

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 223/10
5164741

BETWEEN MICHAEL LOWRIE
 Applicant

AND NEW ZEALAND STEEL
 LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Anne Marie McNally for Applicant
 Philip Skelton for Respondent

Investigation Meeting: 16 March 2010

Determination: 11 May 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] New Zealand Steel Limited (NZSL) dismissed Michael Lowrie on 19 May 2009.

[2] NZSL manufacturing manager Garry Toner made that dismissal decision. In a letter to Mr Lowrie dated 21 May 2009 Mr Toner gave the reason for the dismissal as being that:

“... while you remained subject to a current final written warning issued on 16 December [2008] for insubordination, on 29 April [2009] you swore at and made offensive and insulting statements to your supervisor in front of other employees.”

[3] Mr Toner’s letter said that on 29 April Mr Lowrie had questioned in “*an abusive and demeaning way*” whether his supervisor was concerned about employee safety and had accused his supervisor of “*f...ing hiding behind his manager’s back*”.

[4] Mr Toner wrote that he accepted at the time of incident Mr Lowrie had taken issue with a decision about not carrying out a safety maintenance procedure that day but said “*the manner in which you chose to express your concern*” was unacceptable behaviour. He then referred to the existing final written warning and wrote that neither he nor the supervisor had any confidence Mr Lowrie’s “*behaviours and approach*” to his supervisors would be any different if the employment relationship were allowed to continue.

[5] Mr Lowrie, through his union, promptly raised a personal grievance against his dismissal and advised that he would be seeking reinstatement. The union’s letter noted Mr Lowrie also contested the final written warning that preceded the dismissal and the two issues would need to be addressed together.

The issues

[6] The issues for determination by the Authority are:

- (i) whether a personal grievance about the final written warning issued to Mr Lowrie on 18 December 2008 was raised on his behalf within 90 days; and
- (ii) if not, whether leave should be granted to do so under s114(3) of the Employment Relations Act 2000 (the Act); and
- (iii) if the grievance was raised or leave is granted, was the warning justified; and
- (iv) whether NZSL’s decision on 19 May 2009 to dismiss Mr Lowrie meets the test of justification under s103A of the Act; and
- (v) if not, what remedies are required (after considering mitigation and contribution); and
- (vi) is reinstatement practicable?

The investigation

[7] For the purposes of the Authority’s investigation written witness statements were provided from Mr Lowrie, the union’s former site convenor Peter Elsley, Mr Toner, NZSL supervisor Tibor Horvath, NZSL acting vice-president Barry McLeod and NZSL human resources adviser Linda Simmons. The parties also lodged all documents considered relevant to the matter. At the Authority investigation each

witness, under oath or affirmation, confirmed the contents of their written statement. Mr Lowrie, Mr Toner, Mr Horvath and Mr McLeod also each answered questions from the Authority member or the parties' representatives. The representatives provided oral closing submissions speaking to written synopses.

[8] In preparing this determination I have reviewed all the evidence and submissions. In accordance with s174 of the Employment Relations Act 2000 (the Act) I need not set out a record of all that material. Rather this determination states findings on the facts and legal issues and expresses the Authority's conclusion on matters for determination.

Grievance on final written warning not raised within 90 days

[9] Mr Lowrie submits that a personal grievance was raised about the final written warning issued to him on 18 December 2008 within the required 90-day period.

[10] Mr Elsley had foreshadowed in a disciplinary meeting before the warning was issued that a grievance would be raised. And the minutes for the 12 March 2009 meeting of a joint union-management committee state: "*Peter [Elsley] confirmed that written advice for Mike Lowrie pg is pending*".

[11] Mr Lowrie submits that this supports a conclusion that NZSL was well aware of the grievance being raised and this need not have been done in writing.

[12] While a grievance may be raised orally, it must satisfy the requirements of particularity. This was not done in the present case. Rather the reference to "*pending*" written advice in the March committee minutes is, I find, most likely to be to the intention to provide the necessary particular details or grounds for a grievance which had not yet been properly raised with NZSL. This is supported by a further reference in the minutes of the committee meeting for 16 April 2009 which again record Mr Elsley confirming that Mr Lowrie's grievance was "*still pending*". While Mr Elsley had also discussed the matter with Mr McLeod within this period, I accept Mr McLeod's evidence that this conversation could not be construed as accepting on NZSL's behalf the raising of a grievance without providing the grounds and details necessary to address it.

[13] As noted in the Employment Court decision in *Creedy v Commissioner of Police*, the personal grievance procedures are:¹

aimed not at preserving rights to litigate past or current injustices at some indefinite future time at which any employee may elect to revive them. Rather, the procedures exist to have alleged injustices identified and addressed quickly, and initially at least, informally, and directly between employer and employee ...

[14] In the present case I find Mr Lowrie did not meet those requirements within the 90 day statutory period.

No exceptional circumstances to raise grievance on warning out of time

[15] Mr Lowrie submitted that, in the event of the Authority finding the grievance was not raised in time, there was exceptional circumstances such that he should now be granted leave to raise the grievance under s114(4) of the Act.

[16] He says his circumstances were exceptional in the terms of the example given at s115(b) of the Act – that he made reasonable arrangements to have the grievance raised by his representative, Mr Elsley, but Mr Elsley unreasonably failed to do so within time.

[17] Mr Elsley, in his oral evidence to the Authority, took responsibility for not getting the personal grievance “in” for Mr Lowrie. He explained that the final written warning letter had arrived on his last working day for the 2008 year. Both he and Mr Lowrie had each wrongly presumed that the other man would draft a letter to NZSL raising the grievance over the warning. At some point early in 2009, and by no later than mid-February, they spoke about this and Mr Lowrie asked Mr Elsley to draft the letter which they would then discuss. However Mr Elsley was busy with other issues at the mill, including the end of his own job as the unions’ site convenor. While he had started drafting a letter, he had not completed it before Mr Lowrie’s dismissal.

[18] The Supreme Court in *Creedy v Commissioner of Police*² stated that the short limit of 90 days, and the potentially serious consequences for employers of not being

¹ [2006] ERNZ 517 at [39].

² [2008] NZSC 31 at [32].

able to bring a grievance, support an interpretation of the provisions for exceptional circumstances which does not unduly limit the power to extend time to raise a grievance. However the Court also emphasised that Parliament imposed a 90 day limit so employers were promptly notified of alleged grievances. Time should be extended only if exceptional circumstances were “*truly*” established and, in addition, the overall justice of the case so required.

[19] I find, from the evidence of Mr Lowrie and Mr Elsley, that Mr Lowrie did not meet the first requirement of the test for exceptional circumstances in s115(b) – he had not made “*reasonable arrangements*” for the grievance to have raised. Mr Lowrie had attended union training and knew how to raise a grievance, a process he had undertaken on behalf of other union members. He knew Mr Elsley was busy with other union business but appears to have done nothing to check why Mr Elsley had not come back to him with a draft letter to review before sending to NZSL. He may also have a mistaken belief that the grievance had already been notified orally to the NZSL by the means referred to earlier in this determination. However such a mistake is not an exceptional circumstance given his own knowledge and experience of what was required.

[20] I am not satisfied that the delay in raising the grievance was occasioned by circumstances which were exceptional and the application for leave to raise the grievance outside the 90 day period is accordingly declined.

The dismissal decision

[21] NZSL submits this whole case is about behaviour, and particularly a failure by Mr Lowrie to raise concerns he had about issues of manning and safety in a proper manner. In the specific instance on 29 April 2009 where, in front of other workers, he challenged Mr Horvath’s commitment to safety, NZSL submits Mr Lowrie failed to use appropriate means of communication. Those means could have comprised speaking one-on-one with Mr Horvath instead of in front of others he supervised, taking his concerns to Mr Toner, or reporting the issue by email on NZSL’s internal system for recording risk or safety concerns.

[22] In making the decision that Mr Lowrie’s behaviour or attitude amounted to

serious misconduct which warranted dismissal, Mr Toner also took account of an existing final written warning issued around four months earlier, the absence or inadequacy of any apology for his behaviour by Mr Lowrie to Mr Horvath, and Mr Lowrie's previous work record during 19 years of service.

[23] In those circumstances NZSL submits it was justified in reaching the conclusion that the employment relationship was "*broken down to such an extent that it held no future for either party*".

[24] The test of justification set under s103A of the Act requires the Authority to objectively review all the actions of NZSL up to and including the decision to dismiss Mr Lowrie. This encompasses not just NZSL's inquiry and decision about whether misconduct occurred and its seriousness, but also an inquiry into NZSL's ultimate decision in light of that finding.³

[25] The scope of the present statutory requirement to consider all the circumstances at the relevant time was expressed in earlier case law in the following way:⁴

"In each case the Court considers all of the circumstances. In a list not meant to be exhaustive ... the Court considers: the conduct of the worker; the conduct of the employer; the history of the employment; the nature of the industry and its customs and practices; the terms of the contract (express, incorporated and implied); the terms of any other relevant agreements; and the circumstances of the dismissal. The Court also has regard to good industrial practice which includes some consideration of the social and moral attitudes of the community."

Determination

[26] For reasons set out below I have concluded that in all the circumstances at the time a fair and reasonable employer would not have decided Mr Lowrie's behaviour on 29 April 2009 was serious misconduct, or even if it was, that dismissal was the appropriate sanction. Accordingly NZSL's actions and decision were not justified and Mr Lowrie has a personal grievance which requires remedies.

[27] There can be no dispute that Mr Lowrie's outburst towards Mr Horvath was

³ *Air New Zealand v V* (2009) 6 NZELR 582 at [36].

⁴ *Wellington Road Transport IUW v Fletcher Construction* [1983] ACJ 653, per Williamson J at 666.

unsatisfactory and required correction. That is a matter to be addressed further as an aspect of contribution in respect of remedies.

[28] However that outburst needs to be considered in its full context – that is all the circumstances at the time – and in a way I was not convinced that the evidence of NZSL’s evidence showed it had been done during its disciplinary meetings in May 2009. That context includes considering the circumstances which led to the earlier final written warning issued to Mr Lowrie and the exchanges he had with both Mr Horvath and Mr Toner on the morning of 29 April 2009.

[29] I accept the thrust of Mr Lowrie’s submissions that consideration of the circumstances of his dismissal should include taking account of an atmosphere of heightened tension between the management and the union members over a programme of staffing efficiencies underway in 2008 and 2009.

[30] For obvious reasons relating to the need for competitive pricing in the international market for steel production, NZSL was seeking to contain staffing levels and overtime costs wherever it could safely and sensibly do so. For similarly sound reasons, union members – including Mr Lowrie in his role as a union delegate – were anxious that this be done without any risk to their safety at work and minimising reductions to their working hours and hence income.

[31] Mill superintendant Etienne Schoeman, who had joined NZSL earlier in 2008, was charged with implementing management’s efficiency drive. This inevitably led to some tension with Mr Lowrie about staffing decisions, based on his experience of working at the mill over the previous two decades, including the last ten years in which he had worked as a shift controller. In that role he had some responsibility for decisions about staffing and who carried out particular roles on shifts for which he was the controller. The shift controller’s role had since changed to some extent with the reintroduction of a shift supervisor position although, at least from Mr Lowrie’s perspective, the lines of responsibility were not completely clear.

[32] One expression of these tensions occurred on the evening of 18 November 2008. Although not due to work that evening Mr Lowrie had agreed to work as shift controller. He did so on the understanding that another worker, whom he saw as

necessary to carry out one role, would also work. However by the time he arrived at work Mr Schoeman had countermanded that arrangement as it would result in one more staff member working on overtime than was usual for that shift. Mr Lowrie considered it necessary because not all the staff on duty had completed training for some particular roles. He rang Mr Schoeman at home to discuss the matter. During that discussion Mr Schoeman specifically instructed Mr Lowrie not to operate the shift with the extra man that Mr Lowrie considered necessary. Mr Lowrie deliberately ignored the instruction and had the man work the shift. In a subsequent disciplinary inquiry Mr Lowrie acknowledged the correct way to have dealt with his concerns over the staffing arrangements would have been to make a formal protest rather than disregarding Mr Schoeman's instruction.

[33] Mr Toner's written evidence carefully set out the background to staffing arrangements in the kiln areas which I need not detail as it is well known to the parties. The key point, for present purposes, was his conclusion that while there was "*no doubt that there may be room for disagreement over whether there was ever a contractually agreed minimum manning level within the kilns*", there was no basis for suggesting the superintendant had no authority to override a controller's decision to man a shift using overtime.

[34] In those circumstances NZSL was entitled to conduct a disciplinary inquiry regarding Mr Lowrie's conduct on 18 November. Its subsequent decision, to issue a final written warning on 18 December 2008, must be taken as justified in the absence of a legitimate challenge to it. However I accept, contrary to the assertion in Mr Toner's evidence, that those circumstances – and the situation which occurred just over four months later on 29 April 2009 – had, to some degree, the character and elements of a dispute about terms and conditions rather than solely being a matter of personal conduct subject only to disciplinary inquiry.

[35] On 29 April 2009 Mr Lowrie was due to be working in a role different to his usual work – as safety co-ordinator during a period of maintenance work in the plant.

[36] Earlier that day Mr Horvath was briefing the crew due to work on the shift that Mr Lowrie usually also worked on as the controller. One crew member scheduled to be in the control room did not want to do that work alone and asked for arrangements

to be made for Mr Lowrie to step in as controller.

[37] Mr Horvath made inquiries of Mr Schoeman who did not approve the change, as he understood it would have required an additional worker on overtime.

[38] Mr Lowrie came to see Mr Horvath shortly afterwards. He had heard from other workers about Mr Schoeman's decision. There was a brief argument between the two men about what should happen but Mr Horvath confirmed that Mr Schoeman's decision would stand.

[39] Mr Lowrie then asked whether arrangements had been made to hose down the inlet building. This area, where the coal needed for the steel making process is mechanically carried into the kiln area, has an identified safety risk of coal dust settling on beams. The risk is that a spark or heat from work in the area may ignite the settled dust causing a fire, as occurred at the mill in 1988. (The reality of that risk was most recently confirmed by a "near miss" incident in June 2009. On that occasion a flame of around 1 metre high was observed running along a beam.)

[40] This identified risk is the subject of a written safety procedure for regular inspection and wash down of the kilns inlet building.

[41] The written policy provided that the kilns team leader and an unidentified number of "operators" were responsible for conducting inspections of the building. They were to do so on day 1 and day 4 of the afternoon shift cycle. The team leader was responsible for arranging hosing of built up dust in specific areas that required it and recording the inspections and hosing activities in a "*wash down log*".

[42] The actual practice of kiln crew was to do a wash down every Monday and Thursday (corresponding to day 1 and day 4 of the shift cycle). It appears the log required by the policy was not actually kept.

[43] Mr Lowrie's evidence was that he noticed a build up of dust in the inlet building prior to talking with Mr Horvath on 29 April – a Wednesday. He asked if the inlet hosing had been done on Monday and reacted angrily when Mr Horvath said it was done on Saturday. The two men then argued about whether the policy required

hosing on every Monday and Thursday. Mr Horvath said hosing was subject to the supervisor's inspection. He then told Mr Lowrie that it was Mr Schoeman who had inspected the building and decided to delay its hose down.

[44] At this point Mr Lowrie remonstrated with Mr Horvath about accepting Mr Schoeman's direction on this matter, questioned whether Mr Horvath cared about the safety of the workers he supervised, and accused him of "*hiding behind*" Mr Schoeman's back. Mr Lowrie then abruptly left the room.

[45] Within minutes Mr Horvath had let Mr Schoeman know of the argument. Mr Schoeman passed that information on to Mr Toner. Some 30 minutes later Mr Lowrie went to see Mr Toner. In an informal conversation with Mr Toner Mr Lowrie explained that he had given Mr Horvath "*a hard time in the control room*" but would "*square it away*" with him. Mr Toner explained that he already had a complaint from Mr Horvath about the conversation which would be investigated. They then discussed Mr Lowrie's concern about inlet hosing which Mr Toner undertook to address. This resulted in the building being hosed down later that day.

[46] Also later that day Mr Lowrie and Mr Horvath had a further discussion. While Mr Lowrie says this included an apology from him to Mr Horvath, I doubt that evidence. Rather I find, relying on Mr Horvath's evidence, that they did talk more about the policy and what it required but Mr Lowrie did not directly express remorse about how he had spoken to Mr Horvath in a room where other workers could hear the conversation.

[47] A series of disciplinary meetings followed. I need not set out their contents as there is no real dispute that they were conducted in a fair manner. Rather it is the decisions Mr Toner then made on NZSL's behalf – that is the substance rather than the procedure – that is at issue.

[48] I find a fair and reasonable employer would have recognised Mr Lowrie's outburst on 29 April was partly caused by mutual errors of understanding and application of the safety policy for inlet inspection and hose down. Mr Lowrie was right about the practice but wrong about the policy when he said it must be done every Monday and Thursday. However both Mr Schoeman and Mr Horvath were wrong to

consider that it was for a supervisor alone to conduct the inspection and make a decision on whether the hose down was needed. The policy as drafted expressed the spirit of both the obligations in the safety legislation and NZSL's own safety principles which require supervisors and workers to take responsibility for decisions and action on necessary safety measures. It was an approach in which NZSL had invested considerable time and money in training staff and putting into practice.

[49] Mr Toner promptly recognised the error made and took corrective action on 29 April 2009. However I find a fair and reasonable employer then investigating whether one brief, heated exchange amounted to serious misconduct would also give greater weight to its own conduct (in this instance, Mr Schoeman's actions) in bringing about the circumstances of Mr Lowrie's outburst – both on the specific safety issue and the heightened tensions around staffing issues.

[50] While there was Mr Horvath's subjective evidence of feeling insulted or offended – at least in his later evidence but not in the statement actually taken from him by Mr Schoeman on 29 April – there was no evidence that the exchange had any real effect of the quality of his relationship with the staff that he supervised. The written statements provided to Mr Toner by workers who heard the exchange with Mr Lowrie do not describe it in the same highly-charged terms. And while Mr Lowrie did swear at Mr Horvath, NZSL's closing submissions acknowledged that this was not a real issue in the mill environment where it was accepted coarse language would not cause the same offence that it might in other workplaces. Mr Horvath agreed in his evidence that it was "*not shocking*".

[51] Neither do I accept that a fair and reasonable employer would consider that all the events of that day support the conclusion that NZLS expressed in its dismissal letter that the employment relationship had broken down to such an extent that it held no future for either party. That plainly does not accord with the civil and productive discussion Mr Lowrie had with Mr Toner only 30 minutes after his outburst at Mr Horvath. Nor does it accord with the fact that later that day Mr Horvath and Mr Lowrie had a civil conversation about what had happened earlier. In that discussion Mr Lowrie explained he had made some assumptions about what Mr Horvath had thought from his body language. He also acknowledged, as Mr Horvath accepts he recalls, that he could have dealt with the matter more appropriately. And I accept Mr

Lowrie's evidence – which Mr Horvath says he may have said but cannot now recall – that he assured Mr Horvath he would be more careful in future.

[52] Against that background I consider a fair and reasonable employer would not have given the same weight as NZSL did to Mr Lowrie's earlier final written warning in making its subsequent dismissal decision. This is for three reasons. Firstly, Mr Lowrie had no previous disciplinary matters in almost two decades at the mill. Both incidents which caused NZSL concern occurred within a short period and were directly related to how Mr Schoeman was implementing a management programme. Secondly, the earlier incident of countermanding a direction from Mr Schoeman was an intentional act while Mr Lowrie's 29 April comments were an emotional response that appeared to lack deliberation. Thirdly, in both incidents Mr Lowrie's actions had a representative aspect rather than merely advancing personal self-interest.

[53] However if I were wrong in concluding that a fair and reasonable employer in all the circumstances at the time would not have decided Mr Lowrie's actions were serious misconduct, I would nevertheless conclude that objectively assessed, such an employer would not have decided dismissal was the appropriate sanction for such misconduct.

[54] There is very limited evidence from Mr Toner about what real consideration was given to alternatives to dismissal of a long-serving employee. Other options may have included further coaching or training about appropriate communication, relocation to another work area, or demotion.

[55] If Mr Lowrie's attempts to reconcile with Mr Horvath – to the extent which Mr Toner inquired into them – were inadequate, more could have been done about requiring an apology.

[56] And while it was not at the level of an unjustified disadvantage, there was an element of disproportionality in Mr Schoeman receiving only "*coaching*" for his breach of NZSL policy – its kiln safety procedures – while Mr Lowrie was dismissed for what was effectively a breach of another NZSL's policy about treating colleagues respectfully.

Remedies

[57] In addressing remedies the Authority must consider whether a reduction is required for blameworthy conduct by Mr Lowrie which contributed to the situation giving rise to his personal grievance: s124 of the Act. Such reduction need not apply uniformly across the basket of remedies sought – here being reinstatement, lost wages, and compensation for hurt and humiliation.

[58] Mr Lowrie's conduct must attract a substantial reduction for contribution. He was a long-serving, experienced and senior employee with a leadership role where he could have been expected to set a better example. He was aware of alternative means to advance his legitimate concerns regarding safety and staffing issues. In fact he exercised one of those means to good effect by speaking with Mr Toner around 30 minutes after his outburst at Mr Horvath.

[59] If this were a situation where reinstatement was not sought or not being ordered, I would have reduced remedies of lost wages and under s123(1)(c)(i) of the Act by one half. In the present matter I have resolved the substantial merits of the case require reinstatement with a 100 per cent reduction of the other remedies sought.

[60] Mr Lowrie made thorough efforts to mitigate his losses by seeking alternative work while waiting for this matter to be resolved and managed to maintain a modest income albeit less than he would have earned at the mill. While he suffered some humiliation and loss of dignity from his dismissal, he must bear that without compensation in return for the more significant and primary remedy of reinstatement which restores his income and his participation in the community of the mill.

Reinstatement

[61] NZSL strongly opposed Mr Lowrie's reinstatement. It considered reinstatement impracticable given Mr Lowrie's attitude to direction from supervisors and managers and a lack of vacancies at the mill.

[62] While I have carefully considered the written and oral evidence of Mr Toner and Mr Horvath, I do not accept there is any insurmountable practical difficulty to

awarding the remedy of reinstatement sought by Mr Lowrie throughout and to which the Act gives primacy. There is sufficient reason for confidence that Mr Lowrie can successfully re-establish working relationships and there has been no question throughout about his actual work performance.

[63] Mr Schoeman no longer works for NZSL.

[64] Although the Authority reached a different assessment from him on the dismissal issue, Mr Toner's evidence and demeanour throughout this investigation demonstrated a measured, principled and practical approach to management such that he could readily deal with any issues arising from Mr Lowrie's reinstatement.

[65] Mr Horvath is able to rely on Mr Lowrie's sworn evidence to this Authority that he would not hold grudges and did not want conflict. Mr Lowrie has also averred to accepting he could have handled the situation better than he did on 29 April and had learned from that. I have also accepted Mr Lowrie's oral evidence that he told Mr Horvath on 29 April that he would be more careful in the future.

[66] While NZSL submitted there were presently no operator vacancies in its kilns, I do not accept this is a barrier to reinstatement. Mr Lowrie's union raised his personal grievance one day after NZSL issued written confirmation of his dismissal. That letter clearly put NZSL on notice that he sought reinstatement.

[67] Accordingly under s123(1)(a) of the Act I order Mr Lowrie to be reinstated to his former position or placed in a position no less advantageous to him, on the following conditions:

- (i) he is reinstated to the pay roll from the first day after the date of this determination; and
- (ii) NZSL is to discuss with Mr Lowrie, through his union representative, arrangements for his return to work on a day nominated by the company within 14 days of the date of this determination, but no later than 14 days; and
- (iii) Mr Lowrie is to participate, in good faith and at NZSL's discretion and direction, in any training or 'refresher' programme required by the company, including guidance regarding workplace behaviour; and

- (iv) NZSL may require Mr Lowrie to work in any position for which he is trained and adequately experienced if he cannot immediately be placed in his former position and until such a position becomes available; and
- (v) Leave is reserved for either party to apply for further directions regarding these conditions (provided that the parties have first attended mediation on any points on which they cannot reach agreement).

[68] The parties are encouraged to seek assistance from the mediation service of the Department of Labour if they require assistance in implementing these conditions of reinstatement.

[69] Leave is also reserved to the parties to apply for further determination by the Authority of any unresolved issues regarding pension and shareholding entitlements in relation to the period between dismissal and reinstatement.

Costs

[70] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so, Mr Lowrie's union may lodge and serve a memorandum on costs within 28 days of the date of this determination. NZSL would have 14 days from the date of service to lodge and serve a memorandum in reply. As a preliminary indication to assist the parties and subject to the content of parties' memoranda should they prove necessary, the Authority would expect the notional daily rate to apply to costs for such an efficiently prepared and presented case heard in less than one-and-a-half days and to total \$4000.

Robin Arthur
Member of the Employment Relations Authority