

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2015] NZERA Auckland 16
5460377**

BETWEEN DAVE RAINFORD
 Applicant

AND COOPER FAMILY
 INVESTMENTS LTD
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Ian Parata, Advocate for Applicant
 No appearance by Respondent

Investigation Meeting: 16 January 2015 at Taupo

Submissions received: 16 January 2015 from Applicant
 None from Respondent

Determination: 22 January 2015

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Dave Rainford, claims that he was unjustifiably dismissed by the Respondent, Cooper Family Investments Limited (CFI) on 10 July 2014.

[2] CFI denies that Mr Rainford was unjustifiably dismissed and claims that he was justifiably dismissed on the basis of redundancy.

Issues

[3] The issue for determination is whether or not Mr Rainford was unjustifiably dismissed by CFI.

Failure of Respondent to attend or be represented

[4] CFI was not represented at the Investigation Meeting.

[5] The statement of problem had been served on CFI and a statement in reply had been received by the Authority on 12 September 2014. The statement in reply had been completed by Mr Tom Findlay, who had been instructed to act on behalf of CFI.

[6] Following advice from Mr Findlay of his withdrawal as CFI's representative, copies of the statement of problem and supporting documentation were sent at his request to Mr Rick Cooper, Chairman of CFI, who filed a response stating CFI's position which was received by the Authority on 12 January 2015.

[7] Mr Cooper declined to attend and represent CFI at the Investigation Meeting and stated that he would accept my determination in the matter.

[8] I therefore proceeded pursuant to clause 12, Schedule 2 of the Employment Relations Act 2000 (the Act) to act as fully as if CFI had attended or been represented at the Investigation Meeting.

Background facts

[9] CFI is based in Taupo and operates a car dealership for SsangYong cars, and also undertakes building maintenance and renovation work. Mr Rainford was employed as a Handyman/Maintenance and Construction Manager by CFI. His employment commenced on 26 October 2010, and he was provided with an individual employment agreement.

[10] Mr Rainford received an annual salary of \$75,000.00 and a Tool Allowance of \$3.00 per hour gross. He was supplied with a mobile telephone and had use of a motor vehicle for work and personal use, although he stated that he did not use the CFI vehicle for personal use. Mr Rainford is a registered carpenter and a member of the Certified Builders Association.

[11] Mr Rainford reported to Mr Rick Cooper, Chairman, and said that CFI had been a good employer during the period of his employment. He had a good working relationship with Mr Cooper prior to May 2014, although he explained that there had been disagreements between them from time to time over his insistence upon CFI's adherence to legislation relevant to the building industry including the Health and Safety in Employment Act 1992.

[12] Mr Rainford said that prior to May 2014 CFI had obtained a contract to undertake a significant building project in Auckland with the commencement date of 5 May 2014. Prior to the building project commencement date of 5 May 2014, Mr Rainford and Mr Tweedie said they had met with Mr Cooper and discussed work which could be commenced on the project prior to obtaining the necessary Building Consent (the BC).

[13] In anticipation of the commencement of the building project he had engaged on behalf of CFI the services of Mr Ross Tweedie, a self-employed building contractor in Taupo, and they had been due to travel to Auckland from Taupo the weekend preceding 5 May 2014.

He had also engaged a number of sub-contractors based in Auckland. The latter were due to commence work on 12 May 2014.

Friday 2 May 2014

[14] Mr Rainford said he had spoken on Friday 2 May 2014 to a consultant with Henderson Council who had advised that the BC had not been received for the building project. Following this conversation he had contacted Mr Richard Voyce, Director/Architectural Designer at a Taupo firm, to seek advice on what work could be undertaken prior to the BC being received.

[15] Mr Voyce responded to Mr Rainford in an email dated 2 May 2014 sent at 3.32 p.m.:

Hi Dave

I have spoken to Russell Shaw (building surveyor) from Auckland Council in regards to the amount of work that could be started before a BC is issued. He has said that it will be at the builders risk if any building work is started prior to BC been issued & that would include any demo work.

[16] Mr Rainford said he had noticed that Mr Voyce's email had not been copied to Mr Cooper and he had forwarded it to Mr Cooper at 6.19 p.m. that evening. In the attaching email Mr Rainford had written:

FYI

This is a bit of a concern!

I have four staff booked for Monday 12th.

[17] An hour or so later Mr Rainford sent a further email to Mr Voyce, copied to Mr Cooper, in which he stated:

Hi Rich.

You need to pull out all the stops on this one. I have manpower booked for Monday 12th.

Starting at "builders risk" is not an option. If we get on the wrong side of these guys at the beginning, they can make things difficult the whole way through.

Look forward to better news next week.

[18] Mr Rainford said he had received no response from Mr Cooper to his emails that evening.

Saturday 3 May 2014

[19] The next morning Mr Rainford received an email from Mr Cooper at 12.04pm. In the email Mr Cooper had written:

*Hi Dave,
If builders risk is not an option, lets can this please. I think it is better we put an experienced Auckland contractor on this project, Thanks for your assistance, You and I both know what you are allowed and not allowed to do, I appreciate your zest for rule books etc.
Thank you.*

[20] Mr Rainford responded in an email at 1.24pm in which he wrote:

*Rick
Acknowledge your comments.
Builders risk is exactly that and it is my licence on the line. Ironically, by the time you organise experienced Auckland contractor, the consent should be available and they will not have to address the issue, a luxury I am not permitted. ...*

[21] Mr Cooper responded at 1.33pm in an email in which he stated:

*Dave
Less hassle for me long run to use contractors thank you.*

[22] Mr Cooper also sent a text message to Mr Rainford which stated:

*Please advise everyone auckland is cancelled till further notice.
Thank you.*

[23] Mr Rainford said he had contacted Mr Tweedie and informed him that the building project in Auckland was cancelled. Mr Tweedie said he had been disappointed to receive the information. It had been a good opportunity for him, providing him with 3-4 months employment, and he had spent several hours loading up a work vehicle with the equipment and personal items he would need for his stay in Auckland throughout the duration of the building project. He had then unloaded the work vehicle.

[24] In addition to contacting Mr Tweedie, Mr Rainford said he had also cancelled the Auckland sub-contractors he had engaged to commence work on Monday 12 May 2014.

[25] In the early afternoon at 2.46 p m Mr Cooper emailed a contact at Auckland Council, Mr Calum Penrose, and copied Mr Rainford in the email. In the email Mr Cooper had written:

Hi Calum

Great to have a natter with you this very afternoon, Mate. I hate to be a pain in the proverbial, you know what, but mate I am having a difficult time getting a permit to once again renovate an old property

...

Sadly I feel I have been let down to some extent by my own engineers and architects etc, but where the blame lays matters not.

We leased a house for my builders to come to Henderson and do the renovations, but sadly as of today I have had to lay him off, we still do not have building consent etc. ...

Was hoping to send four guys to start Monday morning and start, some remedial non-structural work, Sadly Council will not allow this, I had always believed work could be done as long as was not structural and that any framing is left unlined so as inspectors could check and validate the workmanship etc. ...

At this point in time we have beed (sic) paying rent on a property for four weeks, we have four builders with no work, if you can help us at least get a start on this project next week, we would most grateful,

... I personally see no justifiable reason, why staff cannot start to prepare the building an start framing without lining to at least speed up our project.

[26] During the mid to late evening of Saturday 3 May 2014, Mr Rainford said he had received a telephone call from Mr Cooper advising that the project could proceed again. He had accordingly rung Mr Tweedie and advised him that they could travel as planned to Auckland, however Mr Tweedie had responded that he no longer wished to work on the building project, but advised that he would give it some further thought.

[27] Mr Rainford said he had sent a text message to Mr Cooper and advised that Mr Tweedie no longer intended to work on the building project and advised that he should speak to Mr Tweedie direct. In response he received a text message from Mr Cooper which said:

Well thanks f... heaps.

Sunday 4 May 2014

[28] The following morning, Sunday 4 May 2014, Mr Rainford sent an email to Mr Cooper at 9.06 a.m. in which he wrote:

Rick,

As instructed, my meetings tomorrow with the Auckland contractors – demolition, plumber, building-and supplier reps have been cancelled, and they have been advised that their labour will not be required on Monday 12th. I will also Jessica (Takinini office) that the accommodation for Ross and I from tonight will not now be needed.

...

Yesterday was counterproductive and stressful for all involved. I am happy to discuss further with you tomorrow if necessary, but will offer my thoughts now.

I was surprised to learn late Friday afternoon that the two questions Richard had mentioned as early as Monday/Tuesday had only just been answered. ... His email to me quoting work at 'builders risk' rankled. Easy to be blasé when it is not architects risk or engineers risk or owners risk. Buildings risk means me and mine on the line. My email to him was an attempt to have him pull finger and move faster. Obviously you saw it in some other way.

You are correct in saying that I am aware of the work that may be carried out without consent. I am also aware of the implications of the term 'structural' in relation to a two storey building. I believe I would have had difficulty come Monday 12 in convincing all unknown contractors to carry out work without consent.

Had you asked, I could have explained the work schedule I had in mind for Ross and I in the coming week, the meetings tomorrow, and my intention to meet personally with Russell Shaw, the consultant. We intended to put in a week of work up there, leaving here at 11.00am today. I had a tool -loaded van, packed clothes, and food preparation to support out intentions, as did Ross. ...

What is done is done.

A win for some – architects and engineers will have yet more time to carry out their task – you will be more comfortable with your reliable Auckland contractor.

[29] Mr Cooper responded to this email at 9.18 a.m. writing:

Yes agree with you now Mongst every other thing I have to do is find some proactive people as usual falls on me costs etc hence from now on we shall employ contractors

[30] At 9.21 a.m. Mr Cooper followed this email with another which stated: “*So what a pity you didn't report that to me your employer instead of doing my head in your usual quote not mine*”

[31] Mr Rainford responded by email at 9.46 a.m.: “*Not sure when I had the opportunity to explain all this to you as your initial email and text simply said cancel.*”

[32] Mr Cooper sent a further email in response at 10.22 a.m. in which he wrote:

David,

I think the time has come when spades need to be called spades, all these issues simply cannot be allowed to continue, all these issues are causing a lot of stress and money to our respective companies, the bad

feelings amongst contractors, architects, planners, friends etc has gone far enough.

I realise we are all different but I cannot handle any more negativity with building issues, we have tried to be good employers to you, but I have obviously failed, even paying your 20% lost wages for some period of time whilst you were incapacitated and paying a \$4,000 bonus for your holidays. I think we Cooper family Investments will be better served using contractors. Fully appreciate your rights as an employee, but I must think of the company first, I am extremely disappointed in the build up to all this a lot of money, stress etc for no reason at all. Think about this ... why couldn't you have emailed or rung me, your employer and said hi Rick, Trapper and I are packed and of on Sunday, we have a few glitches etc with the permit, but we have plenty to go on with so it won't be a drama, will keep in touch .. wow had I received that I would not have had to react the way I have,,

And that is exactly why we are now having to cancel houses contractors etc and search for a proactive company to do the job and as I said earlier to quote you, ... my head has been done in!

[33] Mr Rainford responded by email at 11.32 a.m. :

Hi Rick, you have raised several "spades" in your email all of which require careful consideration

1. ...
2. *I did not force or coerce you into making the extra payments to me. I remained available and on call during the period of recuperation. I understand the other Cooper Family employee at the time received a similar bonus. I am sorry you regret it now, Cooper Family Investments Ltd is a good employer, but then again I work hard for the company also.*
3. *It is not negative to question poor instructions to perform work outside the law*

...

It is my intention tomorrow to apply myself to the outstanding job cards ... Please confirm or clearly advise alternative instructions.

[34] Mr Cooper responded by email at 11.40 a.m.:

Dave, I am not debating anything more with you except to say I am gutted at your actions.

This episode is causing a lot of stress and expense to me and our company and to me it is not acceptable simply put I do not have the time or energy to argue the point and negatives with you I am trying to find some positive people to simply go and do a job without all this continual drama.

Events following Sunday 4 May 2014

[35] The following morning, Monday 5 May 2014, Mr Rainford arrived at work at his normal start time of 7.30 a.m. Mr Cooper was not at the workplace in Taupo as he had travelled to Auckland. Mr Rainford said he had felt unwell that morning and had left the office.

[36] That evening at 6.59 p.m. Mr Rainford sent Mr Cooper an email in which he had written:

Hi Rick/Deon,

To clarify and avoid further stress for both parties, I wish to clearly express the manner in which I will continue to work for Cooper Family Investments.

I will always work in good faith and put the best interests of CFI first. My interpretation of this is that I fully comply with the all relevant legislation and Codes of Practice related to my role as Building and Maintenance Manager.

...

I will always follow lawful instructions. If the instructions I receive are contrary to the requirements or relevant Acts eg. Building, Health and Safety, I will not be able to comply.

Should my position and interpretation not be acceptable to your view that I should just get on with it and do the job then please advise how this affects my position with CFI.

I believe it to be in the best interests of all parties to resolve this matter to avoid further disputes.

[37] Mr Cooper responded by email at 7.36 p.m.:

Glad to see you are better there are no disputes you haven others asked to do anything illegal after a lot of expenses etc contractors are starting Henderson tomorrow cramming strapping walls etc nothing illegal in fact ticked of by senior building personal.

[38] The next day, Tuesday 6 May 2014, Mr Rainford said he arrived at work and asked Mr Cooper for work instructions. He said Mr Cooper had told him: “*don’t text me, don’t talk to me. I am going to use contractors*”.

[39] Mr Cooper had also advised him that he would be meeting with his accountant: “*to see how we can restructure the company and it may mean using contractors for all our work*”.

[40] Later that morning Mr Rainford said he was instructed by Ms Ursula Jansen, CFI Property Manager, to carry out work on a property. He had completed the work by midday on Wednesday 7 May 2014 and contacted Ms Jansen for further instructions. She had advised him to attend at a leak at another property. This job had subsequently been cancelled by a text message advising that a contractor would be used to repair the leak.

[41] Having received no further work instructions or direction from CFI, Mr Rainford had returned home after leaving messages that he was available for work.

[42] Mr Rainford reported to work on 8 May 2014 at his normal time of 7.30 a.m. He received no work instructions and was ignored by Mr Cooper. Mr Rainford said he had been feeling humiliated at his treatment and he had written and delivered a letter to CFI. In the letter Mr Rainford had written:

Ursula

*I received Rickie email and I appreciate his concerns.
Despite this, I still find myself reporting to work at 7.30 having no job instructions to follow and being ignored by the person to whom I am to report eg R.C. I was directed not to communicate with Rick on Tue 6th and since then you have been my only means of communicating with my employer*

...

*This morning I was again ignored by Rick and was made to feel like I wasn't there.
I have been embarrassed by having to sit at work with no job instructions.
I can no longer work with being treated this way by my employer.
Today I contacted the Mediation Service to assist me in resolving this matter with my employer
I have made to feel by this treatment that I no longer have a position with you and do not understand why I am being treated in this manner.
I believe it better for my health and wellbeing not to be at work until this matter is dealt with by the mediators. The stress and humiliation is too much.*

[43] During the following week 'without prejudice' discussions occurred with CFI's appointed representative in an attempt to resolve the dispute. However no resolution was achieved and a formal mediation date of 10 June 2014 was made available to the parties.

[44] CFI's appointed representative was advised that Mr Rainford would be reporting to work at 7.30am on Tuesday 20 May 2014 and the dispute would be put before the MBIE Mediation Service on 10 June 2014.

[45] Upon Mr Rainford reporting to work at 7.30 a.m. on 20 May 2014 he said that there were no company representatives present and no work instructions were provided. However during the morning Ms Jansen instructed Mr Rainford to visually inspect various properties.

[46] As there was no electricity or water available at the premises which he was visually inspecting, Mr Rainford had returned to his workplace to take his morning tea break.

[47] Whilst taking his morning tea break Mr Rainford said Mr Cooper entered the lunchroom and commented: "*Did he expect to sit here for the next three days and do nothing*". Mr Rainford replied that he was completing a job as advised to him by Ms Jansen, to which Mr Cooper responded with the information that Ms Jansen no longer worked for CFI, that he was "*the boss*" and he had no work for Mr Rainford.

[48] When Mr Rainford asked directly if he was being sent home, he said that Mr Cooper had replied: "*do what you like but I have no work for you. You could have been doing the Auckland job that was too hard for you*".

[49] Mr Rainford replied that he would go and sit at home and wait for any telephone calls and Mr Cooper had replied: "*Do what you like but I have no work for you*".

[50] Mr Rainford said he asked about his CFI work vehicle and was instructed to drop his personal tools at home, return the work vehicle and park it at the CFI premises. He did so, giving to the CFI service manager the mobile telephone and the motor vehicle keys, advising him that he had been told that he had been "*finished up*". He had then cycled home as no arrangement had been made to transport him home.

[51] Mr Rainford said he had received a call from CFI's appointed representative following the return of the CFI property, but no explanation. He had continued to receive his normal wages payment throughout this period but did not attend the workplace or carry out any work.

[52] Mediation had taken place on 10 June 2014 but this had not resolved the matter. Mr Rainford stated that he had received no formal confirmation of the termination of his employment, but on 10 July 2014 when he had received a statement from CFI's accountant that advised that he had been considered as employed until that date.

[53] On 27 August 2014 Mr Rainford filed a statement of problem with the Authority.

Determination

[54] Mr Rainford was provided with no formal letter of termination; however I find that his employment was effectively terminated by CFI on 10 July 2014 when he received his final wage payment and his annual leave entitlement. The Test of Justification in s103A Employment Relations Act 2000 (the Act) states:

S103A Test of Justification

- i. For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*
- ii. The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[55] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. CFI must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[56] In accordance with s 103A (3) of the Act the Authority must also consider whether:

- (a) ... the employer sufficiently investigated the allegations against the employee ...*
- (b) ... the employer raised the concerns that the employer had with the employee ...*
- (c) ...the employer gave the employee a reasonable opportunity to respond to the employer's concerns ...*
- (d) ... the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee ...*

[57] Following the events during the weekend of 2 - 4 May 2014, Mr Rainford said he was:

- ignored by Mr Cooper;

- advised by Mr Cooper not to communicate with him in any way;
- not provided with any instructions for work by Mr Cooper; and
- removed from the tasks allocated to him by Ms Jansen.

[58] As a result of this treatment he received from his employer, Mr Rainford sought to resolve the situation, initially by ‘without prejudice’ discussion and latterly with MBIE Mediation Service assistance. However this did not resolve the matter and his employment was terminated by CFI with effect from 10 July 2014.

[59] I find no substantive reason for the termination of Mr Rainford’s employment.

[60] In regard to the procedure followed by CFI, I note that there were significant flaws, notably (i) there were no allegations specified against Mr Rainford upon which he could offer an explanation; (ii) he was not provided with any opportunity to do so; and (iii) there is no evidence that CFI genuinely considered his explanation in circumstances in which he was given no opportunity to provide one.

[61] CFI claim that Mr Rainford’s position had been redundant following a restructuring of the company and the decision to engage contractors to undertake the duties performed by Mr Rainford.

[62] Provisions of the Act govern questions of justification for dismissal and, in particular, by reason of redundancy. Section 4 of the Act addresses the requirement for parties to the employment relationship to deal with each other in good faith. Section 4(1A)(c) in particular is relevant to a redundancy situation and requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of an employee, to provide to the employee affected:

“(i) access to information, relevant to the continuation of the employees’ employment, about the decision; and

(ii) an opportunity to comment on the information to their employer before a decision is made.” s4 (1A)(i) and (ii).

[63] I find no evidence that Mr Rainford was provided with information regarding a proposal to restructure or any opportunity to comment upon it before a decision was made.

[64] I determine that Mr Rainford was unjustifiably dismissed by CFI.

Remedies

[65] Mr Rainford has been unjustifiably dismissed by CFI and he is entitled to remedies.

Lost wages

[66] Mr Rainford was unemployed from 10 July 2014 until he obtained alternative employment on 3 November 2014. I am satisfied from the evidence provided that Mr Rainford sought to mitigate his loss.

[67] I order that CFI pay Mr Rainford the sum of \$23,076.90 gross (calculated as 16 weeks at \$75,000.00 gross per annum) pursuant to s 128(3) of the Act.

Compensation for Hurt and Humiliation under s 123 (1) (c) (i).

[68] Mr Rainford seeks compensation for humiliation, loss of dignity, and injury to his feelings. I accept that Mr Rainford has suffered hurt and humiliation due to the manner of the termination of his employment with CFI. He suffered emotionally, both on a personal basis and as a result of the adverse impact on his wife.

[69] I order that CFI pay Mr Rainford the sum of \$5,000.00, pursuant to s 123(1) (c) (i) of the Act.

Contribution

[70] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[71] Mr Rainford was under a duty of good faith in relation to CFI, which he acknowledged had been a good employer during his period of employment. He was aware that the project to be undertaken in Auckland was an important one for CFI, and that there was preliminary work that could be undertaken by him and Mr Tweedie whilst waiting for the BC to be approved.

[72] I find that the wording in the email sent to Mr Voyce in the evening on Friday 2 May 2014 and copied to Mr Cooper which included: “*Starting at “builders risk” is not an option*”

and: *“Look forward to better news next week”* to have implied that Mr Rainford did not intend to start work as planned on Monday 5 May 2014.

[73] Mr Rainford confirmed that he was aware that the approval of the BC was imminent. I note that the Auckland sub-contractors' date of commencement was not until 12 May 2014, and he confirmed at the Investigation Meeting that the BC should have arrived by that date. Failing its arrival, Mr Rainford acknowledged that it would have been for CFI to have dealt with the sub-contractors who had been engaged and not him personally

[74] Mr Rainford further acknowledged that he would have received his full salary from CFI even if he had been unable to undertake any work once he arrived in Auckland. Moreover I note that there was no evidence that he was being asked by CFI to undertake any work which may have put him at risk of losing his certification as a registered carpenter.

[75] Rather than telephoning Mr Cooper to discuss the situation when he became aware that there was a delay on the BC being received, the email messages sent by Mr Rainford stating that: *“Starting at “builder’s risk” is not an option”* and: *“Hope for better news next week”* I believe to have had the effect of influencing Mr Cooper to consider using contract labour on the project in Auckland.

[76] However I consider that despite Mr Cooper's initial reaction to his comments, Mr Rainford would have been aware from the email sent by Mr Cooper to Mr Penrose on the afternoon of Saturday 3 May 2014 that Mr Cooper was trying to resolve the situation relating to the issuing of the BC.

[77] I note that Mr Cooper comments in that email to Mr Penrose his view that: *“I personally see no justifiable reason, why staff cannot start to prepare the building”*. I further note Mr Rainford's comment in the email sent to Mr Cooper at 9.06 a.m. on Sunday 4 May 2014 that indicated he had been aware that some work could have been undertaken prior to the BC being received: *“ ... am aware of the work that may be carried out without consent”*.

[78] At this stage the situation which subsequently arose may have been averted with Mr Rainford and Mr Tweedie travelling to Auckland as intended. However Mr Rainford, rather than contacting Mr Cooper directly, had cancelled the sub-contractors he had engaged in Auckland and advised Mr Cooper he had done so.

[79] I note in this context Mr Cooper's comment in the emails to Mr Rainford dated Sunday 4 May 2014 which state: *“What a pity you didn't report that to me your employer ...”* and:

*... Think about this ... why couldn't you have emailed or rung me ,,
your employer and said hi Rick, Trapper and I are packed and as of on
Sunday, we have a few glitches etc with the permit, but we have plenty
to go on with, so it won't be a drama, will keep in touch, wow had I
received that I would not have had to react the way I have ...*

[80] I consider that Mr Rainford in taking the initial action he had done had not acted in good faith toward CFI, and that had he telephoned Mr Cooper and discussed his concerns at an early stage, the situation which subsequently arose and resulted in the termination of his employment with CFI may have been averted.

[81] I find contributory fault on the part of Mr Rainford and reduce the remedies awarded by 25%.

Costs

[82] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

Eleanor Robinson
Member of the Employment Relations Authority