

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 260
5350102 and 5353837

BETWEEN CHRISTOPHER PICKERING
Applicant

AND DETECTION SERVICES
LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: John McBride, Counsel for Applicant
Simon Dench, Counsel for Respondent

Investigation Meeting: 27,28,29,30 March, 23,24,25, 28 May, 5 June 2012

Submissions received: 19 June and 25 June, 24and 26 July 2012 from Applicant
19 June and 25 June, 26 July 2012 from Respondent

Brendan Lyne opinions received: 31 May and 23 July 2012

Determination: 31 July 2012

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This case deals with two principal issues: whether the applicant, Mr Christopher Pickering was unjustifiably dismissed by the respondent, Detection Services Limited (“DSL”); and a dispute about the payment of a bonus.

[2] The dismissal matter is related to the ownership of physical and intellectual property in an acoustic trunk mains leak detection device. The ownership matter is relevant insofar as it relates to the question of justifiability for the dismissal.

[3] The bonus issue depends on the interpretation of the bonus clause and then on an evaluation of the accounts of the companies within the Detection Services Group. As the accounting issues were complex and the accountants employed by the parties

were unable to agree on a number of issues it was necessary to obtain the services of an expert accounting witness, Mr Brendan Lyne. His work and evidence have been invaluable in enabling me to make a decision regarding the amount of the bonus.

[4] The respondent was originally name as Detection Services Group. I am satisfied after considering the evidence and submissions which I received from the parties, that the correct respondent is Detection Services Limited.

[5] The employment agreement was marked “draft” and was with a company yet to be incorporated, Detection Services NZ Limited, as the parent or holding company of a group of companies. A letter from Mr Simmons, a director of the respondent and the other companies in the group, to Mr Pickering dated 20 November 2009 states that for present contractual purposes the employer was to be DSL. Mr Pickering was paid by DSL and DSL charged its Australian counterpart a management fee for Mr Pickering’s services.

[6] In reaching the conclusion that DSL was the employer I have considered the submissions regarding s 183 (2) Companies Act 1993 and prefer the respondent’s submissions.

Employment of Mr Pickering

[7] Mr Pickering and Mr Steven Simmons, a director of the Detection Services Group of companies, were friends prior to Mr Pickering being employed as the General Manager of the Detection Services Group: Detection Services Ltd, Detection Solutions Ltd, Detection Services Pty Ltd and Detections Solutions Pty Ltd. These are the companies that are relevant for the purpose of the bonus calculation. An individual employment agreement was drawn up and signed by Mr Simmons on 22 November 2009. Mr Pickering did not sign the agreement. The agreement was with a company that was to be incorporated, Detection Services NZ Ltd. Employment was to commence on 10 January2010 but Mr Pickering commenced his duties on 5 January 2010 with a trip to Japan on behalf of the company.

[8] The job description sets out Mr Pickering’s primary objectives:

To be responsible and accountable for the effective and efficient management of Detection Services and Detection Solutions with a Group Structure, an

operation including all aspects of staff management, business strategy, logistics operations, marketing and sales, agency management, customer relations and financial management

[9] The agreement contained clause 24.1:

Any trade mark, goodwill, patent, design or copyright work, procedure, process, formula, method of production, invention or other discovery created by the Employee during the Employee's course of employment relating to the business of the Company or capable of being used or adapted for use by the Company, must be disclosed to the Company and shall be the absolute property of the Company ("the Intellectual Property").

[10] Mr Pickering added a further clause, 24.3, but also retained clause 24.1.

Clause 24.3 reads:

Any trade mark, goodwill, patent, design or copyright work, procedure, process, formula, method of production, invention or other discovery created by the Employee prior to the Employee's employment shall be the absolute property of the Employee unless agreed in writing with the Company.

[11] The respondent maintains that the words in clause 24.1 "during the Employee's employment" do not mean "while on the job".

[12] The respondent notes that clause 24.3 refers only to intellectual property created solely by Mr Pickering, not jointly with DSL.

[13] DSL's business is monitoring water leaks in pipes. Mr Pickering and Mr Simmons met on a number of occasions from 2006 onwards and had numerous discussions about a prototype computer-controlled, multi-head insertion platform which Mr Pickering worked on between 2007 and 2009.

[14] Mr Pickering says he developed his own system, called the DPX, whereas DSL says there was a joint development which incorporated the work Mr Pickering did on what he called the DPX and what DSL called Inscan.

[15] Prior to Mr Pickering being employed by DSL he and Mr Simmons shared and exchanged information about a leak detection system. These exchanges included Mr Pickering's going to Australia at DSL's expense, attending a meeting with City West Water in late 2008, talking to Mr David Caunter, the DSL Business Development

Manager, (whose evidence I found helpful and credible) shortly before taking up his employment.

[16] In October 2009 Mr Pickering asked Mr Caunter to go with him and look at hydraulic motors and valves. Mr Pickering says this was to do with his DPX system. There were a number of further communications between the two men in November.

[17] On 20 December 2009 Mr Caunter advised Mr Pickering that he had drawn up the central drive cartridge and asked Mr Pickering to have a look at it. In January 2010 Mr Caunter told Mr Pickering that he was working on the pressure housing which was nearly complete and looking good.

[18] Mr Pickering replied:

That is awesome news David. I will have the drum and main platform underway. My attention will go to the software and electricals over the next month.

[19] I accept the respondent's submission that this shows that Mr Pickering was intending to incorporate Mr Caunter's work into the system he was working on.

[20] On 4 November Mr Pickering sought and obtained from Mr Simmons information about trunk main sizes and pipe depths. In November Mr Simmons supplied Mr Pickering with an x-ray of a sond.

[21] In November 2009 Mr Caunter obtained a quote from Norm Cribb, a Sydney engineering firm, to manufacture a clone of the Sahara, another leak detection system. On 21 November 2009 Mr Caunter emailed Mr Simmons referring to making "Inscan as per the Sahara".

[22] On 21 November 2009 Mr Simmons emailed the WRC Sahara drum design CAD drawings to Mr Pickering. Mr Simmons said this was in response to a request by Mr Pickering, which Mr Pickering denies. It is difficult to see why Mr Simmons would have sent the material other than in response to a request.

[23] Between 19 November and 30 December 2009 there are a series of emails which led to the decision to carry out the manufacturing of Inscan in New Zealand rather than Australia.

[24] On 19 November Norm Cribb emailed a budget quote to Mr Caunter to manufacture a Sahara/Inscan system. Mr Simmons sent this to Mr Pickering on 20 November. Mr Pickering replied on 30 November with New Zealand quotes which were considerably cheaper than the Australian quotes obtained from Norm Cribb. Mr Pickering says the quotes were for his DPX system. In the email he said:

Presume you are registered for GST here in NZ. If I am paying for things, how could we go about claiming for gst back? At the end of the day I guess Detection Solutions would just buy the complete/partially complete unit from me. Alternatively I just pay for the things through Detection Services somehow.

[25] Mr Simmons replied that it was probably best to invoice Services or Solutions and they would pay.

[26] Mr Pickering says he developed his DPX to the point of its being a prototype that was ready to build. He says he did this on his own with the assistance of two consultants – Mr See Wong and Mr Richard Cross – who he hired; and that the work was done in his own time and at his own expense. Mr Pickering claims that there were two systems being developed and that they were separate: his DPX and DSL's Inscan.

[27] The parties agree that Mr Pickering has intellectual property in the computer component of the system.

[28] DSL says that the parties were engaged in a joint venture which in turn created a fiduciary relationship, the duties attendant upon which were breached by Mr Pickering; and that the fiduciary relationship created a constructive trust over the intellectual and property rights in the system.

[29] DSL also that it acquired rights in the system as it was developed in the course of Mr Pickering's employment pursuant to his employment agreement.

[30] The respondent says Mr Pickering appropriated or attempted to appropriate property – physical and/or intellectual – that belonged to DSL and that for that reason it justified in terminating Mr Pickering's employment. DSL says Mr Pickering

appropriated development of a system that he was developing for DSL or jointly with DSL. Mr Simmons saw the process as being a joint development.

[31] Mr Pickering says the development was of his own system, done in his own time, with his money and that his job description does not specify development as a specific duty.

Incorporation of Aqatar

[32] Mr Pickering said that in early December 2009 he was advised by his accountants to incorporate a company as a vehicle for the further development of his project. Mr Pickering said he continued to work on DPX in December and that he completed manufacturing drawings by 3 January 2010 and on 4 January 2010 instructed his accountants to incorporate Aqatar. The incorporation took place on 18 January 2010.

[33] Mr Pickering said he told Mr and Mrs Simmons about Aqatar in late January or early February and said it was a vehicle for ongoing development of DPX. He claims Mr and Mrs Simmons said that was a good idea. They deny they were told at that stage or that either one of them said it was a good idea.

[34] Mr Simmons says he was told by Mr Pickering about the company in May and that Mr Pickering maintained that the company was set up to enable better tracking of costs. Mr Simmons told his wife about the incorporation. I accept the evidence of Mr and Mrs Simmons about when they were made aware of Aqatar. I also accept that they were shocked and taken aback but that at that stage they still regarded Mr Pickering as a trusted friend and did nothing about it.

[35] As matters progressed Mr Pickering initially asserted that Aqatar did not have IP in the system, then claimed it owned everything.

[36] Mr Simmons offered to buy shares in Aqatar. Mr and Mrs Simmons say they also regularly asked Mr Pickering to supply invoices so they could pay for any costs he had incurred in developing the system. Mr Pickering denies this but I prefer the evidence of Mr and Mrs Simmons.

[37] On 21 May there was an email exchange about Mr Simmons buying the system for AUD 120,000 to 130,000.

[38] On 31 May Mr Pickering emailed Mr Simmons that he was thinking of invoicing in discrete parts and asking which Detection Services company should be invoiced. Mr Pickering referred to the system as Inscan but now says it was DPX.

[39] In August 2010 Mr Simmons started being concerned that Aqatar's system was not ready.

Ownership issues

[40] On 29 September Mr Simmons emailed Mr Pickering saying that Inscan was a DSL project that had been taken over by Aqatar and that as DSL had no agreement with Aqatar it had no IP rights in Inscan although 95% of the knowledge, system design and development costs had come from DSL.

[41] Mr Pickering replied that he was prepared to pass his system to DSL for consideration but it still required testing.

[42] On 19 October Mr Pickering emailed that his investment was around \$140,000 and was worth seven times that. Mr Simmons said it was worth nothing if it didn't work.

[43] In late March 2011 Mr Simmons initiated discussions with a UK company, Hydrosave, about on-development of Inscan. On 7 April Mr Simmons emailed Hydrosave saying that DSL owned the system. Mr Pickering protested to Mr Simmons.

[44] On 16 April Mr Simmons asked Mr Pickering for an update and asked him to ship the system to Melbourne to complete the project there. Mr Pickering said it would be tested in New Zealand before being shipped.

[45] On 4 May Mr Pickering emailed Hydrosave saying he had developed it and Aqatar owned IP in it. In correspondence with Hydrosave Mr Pickering asserted that Aqatar owned Inscan.

[46] On 26 May 2011 Mr Pickering asserted that Aqatar owned all the IP. Mr Simmons agreed it owned the software development but that the majority of the concept had been developed by Mr Caunter and himself. He accepted that Aqatar owned the equipment but only because Mr Pickering had decided to go it alone despite his requests because Mr Pickering wanted to own the IP. This was against the spirit of the joint development. Mr Simmons said the system should be tested and shipped to Melbourne and that Mr Pickering had not raised an invoice nor had they agreed on a transfer price.

[47] In 2011 there were negotiations for DSL to buy the system that Mr Pickering had been working on.

[48] On 4 June Mr Simmons said there were two purchases to consider: the equipment and then the IP/drawings/supplier contracts/pricing etc.

[49] A draft agreement was drawn up by Mr Simmons' lawyer. This included payment for costs incurred for design and manufacture and payment for the work carried out by Mr Pickering outside the time worked on the system while at DSL.

[50] On 15 June Mr Simmons sent Mr Pickering a new agreement which included an IP transfer of the onsite machinery (not the software) plus a restraint on sale of software licences to other purchasers.

[51] Mr Pickering said the agreement required amending and he could not provide an invoice until the agreement was executed.

[52] Mr Simmons had an amended agreement prepared with a price of NZD257,000 plus GST which included the IP and software restraint.

[53] Mr Pickering delivered the equipment to MCL Packaging ("MCL") at the airport so crate size could be assessed.

[54] Mr Simmons again requested an invoice and Mr Pickering yet again said he could not raise an invoice until the agreement was signed. Mr Simmons asked for the all the invoices. Mr Pickering said he could provide major component costs information and Mr Simmons could view the invoices once the transaction was complete. Mr Pickering supplied some invoices but \$40,000 “minor invoices” were not supplied. Mr Simmons understandably asked for those invoices.

[55] If Mr Simmons was of the view that the system being developed by Mr Pickering was work he was doing in the course of his employment, it is surprising that he did not assert earlier than he ultimately did that the system belonged to DSL on that basis. Mr Simmons said he needed the system and negotiating to buy it was a practical way of trying to reach resolution.

Disintegration of the relationship

[56] On 4 July 2011 Mr Simmons’ lawyers, Dukesons, wrote a letter to Mr Pickering. It was an unfortunate letter. It asserted that DSL conceived and developed the equipment and owned rights because Mr Pickering had done work in the course of his employment (with the exception of earlier work done in expectation of employment with DSL and a share offer; that Mr Pickering owed DSL a fiduciary duty and held the equipment on a constructive trust for DSL; that a range of IP rights belonged to DSL and that Mr Pickering continued to infringe those. It demanded that Mr Pickering give DSL possession of the system including all plans and software, that he acknowledge that neither Aqatar nor Mr Pickering claimed ownership or use of the equipment and related materials including IP. There was a threat to issue injunctive proceedings and Mr Pickering was accused of appropriating the project, failing to disclose what he was doing and then asserting a claim when the system was needed; and that failure to comply with the instructions would be treated as a disciplinary matter.

[57] MCL refused to return the equipment to Mr Pickering as there was a dispute about the ownership.

[58] Mr Pickering’s lawyers responded and asked DSL to identify the IP rights it claimed to own. There was a request for an urgent mediation.

[59] Dukesons asserted that anything Mr Pickering had done on the system had been or should have been done on behalf of DSL. DSL stated that it had started a disciplinary process and was considering suspending Mr Pickering pending determination of the disciplinary process. There was agreement to attend mediation and Mr Pickering was suspended.

[60] On 15 July Mr Pickering was put on notice that DSL believed he was obliged to complete and build the system for DSL and that he should respond in writing by 21 July 2011 for the purposes of the disciplinary proceedings.

[61] On 1 August Grimshaws, acting for Mr Pickering, provided a proposal to show the DPX development evidence confidentially to counsel or to a third party expert.

[62] Unfortunately, the suggestions regarding inspection of the third party and/or counsel on a confidential basis were ultimately rejected by DSL.

[63] On 15 August Mr Pickering's employment was terminated.

Decision

[64] Blanco White, *Patents for Inventions and the Protection of Industrial Designs* (5th ed), London, Stevens, 1983 states:

Where an employee in the course of his employment made an invention which it was part of his duty to make that invention became the property of the employer. The problem is to determine whether it was made in the course of employment, whether it was something that was the employee's job to invent.

[65] During employment does not mean simply during the time a person was employed. It is whether the employee was engaged and instructed to undertake the task.

[66] The test regarding ownership of intellectual property is set out in *Empress Abalone Limited v Langdon* [2000] 2 ERNZ 53 (CA). The employer asserted that as Mr Langdon had been employed to conduct research all research he conducted had

therefore to fall within the ambit of his employment and be the property of the employer.

[67] In at para [8] Keith J stated:

The suggested principle of law is, we think, stated too widely. It is not supported by the cases or by principle. It would mean, for instance, to recall the famous lines of Ralph Waldo Emerson, that had Empress Abalone manufactured mousetraps as well as pearls [the defendant], although employed only in respect of pearl production, would not have been allowed to turn his inventive mind for the benefit of himself and humanity to the manufacture of a better mousetrap, ... any such invention should belong to the inventor, in the absence of a contractual or other legal obligation to the contrary.

[68] Mr Pickering's job description does not include any reference to research and development. The emphasis is on management which is consistent with it being the General Manager's position.

[69] Mr Pickering did not work on the system in the course of his employment.

[70] This case is complicated by the genesis of the project and its origins in pre-employment matters. Mr Pickering was involved in a number of matters relating to the development of the system.

[71] It does not make sense for DSL to have provided information to Mr Pickering if he was building a system in competition with his employer. Mr McBride submitted that DSL did this because it could chose to buy the DPX if it wanted to. However, if there were two systems and DSL was providing information for Mr Pickering to use to develop his, and then chose not to buy it, Mr Pickering would have used DSL's information in developing his system and would potentially be able to benefit from this in the future. This does not make sense either. Why would DSL wish to be paying for DPX at the same time as it was purportedly working on its own system?

[72] I find, on the balance of probabilities, that there was only the one system being developed. Prior to and after the commencement of employment Mr Simmons and Mr Caunter shared information with Mr Pickering.

[73] Mr Dench submitted that there was a joint venture and a fiduciary relationship. If the development was a joint venture prior to employment and continued to be a

joint venture once employment commenced, it is difficult to categorise issues regarding the development as an employment relationship problem.

[74] The relationship in a joint venture is between the joint venturers not between an employer and an employee.

[75] Whether or not there was a joint venture is not something I need to make a finding about. That would only be of significance if the matter of fiduciary duties was relevant to this decision. If there were a joint venture there need not necessarily be a concomitant fiduciary relationship.

[76] For the purposes of this decision, it is sufficient that I consider the context in which the system development took place. Mr Simmons maintained it was a joint development. I agree with his assessment. Mr Pickering was not developing a separate system.

[77] When Mr Pickering commenced his employment any development he did on the system was not as an employee as it was not part of his job description and employment duties.

[78] Neither did he carry out the development as an individual without any obligations to anyone else. During the time he was employed he was developing the system outside the employment relationship on a joint basis with Mr Simmons and DSL. The issue of who owns what with regard to the system is one which I neither need to nor can determine. I cannot determine it because there is insufficient evidence.

[79] The issue is what impact, if any, that joint development and the manner in which Mr Pickering behaved in regard to it, have upon the justifiability of the dismissal. I agree with Mr Dench that the issue is one of justifiability not ownership per se.

[80] In *Smith v Christchurch Press Co* [2000] 1 ERNZ 624 [73] the Court of Appeal acknowledged that, in the interests of restricting intrusion into employees' private lives, there are very limited circumstances in which an employer can be said to have a legitimate interest in an employee's conduct outside of work. For such a legitimate interest to exist in a particular situation:

...there must be a clear relationship between the conduct and the employment. It is not so much a question of where the conduct occurs but rather its impact

or potential impact on the employer's, whether that is because the business may be damaged in some way; because the conduct is incompatible with the proper discharge of the employees' duties; because it impacts upon the employer's obligations to other employees or for any other reason it undermines the trust and confidence necessary between employer and employee. ... It is [not] necessary for there to be demonstrated actual adverse effect on the employment situation before the employer is entitled to conclude that the conduct warrants dismissal.

[81] The Court also stated that conduct outside of working hours could amount to serious misconduct if there was a sufficient nexus between that conduct and the employment relationship.

[82] Mr Pickering had a duty of fidelity to his employer. The employment relationship is one of trust and confidence.

[83] In this particular situation the complicating factor is that the joint development and the way the parties interacted regarding it clearly had an impact on the employment itself. It differs from a situation where, for example, an employer and an employee may have had a joint business venture training race horses or selling soap if the employment was unrelated to racehorses or soap sales.

[84] There are aspects of Mr Pickering's behaviour regarding the joint development that impacted negatively on the employment relationship and adversely affected the performance of his duties.

[85] Mr Pickering had obligations of trust and confidence towards his employer.

[86] Mr Pickering initially asserted that he had incorporated Aqatar to keep track of costs. He told Mr Simmons that Aqatar did not own IP in the development and later changed his position and asserted Aqatar owned everything. This alteration in position was not helpful regarding the attempts Mr Simmons was making to negotiate to purchase the system.

[87] Mr Pickering's failure to supply invoices when requested did not facilitate matters either. I do not find Mr Pickering's explanation for this failure convincing or satisfactory.

[88] Mr Pickering should have discussed his intention to incorporate Aqatar; or, at the very least, disclosed the fact that he had done so at the time of the incorporation.

[89] Mr Pickering was the General Manager. Mr Simmons was correct to reach the conclusion that the way in which Mr Pickering had behaved cast considerable doubt upon his ability to continue as General Manager as Mr Simmons' ability to trust Mr Pickering had been impaired by Mr Pickering's behaviour.

[90] While Mr Simmons' frustration with the negotiations is understandable, the tenor and content of the letter sent by Dukesons on 4 July 2011 contained assertions that should not have been made. Given Mr Simmons' position that the development was a joint development, I refer particularly to the claim that DSL owned the system in its entirety. If it was a joint development, that plainly could not be the case. Furthermore, Mr Simmons knew that Mr Pickering had spent his money on the system. The instruction to hand the system over was not a reasonable instruction nor was the requirement for an undertaking that acknowledged that neither Mr Pickering nor Aqatar could claim any ownership in the equipment or related materials, including the intellectual property.

[91] The letter of 11 July 2011 was not helpful either. It added fuel to the fire by asserting that the assumption that Mr Pickering had developed the software before his employment commenced was now being questioned and a claim that Mr Pickering was intending to compete with DSL. The demand to hand everything over was repeated. There was no suggestion of reimbursement for Mr Pickering's expenditure.

[92] Adding to the unfortunate manner in which matters were conducted was the refusal by Mr Simmons to have Mr Pickering show the development evidence confidentially to DSL's counsel or to a third party expert after initially suggesting that the information be reviewed confidentially.

[93] Had the proceedings been conducted in a more measured and considered manner the parties may well have been able to negotiate a sale and purchase of the development.

[94] Mr Simmons was not justified in dismissing Mr Pickering because he refused to hand over the development and to sign an undertaking relinquishing all rights in it.

It cannot be said that Mr Simmons carried out a fair investigation. He made assumptions about ownership but did not trouble to go through a process of having his assumptions checked by a third party on a confidential basis.

[95] The dismissal was unjustified because Mr Simmons could not dismiss Mr Pickering for refusing to hand over the development to DSL as the development did not belong in its entirety to DSL. Mr Simmons' refusal to investigate the issue of ownership by undergoing an inspection process destroyed the possibility of a fair investigation and a resolution.

[96] However, Mr Simmons conclusion that he could no longer trust Mr Pickering to act in the best interests of DSL or to act honestly and ethically on behalf of the business was valid.

Remedies

[97] Mr Pickering has sought compensation, reimbursement of lost wages,

[98] Mr Pickering also seeks an order that the individual employment agreement has been breached in that DSL asserted it was the owner of the physical and intellectual rights in the system being developed. There has not been a breach.

[99] Mr Pickering was distressed by the termination of his employment. He seeks between \$35,000 and \$50,000 compensation. The evidence is not such as to justify an award at that level. I set the amount at \$10,000.00.

[100] As to the lost remuneration claim, Mr Pickering was required to show that he had attempted to mitigate his losses. He had registered with three employment agencies and in November purchased a distressed business from which he has derived no income. I am not satisfied that these efforts constitute adequate attempts at mitigation and so decline to make an award of lost remuneration.

[101] Mr Pickering seeks compensation for the loss of opportunity to earn the bonus for the balance of the twelve months through to August 2012. I decline to award compensation on this basis.

[102] He also seeks payment of interest on the loan he took out to fund the costs of the building of the system. There is no basis for the Authority to make such an award.

Contribution

[103] I am required to consider whether there was contribution on Mr Pickering's part. I have concluded that there was. The incorporation of Aqatar, the failure to send invoices, the assertion that he solely owned all rights in the system particularly after having stated Aqatar did not own rights all contributed to the situation giving rise to the personal grievance. The remedies (not including the bonus) are to be reduced by 50%.

Bonus

[104] I am very appreciative of Mr Lyne's work and the amounts awarded are based on that.

[105] Had the companies' accounts been in a better state the calculations would have been much easier. Mr Pickering was obliged to expend what may well be a substantial amount of money on employing an accountant to try to ascertain the amount of the bonus, when the responsibility for doing the calculations lay with the employer.

[106] There was no agreement that Mr Pickering would be paid the bonus for the full 2010 year.

[107] Mr Pickering is entitled to a bonus for part of the 2010 year, the full 2011 year and the 2012 year till date of dismissal: NZD 117,351 inclusive of interest.

Costs

[108] My usual practice is to suggest that the parties attempt to resolve the issue of costs themselves. While it is apparent that the relationship between the parties is less than satisfactory, I am nonetheless of the view that to negotiate costs would be more beneficial to the parties than a continuation of costly legal proceedings.

[109] In the absence of a negotiated agreement regarding costs, the applicant is to file a memorandum within 28 days of the date of this determination. The respondent is to file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King

Member of the Employment Relations Authority