

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Leonard Patrick Kelly (Applicant)  
**AND** New Zealand Dairy Foods Pty Ltd (Respondent)  
**REPRESENTATIVES** Hugh Fulton, for Applicant  
Robert Towner, for Respondent  
**MEMBER OF AUTHORITY** Tom Woods  
**INVESTIGATION MEETING** 2 and 3 July 2002  
**DATE OF DETERMINATION** 26 September 2002

**DETERMINATION OF THE AUTHORITY**

**Employment Relationship Problem**

In a statement of problem received by the Authority on 17 December 2001, the applicant Leonard Kelly says he has a personal grievance against his former employer, New Zealand Dairy Foods Pty Ltd. The personal grievance is stated to be on account of his unjustified (constructive) dismissal on 27 November and allegations of an earlier unresolved disadvantage grievance whereby the respondent purported to vary the employment agreement between the parties. Mr Kelly claims unpaid wages and other entitlements as at 27 November 2001 and lost remuneration and benefits including redundancy compensation as well as compensation for hurt and humiliation as a consequence of his personal grievance.

The respondent denies that Mr Kelly was dismissed and says by way of a counter claim that he voluntarily resigned in breach of contract without having given the required notice. The respondent seeks damages of \$7,800.00 in that regard and a declaration that Mr Kelly breached his obligation of good faith to the respondent when he left.

**Factual background**

Mr Kelly is a Netware certified computer engineer. He obtained the Netware Certification Qualification in July 1999. The respondent operated a Netware Network operating system. In 1999 the respondent engaged an employment agency called Business IT Support, to find a Certified Netware Engineer (CNE) for the position of technical supervisor at its premises in Takinini. It is acknowledged as a specialist position requiring expert knowledge of a Netware Network operating system. In that respect a CNE qualification was a critical and essential part of the job. The job also involved the supervision and management of 6 staff who all were specialists in different areas of IT.

Mr Magee handled the management of the respondent's technical infrastructure at the time. The employment agency recommended Mr Kelly as a person suitable for appointment. Mr Magee conducted the employment negotiations with Mr Kelly. The respondent places importance on career development. Mr Magee acknowledged that Mr Kelly was looking for employment that would develop his CNE qualification and was told by Mr Magee or representations to the effect that the job would provide such an opportunity.

On 14 December 1999 Mr Kelly entered into an employment contract with the respondent having effect from 10 January 2000. The relevant terms of contract provided a commencement salary of \$58,500, a telephone rental allowance of \$282 per annum, annual leave of four weeks and provision for redundancy compensation of ten weeks' pay for over twelve months completed service plus twenty days sick leave should redundancy be relevant. The summary of the position description read:

*Responsible for management of the day to day Computer Infrastructure on all NZ Dairy Foods sites in line with NZ Dairy IT procedures and policies to ensure their maximum availability and performance. This includes planning and controlling additions to this infrastructure in conjunction with Group and site personnel.*

There was an issue whether a third page formed part of the position description. I have considered the matter and find that it does not. The page was unknown to Mr Magee. Other than that the wording is clearly inconsistent with the high importance that the respondent placed on Netware for the purposes of this job.

The letter of appointment advised that in respect of the job description some of the actual duties may change and that specific training would be made available to carry out "the full range of tasks in the job".

In April 2000 Mr Kelly undertook a performance review in which he was able to indicate his career direction. He desired to advance his CNE qualification and gain a Master Certified Novell Engineer (MCNE) in the GroupWise path. At this time he also thought it important to gain knowledge in Novell Directory Servers for UNIX. That was referred to as the PACE review. Then in October 2000, Mr Kelly had completed an IT Operations Departmental Review which portrayed a restructuring of the IT operations department to address amongst other things problems following the migration of Lotus Notes to GroupWise in October 2000.

Not long after Mr Kelly commenced employment, the respondent announced an intention to split off from New Zealand Dairy Group. The split occurred in September 2001. From April Mr Kelly was required to manage the Network split process and establish relationships with service providers for on going systems support. The primary relationship was with Datacom. Considerable overtime was used to manage the process and Mr Kelly was rewarded with 15 days leave on pay, which he took on 8 October 2001. Mr Scott returned to work on 29 October 2001.

In June 2001 the respondent employed Mr Scott in the position of Chief Information Officer. Mr Scott is responsible for the IT infrastructure working and developing strategies for future application. Mr Kelly reported to him along with 9 other employees. When Mr Scott joined the respondent company, it was in the process of splitting from its parent body the New Zealand Dairy Group. His immediate task was to formulate an IT strategy for the respondent. He said that initial consultations revealed that general computer users disliked the Email software and wanted faster machines with the latest Windows and Office applications and to replace the current Email with Microsoft Outlook.

In August 2001, Mr Scott presented what he referred to as his vision of an integrated modern IT system to a working group known as the IT Steering Group (the Executive Team) and the respondent Board. I have no doubt that at this point in time, Mr Scott's personal preference of a futuristic network operating system was Microsoft as his idea was to introduce to the respondent industry-standard network operating system and messaging systems. In the June 2002 edition of *Managing Information Strategies*, a document produced by Mr Scott, Windows NT is listed as the most common server operating system deployed in New Zealand. It is in effect the industry-standard network operating system that Mr Scott preferred.

The project had as its ultimate outcome the adoption of the Microsoft network system. The project however entailed two sub-projects, which involved the use of Microsoft systems. The first was to change the email from GroupWise to Outlook. The second required the adoption of the Thin Client model and the deployment of Office and Outlook via Citrix as with all the other software programs.

Mr Scott undertook to complete the project within the current IT budget. Substituting money that was to be spent on new desktop computers would finance the project. The need for the respondent to historically purchase new computers would be replaced by the use of Citrix technology.

In September 2001 Mr Scott initiated a project to test the feasibility of moving to a Thin Client infrastructure based on Citrix. He discussed the project with Computerland who he recognised as the respondents prime technology advisors. Computerland produced a first draft of the proposal on 6 September 2001. On the 18 September Mr Scott presented Mr Kelly a proposal document which I am satisfied was the first draft headed "Citrix and Wireless Feasibility Study" for comment. Mr Kelly responded the next day via email. He opposed the proposal and recommended that the PC replacements proceed as budgeted and that the Citrix project be deferred until the split from the Dairy Group is complete. Mr Kelly was critical of Computerland's involvement saying that they have "no knowledge of our systems". He supported Datacom as the primary service provider best suited to complete the Citrix integration should it proceed.

Mr Scott said he took Mr Kelly's views into account and felt that the Citrix project was in the best interests of the respondent. He continued to use Computerland.

On 27 September 2001, Mr Scott met with Computerland to discuss the project and work to be done. The project was at this meeting divided into three distinct tasks: the first two essentially preliminary projects of a full migration from Novell to Microsoft platforms. The first was the Citrix integration. It was agreed to finalise a proposal by 2 October 2001. A contract to conduct a feasibility study was in fact signed on 3 October. The second task concerned the GroupWise to Outlook/Exchange migration. The third task was the creation of an NT to Netware migration discussion document. This document was released on 13 November 2001.

On or about 19 October 2001, Mr Scott arranged a meeting with staff to inform them of a proposed restructuring of the IT department. At that meeting Mr Scott made reference of his intentions to replace Netware with Microsoft. Mr Kelly says that he first become aware of that from a work colleague who phoned him while still on leave.

Mr Kelly returned to work on 1 November 2001. Late that day Mr Scott advised Mr Kelly of the decision to go with Microsoft Outlook and that he was thinking of a complete migration to a Microsoft NT network. Mr Kelly did express concern that the decision would affect his career as a Netware engineer and that if the respondent proceeded with the change he would consider his position redundant. Mr Scott said he expressed no view on that situation but indicated that no final decision is made of the change to Microsoft NT and that if it occurred he would be offered the

opportunity to retrain in the Microsoft network system. Mr Scott said he would talk to Ms Walls the General Manger, Human Resources as to Mr Kelly's options.

Ms Wall in a prepared brief stated that Mr Scott did discuss with her Mr Kelly's situation. She said they talked about the proposed phasing out of Netware and the possible impact it might have on Mr Kelly's career. Ms Wall was led to understand that if the respondent company moved away from GroupWise, Mr Kelly would consider himself redundant. In assessing whether or not a position is redundant as a result of a change in duties, Ms Wall said it was standard company practice to assess it on the basis of whether the changes affect 50% or more of the employee's duties. In deciding Mr Kelly's situation Ms Wall decided:

*Peter satisfied me that even if a change in the network system occurred in addition to the proposed changes to the email system, only a small proportion of Len's day to day activities would be affected and certainly not more than 50% as the proposed changes were not fundamental to Len's role as Technical Supervisor. In addition, because Len's position was not disappearing, I concluded that this was not a redundancy situation and the question of redundancy compensation would not arise.*

On the 7 November 2001, Mr Scott informed Mr Kelly of Ms wall's advice of the situation. Reading the inevitability into the situation, Mr Kelly sent an email to Mr Scott on 7 November 2001. Mr Kelly had considered what Mr Scott told him and expressed the view that the decision put him in a position whereby his qualification, training and interest in Netware would no longer valid. He also indicated that he would not be the appropriate person for the job given the new technical requirements. The letter then read:

*From where I stand, the decision in which I had no tangible involvement has a direct impact on my chosen career. And for this and the above reasons I would have expected to have been given a choice as to how I might deal with this change. Without having to be the one to bring this rather obvious issue to light. As I have indicated to you before, the reasons mentioned I would have thought redundancy to be a fair and equitable solution*

Mr Scott met with Ms Wall on 12 November 2001 to consider a response and confirmed the earlier decision that no redundancy situation arises as in their opinion Mr Kelly's position remains unaffected and that his duties would not be significantly changed. Mr Kelly was given a letter to that effect on 15 November 2001. The letter read:

*As stated in the position summary of your position you are responsible for management of the day to day computer infrastructure on all of this company's sites. The fact a new network operating system is going to be run within that infrastructure does not change your position.*

*Employees of this company are expected to adopt to new methods and techniques introduced in the course of their employment.*

*Your letter of appointment states that any specific training you may need to carry out the full range of tasks in the job will be made available to you. Full training in windows NT and exchange has been offered to you and we would expect that offer to be taken up.*

The letter then stated:

*Now that the decision has been made to change the network operating system from Netware to windows NT it is time for you to accept such change.*

It was in this period that the respondent claims that a discussion occurred in which Mr Kelly was offered a "loyalty" payment as an incentive to retain him until the middle of 2002. Mr Kelly denies that such an offer was made. More certain however were overtures by the respondent that

notwithstanding the change of network systems, Mr Kelly's Netware expertise would still be required well into 2002.

It was also in this period, 13 November 2001 to be exact that Computerland released a draft discussion document headed "Infrastructure Upgrade for New Zealand Dairy Foods Ltd". The document set out the requirements of a full migration to Microsoft and proposed that the migration occur as one large infrastructure upgrade to be conducted separately but in conjunction with the Citrix feasibility study.

On Friday 23 November 2001 Mr Kelly responded by letter through his solicitor disputing the respondent's construction that a change from Netware to Microsoft is not a material variation of his employment contract. Mr Kelly then sought to invoke the respondents dispute resolution process to resolve the problem. On the Monday, 27 November 2001, Mr Kelly in the absence of a response notified the respondent that he accepts that it had repudiated his contract and therefore ceases employment with immediate effect. A request for redundancy compensation and other money due to him was made.

The respondent paid Mr Kelly \$1906 and on the grounds that Mr Kelly did not give proper notice, deducted days owing in lieu of notice from his final pay pursuant to his contract.

### **The respondents case**

In focused submissions, Mr Towner submitted that this is a case is of an employer having a suitable job for the employee, of wanting him to continue in its employ and offering the employee any necessary training.

Succinctly stated, the respondent says that Mr Kelly agreed to his position description, which remained unaltered in the course of his employment. The letter of appointment expressly contemplated a change in duties and that training would be provided in order for Mr Kelly to carry out the full range of tasks in the job.

The respondent says that Mr Kelly was appointed to manage the day to day computer infrastructure of the respondent company. The fact that the computer infrastructure changes does not necessarily alter the position of Technical Supervisor. The key accountabilities of that position continue to apply to whatever infrastructure is in place. Any technical or knowledge issues that might arise would be addressed by training.

In this case the respondent says it considered whether the change of infrastructure would render the position of Technical Supervisor surplus. The respondent decided that it would not. The respondent says it formed that decision based on its assessment of the nature of the role and Mr Kelly's capabilities to perform it. The respondent acknowledged that a change would require learning new knowledge and technical expertise from that previously understood but that training would be provided for that.

Overall, the respondent says that employees are expected to take on and adapt to new methods and techniques introduced in the course of their employment and that the change of infrastructure in this instance is a change of sorts contemplated in the letter of appointment.

The respondent says that in any event, Mr Kelly disqualified himself from any entitlement to redundancy pay as he left the company prematurely. The respondent says that at the time of him leaving, there was still work for him to do for at least 6 months. Furthermore, the respondent claims that Mr Kelly breached his employment agreement by not giving the requisite notice.

## **The applicants case**

The basis of the applicant's case is that the object of his employment contract was to service and supervision of a Netware operating system. The position description of Technical Supervisor was a specialised job requiring qualification and experience in the Netware system. The respondent according to Mr Fulton owed Mr Kelly reciprocal obligations giving him experience, status and enhanced capabilities in that technology.

The applicant concedes that it is an employer's prerogative to select and change its methods of operation and the technology it chooses. Mr Fulton submitted that an employer's prerogative is fettered by other contractual obligations. The legal principle that may determine the scope of a contract and what constitutes a variation equally applies in Mr Fulton's submission to situations of reorganisation and redundancy. Counsel referred me to Mazengarb's *Employment Law* (Vol 2, para 1025) where the right to work and the right to work in a particular career or at a status, is explained. There the learned authors expressed the view that in certain areas, such as the computer software industry, failure by an employer to provide for maintenance or development of skills might render an employee's future prospects of employment remote. That failure according the authors after citing English common law developments might well constitute repudiatory conduct.

In developing his submission, Mr Fulton citing *Department of Corrections v Harris [2001] ERNZ 426* in which the Court found that an employer's power to transfer (in the public service) is not absolute even in redundancy situations, submitted that in principle the same would apply in the exercise of a power to re-train. Such an exercise of power must be undertaken reasonably taking into account the aspirations and reasons of the employee. An employer cannot fall back on contractual rights when the exercise of those rights would deny an employee of the right for those matters to be fairly taken into account: *Marlborough Harbour Board v Goulden (1985) ERNZ Sel Cas 159; [1985] 2NZLR 378 (CA)*.

In this case, Mr Fulton submitted that the respondent failed to consider the foundation and aspirations of Mr Kelly's employment as a consequence of planning and deciding the migration to a new computer operating system. In particular, it is submitted that the respondent failed to identify the true nature of Mr Kelly's employment when it undertook to determine the facts of his employment status. It is submitted that the respondent assumed without discussion Mr Kelly's rights and unilaterally made assessment what it required of him. That assessment extended to the point of directing re-training and presuming he would benefit with a dual qualification.

Mr Fulton submitted that the respondent had no right to direct this change without his consent. It was submitted that Mr Kelly was within his rights to deny acceptance of the change and in the circumstances presented to him. It is a repudiation of an employment contract to announce that its terms or its performance is varied to new terms and conditions. In that regard, Mr Fulton submitted that there is no difference between a breach and a threatened or anticipatory breach.

## **Determination**

I accept that central to this case is the interpretation, application and operation of Mr Kelly's contract. The contract issues are not in dispute. I will address the issues in the order presented in the applicant's submissions. But first, I will comment on Mr Kelly's contract. I have no doubt on the facts that the job in question was a specialist job. Mr Magee made it clear that the respondent was looking for someone with the appropriate CNE qualifications in order to manage the company's computer infrastructure, which was a Netware Network operating system. In fact Mr Magee said a CNE qualification was essential for the job.

At this juncture it is important to put Mr Kelly's qualification in perspective. The evidence in this case simply confirmed to me that one can no longer form simplistic impressions regarding the world of information technology. It is a rapidly evolving industry. Fifteen or so operating systems are fighting for primary recognition in a fiercely competitiveness market. Along with that is an equally fierce branding war from which has developed and continue to develop highly specialised systems that are now so specialised that it is now an industry to maintain integration between them. At the top of the IT evolutionary ladder in the Darwinian sense, at least in the New Zealand context, are two operating systems: Windows and Novell Netware. Mr Kelly informed me and there is no reason to doubt his evidence that there are two main directions a person can take when moving into Networking as career. They are either Windows or Netware network operating systems. If you dedicate yourself to one or the other that is a career choice. Mr Kelly chose to become a Netware engineer because his considered assessment on options led to the conclusion that a CNE qualification is better regarded in the information technology industry than a Microsoft equivalent qualification. Mr Kelly obtained a CNE qualification. Obtaining a qualification is just the start. As with many careers experience is important. That is particularly the case in the IT industry where the maintenance and development of existing skills perhaps takes greater significance than other careers due to the rapidly evolving nature of the industry.

Mr Kelly accepted a job with the respondent clearly with the expectations to gain experience and advance his career as a Netware engineer. I have no doubt that in employment negotiations the respondent reciprocated his wish to be given the opportunity to advance his career in Netware. The respondent has a proactive policy encouraging career development as the PACE programme clearly acknowledges. Mr Kelly expressly advocated a desire to advance his current role and sought higher Netware qualifications. This now leads me to the job description. When Mr Kelly accepted the job the computer infrastructure as noted in the job description referred to the Netware networking operating system. The position Technical Supervisor and key accountabilities associated with that position all relate to the management and supervision of a Netware infrastructure. The letter of appointment indicated that duties associated with that position might change from time to time and that training will be provided.

There is no issue that an employer may select and change its computer infrastructure or operating system. The issue central in this investigation is whether Mr Kelly was obliged under his employment contract to work on any network operating system the respondent may choose. Mr Kelly says no unless it is Netware. In this instance Mr Kelly argues that his job as Technical Supervisor was confined only to managing and supervising a Netware system. He says the decision to migrate to Microsoft NT made his job redundant. The respondent says that was not the case and that Mr Kelly was obliged to accept the change and retrain in a different system.

It is trite to say that central to the meaning of redundancy, if to employ the words common usage as found by the Court of Appeal in *G N Hale & Son Ltd v Wellington etc Caretakers etc IUOW (1990) ERNZ Sel Cas 843: [1991] 1 NZLR 151 (CA)* is that the employer's termination of a particular worker's employment is attributable, wholly or mainly, to the fact that the position filled by the worker is, or will become, superfluous to the needs of the employer.

The facts are important. Mr Kelly's main concern was that the respondent was to adopt a Microsoft infrastructure. The respondent had not implemented the infrastructure upgrade but had commenced a Thin Client feasibility study with the intention of migrating the desktop computer environment from traditional "fat client" to Thin Client. That project is seen as a preliminary phase of a full migration from Novell to Microsoft platforms. Mr Scott made it ver clear that the respondent was to fully introduce industry-standard network operating systems and messaging systems from Microsoft. The implementation was simply perceived as a timing issue. It was to happen. That

intention was unequivocally conveyed to Mr Kelly in the letter dated 15 November 2001 in which the respondent stated that “a decision has been made to change the network operating system from Netware to Windows NT”. The letter then carried on to say that it is time for Mr Kelly to accept the change.

The respondent had taken upon itself to determine Mr Kelly’s entitlement to redundancy compensation in light of its decision to migrate to Microsoft. The core question is whether in the circumstances Mr Kelly’s position would be redundant. In other words, will his position become superfluous. I find that it would. I have considered the authorities relied on by the respondent in particularly the proposition that no employee has a right to insist on being made redundant as was argued in this case. I readily recognise that a worker is expected to adapt himself to new methods and techniques introduced in the course of his employment. However that principle has no relevant application in a redundancy setting through a comparative evaluation of core work of Mr Kelly’s position as Technical Supervisor of a Netware operating system, which would become redundant, contrasted with the position of Technical Supervisor of a Microsoft NT operating system. Although the position description remains substantively unaltered I am satisfied that the two jobs are fundamentally different. They represent two distinct career paths.

In similar circumstances explained by Palmer J in the *NZ Furniture* case, Mr Kelly had, in the material circumstances, a choice of continuing his employment, if he elected to work for the respondent in the new very different position as a Microsoft engineer. I am satisfied that if Mr Kelly had accepted this position, this employment change would effectively comprise a new career path for him, essentially removed from his job as a Netware engineer.

Mr Kelly declined to change his career path for personal reasons, which I find as compelling. He was able, in the material circumstances of this case, to freely make this choice without impacting adversely on his redundancy entitlement under his contract.

There is considerable substance in Mr Kelly’s claim that the respondent did not properly consult with him in order to establish the true nature of his employment and his position in deciding whether the infrastructural change would impact on his job. The respondent did unilaterally determine Mr Kelly’s best interests whereas such an assessment is primarily one for Mr Kelly to make or at least to materially contribute towards it. Such was the case in directing re-training and presuming that he would benefit dual qualification.

In different factual circumstances to those arising in this case, a suitable alternative position may, of course, avoid a redundancy situation. The offering of a suitable alternative position must in the first instance be a reasonable requirement. I do not consider that in the circumstances of this case Mr Kelly would be obliged as a matter of reasonableness to change his career and re-qualify as a Microsoft engineer.

This now leads me to consider the circumstances of Mr Kelly’s departure. The question posed by the respondent is whether Mr Kelly left voluntarily before he needed to do so. The true question always put in a grievance setting is, at whose initiative did the employment come to an end? Mr Kelly’s response is that the respondent made it clear to him that it did not intend to perform the obligations under his contract when it announced it would not apply the redundancy terms of the contract. Therefore, he felt entitled to cancel the contract claiming that he was not obliged to wait for the anticipated breach to occur.

The respondent says that at the time of Mr Kelly’s departure the redundancy had not actually arisen. His departure was a voluntarily resignation. As an alternative submission the respondent says that if

there was a redundancy then Mr Kelly resigned prematurely as there was still work to be done and an ongoing need for his services.

A redundancy situation can arise in circumstances that the position “will become” superfluous. The letter of 15 November 2001 is determinative of the respondent’s position in that regard. Clearly, Mr Kelly believed that the respondent would not accept his claim for redundancy. What options are then open to an employee when an employer threatens a breach of contract. The situation was well stated by Goddard CJ in *Taranaki Health Care v Lloyd* [2001] ERNZ 546: 556 in addressing a situation where one party repudiates the contract by making it clear that he does not intend to perform the obligations under it. His Honour stated:

*When that happens, the other party, the innocent party, may cancel the contract at once without waiting for non-performance. The repudiation by the contract breaker may be inferred from words (an unambiguously expressed intention not to perform some of the terms of the contract) or conduct (actual non-performance). There is no difference in law between actual breach and threatened breach, the latter being called anticipatory breach. The cancellation by the innocent party may be made known by words or conduct evincing an intention to cancel and it is not necessary to use any particular form of words so long as the intention is plain. The effect of cancellation is that neither party is obliged to perform the contract any further.*

The respondent’s repudiation is said to consist of its failure to apply the redundancy terms of the contract. Mr Kelly conveyed his acceptance of the repudiation in the letter of 27 November 2001. Although there was ongoing work, I conclude that Mr Kelly was entitled in the circumstances to cancel the contract at once without waiting for actual non-performance. In other words, he is not obliged to wait for the anticipated breach to occur. The respondent was adamant of its position as Ms Walls evidence clearly indicates.

Given my findings, I do not need to consider the respondent’s counter claim, as there was no breach by Mr Kelly leaving the employment without notice.

Therefore the investigation concludes that Mr Kelly has a personal grievance as claimed.

## **Remedies**

Mr Kelly seeks lost remuneration and compensation. I accept that Mr Kelly found immediate employment. I heard no evidence at the hearing of any hurt or humiliation arising from the dismissal. In the circumstances I am only prepared to confine remedies to outstanding wage claims including redundancy entitlement due to him under his contract.

The respondent admits that it deducted money from Mr Kelly’s final pay on account of the claim that he breached his contract regarding notice. I am uncertain as to the actual amounts that were deducted. Mr Kelly indicated in submissions that he was not paid holiday pay to the date of termination. He says he had 20 days annual holidays owing which according to his calculations totals \$5,520.00. Mr Kelly also claims unpaid salary (including expenses) as at 27 November 2001. The expenses amount to \$153.93.

Mr Kelly is entitled to be paid compensation rights for the fact of redundancy. It clearly represents a loss of benefit, which Mr Kelly might reasonably have expected to obtain if the personal grievance had not arisen. Mr Kelly claims such loss of benefit, which may be awarded under s 123 of the Employment Relations Act 2000. In that regard, Mr Kelly claims in total 11.8 weeks pay amounting to \$15,6757.66. The sum is in accordance to a formula set out in the contract.

Due to the imprecise nature of the claim, I will direct the respondent to pay Mr Kelly all remuneration (including accumulated leave and expenses) and emoluments due to Mr Kelly as at 27 November 2001. That includes, for the avoidance of doubt, monies accruing to Mr Kelly for a period of one month from, and including 28 November 2001 in lieu of notice.

The respondent is further directed to pay Mr Kelly redundancy compensation in terms of his employment contract.

**Costs**

Costs are reserved. I would encourage the parties to resolve the issue of costs themselves if they can, taking into account the usual award of costs in similar circumstances.

In the unlikely event that a resolution is not possible, the applicant is to file submissions with the Authority, and a copy to the respondent within 14 days of the date of this determination. The respondent will have a further 14 days to respond to the Authority and a copy to the applicant.

**Tom Woods**  
**Member**  
**Employment Relations Authority**