explained:

In response you made it clear that you are unwilling to accept instructions from fellow team members. Additionally, you have admitted to not following the instructions given by the three Foremen. It is expected that all employees adhere to reasonable instruction. The request to move the empty trailer under crane 1 was a reasonable instruction necessary for maintaining the flow of operations. Your failure to follow this instruction and the subsequent decision to leave caused a slowdown in operations, directly affecting both the team and our customers.

I have concerns by the lack of willingness to follow reasonable instructions from not only the Foremen but all C3 employees. This situation has undermined my trust and confidence that similar issues will not arise in the future, posing a significant health and safety risk to C3. At times, you may be asked to change duties and maintain the efficiency of operations.

[23] Mr Jay was given an opportunity to respond before the final outcome was decided on. His email on 12 June noted he had never received a warning, or any correctional training, that their statement his behaviour could impact on all staff was a huge allegation. He said the request to move the trailer came 19 minutes before the shift change over and everyone was tired. It was reiterated he found the request to move the trailer to be unreasonable and he thought asking questions was the right thing to do.

[24] Mr Jay was given two options and he chose to go home thinking that would deescalate the situation. He was not told this would end his employment. He also noted he had made multiple complaints of bullying and unsafe behaviour and had received no response and that was why he was hesitant to move the trailer because it was part of a common theme. It was noted he loved his job and this would be a huge loss having implications for his mental health and wellbeing.

[25] On 13 June C3 wrote back and confirmed the final decision was serious misconduct and employment was terminated effective that day. In response to the issues he raised it was clarified that the impact of not following lawful instructions was on C3 employees Mr Jay worked alongside and the shift was still going so the concerns were relevant regardless of whether it was almost time to finish. It was clarified that the evidence was not of him asking questions but refusing on three occasions to comply with a lawful instruction. It was not accepted he was given two options, with one of them being to go home. In the context of Mr Jay refusing three requests to move the trailer the reference to moving the trailer or going home came from a third Foreperson who was attempting to assist in having the instruction complied with.

[26] In relation to the connection to Mr Jay's bullying complaints C3 reminded Mr Jay he had retracted his allegations and that reports of bullying had therefore been addressed. It noted those who had been accused had been spoken to despite the complaint not being formalised and then being retracted.

[27] A personal grievance claim was raised with C3 on Mr Jay's behalf on 2 July 2024 alleging the decision to dismiss was unjustified given Mr Jay's previous complaints about bullying. Summary termination was also said to be in breach of the good faith obligations on employers. C3 responded. It did not accept Mr Jay had a personal grievance claim. Mr Jay lodged his claim in the Authority on 5 February 2025.

Unjustified dismissal

[28] Assessment of the employment relationship problems raised by Mr Jay in the Authority require consideration of whether the investigation was fair and the decision to dismiss Mr Jay was justified by C3. In assessing whether C3's actions were justified, the test for justification set out in s 103A of the Act involves determining whether C3's actions were what a fair and reasonable employer could have done in all the circumstances at the time.

[29] Specifically, in considering C3's actions against the fair and reasonable employer test the Authority must consider:

- a. Whether, having regard to the resources available to C3, did it sufficiently investigate the allegations before taking action against Mr Jay;
- b. Whether C3 raised the concerns with Mr Jay before dismissing or taking action against him;
- c. Whether C3 gave Mr Jay a reasonable opportunity to respond to C3's concerns before dismissing Mr Jay;
- d. Whether C3 genuinely considered Mr Jay's explanation in relation to the allegations against Mr Jay before taking action against Mr Jay.

[30] The test for justification is an objective test and the Authority may not substitute the employer's decision with its own but is required to review the facts on which the decision was made to determine whether an employer acted justifiably. The Authority may also consider any other factors it thinks appropriate (s103A(4)). Minor defects in the process followed by the employer cannot in and of themselves, render an action unjustifiable if these did not result in the employee being treated unfairly (s103A(5)).

[31] Mr Jay has three main concerns about his dismissal and C3's decisions and actions affecting his employment. Firstly, the instruction to move the trailer was not reasonable because it was someone else's trailer to move and it was unfair and therefore unreasonable for the Stevedore Foreperson to require Mr Jay to move the trailer. Secondly, he says he should never have been dismissed for such a minor matter. Thirdly the incident involved the person he says had been targeting him in the workplace by taking actions that deliberately made things difficult at work. Mr Jay made complaints about this and either no action or insufficient action was taken.

Was the instruction to move the trailer a reasonable instruction?

[32] Ms Fuller gave the instruction to Mr Jay to move an empty trailer. Her evidence was that it was a reasonable instruction to give and explained what had occurred. She was already standing outside in the middle of the berth with another Stevedore Foreperson, when she heard the request from the other employee for Mr Jay to move the empty trailer from in front of crane one to make room for the loaded trailer. She heard no response from Mr Jay and tried to speak to him over the radio but he did not reply to her. He eventually said "why can't [the other employee] pull his own trailer?". Ms Fuller says she said words to the effect of:

Can you please pull the empty trailer from crane one so [the other employee] can deliver his trailer, and then after that could you please reverse the trailer from crane 3 so we can get the grab trailer to switch out the grabs?

[33] She recalls Mr Jay said no and she asked him one further time and Jay replied with words to the effect of “no [the other employee] can pull his own trailer.” Ms Fuller then asked Mr Jay “did you just say no?” and Mr Jay said again “he can pull his own fucking trailer, why do the rules change all the time.”

[34] In response to questions from Mr Jay about why she chose to ask him to move the trailer when she had an option to ask the other employee to move it she explained she asked Mr Jay to move the empty trailer because he was available and ultimately it seemed the easiest solution to her.

[35] Mr Jay says the other employee’s behaviour towards him was deliberate. He does not accept there is any other reason why the other employee did not move the trailer. Ms Fuller said she was shocked when Mr Jay made it clear he was refusing her instruction to move the trailer, which was why another Foreperson took over. She also said Mr Jay was empty and waiting which is why she discounted asking the other employee to move his own trailer on that occasion.

[36] It was open to C3 to find that Ms Fuller’s instruction was a reasonable instruction for a number of reasons. The Port environment is a safety sensitive site that is highly regulated. With that in mind, it was Ms Fuller’s role to oversee the loading at the berth she was assigned to. Her job was to oversee the loading operation. There are many moving parts on the wharf with Mafi drivers pulling full trailers alongside, the crane moving logs onto the vessel and then digger drivers were responsible for placement of the logs on the ship. All involved explained the flow they try to maintain in order to load the ship safely and as efficiently as possible.

[37] It was Ms Fuller’s call as the Stevedore Foreperson to ask the berth master Mafi driver (Mr Jay) who she could see was sitting stationary with no trailer attached, to move an empty trailer. Ms Fuller’s instruction was met with refusal and a question as to why. Her role included oversight of the safety of staff on the berth.

[38] It was within the scope of Ms Fuller's role to give a direction over the radio or in person to staff on the berth and expect that be carried out.

Was it a minor matter?

[39] Mr Jay was very surprised to receive the invitation to a disciplinary meeting with allegations that his conduct could be serious misconduct. Mr Jay says it was a minor matter and did not need to result in dismissal. He went to the disciplinary meeting expecting a warning. He noted the incident form lodged by Mr Fuller recorded the matter as being minor and not requiring any follow up and did not understand how if that was the case, C3 could reach a finding that his conduct was serious conduct.

[40] The incident report summarised the issue as a failure to follow instructions and ongoing tension within the Mafi driver group was recorded as the cause. The preventative action recorded was "Foreman resolved issue at the time and sent one of the drivers home early for follow up in the morning."

[41] C3 noted the Port is a highly regulated environment and safety sensitive work site. It has reporting requirements depending on the seriousness of an incident to more than one regulator, including Worksafe and Maritime New Zealand. It explained that while the initial incident report records the 29 May incident as minor there is a distinction between what might be considered serious for regulatory purposes as opposed to assessing the seriousness of employees conduct for disciplinary purposes. The Foreperson, in the absence of senior managers is the most senior person on site. They play a key role in ensuring the safety of all staff and the efficient operations on each shift. It is not optional to comply with an operational instruction from the Stevedore Foreperson.

[42] C3 said this was the heart of the matter from its perspective. During the disciplinary meeting C3 was not able to get any assurances from Mr Jay that he understood the seriousness of not following instructions from a Stevedore Foreperson while he was at work. The safety concerns extended beyond the failure to follow Ms Fuller's instruction and were also about the failure to respond over the radio and leaving to go home before a shift ended. It was explained radio communication is critical at the port because it is the main method of communication and allows all staff to be aware of operations. Mr Fuller explained:

The radio creates a safety communication loop. With the number of heavy machines, light vehicles and ground personal operating on the port it is critical that all staff have good radio communication to prevent serious incidents happening and to be able to call for assistance. Should someone not be responsive on the radio there is a risk that the individual or another may be placed in an unsafe situation without knowing especially as a lot of work involves lifting heavy products using ship cranes. For the Mafi drivers operating around and under those cranes it is seriously dangerous if they are in the wrong place at the wrong time and there is an equipment failure. They may also have had an unexpected event and need assistances.

It is important for a C3 employee to be a team player and be willing to change their plans to help others if they need to. The port environment is safety-sensitive and when someone refusing to adapt to a new plan or follow instructions can endanger lives.

[43] During the investigation meeting in answer to a question about whether Mr Jay would do things differently, Mr Jay replied categorically with a “no”. That was a key part of C3’s rationale for the conclusion it reached. This is recorded in the preliminary decision letter as concerns about trust and confidence. Mr Rarere and Mr Fuller both said they were looking for assurances this would not happen again but Mr Jay could not give them that. Without that they could not be satisfied the site was safe for Mr Jay or other employees given the nature of the workplace.

[44] It was reasonable for C3 to conclude the failure to respond on the radio and follow the Stevedore Forepersons’ instructions, on more than one occasion, was more than minor.

Should C3 have considered the concerns about bullying?

[45] It was agreed that Mr Jay had raised concerns about other employees on more than one occasion. The first was the 24 November text messages to Mr McLean. This was responded to with a toolbox meeting on radio protocols because Mr Jay asked for his identity to be kept confidential. Two more hazard reports were submitted about bullying. C3 accepts the first one was not responded to and could not explain what happened to that report but the second one on 12 May 2024 was responded to.

[46] The issue for Mr Jay in raising bullying in response to the allegations against him is that he accepted in May his complaint was addressed and he did not wish to take it any further. His communications with Mr Rarere confirm he was satisfied with the actions taken, appreciated it had been discussed with him and on that basis he withdrew his complaint. Ms Fuller also followed up despite what she described as the retraction.

She wanted to ensure the process was fair and that the complaint had been dealt with properly from an HR perspective.

[47] C3 had a comprehensive policy setting out the process for addressing and investigating bullying. Ms Fuller also checked what steps Mr Rarere had taken and noted copies of the Code of Conduct had been provided to those involved. No additional complaints had been received and there was no obvious examples of inappropriate behaviour at that preliminary stage. The hazard reports did not detail specific behaviours or conduct. Had Mr Jay continued with his complaint it would have been able to be investigated but with no investigation no conclusion can be reached about whether or not there was bullying.

[48] Nonetheless Mr Jay's conduct, even if there was a justification such as conflict with another employee, in refusing to follow an instruction in a safety sensitive workplace, left C3 in a position where it was open for it to reach the conclusions it did.

[49] Ms Carter's evidence recorded C3's position and the rationale for the decisions it reached as follows:

With Jay having accepted that he refused to move the trailer, despite several clear instructions, we communicated our preliminary finding that all allegations were substantiated, resulting in a decision of summary dismissal. It was explained to Jay that his continued lack of willingness to change his attitude, coupled with his failure to take ownership, had irreparably damaged the working relationship. This behaviour does not align with the standards and expectations of a C3 employee. Had Jay shown insight and remorse for his part in the incident, a lesser sanction may have been imposed however this did not seem appropriate given the stance Jay took. We simply did not trust him to perform his role safely.

[50] It was not safe to have an employee to both not respond on the radio and then refuse the instructions of the Stevedore Foreperson in the middle of loading a vessel. In these circumstances, C3's decisions about the seriousness and the appropriate outcome were decisions it was able to reach despite the employee's belief they had genuine reasons for refusing.

Mr Jay's dismissal was justified

[51] In assessing C3's actions against the fair and reasonable employer test in s 103A of the Act, it was justified in reaching the conclusions it did. The instruction was reasonable and lawful and C3 was able to reach the conclusion it did after considering

all the information gathered during the investigation. This is despite Mr Jay's justification because of the safety sensitivities inherent in a working port.

[52] The hierarchy with the Stevedore foreperson having particular responsibility for the environment on the port beside the vessel is an important part of managing the safety risks. That meant the issue was not minor and the finding the conduct was serious misconduct was a decision available to C3 in those circumstances.

[53] The decision that summary dismissal was an appropriate outcome was explained in terms of what was presented at the disciplinary meeting. With no assurance that this would not happen it was open to C3 to conclude dismissal was an appropriate outcome. The proposal regarding summary dismissal as the appropriate outcome was consulted on. Mr Jay provided a written response by email before the final decision was confirmed in writing.

[54] In light of the findings set out above, the dismissal was justified both substantively and procedurally.

Were there disadvantages?

[55] Although C3's actions were justified in terms of the dismissal, I have considered whether Mr Jay was nevertheless disadvantaged by C3's actions when there was no response to his first hazard report and arising from the confusion about his email statement during the disciplinary investigation.

[56] Under s 103(1)(b) of the Act a personal grievance for unjustified disadvantage requires that an employee's employment, or one or more conditions be affected to the employee's disadvantage by some unjustifiable action by the employer.

[57] C3 remained puzzled as to why the first report was not received and had a process and policy in place for dealing with these types of complaints, evidenced by the way in which the second hazard report was responded to. I also note Mr Jay enquired about what had happened to the first hazard report which meant C3 was initially unaware this was the case. Not responding to the first hazard report clearly disadvantaged Mr Jay because he was feeling unsafe in the workplace due to conflict with another employee but given a second hazard report was received and acted on and

that Mr Jay asked that it not be investigated, C3's failure to take action initially does not result in any unjustified disadvantage.

[58] With regard to Mr Jay's email statement during the disciplinary investigation, the confusion arose because of questions from Mr Jay about whether he had an opportunity to respond fully before the final decision was made. Ms Carter's evidence was that she received an email from Mr Jay about bullying after the investigation into his conduct had commenced. It is not clear whether that email was considered during the investigation and it may have been because the invite to the disciplinary meeting records Mr Jay's statement as being attached to all the investigation material.

[59] If it was not considered this would represent a disadvantage but it was unlikely to have changed C3's final decision. It appeared consistent with what Mr Jay presented at the meeting and his position at the investigation meeting with the Authority. Even if the additional email about bullying was not received, despite his concerns about bullying, it could not amount to a separate disadvantage because the finding above is that Mr Jay's conduct was capable of being considered to be serious misconduct despite his justifications. Bullying was a separate matter and it was reasonable for C3 to have thought the bullying allegations were withdrawn.

Outcome

[60] Mr Jay has been unsuccessful with his personal grievance claims against C3 and accordingly he is not entitled to an assessment of remedies.

Costs

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

[62] If the parties are unable to resolve costs, and an Authority determination on costs is needed, C3 Limited 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 Mr Jay will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[63] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹

Sarah Kennedy
Member of the Employment Relations Authority

¹ www.era.govt.nz/determinations/awarding-costs-remedies