

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 25
3110156

BETWEEN

TRACY KUO
Applicant

AND

OZAC ARCHITECTS LIMITED
Respondent

Member of Authority: Michael Loftus

Representatives: Kate Henry and Kirby Kleingeld, counsel for the
Applicant
Brett Vautier, counsel for the Respondent

Investigation Meeting: 11 August 2021 at Auckland

Submissions Received: 23 August and 10 September 2021 from the Applicant
3 September 2021 from the Respondent

Date of Determination: 18 January 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Tracy Kuo, raised a number of claims of unjustified disadvantage. She says:

- (a) she was required to retrospectively prove various absences were attributable to illness;
- (b) she had the security of her employment threatened for various improper reasons:
and
- (c) she had been bullied.

[2] Ms Kuo also claims the respondent, Ozac Architects Limited (Ozac), breached the duty of good faith in that it misled her into believing she could work from home and failed to respond to attempts to discuss her fears about colleagues returning from China during the early stages of the covid pandemic there.

[3] Ozac is of the view it had issues it wished to address with Ms Kuo but was unable to proceed due to Ms Kuo's illness which she then extended until choosing to resign of her own volition in order to avoid a possible disciplinary enquiry. It denies any wrongdoing.

The Authority's investigation

[4] Early in the investigation I raised the point that given the content of the briefs of evidence and the resignation letter (especially its last paragraph) along with the provisions of s 122 of the Employment Relations Act 2000 (the Act) I considered there was a possibility Ms Kuo could have been constructively dismissed and I would consider that possibility.

[5] Ms Kuo proceeded on this basis and essentially replaced the bullying claim with one of constructive dismissal. Ozac, while reiterating constructive dismissal had not been pleaded, addressed the claim having been put on notice it would be considered.

[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 though there is discussion of the latter given this is a dispute and the submissions are crucial.

[7] This determination has not been issued within the three month period required by s 174C(3) of the Employment Relations Act (the Act). As permitted by s 174C(4) the Chief of the Authority decided exceptional circumstances existed to allow a written determination of findings at a later date.

Background

[8] Ms Kuo was engaged by Ozac as an architectural technician on 8 January 2018, with her terms of employment being stipulated in a written employment agreement. One of its terms provided an entitlement to 5 days sick leave per annum and there was a requirement she comply

with various policies including one pertaining to the use of sick leave. Also contained in the agreement was a provision under which a refusal to obey a lawful instruction could potentially be deemed serious misconduct.

[9] In August 2019 Ms Kuo was promoted but around this time her sick leave usage increased and she exhausted her entitlement. She attributes this to a medical condition and it was behind a request Ms Kuo made in late December 2019 for two days annual leave to be taken on 15 and 16 January 2020. She later advised the leave was required so she could undergo related pre-arranged and minor surgery but did not tell Ozac at the time.

[10] She says that around this time she also became concerned about the covid outbreak in China as a number of her colleagues were from China and had recently returned there or been in contact with others who had. She claims a number of colleagues were either exhibiting signs of covid or joking about it.

[11] On 24 January 2020, Ms Kuo did not arrive at work. Ozac says she did not follow the procedures relating to sick leave usage and advise her absence. She says she advised her supervisor. She attributes her absence to a days sick leave due to flu like symptoms which, on 28 January, she stated she had caught at work when she returned after the surgery.

[12] 28 January 2020 was the next day on which Ms Kuo was expected at work but she did not attend. Instead, she emailed asking she be allowed to work from home. She says she still had flu like symptoms but felt well enough to work from home. The email refers to covid and a reluctance to work in a “contained environment” where it might spread as her immune system was “running quite low.” The work from home request, an arrangement Ozac had not previously countenanced, was on the grounds that while she “... would like to keep up with the workload ... it’s a bit too risky for me to go into office while I am already sick”. Ozac takes issue with the idea Ms Kuo could work on the grounds she subsequently admitted she was bedridden for a week at this time (see [25 below]).

[13] Mr Zhou, a director of Ozac, replied advising they were discussing work from home arrangements but no decision had yet been reached. That said, Mr Zhou also wrote “at this stage stay at home if you feel uncomfortable.” Ms Kuo interpreted this as acceptance of her request. She adds that while she did not have all the tools required to work from home she decided to wait as Mr Zhou’s email had also said some decisions would be made that day.

[14] Further correspondence followed over the next few days with Ms Kuo asking what was happening so she could then make arrangements with her supervisor and Ozac advising they were continuing to look for ‘a solution’ but no decision had been reached.

[15] Ms Kuo claims that notwithstanding the lack of progress she did in fact work on 30 January performing project work and communicating with clients, though there was no direct communication regarding Ms Kuo’s status – leave or otherwise..

[16] On 31 January Jenny Ho, the assistant office manager, wrote asking whether Ms Kuo had a computer and the internet so as to be able to work from home. She also asked “How much longer do you need before going back to the company for work?”

[17] Also on 31 January 2020, and following the email above, Ozac issued a policy outlining the circumstances in which employees were permitted to request they work from home. The policy stated employees were “eligible” to apply if:

- (a) they had travelled to China or any other country in the last 14 days;
- (b) they had been living with people who recently travelled from China or any other country;
- (c) they had been in close contact with a confirmed coronavirus case; and
- (d) they had similar symptoms including fever, coughing, and difficulty breathing.

[18] While Ozac advised staff these were the only grounds of eligibility¹ the application form also contained an “other” category.

[19] On 1 February Ms Kuo advised Ms Ho she had everything she needed other than some software. She also advised she was still suffering flu like symptoms and wasn’t well enough to “fight for virus” (sic).

[20] That was followed on 3 February with an email advising what software Ms Kuo needed. The same day Ms Kuo completed the work from home application citing two grounds. One was that she had had similar symptoms while under the “other” heading she advised her “immune system run low after surgery. Caught flu in office after working for two days. Symptoms included fever, coughing and sneezing.”

¹ Email to all staff re ‘Company Policy for Work-from-home’ dated 31 January 2020

[21] The application was rejected that day with Ozac taking issue with the fact Ms Kuo never produced any medical evidence to support the claim her immune system was compromised or at such a level as to pose a risk. Ozac also takes the position that Ms Kuo's application suggested, via the use of 'included' in the past tense, that she was no longer experiencing flu-like symptoms and it is of the view she did not otherwise meet the criteria to work from home in accordance with the policy.

[22] Also on 3 February Ms Kuo advising that she assumed she was on annual leave as the work from home system had not then been established and asked she be debited three days annual leave. Ozac claims to have been baffled by this as sick leave would be paid while annual leave would not. That may have influenced what then occurred.

[23] On 4 February New Zealand introduced a requirement residents returning from China self-isolate for 14 days, though the policy had been announced two days earlier.

[24] On 5 February Ozac advised Ms Kuo her application to work from home had been unsuccessful. The rationale was that the policy was to cover covid, yet Ms Kuo had had flu. The email advised her condition was such she should instead take sick leave. The issue of her absence on 24 January was also raised with advice that notwithstanding the failure to advise Ozac as per the rules the company was treating it as sick leave. The email then went on to advise that as the absence had continued for more than three days a medical certificate was required. The email also advised that if still sick Ms Kuo could "continue to take sick leave without worrying about work" and someone else could cover her job. Finally, the email advised Ms Kuo would be paid for the work she had performed on 3 and 4 February.

[25] There was further communication on 5 February with Ms Kuo claiming she had told her supervisor of her illness on 24 January but failed to advise management as she was too sick. She also challenged the rejection of her work from home application on the grounds she had qualified under the "similar symptoms" heading. She also argued her later leave had been approved by Mr Zhou and asked how Ozac could provide a safe workplace when "the office is full of people with flu without wearing mask" and said she could not risk further illness given her recent surgery and flu that had led to her being bed ridden for a week. Ms Ho replied that evening and the earlier decisions remained unchanged.

[26] The next date on which Ms Kuo was due to work was 7 February but she took another days sick leave. She provided a medical certificate and continued to comment on recent events.

She asserted her leave between 28 and 31 January should be unpaid annual leave but after that date responsibility was Ozac's given its delay in developing a work from home policy and replying to her request in that regard. The email also advised Ms Kuo would no longer take two weeks leave previously planned for 21 February to 9 March. She would instead work from home but take annual leave on 13 and 14 February.

[27] Ms Ho replied saying a medical certificate for 24 January was still required and Ozac was reconsidering what had occurred given Ms Kuo's leave entitlements, the fact she had confirmed the absences were due to illness and that Ozac stood by its rejection of the work from home request. Ms Ho advised approval for leave on 13 and 14 February had to be granted especially as "you have recently taken too much leave". Finally, Ms Ho reminded Ms Kuo Ozac expected her back in the office on 10 February.

[28] Ms Kuo replied on 8 February, a Saturday. She advised she would return on Monday 10 February and continued to argue previous events with her position being formally confirmed by the raising of a personal grievance on 11 February. Ms Kuo claimed Ozac had inappropriately and unjustifiably determined her absence in the week of 28 January 2020 was to be sick leave and challenged Ozac's request she provide a medical certificate.

[29] In the interim, and on 10 February, Mr Kuo returned to work. That day Ms Ho sent an email advising there were no rules that required an employer to allow work from home. It reiterated Ozac has asked for a medical certificate and told Ms Kuo to take the request seriously.

[30] On 12 February the parties met to discuss issues raised by the grievance. Present were Ms Kuo, Mr Zhou, Ms Ho, Mr Song (the Supervisor) and Ms Zhu, Ozac's sole director and via a couple of holding companies its second shareholder along with Mr Zhou.

[31] About the meeting Ozac says Ms Kuo was now requesting the period 28 to 31 January and half a day on 5 February 2020 were retrospectively deemed to be unpaid annual leave. Its view remained that Ms Kuo absence was the result of her purported illness so the leave was sick leave and as a result the request for a medical certificate remained valid.

[32] Ms Kuo says little about the meeting other than she believed Ozac had accepted it could not force sick leave. Notes were, however, taken and Ms Kuo recorded the meeting and edited

notes thereof produced in the Authority. These would suggest that while the issues were canvassed the meeting was inconclusive.

[33] On 13 February 2020 Ms Zhu wrote advising Ozac considered Ms Kuo was not allowed to demand days taken off due to sickness be taken as unpaid annual leave and that Ozac retained the right to consider them sick leave. It followed they retained the right to demand a sick leave certificate.

[34] The email went on to advise that as a result the leave in dispute (24 Jan, 28 to 13 Jan and a half day on 5 Feb) would be treated as sick leave and a medical certificate must be provided. It advised Ms Kuo pay slips would be amended accordingly before going on to say:

In addition, combining the information we have heard so far and how you have been acting/reacting these days, we hereby to reasonably tell you we have to organise a work-related performance investigation on you.

[35] Ozac says this was the result of numerous issues being raised during this period concerning Ms Kuo's historical work performance and it considered it necessary it implement a formal process. Ozac claims that at no time did it predetermine a decision as to whether disciplinary action would be required but unless a formal process was followed it would not be in a position to take action. In oral evidence Ms Zhu claimed this arose from the fact Mr Song had expressed serious concerns though then said he never raised them, at least with her. She said "He didn't speak to me – might have to others" and once she heard she asked him for a report on Ms Kuo "true performance".

[36] Ms Kuo responded disputing Ozac's assertions on 18 February. That prompted a further exchange with Ms Zhu demanding a medical certificate by 5pm 20 February or "a formal notice would be issued". Ms Kuo responded that she thought Mr Zhou had conceded Ozac did not have the right to enforce sick leave and issues concerning the status of her previous leave had not been finalised. The exchange continued with no satisfactory conclusion.

[37] On 19 February 2020 Ms Kuo did not, once again, appear at work. Instead, she saw her doctor who provided a medical certificate, forwarded to Ozac at 4.16pm, advising she was unfit to work for a period of 14 days. She says this was the result of Ozac's behaviour and the work related stress it induced. Ozac complains the medical records show no clinical tests were carried out and the doctor simply relied on patient comment and did not distinguish the investigation into her employment situation.

[38] At 6.01pm Ozac emailed Ms Kuo. The email raised a multiplicity of performance concerns which covered issues as diverse as a failure to deliver timely drawings which led to improper delays to a project, poor time management and making inappropriate comments about Ozac which “spread” to clients. It required Ms Kuo’s attendance at a disciplinary meeting on 4 March 2020 but advised “We do not intend to discuss the subject matter of the proposed meeting in advance however if you have any questions please let me know”. The email advised the consequences of an adverse finding might include dismissal.

[39] Shortly thereafter there was a further email advising Ozac was shocked and worried about the 14 day medical certificate as Ms Kuo had “looked quite well this morning”. Given what had passed Ozac demanded a second certificate from a medical practitioner of its choice.

[40] Ms Kuo did not respond till 24 February when her solicitor sent a letter to Ozac’s then solicitor disputing a suggestion her situation warranted an enquiry into whether or not she could be dismissed for medical incapacity. Ms Kuo also claims she heard from colleagues that Ozac was “trying to get rid of her” that same day.

[41] On 27 February Ms Kuo’s solicitor received an email from Ozac’s again requesting a further medical examination.

[42] On 28 February 2020 Ms Kuo raised a further personal grievance for unjustified disadvantage. It reiterated matters raised in the original personal grievance and added a claim the disciplinary process had been commenced in retaliation for the original grievance.

[43] On 3 March 2020 Ms Kuo provided a further medical certificate stating she would not be in a position to return to work until “settlement” had been reached. It was subsequently amended to state she would not be able to return to work for a period of two weeks.

[44] Ms Kuo did not attend the disciplinary meeting planned for 4 March 2020. and nor did Ozac attempt to organise a new date.

[45] On 18 March 2020, the date on which Ms Kuo was due to return to work, she gave notice of her resignation effective 15 April. The letter finishes with:

Given the Company’s treatment of me and the negative effect this treatment has had on my health, I feel that I have no other option than to resign from my employment.

[46] That was followed on 19 March 2020 by a further medical certificate advising, amidst other things, that “I do not think her current work environment is good for her health. Please offer your consideration in allowing her to be off work for a further 2 weeks as being at work is currently detrimental to her health.” The certificate did not state Ms Kuo was medically unfit to work but did suggest improvements that had been witnessed were the result of her having been absent from the workplace. It also stated her condition would improve as a result of its cause being removed and concluded she should have a further two weeks off work.

[47] Ozac portray this as a failure to have further medically approved sick leave which it simply is not.

[48] On 20 March Ozac advised that due to the resignation it would no longer pursue the disciplinary action. Ozac also asked that Ms Kuo shorten her agreed notice period but she did not respond and nor did she return to work on the expiry of her last medical certificate on 3 April or otherwise communicate with Ozac. That said there was further communication from her doctor on 6 April which suggested Ms Kuo “have an additional 2 weeks off work as “I continue to believe that her current work environment would negatively impact her health”.

[49] As events transpired Ms Kuo did not return before the expiry of her notice period on 15 April.

[50] While Ozac takes issue with the fact these medical reports contained no detail or explanation it chose not to raise any issue “which may have aggravated the applicant’s condition and simply allowed her to remain off work”.

[51] Ozac instead placed its faith on resolving the issues at either a disciplinary meeting or an MBIE Mediation Ms Kuo had arranged. The first never occurred and the second did not resolve the issues.

Analysis

[52] As already said Ms Kuo claims, as amended (see [4] and [5] above), are that she was:

- (a) Unjustifiably disadvantaged by having her absences in late January/early February retrospectively classified as sick leave and then demanding she provide medical certificates to justify them;

- (b) Unjustifiably disadvantaged by having Ozac threaten the security of her employment by threatening 'action' if Ms Kuo did not provide a medical certificate and then raising the performance allegations for improper reasons:
and
- (c) Unjustifiably and constructively dismissed.

[53] In addition there is the claim Ozac failed to act in good faith. A penalty, partly payable to Ms Kuo, is sought.

[54] Ms Kuo has raised two disadvantage claims which while pleaded separately I shall consider together as the evidence leads to a conclusion they are intrinsically linked.

[55] Arguing in support of her claim she was disadvantaged by having her absences retrospectively classified as sick Ms Kuo's submissions rely on the facts, largely ascertained from the correspondence and as asserted by her. She says it was unreasonable for Ozac to make its decision given it had been in receipt of a request Ms Kuo wished to work from home and, having responded that it was working on a policy that might allow her too, advised she could stay at home.

[56] A similar approach is taken with respect to the claim she was then disadvantaged by reason of the threats when she failed to produce the medical certificates required to support a claim for sick leave.

[57] Against the claims Ozac takes the approach it was doing nothing more than exercising its right to question Ms Kuo's performance, her failure to comply with its policies and the impact her absences were having on the business. As with Ms Kuo, Ozac's approach also relies on the facts and a favourable interpretation of them.

[58] Essentially, and for a claim such as this to succeed, there are three things Ms Kuo must establish. They are that there was an action or actions which disadvantaged her and which were unjustified.

[59] Having considered the evidence and submissions I conclude Ms Kuo has succeeded with her disadvantage claims and in doing so rely upon a couple of key concessions made by Ozac in oral evidence.

[60] While the duty of good faith requires both parties be active and constructive in maintaining a productive employment relationship which includes a duty they be responsive and communicative I have no qualms in concluding the duty is greater on an employer who later intends relying on its communication in a disciplinary setting. It must make its requirements clear and remove any ambiguity.

[61] In this instance I must conclude Ozac has fallen short.

[62] First there was the emails of 28 January. There Ms Kuo expressed concerns about returning to the workplace and asked she be allowed to work from home. To that Mr Zhou replied she could, at that stage, remain at home. He never said under what conditions or otherwise qualify that statement. Given the issues Ms Kuo had raised and a response doing no more than advising Ozac was considering a work at home process and permitting her to stay at home it was, in my view, entirely reasonable for her to interpret that as a positive response to her request.

[63] Furthermore, Ms Kuo followed up the next day and again the response did nothing more than say we are still looking at a work from home policy. Again, Ms Kuo was not given any reason to consider her absence was anything other than approved, nor I must add was she given any reason to consider her absence was considered to be sick leave.

[64] Given the issues she had raised this could, as she says, be easily seen as a positive response to her concerns especially as there is nothing to disavow her of that view. If anything, the intimation is her request would be granted and that is apparent from her email of 1 February in which she confirms she has her computer (though inadequate software) and remained sufficiently unwell to work in the office. Again I note she followed up on 3 February and again there was no response to disavow her of a view her absence was both approved and considered work from home pending the policy and a consideration of her request under it given the initial request this be permitted.

[65] Here I must also comment on the fact the draft work from home policy had by then been issued and again issues arise. The policy has an apparent inconsistency in that it has an 'other' ground under which employees might request they be allowed to work from home yet the body of the policy suggest approval was limited to staff who displayed one of four express criteria.

[66] It was then things unravelled with Ms Ho raising the possibility the absence was in fact leave. Ms Kuo's response was if that was the case she wanted it treated as annual in the absence of the policy – she did not want it treated as sick despite evidence she was unwell. Given she had actually had her absence approved without caveat I would have to conclude she was never on leave and this was a generous concession.

[67] Notwithstanding that Ozac now continued to argue it was sickness and while there may be an argument it was entitled to do so for the absence on 24 January it was not entitled by reason of having authorised the absence permitted to do so thereafter. That means the demand for a medical certificate was invalid as such a demand relied on sickness exceeding three days. Given the later approval of absence on the 28th, the next working day, without ascribing it to sickness the actual absence, if there was one, was only a single day.

[68] Here I must also reference one other point and that is that while Ms Kuo advised that she was ill to some extent she remained adamant that that did not preclude her working from home. Given the initial approval she work remain home in response to request she be allowed to work from there this becomes irrelevant – at least initially work from home had effectively been approved.

[69] From this point I will simply say things deteriorated with Ozac continuing to pursue its invalid requirement for a medical certificate and instituting disciplinary action which while including additional items also contained a threat of action up to and including dismissal. In other words Ms Kuo's employment was placed at risk.

[70] It follows there was an action which as disadvantageous to Ms Kuo and in which her employment was placed at risk. The action is, given the reasons I have already discussed, unjustified.

[71] While the interaction between the parties intensified and it was this that led to the claim of bullying I need consider that no further as the claim was not pursued. It was instead replaced with the claim of constructive dismissal.

[72] In *Auckland etc. Shop Employees etc IUOW v Woolworths (NZ) Ltd*² the Court of Appeal held that constructive dismissal includes, but is not limited to, cases where a breach of duty by the employer causes an employee to resign.

[73] The breach must be repudiatory as opposed to a nuisance or unpleasantness and there must be a causal link between the employer's conduct and the tendering of the resignation.³ Resignation in response to that conduct must also be foreseeable.⁴

[74] Notwithstanding the evidence about the escalating tension between the parties over the refusal to approve working from home, the demands for a sick leave certificate and Ozac's escalating dissatisfaction with other aspects of Ms Kuo's performance when asked why she resigned Ms Kuo clearly stated it was because she had a new job and did not attribute the resignation to the other matters.

[75] Further questioning elicited the fact the job was with a friend and had been a possibility for some time. Indeed they suggest that it was so well advanced Ms Kuo never intended returning to Ozac and the medical certificates and discussions which occurred over late February and March were designed to ensure that was the case while she finalised her new employment. With those answers Ms Kuo lost any chance of establishing she had been constructively dismissed.

[76] I have concluded Ms Kuo was not constructively dismissed but that she had suffered an unjustified disadvantage when Ozac concluded her initial absences were sickness and demanded a medical certificate.

[77] I have not considered the later events in any great detail as while discussed in evidence Ms Kuo had (a) dropped the bullying claim; (b) did not assert they were an issue to any great extent and notwithstanding the medical certificates and referrals in them to the adverse work environment undermined this to a great extent by accepting her doctor, who did not give evidence, was working on the basis of what she had been told by Ms Kuo and, more importantly, the evidence which leads to a conclusion she was trying to ensure a continued absence pending conclusion of her new work arrangements. Here I also note a robust assertion

² (1985) ERNZ Sel Cas 136; 2 NZLR 372 (CA)

³ *Z v A* [1993] 2 ERNZ 469

⁴ *Weston v Advkit Para Legal Services Ltd* [2010] NZEmpC 140

of her rights and position in the correspondence along with the fact she did assert those by raising the initial personal grievance.

[78] That said the conclusion a grievance exists raises the question of remedies. In her statement of problem Ms Kuo sought lost wages and compensation. The wages sought, given the new job, are limited to “the period of unpaid sick leave from 19 February 2020 until her employment terminated. The amount sought was \$9,824.61.

[79] For two reasons this claim must fail. The first and most important is Ms Kuo had exhausted her entitlement to sick leave so she would not have been paid in any event once the medical certificates were provided. The second is any chance I might have overlooked that were undermined by the answers referred to paragraph [77] and notwithstanding the certificates question over their veracity.

[80] That leaves compensation. Here I accept there was some harm with the way Ms Kuo gave her evidence eliciting confirmation she was hurt by Ozac’s initial approach and its insistence on a demand it had no right to pursue. Having considered that evidence and current compensatory levels, I consider \$10,000 appropriate.

[81] The conclusion remedies accrue means I must also consider whether or not those remedies should be reduced by reasons of contributory conduct.⁵ Ms Kuo’s success is in respect to a relatively narrow issue – namely Ozac’s demands based on an incorrect assumption about illness it had effectively conceded when approving the absence. She can not be considered to have contributed to that.

[82] Lastly there is the claim for a penalty. It is based on an assertion Ozac misled Ms Kuo over her ability to work from home which is a breach of the duty of good faith. For two reasons I decline to consider that. The first is that at the heart of Ms Kuo’s success so to penalise would essentially penalise Ozac twice. The second is that the evidence is that Ms Kuo was also less than forthcoming in some regards with an example being her initial failure to fully advise Ozac of the reasons for her absence. As already said the duty to communicate openly operates two ways.

⁵ Section 124 of the Employment Relations Act 2000

Conclusion and Orders

[83] For the above reasons I conclude Ms Kuo has a personal grievance in that she was unjustifiably disadvantaged. Her other claims fail.

[84] As a result I order Ozac Architects Limited to pay Tracy Kuo the sum of \$10,000 (ten thousand dollars) as compensation for humiliation, loss of dignity and injury to feelings pursuant to section 123(1)(c)(i) of the Act.

[85] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves but if they are not able to do so and an Authority determination on costs is needed Ms Kuo may, as the successful party, lodge a memorandum on costs within 14 days of the date of issue of this determination. From that date Ozac will then have 14 days to lodge any reply memorandum. The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.⁶

Michael Loftus
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs, see www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.