

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 74
5392332
5394761

BETWEEN ALICE KIWA, JANELLE
KIWA and HAYDEN CLARK
Applicants

A N D PHIL'S PLACE LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicants in person
S Grice, Counsel for Respondent

Investigation Meeting: 25-26 February 2014 at Tauranga

Submissions Received: 26 February 2014 from Applicants
26 February 2014 from Respondent

Date of Determination: 4 March 2014

DETERMINATION OF THE AUTHORITY

- A. The application for non-publication order is dismissed.**
- B. All of the applicants were not casual employees, but permanent part time or full time employees.**
- C. All of the applicants were unjustifiably dismissed by Phil's Place Limited.**
- D. There was no contributory behaviour warranting any reduction under s.124 of the Employment Relations Authority Act 2000.**
- E. An order Phil's Place Limited pay Alice Kiwa:**
 - a) \$4,872 being lost remuneration pursuant to s.123(b) of the Employment Relations Act 2000;**

- b) **\$15,000 pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000.**
- F. An order Phil's Place Limited pay Janelle Kiwa:**
- a) **\$4,536 being lost remuneration pursuant to s.123(b) Employment Relations Act 2000;**
 - b) **\$15,000 pursuant to s.123(1)(c)(i) Employment Relations Act 2000.**
- G. An order Phil's Place Limited pay Hayden Clark:**
- a) **\$9,692.40 being lost remuneration pursuant to s.123(b) Employment Relations Act 2000;**
 - b) **\$15,000 pursuant to s.123(1)(c)(i) Employment Relations Act 2000.**
- H. An order Phil's Place Limited pay \$8,500 to the applicants as a contribution towards their legal costs pursuant to clause 15, Schedule 2 Employment Relations Act 2000.**

Employment relationship problem

[1] All of the applicants were employed by Phil's Place Limited until dismissed in July 2012. They allege they were unjustifiably dismissed on 18 July 2012 by Mr Philip Rudd following an altercation about his food.

[2] The respondent disagrees. It says the applicants were justifiably dismissed because they were casual workers and a genuine redundancy situation had arisen due to financial problems. It submits it followed a fair process leading to their dismissals for redundancy.

Non-publication order

[3] A previous application for a non-publication order for suppression of evidence and details leading to the identification of Mr Phillip Rudd had been refused.¹ At the end of the hearing, the respondent made a second application for a non-publication

¹ *Kiwa & Ors v Phils Place Ltd* [2014] NZERA Auckland 67

order. The new grounds were the likelihood of the applicants' previous representative, Max Whitehead, breaching their employment agreements by revealing information he has in his possession from this matter which may be confidential information. It submits the only remedy against Mr Whitehead is a non-publication order.

[4] Clause 10, Schedule 2 of the Employment Relations Act 2000 (the Act) allows the Authority to make an order that "*all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published*". In exercising this discretion, the respondent must show "... *exceptional circumstances which reveal the real risk that the administration of justice would be frustrated or rendered impractical if the evidence is published*"².

[5] There is a presumption that all evidence should be given in public and freely reportable³ subject to the Authority's ability to determine whether an investigation meeting "*should not be in public or should not be open to certain persons*" and to "*follow whatever procedure the Authority considers appropriate*" (ss.160(1)(b) and (f) of the Act).

[6] The respondent has not identified what (if any) confidential information is held by Mr Whitehead requiring non-publication, beyond the evidence before the Authority.

[7] The evidence of Mr Rudd shall form part of the written determination insofar as it is relevant. It cannot be a breach of the confidentiality provisions in the applicants' employment agreements for him or any other person to refer to the matters within the Authority's determination, given it is publically available. The Authority has no express power to prohibit publication of part or all of its decision itself.

[8] A non-publication order is not available to prevent potential breaches without a proper evidential foundation. In any event of breach, there are remedies available against Mr Whitehead for aiding, abetting or inciting a breach of contract under s.134(2) of the Act.

² *Lloyd-Barker v. Society for the Prevention of Cruelty to Animals Inc* (unreported) ERNZ Auckland AA334/09, 14 September 2009

³ *Davis v. Bank of New Zealand* [2004] 2 ERNZ 511

[9] In the circumstances, the Authority declines to grant the further non-publication order sought.

Issues

[10] The remaining issues arise:

- (a) Were the applicants casual employees?
- (b) Were the applicants dismissed on 18 July 2012 or for reasons of genuine redundancy?
- (c) Was the process leading to dismissal for redundancy what a fair and reasonable employer could have done in the circumstances?
- (d) If the dismissal was unjustified, what remedies should be awarded:
 - Have the applicants lost remuneration (s.123(1)(b) of the Act);
 - Should damages be awarded for hurt and humiliation (s.123(1)(c)(i) of the Act)?

Facts leading to dismissal

[11] The respondent owned a restaurant business known as Phil's Place located on the Tauranga Marina. The restaurant traded on the name of the respondent's (then) sole director and resident rock star, AC/DC drummer, Philip Rudd.

[12] Alice Kiwa was employed as a kitchen hand from 17 October 2011 until her dismissal in July 2012. She was paid \$14 per hour. She worked an average of 29 hours over a 40 week period.

[13] Janelle Kiwa was employed as a chef from December 2011 to 22 January 2012. She left due to a head injury. She was then re-employed on 24 June 2012 until her dismissal in July 2012. She was paid \$18 per hour. She worked an average of 42 hours over a six week period.

[14] Hayden Clark was employed as a chef from December 2011 until he was dismissed in July 2012. He was paid \$42,000 per annum.

[15] All three applicants signed contracts entitled "*Casual independent employment agreement*". The contracts included various references to casual employment⁴.

[16] On 18 July 2012, the applicants were working at the restaurant. Later that evening, Mr Phillip Rudd entered the restaurant and asked Hayden Clark for an antipasto platter. He instructed Mr Clark and/or Janelle Kiwa to deliver it to his boat. It was commonplace for Mr Rudd to order food and beverages for himself and his guests. He then left the restaurant.

[17] Once his meal was ready, Janelle Kiwa arranged for another employee to collect the meal and take it to the boat. However, this employee had been told by Mr Rudd's security guard that it was to go to his aircraft hangar. That employee arranged for the meal to be delivered to the aircraft hangar. Mr Clark was later told when it arrived at the hangar Mr Rudd was nowhere to be found.

[18] Sometime later Mr Rudd came back into the restaurant. He was angry. He kicked the back door in saying "*where is my f...ken meal*". Mr Clark tried to tell him that they had been told to take it to the aircraft hangar by his security guard.

[19] Mr Rudd then yelled "*you're all f...ken useless*", "*you're all f...ken fired*", "*drop what you are doing*" and "*I'll get the cleaners in tomorrow and a whole new team*". He then kicked the rubbish tin and left the restaurant slamming the door very hard. Mr Rudd does not dispute this series of events.

[20] There were customers in the restaurant seated and waiting for meals. Janelle and Alice Kiwa downed tools, gathered their personal belongings and left the restaurant. Mr Clark and another employee remained at the restaurant unsure what to do.

[21] Warwick Hall, restaurant manager, rang and asked to speak to Mr Clark. Mr Clark was told not to leave and to carry on. However, shortly afterwards, a security guard came in, collected Mr Clark's keys, told him to take his belongings and walked him out the door and off the premises. Mr Clark also understands the same security guard then removed dinners from the diners.

⁴ Clauses 4, 17, 19 and Acknowledgment, Applicants employment agreements

[22] On 20 July 2012, the applicants received a text message from another employee telling them there was a meeting at the respondent's lawyer's offices. There was no explanation what the meeting was about. Janelle and Alice Kiwa could not attend due to personal obligations. Mr Clark did attend.

[23] At the meeting, an apology from Mr Rudd was given by the respondent's accountant, Andrew Walton. He then discussed options for the future of the restaurant, including the possibility of closing it. Several staff were angry and wanted to know about their job security. Mr Walton told them they were still employed. Another meeting was arranged for 23 July 2012. No reason for the second meeting was given.

[24] Janelle and Alice Kiwa were told about the second meeting. Both were resistant about attending until another employee asked them to come to see what was going on.

[25] All three applicants attended the meeting on 23 July 2012. The applicants were told the purpose of the meeting was to discuss the future of the restaurant. Three options were raised namely making the restaurant work, closing for the winter period and closing down completely. The applicants were told Mr Rudd's preference was to close for a period during the winter months. The meeting was tense, staff were angry. No feedback was provided on any of these proposals. Most of the meeting was about staff seeking assurance about job security.

[26] On 25 July 2012, all three applicants received a letter from the respondent advising that their casual employment was terminated. Ms Janelle Kiwa was told her contract was terminated due to a 90 day trial period despite her previous employment.

[27] On 26 July 2012, all three applicants received a further letter from the respondent. It stated that following the meetings held on 20 and 23 July 2012, the respondent had decided the restaurant was to close over the winter period due to financial losses for the company effective 25 July 2012. It stated the applicants had been advised of their right to obtain legal advice and given an opportunity to provide feedback. Warwick Hall was available to provide a written or verbal reference and it reminded employees of the confidentiality provisions which continued to apply after termination of employment. They were advised that any breach of the provision would be treated seriously.

[28] Applications for personal grievances were filed by a number of applicants. They were directed to mediation. Mediations were arranged in Tauranga and Rotorua. These were unsuccessful in resolving these applicant's grievances.

[29] A hearing was set down in November 2013. This was adjourned to February 2014 due to the respondent's counterclaim and an application about Mr Whitehead's continued representation.

[30] The matter has now come before the Authority for decision.

Were the applicants casual employees?

[31] At the beginning of Mr Clark's evidence on the second day of hearing, the respondent conceded he was not a casual employee. Accordingly the Authority determines Mr Clark was not a casual employee. He was a permanent employee at the time of dismissal.

[32] The respondent submits Alice Kiwa and Janelle Kiwa remain casual employees because of the employment agreements they signed. It presented no evidence about the conduct leading to or following the signing of these agreements.

Contract of Employment

[33] Both Janelle and Alice Kiwa had similar employment agreements. Janelle Kiwa's agreement was signed 17 July 2012. Alice Kiwa's agreement was dated 13 October 2011.

[34] Clause 4 set out these applicant's work hours as follows:

"4. Work hours:

- (a) *Under the terms of this agreement, the employer **may** offer work to the employee from time to time, whether for a few hours, a day or a week. Where the work is available and the amount of work available will depend on the changing requirements of the employer. If work is offered there is no guarantee of the hours that will be available on any particular day. Once an agreed period of work has ended, the employer is not obliged to offer further work to the employee. The employee's employment will end at the end of each agreed period of work, unless the employee has been offered and accepted further work.*

- (b) *The employee will be offered work by a telephone call from the employer, or at the request of the Restaurant Manager of Phil's Place.*
- (c) *The employee is not obliged to accept, or remain available for, further periods of work offered."*

[35] There were other references to the casual nature of this employment throughout the employment agreement⁵.

Were Alice Kiwa and Janelle Kiwa casual employees?

[36] There is no statutory definition of a casual employee in the Act. The question of whether a person is employed as a casual employee depends on the mutuality of the intention at the outset of the employment and the nature of the work including its regularity, its hours and obligations imposed on the employee. The Courts have assessed whether employment is casual against the following characteristics⁶:

- (a) Engagement for short periods of time for specific purposes;
- (b) A lack of regular work pattern or expectation of ongoing employment;
- (c) Employment is dependent on the availability of work demands;
- (d) No guarantee of work from one week to the next;
- (e) Employment as and when needed;
- (f) The lack of an obligation on the employer to offer employment or on the employee to accept any other engagement; and
- (g) Employees are only engaged for the specific term of each period of employment.

[37] Alice Kiwa gave evidence about the conduct surrounding her acceptance of employment with the respondent. She stated at hearing she was "*employed like a permanent worker*". She had been hired by the previous manager, Leo Roberts. She was told she was working five days on and two days off. She worked weekly from October 2011 until dismissed in July 2012. Her work was dictated by a roster

⁵ Clauses 12, 13, 17 and 19 Employment agreement between Phil's Place Limited and Alice Kiwa dated 13 October 2011 and Employment agreement between Phil's Place Limited and Janella Kiwa dated 4 July 2012

⁶ *Lee v. Minor Developments Ltd t/a Before Six Childcare Centre* EmpC Auckland AC52/08, 23 December 2008 at [43]-[45]

prepared weekly each Sunday by the head chef. She was given no indication she would not be offered work. She was aware of the hours of other casual workers at the restaurant. They would usually work two to three days or half a day. She did not believe she was able to look elsewhere for work and had to take the rostered work. As she said, *"I took that job and that was it for me"*⁷.

[38] Janelle Kiwa gave evidence she had been contacted by the head chef, William Gould, to start work in June 2012. She had worked there previously. She was asked to come back and work full time between 40 and 50 hours per week. She was told staff are leaving, including the previous head chef. Mr Gould had taken over his job and was in the process of replacing staff. She was told she would have the previous head chef's days, being Sunday and Monday off and Tuesday to Saturday on. From her discussions with Mr Gould, she believed she was a permanent full time worker. At no stage did she believe her job was at risk. She worked there every week until dismissal. She denied her work was *"as and when needed"*. She believed she had continuous regular employment and was obliged to do the work.

[39] An employment agreement was offered to Janelle Kiwa after 4 July 2012. She went through the agreement and made notes. This included a note next to clause 4 work hours stating *"*. was originally offered part time work but upon starting was given full time roster with SUN/MON OFF"*⁸. She says she made the note by clause 4 to show she was working full time, not part time or casually. The restaurant manager, Warwick Hall, had told her she would start part time growing to full time. At the time she signed the agreement she was working full time hours. She signed it on 17 July 2012 and returned it. It was not countersigned by the employer.

[40] The wage records in the form of a pay summary were produced for Janelle and Alice Kiwa. It showed both were employed on a regular basis from the start to the end of their employment. Alice Kiwa's hours fluctuated but on average she regularly worked 29 hours or more for the majority of the 40 week period. There was a regular pattern of work.

[41] Janelle Kiwa worked for a shorter period. Her wage records evidenced full time work hours. On average she worked 42 hours per week from mid-June over a six week period.

⁷ Oral evidence A Kiwa 25/02/14

⁸ Employment agreement between Phil's Place Limited and Janella Kiwa dated 4 July 2012

[42] In the circumstances, the Authority determines all of the Applicants were not casual employees, but permanent part time or full time employees.

Were the applicants dismissed on 18 July 2012 or for reasons of genuine redundancy?

[43] Although the respondent does not dispute the applicant's evidence about the events on 18 July, it denies these applicants were dismissed. Even if they were dismissed, this was rectified by Mr Rudd's apology on 20 July 2012, Mr Walton's statement they remained employed and the additional payment the applicant's received for the period 18-26 July 2012.

[44] The Authority has no doubt these applicants were dismissed by Mr Rudd's actions on 18 July 2012. Mr Rudd was the sole director of the respondent at the time. The applicants were aware of his ownership and status within the respondent business. All of the applicants believed he could make decisions on behalf of the respondent.

[45] Mr Rudd's apology was not received by Alice and Janelle Kiwa. They were not present at the meeting on 20 July 2012. Hayden Clark gave evidence he did not believe the apology was sincere because Mr Rudd did not make it in person and it appeared to be aimed at trying to cover up what happened on 18 July. There was no evidence what the apology aimed to rectify other than attempt to excuse bad behaviour. It did not appear to specifically address the hurt and humiliation these applicants had suffered. The respondent made little effort (if any) to contact these applicants to ensure they attended the meeting where the apology was given. A general apology to staff was insufficient to rectify anything. It simply devalued the feelings of those whom had been present during the bad behaviour.

[46] Mr Rudd did apologise at the end of his evidence on 25 February 2014 to these applicants which was accepted, albeit 18 months after the incident.

[47] None of the applicants were aware of the additional payments until these proceedings and a holiday pay claim had been raised. The nature of the payments made after 18 July 2012 was unknown to the applicants at the time. Their final payslips and correspondence at the time did not identify what the additional payment was for⁹. The additional payment was described as "*termination pay*". Oral evidence

⁹ Exhibit O Brief of evidence Andrew Rutherford George Walton

from the respondent's accountant, Andrew Walton, confirmed the phrase "termination pay" referred to both their accrued holiday pay and "*pay in lieu*". At hearing the respondent could not identify what part of the termination pay for these applicants was "*pay in lieu*" (if any). The Authority is not persuaded there was an additional payment, and even if it did occur, all of these applicants should have been aware they remained employed to 25 July 2012 as a consequence.

[48] The statement by Mr Walton at the 20 July 2012 meeting that the applicants remained employed was only known to Mr Clark. Janelle and Alice Kiwa were not present at that meeting. They were not aware of that statement until evidence in these proceedings were filed.

[49] Hayden Clark recalls that statement being made at the 20 July meeting, but did not believe it. This was especially when the respondent started speaking about the possibility of the restaurant closing. He believes the timing and nature of these announcements were to cover up what occurred on 18 July.

[50] The restaurant had allegedly been in financial strife for some period of time. However, no financial records disclosing the restaurant's actual financial position at the time the decision was made were provided to the Authority.

[51] Despite being the decision maker, Phillip Rudd told the Authority he did not know what redundancy was. When questioned about his motivation for closing the restaurant, he gave told the Authority about his concerns of staff theft, long waiting times for meals and playing unauthorised music. He acknowledged these applicants were not involved in the thefts at all. His evidence indicated these concerns were his primary motivation for closure of the restaurant, not financial concerns.

[52] The respondent has now restructured and reopened the restaurant. The restaurant business is leased and the respondent paid a rental fee. Mr Rudd says it continues to lose money.

[53] Andrew Walton, the respondent's accountant gave evidence that prior to 18 July, the respondent was keen to make the restaurant work. Under examination by the Authority, he said the events of 18 July shook the foundations and "*brought forward the options*" including closing the restaurant. As Mr Walton said: "*whatever had*

happened on 18 July brought forward the need to stop the bleed”¹⁰. The impression from his evidence was that the closure of the restaurant became an option to avoid the consequences of what occurred on 18 July.

[54] In the circumstances, the Authority determines the applicant’s employment was terminated on 18 July 2012. The reasons for redundancy were not genuine. These applicants were unjustifiably dismissed.

[55] Given the above determination, it is not necessary to determine whether the process leading to dismissal for redundancy what a fair and reasonable employer could have done in the circumstances.

If the dismissal was unjustified, what remedies should be awarded?

Have the applicants lost remuneration (s.123(1)(b) of the Act)?

[56] All applicants have a personal grievance. Accordingly, they seek three months’ lost remuneration pursuant to s.123(1)(b) of the Act. All three applicants gave evidence of their attempts to mitigate their losses by seeking alternative paid employment.

[57] Hayden Clark and Alice Kiwa found employment more than three months after they were dismissed. Mr Clark’s employment was at a lesser status than what he had had previously. Ms Kiwa’s employment is at a similar status and rate.

[58] Janelle Kiwa found employment in or about 31 August 2012. It was at the same or comparable rate to what she had lost.

[59] Alice Kiwa worked on average 29 hours per week at \$14 per hour. Her lost remuneration over three months shall be \$4,872.

[60] Hayden Clark was earning \$42,000 per annum or \$807.70 per week. His lost remuneration over three months shall be \$9,692.40.

[61] Janelle Kiwa worked on average 42 hours per week at \$18 per hour. She lost approximately 6 weeks wages. Her lost remuneration for this period shall be \$4,536.

¹⁰ Oral evidence Andrew Walton 26/02/14

Should damages be awarded for hurt and humiliation (s.123(1)(c)(i) of the Act)?

[62] The applicants seek an award of compensation of \$15,000 each for hurt and humiliation pursuant to s.123(1)(c)(i) of the Act. It is accepted that there was no contributory fault by these applicants reducing remedies pursuant to s.124 of the Act.

[63] The dismissal was abrupt and harsh. These applicants were sworn at, told to leave immediately and Mr Clark was escorted from the premises.

[64] Alice Kiwa deposed to being scared and humiliated by Mr Rudd's behaviour on 18 July 2012. She had never been subjected to this type of behaviour at work before. She had enjoyed working for Mr Rudd and with the staff there. It affected her so badly she was diagnosed as suffering from depression and placed on a sickness benefit. She was prescribed antidepressants and found that she could not concentrate or work for a period of time. Despite her diagnosis, she continued to search for jobs. She had been proud of always having a job, working hard and never being on a benefit. It was humiliating having to borrow money from friends and relatives to survive until a new job could be found. This represented a significant loss of mana and status for her within her whanau and community.

[65] Janelle Kiwa was made homeless as a result of the dismissal. She had to bludge accommodation from friends and relatives. She could not afford to pay her bills. She had suffered a head injury and was unable to pay medical expenses pertaining to that injury as a result. When she could afford to go to the doctor he diagnosed her as suffering from depression and prescribed antidepressants.

[66] She was also subjected to false accusations she had stolen from Mr Rudd. The respondent had commissioned a report which identified employee thefts. The confidentiality with which it treated this information is unknown. Ms Kiwa's evidence was this was well known in Tauranga. Interviews with prospective employers included questioning about the alleged thefts at Mr Rudd's restaurant. When she refused to speak about it due to the confidentiality provisions in her employment agreement, prospective employers believed she must have stolen from Mr Rudd.

[67] Hayden Clark was in a similar position to the other two applicants following dismissal. He had to borrow significant amounts of money from friends and family to meet his commitments. He had to leave town in order to secure employment. He

eventually found a less advantageous job with reduced status in a neighbouring town. He has also been subjected to false allegations of staff thefts which he could not answer.

[68] All three applicants could not obtain any assistance from WINZ immediately following the dismissal. This was because they could not tell WINZ the reasons for their dismissal due to the confidentiality provisions in their employment agreements. As a result they were stood down for six weeks and could not access emergency benefits.

[69] Where a redundancy dismissal is carried out in a defective manner, distress compensation in the range of \$10,000-15,000 may be reasonable¹¹.

[70] Mr Rudd's behaviour on 18 July was scary and intimidating. It directly affected these applicants' physical and mental health, wellbeing and mana within their community.

[71] The confidentiality provisions and false allegations about these applicants involvement in staff thefts prevented them securing income and employment. The logical source of any rumours about theft would be the respondent who allegedly uncovered the thefts by other staff. It then tried raising the theft allegations and their effect upon these applicants as a reason to support Mr Rudd's application for non-publication.¹²

[72] An award of \$15,000 is appropriate for each individual applicant for the defective manner in which this dismissal was carried out.

Costs

[73] As the successful party, each of the applicants are entitled to a contribution towards their costs. The applicants' actual legal costs were \$8,533.25.

[74] The starting point for assessing costs is the Authority's daily notional tariff of \$3,500. This matter took two days. Accordingly the starting point is \$7,000.

¹¹ *Telecom NZ Ltd v. Nutter* (CA, 21/07/04) [2004] 1 ERNZ 315, 331 at [94]; *Wellington College of Education v. Scott* [1999] 1 ERNZ 98 (CA) at 103; *Aoraki Corp Ltd v. McGavin* [1998] 3 NZLR 276, [1998] 1 ERNZ 601 (CA)

¹² *Kiwa & Ors v Phils Place Ltd* [2014] NZERA Auckland 67

[75] There are no factors requiring reduction of the tariff. The fact these applicants were self-represented partway through hearing is not conduct justifying any reduction.

[76] There are several matters requiring an increase in the tariff. These are:

- (a) Three unsuccessful pre-trial applications by the respondent;
- (b) The unsuccessful counterclaim by the respondent.

[77] An uplift of \$1,500 to the daily notional tariff to reflect the above matters is warranted in the circumstances.

[78] There is an order Phils Place Limited pay \$8,500 as a contribution towards the applicants legal costs pursuant to clause 15, Schedule 2 Employment Relations Act 2000. The applicants may wish to direct the respondent make this payment directly to their lawyers and provide them with receipts.

[79] Accordingly the Authority makes the following orders:

A. An order Phil's Place Limited pay Alice Kiwa:

- a) \$4,872 being lost remuneration pursuant to s.123(b) of the Employment Relations Act 2000;
- b) \$15,000 pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000.

B. An order Phil's Place Limited pay Janelle Kiwa:

- a) \$4,536 being lost remuneration pursuant to s.123(b) Employment Relations Act 2000;
- b) \$15,000 pursuant to s.123(1)(c)(i) Employment Relations Act 2000.

C. An order Phil's Place Limited pay Hayden Clark:

- c) \$9,692.40 being lost remuneration pursuant to s.123(b) Employment Relations Act 2000;

d) \$15,000 pursuant to s.123(1)(c)(i) Employment Relations Act 2000.

D. An order Phil's Place Limited pay \$8,500 to the applicants as a contribution towards their legal costs pursuant to clause 15, Schedule 2 Employment Relations Act 2000.

T G Tetitaha
Member of the Employment Relations Authority