

NOTE: This determination contains an order prohibiting publication of certain information at [1]

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 280
3240379

BETWEEN NRE
Applicant

AND ROLLESTON MOTELS (2013)
LIMITED
Respondent

Member of Authority: Lucia Vincent

Representatives: Hayley Johnson, advocate for the applicant
Paul Brown, counsel for the respondent

Investigation Meeting: 16 February 2024 in Christchurch

Submissions Received: 16 February 2024 from the applicant
16 February 2024 from the respondent
Further information received on 8 March 2024

Determination: 13 May 2024

DETERMINATION OF THE AUTHORITY

Non-publication

[1] This determination contains an order prohibiting publication of certain information, specifically, the applicant's name and any details that might identify her.¹ I make this order on a permanent basis because this determination refers to sensitive circumstances of the applicant, who I will refer to as NRE. These circumstances include a Court order relating to her child. Naming NRE could identify her child and potentially infringe anonymised orders made by another Court.

¹ Pursuant to clause 10(1), Schedule 2, Employment Relations Act 2000 (Act).

[2] The respondent, Rolleston Motels (2013) Limited, trading as Rolleston Highway Motel (**RHM**), objected to the order relying on the open justice principle.² RHM says no specific adverse consequences exist that would justify departing from it.

[3] Identifying NRE and by extension her child could potentially infringe anonymised orders made by another Court – that means a material risk exists of adverse consequences if NRE’s name was published, displacing the presumption in favour of open justice.³ The risk of these consequences outweighs any public interest in knowing NRE’s identity. I am satisfied a good reason exists for making a non-publication order.

What is the employment relationship problem?

[4] NRE worked for RHM as a housekeeper for nearly 18 months. NRE says RHM dismissed her during a meeting convened to discuss baseless allegations of bullying, by telling her she would not be getting any more hours. She says this followed an unreasonable, unilateral reduction in her agreed hours of work, forcing her income below a level she could reasonably live on.

[5] RHM says NRE freely resigned. It rejects her claim of unjustified disadvantage saying when it reduced her hours of work, NRE’s casual status meant it could do so based on business need without any obligation to give set minimum hours.

[6] To determine how NRE’s employment ended (whether RHM dismissed her or NRE resigned), I must first establish on what basis RHM employed NRE. Did RHM employ NRE on a permanent part-time basis as NRE claims, or did (as RHM says), it always employ her as a casual?

How did the Authority investigate?⁴

[7] The Authority investigated by considering relevant evidence and submissions. This included written witness statements lodged by the parties: Statements from NRE and her support person, Allana Atkins, and for RHM, owner and director Mr Russell

² Referring to *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, *Erceg v Erceg* [2016] NZSC 135 and *Y v Attorney-General* [2016] NZCA 474 and Section 14 (Freedom of Expression) of the New Zealand Bill of Rights Act 1990.

³ Principles recently described by the Employment Court in *JKL v Stirling Anderson Ltd* [2022] NZEmpC 107 at [40] to [41]. Also see *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [190].

⁴ As permitted by s 174E of 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.

Lilley, General Manager Jeanette Ellis, and Head Housekeeper Kama Gregg. Witnesses answered questions under oath or affirmation from the parties' representatives and I. Representatives made submissions.

What are the issues?

[8] I must determine the following issues:

- (a) What was the real nature of NRE's employment with RHM?
- (b) Did RHM unjustifiably disadvantage NRE by reducing her hours of work?
- (c) Did RHM unjustifiably dismiss NRE or did she resign?
- (d) What (if any) remedies should I award, such as:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate NRE's loss); and
 - Compensation under section 123(1)(c)(i) of the Act?
- (e) If I award any remedies, should I reduce them for any blameworthy conduct by NRE contributing to the situation giving rise to her grievance?
- (f) Should either party contribute to the costs of representation of the other party?

What was the real nature of NRE's employment with RHM?

[9] Did RHM employ NRE as a casual employee or a permanent part-time employee? If RHM employed NRE as a casual, did the reality of the working arrangements remain casual or did it evolve into a permanent part-time role by the time NRE's employment ended? To answer these questions, I must examine how the working arrangements functioned in practice to determine the real nature of the employment relationship.⁵

⁵ As noted by the Employment Court in *Baker v St John Central Regional Trust Board* [2013] NZEmpC 34 at [20] referring to *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225 at [37], "It is well-established that a determination as to a person's employment status requires an assessment of the real nature of the employment relationship." See also *Rush Security Services Ltd, (T/A Darien Rush Security) v Samoa* [2011] NZEmpC 76 at [20].

[10] NRE approached RHM for work by initially calling then coming in for a short work trial to show she could clean. She recalled another Housekeeper, Ms Gregg, trialled her, then promised her regular hours, from Sunday to Thursday amounting to 22 hours each week, enough for her to live on.⁶ NRE said she made it clear she could not work Saturdays, a day she spent time with her son according to a Court order.

[11] NRE signed an individual employment agreement offered to her by RHM's General Manager Jeanette Ellis.⁷ I accept the agreement recorded NRE's employment as a casual employee. For example:

- (a) Clause 3 described the nature of employment as being intermittent, with each offer of work being a separate engagement. RHM and NRE agreed to no guarantee of ongoing engagement and NRE had no obligation to accept any offer of work (except for accepted engagements).
- (b) Clause 6 described the hours and days of work as not exceeding 5 per day or 25 per week, but any practice did not create an entitlement or expectation of ordinary or normal working days or hours. RHM would contact NRE by telephone, giving as much notice as possible about an engagement.
- (c) Clause 11 allowed for termination by RHM not making an offer of work for three months or by RHM not accepting work for three months.

[12] NRE recalled signing the agreement without feeling concerned about the casual label because she believed the promise made to her that she could have regular hours. NRE also felt assured by a roster later stuck to a wall in the laundry (**laundry roster**).

[13] The laundry roster assumed some significance although its status was disputed. The bottom part of the laundry roster listed three housekeepers with their names appearing on five days from Monday to Sunday underneath the heading "House Keeping Roster." NRE's name appeared from Sunday to Thursday. Underneath that part appeared two other names with the heading to the left of "Casuals" with numbers to call two people who did not appear on the roster.

⁶ Ms Gregg said she was promoted at some stage during NRE's employment from the role of Housekeeper to Head Housekeeper. She could not remember the events NRE described but believed she would not have made such a promise – she herself had no guaranteed hours at that time.

⁷ The copy provided with the Statement of Problem was dated 9 June 2021, around the time NRE started.

[14] Witnesses differed in their views of what the laundry roster meant. NRE said it reflected her permanent hours. By contrast, Ms Gregg said the laundry roster reflected staff availability only – the hours she (and NRE) hoped to work. Ms Gregg claimed the whiteboard in the laundry recorded the roster for housekeeping staff which depended on occupancy levels and was set by the receptionist (who did not give evidence) on a weekly basis. Ms Gregg said the individuals listed beside the heading “casuals” on the laundry roster only helped when they were unable to complete the cleans required using the housekeepers rostered on that week. Ms Ellis said the laundry roster reflected availability and promised no regular work, but acknowledged she had nothing to do with the rosters as she was hands off on a day-to-day operational basis and left it to staff who were on site.

[15] Whatever the status of the laundry roster, NRE regularly worked the five days stated on it: Sunday through to Thursday. When working, it appeared generally accepted that NRE worked sometime between 8:30am and 9:00am, working up to five hours (finishing at 2:00pm) or less depending on how many rooms required cleaning. NRE’s undisputed pay history shows she regularly worked at least 20 hours across five to six days with few exceptions for nearly eighteen months.⁸

[16] Despite the relationship being documented as casual, I find the parties behaved differently to the label given to it. RHM may have intended NRE to start working as a casual employee consistent with the agreement. Even if a promise was not made to NRE that she would have regular work on specific days, how the parties behaved over time created a reasonable expectation of ongoing work. This conduct undermined the agreement, by quickly establishing a pattern of regular hours and days that NRE grew to reasonably rely on. NRE reasonably expected she would in her words “never not be offered” work Sunday to Thursday given the history. Even if the relationship started casually, I find it almost immediately became permanent – how the employment relationship operated over time resulted in a change in status.⁹

⁸ There were some outliers including two consecutive pay periods where she worked six hours only, explained as periods of leave in evidence. These related to pay periods covering 17 January 2022 to 23 January 2022, and 10 January 2022 to 16 January 2022.

⁹ As noted by Chief Judge Colgan in *Rush Security*, n 5 above, “... whilst such change may sometimes result in this being evidenced in explicit agreement between the parties, more often such changes are gradual and subtle and occur in day to day conduct. These, when viewed overall, may lead to a conclusion that the parties have agreed implicitly to vary their original agreement for casual employment” at [24].

[17] I am reinforced in my conclusion because the laundry roster listed only three Housekeepers (including NRE) each working a rolling roster covering a complete working week. The Housekeepers were listed quite differently to the two casual staff listed with their respective cell phone numbers – only called upon when these existing three staff could not cope such as when occupancy levels were higher than usual. It is difficult to reconcile a claim these “casual” staff had the same status as staff who did not have their numbers listed and in NRE’s case had regularly worked five days a week for nearly 18 months.

[18] RHM’s restructuring of hours of work seemed inconsistent with NRE’s claimed casual status (arguably unnecessary for casual staff). Expecting NRE to give notice also seemed an ill-fitting concept if as RHM claimed, NRE could decline any offers of work. Such an approach recognised through conduct that NRE worked regular hours resembling permanent part-time employment.

Did RHM unjustifiably disadvantage NRE by reducing her hours of work?

[19] RHM sent a letter to all housekeeping staff dated 19 October 2022 proposing to change hours. Ms Ellis signed the letter in which she said a roster would be done a week in advance - each housekeeping staff member would be offered working days and times to work, with potentially staggered hours and different days. The letter noted most were on casual agreements meaning no set days or hours could be offered. The letter attached a roster that reduced NRE’s hours to 16 and required her to work Saturdays (a day she could not work). Five other people were listed with similar hours except Ms Gregg who had 22.

[20] When asked about the letter, RHM acknowledged changes resulted in solely NRE working fewer hours - others worked increased hours. RHM claimed these changes more equitably distributed hours to staff. Aside from Ms Gregg who had permanent hours at that time, the remaining housekeeping staff on the roster affected by the change appear to have been considered casual by RHM, including NRE. Given the statement about casuals having no certainty, it seemed odd RHM offered increased hours to other staff it considered casual while at the same time giving NRE fewer hours.

[21] NRE became extremely concerned about her reduction in hours. She messaged Ms Ellis the next day, on 20 October 2022, questioning the “big decline in hours” and reminding her she could not work Saturdays due to care arrangements with her son. Ms

Ellis responded to NRE telling her to speak to Ms Gregg because Ms Ellis said “I don’t have any input” despite having authored the letter.

[22] On 27 October 2022, NRE messaged again saying she did not understand the reduction in hours:

I have worked an average of 22 hours a week for the past year, dropped to 12, without even a discussion and now there is no way I will get the 22 hours back. I simply cannot afford to stay working here as 7 hours isn’t enough to survive on. I have some serious thinking to do as at this point, I feel my only option is to resign from this job, a job I love and find alternative employment with similar hours to what I was on. [NRE]

[23] In a Facebook post that same day (27 October 2022), Ms Ellis advertised for casual housekeepers to work between 9am and 3pm with varying hours and days. When asked at the Investigation Meeting about the reason RHM advertised for more staff after restructuring hours to more equitably distribute the fewer hours they had available for staff, Ms Ellis said she backed RHM to have sufficient occupancy levels to justify more staff. The explanation appeared at odds with the basis for the proposal (that there were insufficient hours to equitably distribute between staff, most of whom were casual, and which resulted in only NRE’s hours reducing).

[24] Ms Ellis messaged NRE a few days later on 30 October 2022:

Could you please advise Kama of your intentions to stay working at the Motel or leaving please. Hours will remain the same. I put the ad for a new cleaner on Facebook because I thought you had decided to leave...

[25] Whatever the reason for restructuring hours of work for the Housekeeping team, RHM did not fairly change NRE’s hours of work in the way it did. At the time of reducing NRE’s hours of work, RHM employed NRE as a permanent part-time employee working at least 20 hours a week across five days Sunday to Thursday. This meant RHM needed to obtain NRE’s agreement to change her hours of work. Failing to do so resulted in RHM unjustifiably disadvantaging NRE.¹⁰

Did RHM unjustifiably dismiss NRE by saying she had no more hours or did NRE resign?

[26] Ms Ellis sent another message on 30 October 2022 to NRE: “I won’t tolerate bullying at the Motel either between you, or any of the staff, so I think you should be looking for another position!!!” NRE responded the next day saying, “Bullying

¹⁰ A personal grievance under section 103(1)(b) of the Act.

Jeanette? I have never been a bully, and it has never been discussed since I've been here. Are you saying that if I don't resign you will fire me because of the bullying?"

[27] A week later, the allegation of NRE being a bully was somewhat retracted. Ms Ellis sent NRE an email asking her to attend a meeting on Monday 14 November 2022 with the Receptionist and Head Housekeeper, "so we can get to the bottom of these allegations." Ms Ellis then said:

Maybe bullying was not the correct name, but you would have to agree that behaviour has been inappropriate, so by you facing up person to person we can iron out any problems that you might have with the people that are your Supervisors and the people that you work with.

[28] NRE attended work on the morning of the scheduled meeting with a support person, Allana Atkins. Four people for RHM attended the meeting: the owner of RHM, Mr Lilley, Ms Ellis, Ms Kama and another employee.

[29] What happened next resulted in the end of the employment relationship. Most agreed voices were raised and discussions became heated. NRE recalled asking three times for details of the bullying allegations without response. That NRE asked assertively was corroborated by other witnesses. Ms Kama said she felt anxious about being put on the spot, acknowledged going into fight or flight mode, raising her own voice, and feeling upset enough to leave the room with the other employee present. That left Ms Ellis and Mr Lilley with NRE and her support person.

[30] Both NRE and Ms Atkins recalled Ms Ellis then said "... the girls and I have talked and you won't be getting any more hours." NRE took this to mean she had no more work and had been fired. Ms Ellis denied making the statement but said in her evidence during the investigation meeting, "If it was up to me, I would not have given her any more hours." I took Ms Ellis to mean that it was not up to her as she had nothing to do with the rosters, so her views of hours did not matter. Mr Lilley says the meeting ended with him telling NRE to go back to work and finish her shift.

[31] After the meeting, NRE had become so upset she went to cry in the bathroom. She gathered her belongings, left the workplace and did not return. She sent a message to Ms Ellis within hours of the meeting that read:¹¹

Hi Jeanette. I came to the meeting today as I thought we were talking about some alleged bullying claims but when I asked you about this 3 times there was no reply.

¹¹ Emphasis by the Author.

You said I am on a casual employment agreement so you can end my job whenever you like and that is what you did today, you said **The girls and I have discussed it and we are not giving you any more hours.** I honesty just cannot fathom why this has happened Jeanette, I loved my job and would love to have continued, BUT I needed the consistent 22 hours which you changed without discussion. **I am sorry you felt that ending my job was the best option for all.** This is heart-breaking for me, no job, no money and no real reason other than you have given my work to others. I hope you have a better Christmas and New Year than I will.

[32] I find it more likely than not that Ms Ellis did say: “The girls and I have discussed it and we are not giving you any more hours.” NRE’s message within hours recorded her recollection it was said. NRE’s support person recalled hearing it too. Correspondence from RHM’s advocate after the relationship ended accepted the statement was made.¹²

[33] That is not the end of the matter, however. The statement could be read more than one way. For example, Ms Ellis may have intended to say she would not give any more hours than the reduced hours each week, not to indicate she had fired NRE. Both NRE and her support person interpreted the statement to mean Ms Ellis had fired her because she would get no hours whatsoever i.e. zero hours.

[34] Ms Ellis accepted in evidence she had the authority to dismiss an employee but did not dismiss NRE – saying she resigned after the meeting when she left work on her bike giving her and others in the meeting the one fingered salute. As I set out below, I have found Ms Ellis did dismiss NRE during the meeting – what followed did not somehow make her dismissal a resignation simply because she responded robustly.

[35] What is a dismissal? Broadly defined it is termination at an employer’s initiative.¹³ It is an objective test that focuses on whether it was reasonable for somebody in the employee’s shoes to have considered themselves dismissed.¹⁴

¹² Letter dated 1 December 2022, “...It is correct that (NRE) was told “we are not giving you any more hours” and it is correct that the response of (NRE) was to state she required 22 hours of work...” (paragraph 15).

¹³ *Wellington, Taranaki and Marlborough Clerical etc IUOW v Greenwich, (T/A Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC) at [103].

¹⁴ Well established principles relied on by the Employment Court in for example, *Kang v Saena Company Ltd* [2022] NZEmpC 151 at [15] to [17], *Cornish Truck & Van Limited v Gildenhuis* [2019] NZEmpC 6 at [44] to [45] and *Concrete Structures (NZ) Limited v Ward* [2020] NZEmpC 219 at [27] to [29].

[36] I find that Ms Ellis' statement in context could be reasonably construed as reducing NRE's hours to zero, and that reducing a permanent part-time employee's hours to zero could in context be reasonably viewed as a dismissal. NRE had made it clear she could not survive on fewer than 22 hours work and felt forced to consider resigning when Ms Ellis refused to restore her roster, exasperated when Ms Ellis seemed to suggest she had nothing to do with rosters (despite being the author of the letter making changes to hours), and defensive when Ms Ellis advertised for more Housekeepers when she wanted her hours restored to her. Ms Ellis summoned NRE to a meeting to discuss what was initially an allegation NRE had bullied others. When NRE attended the meeting convened for the purpose of discussing those allegations and asked for more detail, no one responded. NRE had previously asked Ms Ellis about whether (if she did not resign) she would be dismissed? Receiving no assurances and against that background, a reasonable person could interpret Ms Ellis' statement she would not give NRE any more hours, as the end of the employment relationship. RHM reinforced NRE's dismissal when Ms Ellis failed to respond to NRE's message clearly communicating her belief her job was at an end at Ms Ellis' instigation.¹⁵

[37] I pause to comment on Mr Lilley's statement about going back to work to finish her shift – potentially a factor telling against dismissal from his perspective. This statement must be viewed in context including that he (as an owner) had attended to support Ms Ellis who had authority to dismiss. The statement did not change the impact of what Ms Ellis had said. NRE did not return to work because she believed (reasonably) she had been dismissed.

[38] The inherent imbalance of power in employment relationships made it imperative RHM fairly approach issues of concern and respond in good faith to concerns raised by NRE. NRE with her support person presented to a meeting where there were four people there for RHM to their two. NRE had attempted multiple times to have her hours restored – RHM knew this was the most important issue for NRE. When viewed objectively, a reasonable person could interpret Ms Ellis' statement she would not give NRE any more hours, as a dismissal. It is also more plausible - given the upheaval losing her job caused her, it is unlikely NRE would have resigned without a job to go to as claimed by RHM.

¹⁵ Ms Ellis accepted she did not attempt to follow up with NRE following her message.

[39] Even if Ms Ellis' statement was unclear and NRE mistaken (which I do not accept), an employer acting in good faith should correct an employee's mistaken belief about being dismissed.¹⁶ Ms Ellis did not do so and must accept the consequences for RHM of having failed to do so:

Where the communication is equivocal, the employer learns that the employee has misunderstood it as a dismissal contrary to the employer's intention but does nothing within a reasonable time to correct the employee's false impression. In such a case the employer must suffer the adverse consequences of passively standing by and letting the employee think that a dismissal has taken place.

[40] If I am wrong in my conclusion RHM dismissed NRE, I find a sufficiently serious breach by RHM had occurred in reducing NRE's hours that could have justified her immediate resignation, consistent with an unjustified (constructive) dismissal.

[41] RHM did not appear to claim it could justify any dismissal of NRE, only that it did not dismiss her and she had resigned. Having found NRE was a permanent part time employee, that there was no reasonable basis to reduce NRE's hours to zero, and no allegations of NRE being a bully progressed, I also find RHM had no substantive reason to dismiss NRE. RHM did not follow a fair process in terms of section 103A of the Act either. For example, NRE did not have an opportunity to have her side heard with genuine consideration. To date she is unaware of any specific detail of any allegations of bullying. There is nothing to support a conclusion a fair and reasonable employer could dismiss NRE. NRE has a personal grievance for unjustified dismissal in terms of section 103(1)(a) of the Act.

What remedies should I award?

Remuneration lost

[42] NRE claims 24 weeks wages for the period she was without work from the date of her dismissal on 14 November 2022 to 1 May 2023 when she secured another role. During that period, she remained unfit for work for a period, then struggled to secure a position once she became well enough to search for work.

[43] Section 128 of the Act requires me to order an employer pay an employee the lesser of a sum equal to the remuneration lost as a consequence of the personal grievance or three months ordinary time remuneration. Despite that, I may use my

¹⁶*New Zealand Cards Limited v Ramsay* [2012] NZEmpC 51 at [51].

discretion to award a sum greater than that. The Court of Appeal has emphasised that moderation is required when exercising the Authority's discretion to give an increased award for lost remuneration.¹⁷

[44] NRE gave limited evidence of attempts to secure work. In the circumstances I decline to exercise my discretion to award the full sum sought of 24 weeks. I consider it reasonable to award the equivalent of three months ordinary time remuneration. This amounts to \$6,292 (gross).¹⁸

Compensation

[45] Under s 123(1)(c)(i) of the Act, I may award payment of compensation for humiliation, loss of dignity and injury to feelings of the employee.

[46] NRE described the impact on her of her dismissal; that she felt stress, anxiety and heartache and could not sleep. She also felt threatened and devastated by the loss of her job. She felt embarrassed to explain to her young son what had happened, and that he felt worried and sad for her, as did her family. She said she felt like a complete loser and suffered from low self-esteem and no confidence. It took a long time for her to recover, and she still feels nervous and anxious if she ever meets with her boss about anything, causing her to feel afraid to ask any questions for fear of causing a problem.

[47] NRE has also claimed compensation for the unilateral reduction in her hours in the weeks leading up to her dismissal. I accept NRE felt upset because she relied on the agreed working arrangements for income security and so as to structure her working life around care arrangements with her son. However, there is considerable overlap between the disadvantage and the end of the employment relationship which occurred within weeks of each other. I find these events and their impact are inextricably linked and that I should recognise that with a global award of compensation.

[48] I have considered the extent of the harm NRE suffered, where it sits when compared with other cases, then stepped back and assessed what I consider a fair and just amount in the circumstances.¹⁹ I am satisfied an award of \$20,000.00 is appropriate.

¹⁷ *Sam's Fukuyama Food Services Limited v Zhang* [2011] NZCA 608 at [36].

¹⁸ Based on the contractual hourly rate of \$22 and an average of 22 hours per week.

¹⁹ See for example, *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [153] to [164]. General trends in recent compensation levels can be found at [Compensation for personal grievance claims: Jul - Dec 2023 » Employment New Zealand](#).

Holiday Pay

[49] Because I have found NRE to have been a permanent part-time employee, section 28 of the Holidays Act disallows payment of annual holiday pay with wages. I therefore grant leave to return to the Authority regarding any further claim for annual holiday pay paid with NRE's wages incorrectly, should the parties be unable to agree on the amount.

Contribution?

[50] I have considered whether NRE contributed to the circumstances giving rise to her personal grievances. RHM made much of the way NRE left work on her final day which I have observed as an emotive response to the way her employment ended. I do not consider what happened after NRE's employment ended as relevant to remedies. NRE attempted to resolve the issue of her hours and to find out more about allegations against her. If anything, NRE's actions were an attempt to restore the relationship and not the sort of behaviour considered contributory.

Summary of Orders

[51] RHM must pay NRE:

- (a) Remuneration lost of \$6,292 (gross); and
- (b) Compensation of \$20,000 for unjustified dismissal.

Costs

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

[53] If the parties are unable to resolve costs, and an Authority determination on costs is needed, NRE may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, RHM will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[54] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²⁰

Lucia Vincent
Member of the Employment Relations Authority

²⁰ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1