

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 47/08  
5053269

BETWEEN ELAINE BRODIE  
Applicant

AND OPOTIKI PACKAGING AND  
COOLSTORES LIMITED  
Respondent

Member of Authority: R A Monaghan

Representatives: F Meikleham, Counsel for Applicant  
K Stretton, Advocate for Respondent

Investigation Meeting: 29 October 2007 at Gisborne  
31 October 2007 by telephone conference

Submissions received: 5 and 21 November 2007 from Applicant  
16 November 2007 from Respondent

Determination: 15 February 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Opotiki Packaging and Coolstores Limited (“OPAC”) employed Elaine Brodie as quality control supervisor at its packhouse in Gisborne. The area Ms Brodie supervised was the packing of citrus, apples and kiwifruit. She says OPAC dismissed her unjustifiably.

[2] OPAC says Ms Brodie’s dismissal was justified. The dismissal followed a warning to Ms Brodie about her failure to follow quality control procedures, and a further instance of failure to follow procedures which was associated with OPAC’s incurring significant re-packing costs.

### **Events leading to the dismissal**

[3] Ms Brodie has extensive experience in quality control in the fruit packing industry, although her employment at OPAC began in September 2004. Her early duties at OPAC were to supervise citrus packing, then apple packing, then in April 2005 she supervised kiwifruit packing. She was also to supervise kiwifruit packing in the 2006 packing season, and began doing so on 1 April 2006.

[4] Quality standards in the kiwifruit industry are stringent and requirements are prescriptive. Zespri International Limited (“Zespri”), with whom OPAC has contracts, issues a manual detailing the standards it requires and audits packed kiwifruit at the wharf prior to export to ensure its standards have been met. If the kiwifruit fails the Zespri audit, it cannot be shipped. OPAC also has its own quality manual, and conducts its own internal quality audits.

[5] Ms Brodie’s role was to oversee the quality of the packing operation and ensure the necessary standards were met. She was required to ensure the packing and grading staff, and the two quality controllers, were aware of and were meeting the required standards.

[6] At the beginning of the 2005 kiwifruit season OPAC introduced a new quality recording system known as ‘R600’ to the Gisborne packhouse, having begun using the system at its Opotiki site the previous year. Overall OPAC would continue to observe the industry standard for quality checking, but the R600 system changed the focus from exceedingly high quality in packouts to maximising export packouts without breaching quality standards.

[7] The R600 system itself involved the inspection of samples of 600 kiwifruit off every packline, inspected 100 at a time at pre-set intervals. The pallets from which the samples were taken were marked for identification later if necessary. Each individual kiwifruit was checked, and the existence of any defects was noted and counted. The count was recorded on a daily ‘defect control chart’, which identified the grower, the orchard and sometimes the area of the orchard from which the

sampled fruit was sourced, the time of the inspection and the number of defects noted at the time of the inspection.

[8] When a 30<sup>th</sup> defect was counted in a sample all associated marked pallets were pulled off the packline for a further subaudit and possible reworking. 'Reworking' means repacking the product and, in this context, removing enough obviously defective kiwifruit to bring the defect count back into an acceptable range.

[9] When the defect count was 27 – 29 the packline continued to be worked, but the activity was referred to as working 'in warning'. When kiwifruit was being worked on in warning, it was marked with a 'hold' card and set aside to be looked at again. Staying 'in warning' without moving 'out of grade' was the mechanism by which export packouts were maximised.

[10] When the defect count was 23 – 26, this was referred to as working 'in grade'.

[11] If the number of defects was below 23 this was considered a sign of 'overgrading', or the unnecessary downgrading or rejection of kiwifruit when the individual fruit met the required standard or the defect count in the packed product could still have remained within acceptable limits. Reworking may be necessary, but in this context when the product was repacked unnecessarily rejected kiwifruit could be retrieved and included.

[12] If the R600 system was not operated correctly then problems were not detected, and remedial action was not taken. Thus excessive amounts of defective kiwifruit could be packed. Failing subsequent detection by OPAC, the product would be likely to fail the Zespri audit at the wharf. On the other hand a loss of income would result from the unnecessary rejection of suitable kiwifruit, or the rejection of defective kiwifruit when rejection was not necessary to remain in grade.

[13] Ms Brodie received training in the quality control procedure, including the R600 system, prior to the commencement of the 2005 season. She also received support during the season from Mary Clifford, the company's assistant quality manager. Ms Clifford's responsibility was to ensure quality requirements had been

met once product had been packed and was ready for dispatch, and that Zespri's requirements were met.

[14] Further pre-season meetings and training sessions were conducted prior to the start of the 2006 season. In addition Ms Clifford travelled to Gisborne to assist with the commencement of the season.

#### 1. The written warning

[15] On 1 April 2006, the first day of the 2006 season, the defect control chart for product received from a particular grower recorded defect counts in the 19 – 22 range at each of 7 inspections occurring between 11.55 am and 2 pm. A downward trend began with an inspection at 11.20. This was indicative of what OPAC considered to be a serious overgrading problem.

[16] Ms Brodie said in evidence that she noticed the problem after lunch (after about 12.30 pm) and went to speak to the quality controllers about it. She said further that she could see for herself that class I (export quality) kiwifruit was among the rejects. No-one had told her about the overgrading, and she had expected the quality controllers would advise her of it. She also understood the quality controllers had been or would approach the head graders, but received no further feedback about that.

[17] Ms Clifford and Ian Robertson, OPAC's post harvest operations manager, arrived at the Gisborne site at about midday. They saw the relevant defect control chart, and observed the presence of class I kiwifruit among rejected or class II kiwifruit. Both took the view that the problem should have been identified promptly and addressed by a direct approach to the graders. Ms Clifford made such an approach herself, while Mr Robertson referred the matter to Hugh O'Donnell, the Gisborne site manager. Ms Brodie said in evidence she was aware Ms Clifford intended approaching the graders, and said Ms Clifford did not get back to her afterwards.

[18] Ultimately the product was reworked and over 2,000 trays were recategorised from class II. OPAC says the reworking enabled it to salvage over \$10,000 worth of export quality kiwifruit which had been wrongly graded.

[19] Mr O'Donnell called a disciplinary meeting which went ahead on 4 April 2006. Ms Brodie gave the explanations set out above. She was asked whether she should have inspected the product herself, and acknowledged she should have but said she had 'other problems' to address. In evidence she said one of the 'other problems' was with product being caught in machinery and not dropping into boxes correctly. She also told Mr O'Donnell she was aware she could have spoken to the graders.

[20] Mr O'Donnell believed Ms Brodie's conduct amounted to neglect in carrying out her duties, which had serious consequences. He did not accept her explanations and considered her actions and inactions amounted to serious misconduct. Accordingly by letter dated 4 April 2006 he issued a formal written warning that:

“... should there be any reoccurrence of this neglect of your duties and responsibilities then disciplinary action will result which may lead to your dismissal.”

[21] The letter went on to suggest that the parties work together to formulate a pathway of remedial action. Mr O'Donnell said in evidence he considered his actions lenient, because he knew Ms Brodie was competent and she had been employed because of her expertise in quality control. Nevertheless the parties turned their attention to the formulation of the remedial action pathway.

[22] As matters stood at the time, the essence of the 1 April difficulty lay in Ms Brodie's failure to address the overgrading problem in a proactive way, her failure to take responsibility for her part in the problem, and the weakness of her explanation in the context of her experience and seniority. It is difficult to see how the draft pathway which Mr O'Donnell prepared would address this, nevertheless he gave the draft to Ms Brodie for comment. Ms Brodie prepared a written counter-proposal, which she gave to Mr O'Donnell on 17 April. It was very considerably more detailed than Mr O'Donnell's, and indicated who would have responsibility for a lengthy list of tasks

as well as when the action listed would be implemented. In my view, both documents missed the point.

## 2. The incident on which the dismissal relied

[23] Meanwhile product packed between 4 and 13 April 2006 had been prepared for dispatch to the wharf by 14 April. Ms Clifford conducted a 'mirror' audit of a Zespri audit, failing seven out of nine pallets. The audit revealed that too many defective kiwifruit had been packed. Product packed between 4 and 13 April was reworked over the Easter weekend, at an estimated cost varying between \$28,000 and \$32,000.

[24] Mr O'Donnell was to investigate the cause. I was provided with extremely limited information regarding the extent of his investigation, but Mr O'Donnell said at the investigation meeting that he talked to the staff on the Saturday (15 April) while they were repacking. He asked them 'what was going on'. One of the quality controllers, Vicki, told him she had brought to Ms Brodie's attention boxes of product containing kiwifruit she considered out of grade, but Ms Brodie either treated the product as in grade or told her to take another box and continue working as long as the defect count from the new box brought the product back in grade. The other quality controller, Wai, also said she was told to take another box and continue working when she attempted to draw out of grade fruit to Ms Brodie's attention. This was significant because Ms Brodie should have acted on the concerns and at least have marked the product in question with a 'hold' card for subauditing or possible reworking later.

[25] I was not provided with any further specifics of the incidents which caused Vicki's and Wai's concerns, except to the extent a matter Vicki had raised became a central feature of Ms Brodie's disciplinary investigation. The incident occurred at the end of Thursday 13 April, the last day before the Easter holiday. There was an associated allegation that Ms Brodie had expressed a wish to finish work so everyone could go home for the holiday.

[26] According to a diary note Mr O'Donnell made on 17 April (Easter Monday) he spoke at about 9 am to the head grader in what I assume was part of his investigation into what led to the audit failure. The head grader said, among other things, that the graders were not seeing obvious defects and not grading quickly enough. The graders were also confused because they were being told to let more fruit through on a good line, and less on a bad line.

[27] I understood that to mean that a 'bad line' was one with a relatively higher number of defective fruit, so that relatively more fruit would have to be rejected during grading in order to ensure total defect counts remained within the acceptable limit during inspection. Graders needed to recognise whether they were working on a 'good line' or a 'bad line', and exercise appropriate discretion on whether to pack particular fruit or not accordingly. Overall, the head grader suggested the graders needed retraining.

[28] Mr O'Donnell and Ms Brodie met later on the morning of 17 April. Mr O'Donnell said the context of the discussion concerned how so much product could have failed Ms Clifford's audit and I assume this discussion, too, was part of the investigation into what had led to the audit failure. Neither Mr O'Donnell nor Ms Brodie gave an account of the meeting in their statements of evidence, and although both had prepared reasonably contemporaneous diary notes, neither note was full.

[29] It seems, however, that the discussion quickly centred on a document referred to as the quality control record sheet for packline 15382 and completed on 13 April. The record sheet both identified and counted the defects found on the packline in samples taken at the end of the day between 4.45 pm and 5.30 pm. Vicki had declined to sign off the count taken at 5.30 pm. This was the product to which she had drawn Ms Brodie's attention, and she believed should have been treated as out of grade.

[30] In essence Ms Brodie's response was that she considered the fruit in question to be borderline, and if problems continued the product could be re-worked later.

[31] Mr O'Donnell said the discussion about packline 15382 triggered his decision to initiate disciplinary action.

### 3. The disciplinary procedure and decision to dismiss

[32] By letter dated 18 April 2006 Ms Brodie was advised she was stood down from her position, and that a meeting was sought pursuant to the company's disciplinary policy. The letter referred to the previous day's meeting, saying the stand down followed Ms Brodie's bringing to Mr O'Donnell's attention her failure to adhere to quality control procedures by not failing out of grade product on two occasions. The 'two occasions' were not specified, but it seems they related to Vicki's and Wai's expressions of concern.

[33] Ms Brodie instructed a solicitor, and the solicitor and Mr O'Donnell embarked on a discussion of the merits of the matter even before the disciplinary meeting was held. In the course of their exchanges Mr O'Donnell wrote a further letter dated 28 April, in which he said Ms Brodie had volunteered information that she: did not act on quality control information brought to her by her staff and showing product was out of grade; instructed staff to disregard that information and continue to sample fruit; and at the end of the day on 13 April had instructed staff not to record a failure of packed product to pass a quality control inspection. He denied Ms Brodie's actions were because of a lack of supervision and training.

[34] He also made the broader assertions that:

“OPAC views Ms Brodie's poor leadership and propensity to circumvent industry decision criteria as having lead (sic) to confusion and poor performance within her grading and quality control staff, and directly lead (sic) to OPAC having to re-work 56,000 tray equivalents of fruit.

The consequences of Ms Brodie's decisions to circumvent industry quality criteria has directly exposed the company to:

- (1) Repacking costs ...
- (2) Potential loss of credibility with growers ...”

[35] The letter also referred to Ms Brodie's actions as being deceitful and unprofessional, before noting that: "the correct disciplinary procedure has still to be followed, that is to allow Ms Brodie the opportunity to explain her actions and for OPAC to consider her response before considering any disciplinary action against her."

[36] The disciplinary meeting was conducted on 4 May 2006. Ms Brodie was asked about the events of 13 April, and her answer addressed her exchanges with Vicki at the end of the afternoon. She said she was helping out on the grading tables, and working 'in warning' when Vicki approached her. She could see there was some borderline kiwifruit and some was out of grade. She told Vicki 'they would be ok', referring to the borderline fruit.

[37] Vicki and Ms Brodie then discussed the completion of the record sheet. Ms Brodie said she told Vicki to 'put the R600 to maximum' and that some fruit would be repacked later if necessary. She acknowledged that Vicki disagreed. She also said that about 100 boxes were out of grade. When the quality control record sheet was put to her, she said she did not notice Vicki had not signed off and claimed to be unaware Vicki was unhappy.

[38] Ms Brodie agreed she had asked Wai to get another box when a sample was moving out of grade. Again her explanation was that the fruit was borderline, and to comment that product could move out of grade quickly. When it was put to her that she had not followed procedure, she asserted that Wai had followed procedure by getting another box.

[39] Neither Vicki nor Wai gave evidence to the Authority.

[40] When asked about the result of the repacking on 15 April Ms Brodie said it was obvious the kiwifruit should not have gone through. There was a generalised discussion about her awareness of a problem with the graders, and what she had done about the matter, but no finding was expressed about whether she had responded satisfactorily and that matter was not part of the decision to dismiss. Several other aspects of the packing done between 4 and 13 April were also touched on but they did not form part of the decision to dismiss.

[41] When the extent of her seniority and experience was put to her, Ms Brodie said she tried to do all that was possible but had no help from senior staff including Mr O'Donnell. At the same time, however, she said she could not go to Mr O'Donnell for help because she did not think he 'knew enough'.

[42] The meeting note also records Ms Brodie as commenting that staff had been told they had four days off over Easter, and that 'you couldn't tell people they had to work'. I accept that a comment of that kind was made.

[43] By letter dated 5 May 2006 Mr O'Donnell explained his view of the facts again, setting out his finding that the quality control record sheet for packline 15382 had not been initialled and that the final entry did not represent a true and correct record. There was a failure to ensure that quality control criteria were followed. Mr O'Donnell also commented that, when alerted to the fact that the product was out of grade, Ms Brodie did not put a 'hold' card on the product. Her explanation – that it was Easter and the staff expected the weekend off – was not accepted. Mr O'Donnell went on to comment that the failure meant repacking costs were incurred and growers were informed they would be paid for up to 10% less fruit volume. He said again that he rejected Ms Brodie's explanation that she had not received adequate training and concluded:

“The serious level of breach in failing to follow the correct procedures means we have lost trust and confidence in your ability. We note as an aside that you also failed to show remorse and failed to accept responsibility. There have also been other problems with regard to quality checking the fruit, as outlined to you previously. Given the above, we regret to advise that you are dismissed from your employment, effective from Monday 8 May 2006.”

[44] In evidence, Mr O'Donnell said in making the decision he relied on Ms Brodie's acts and omissions as follows:

- (a) failing to follow documented Zespri and OPAC quality control criteria, resulting in significant volumes of export kiwifruit packed on 13 April failing quality audits prior to dispatch;
- (b) failing to act on quality control information showing product was out of grade;

- (c) instructing staff to disregard the said information and continue packing, disregarding Zespri and OPAC quality control criteria;
- (d) instructing staff not to record that product had failed to pass quality control criteria; and
- (e) failing to notify senior OPAC management of the serious problem.

### **The justification for the dismissal**

[45] The test of justification for a dismissal is whether, viewed objectively, the employer's actions were those a fair and reasonable employer would have taken in all the circumstances at the time of the dismissal.<sup>1</sup>

[46] Ms Meikleham submitted OPAC's actions did not meet this test because:

- (a) further to the substantive reasons for the dismissal, -
  - . the reasons given did not amount to serious misconduct,
  - . OPAC's loss was wrongly attributed to Ms Brodie,
  - . Ms Brodie was merely attempting to comply with earlier instructions regarding working in warning; and
- (b) further to the procedure used in making the decision, -
  - . Ms Brodie had not received adequate opportunity to improve her performance following the 4 April warning,
  - . OPAC did not adequately investigate Ms Brodie's actions,
  - . the outcome was predetermined.

[47] In the exchanges prior to the disciplinary meeting, and in submissions, Ms Brodie's representatives relied on company rules attached to OPAC's disciplinary policy to say Ms Brodie's conduct did not amount to serious misconduct. It was submitted that the rules include in their definition of 'less serious misconduct' the 'failure to perform work to the required standard', and 'failure to follow product-handling procedures'. Even so, these actions expressly 'may result in dismissal or a formal written warning.' For its part, OPAC relied on a provision under the heading 'serious

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<sup>1</sup> Section 103A Employment Relations Act 2000

misconduct – likely to result in instant dismissal’ which refers to ‘failure to follow product handling procedures which result in a serious safety or damage situation’.

[48] In support of its position OPAC placed heavy emphasis on the cost of the remedial action it said was necessary as a result of Ms Brodie’s failure. That raised a further question of whether - as was submitted on behalf of Ms Brodie – the company was wrong to attribute the associated loss to Ms Brodie.

[49] The tenor of the company’s evidence was that the responsibility for the loss was indeed being attributed to Ms Brodie, even though the reasons given for the dismissal centred on the record relating to packline 15382. The latter fell very far short of being sufficient to warrant the former. A fuller investigation of other issues discussed during the disciplinary meeting - for example the graders’ performance and what was done to address it - might have made a difference, but OPAC stopped short of pursuing and relying on those matters.

[50] Accordingly while I accept there were instances of unacceptable practice on Ms Brodie’s part on 13 April, and even that the unacceptable practice had serious implications, I do not accept that those instances could legitimately be extrapolated to attribute responsibility to the extent OPAC has attempted.

[51] Further to the unacceptable practice, I do at least find that OPAC had information on which it was entitled to rely to the effect that on 13 April Ms Brodie failed to follow quality control criteria by not observing the requirement to place hold cards on questionable product, or to set it aside for sub-auditing, when she should have. Nor did she give due attention to the quality controllers’ concerns that packing had gone out of grade, and she should not have simply told them to begin sampling from another box. She should have addressed, rather than avoided, the problem being signalled.

[52] Regarding the alleged instruction to staff, on the evidence I was given it was not accurate to say Ms Brodie had instructed the quality controllers not to record that product had failed. Put that way, the allegation is extremely serious. It implies that

Ms Brodie knew the product from packline 15382 had failed and deliberately instructed the quality controllers to record otherwise.

[53] However on the evidence the discussion about the last inspection on 13 April boiled down to a disagreement over whether a particular fruit was borderline or defective. I accept the effect on the defect count was significant, and I do not accept Ms Brodie's protest that her dismissal was brought about by a problem with a single fruit. Even if her view that the individual fruit was borderline was correct, she was well aware by then that there was a significant problem with the quality of the fruit being packed and should have been substantially more proactive than she was. However, on the evidence I was given I believe Mr O'Donnell went too far in concluding Ms Brodie had deliberately instructed a quality controller not to record that product had failed.

[54] Regarding the alleged failure to notify Mr O'Donnell (or 'senior OPAC management') of 'the serious problem', the nature of the 'serious problem' was not specified. When I asked Mr O'Donnell about it he could refer only to the issue arising out of the record for packline 15382. I do not accept that in itself is a 'serious problem' to the extent that a failure to notify 'senior management' warrants disciplinary action.

[55] However despite the answer, in the overall context and in particular the discussions at the disciplinary meeting, I consider it likely Mr O'Donnell was really referring to what was indeed a serious problem with the grading of the product packed between 4 and 13 April. I am influenced in this view by the fact that Mr O'Donnell was an honest witness and gave evidence to the best of his ability, but he was clearly very underprepared for the investigation meeting. Further, the failure to notify someone of the wider packing problems was raised with Ms Brodie at the time, and I would agree her answers were unacceptable.

[56] In summary, there was a serious failure on Ms Brodie's part on 13 April to follow quality control procedures and act on information signalling remedial action was necessary. OPAC was entitled to conclude that much. In the light of my findings regarding the remaining matters, the evidence supports a finding of 'less serious

misconduct under the company's disciplinary policy, rather than one of 'serious misconduct.'

[57] Ms Meikleham's third submission in respect of the substantive justification for the dismissal was that Ms Brodie was merely attempting to comply with earlier instructions. However matters were not quite so simple. Ms Brodie disagreed with the shift in emphasis from working in grade to working in warning. That much was clear from her evidence, and I do not accept the submission that the evidence showed she had no objection to the R600 system. She preferred to work within the greater tolerance for error available when working in grade. At a practical level working in warning required more careful monitoring, prompter remedial action and finer exercises of judgment than Ms Brodie exhibited on 13 April.

[58] In turn I do not accept the submission that Ms Brodie was doing no more than attempting to work in warning, as instructed. In reality the incidents described amount to a failure to observe checks and balances intended to prevent consistent working 'in warning' from moving into working 'out of grade'.

[59] I turn to the submission that Ms Brodie was not given sufficient time to improve, or assistance in that respect, before the dismissal. I do not accept that submission for a number of reasons. I do not believe the problem was at heart one which could necessarily be addressed by training and supervision. Ms Brodie was too experienced for that. The problem was in her poor exercise of judgment and her failure to take remedial action when she should have known action was required. Not only that, I do not accept that she was inadequately trained and supported. If she had difficulty in exercising judgment within tighter levels of tolerance, she was still aware of the required procedures and had received training and support in their application. She simply did not follow them.

[60] I do not accept Ms Brodie's assertions that she was unsure about lines of authority or her role in the quality control procedures. She was an experienced supervisor and it was for her to be proactive in ensuring the appropriate action was taken when quality issues arose. If there was some uncertainty about the roles of the head grader and the quality controllers, for example, it was for her to exhibit

leadership and to attempt to resolve it. If necessary, problems could be raised with Mr O'Donnell or advice sought from the Opotiki site. Ms Brodie chose not to do that.

[61] Finally, the submission that the dismissal was predetermined was based on a submission that OPAC did not consider Ms Brodie's explanations with an open mind. Although I have reservations about the way Mr O'Donnell expressed himself on 28 April, he was already aware of the substance of Ms Brodie's explanations. He did not accept them, but that is not evidence of a failure to consider them with an open mind. There was not enough evidence for a finding that the dismissal was predetermined.

[62] In conclusion, for the reasons indicated I am not persuaded that the acts for which Ms Brodie was dismissed amounted to 'serious misconduct – likely to result in instant dismissal', as defined in the company's disciplinary policy. OPAC's investigation did not go far enough to establish that the acts it said it relied on to justify the dismissal were acts which resulted in a 'serious damage situation'. Its investigation did, however, establish that the acts in question occurred and amounted to failures to follow product handling procedures. Dismissal was still open to it in terms of the disciplinary policy.

[63] Mr O'Donnell was entitled to take into account Ms Brodie's failure to show remorse or accept responsibility. I accept that she did neither at the time, and her evidence in the Authority was in a similar vein.

[64] Mr O'Donnell was also entitled to take into account that Ms Brodie was already in receipt of a warning in respect of her 'neglect of duties'.

[65] Overall, OPAC has not persuaded me that summary dismissal was action a fair and reasonable employer would have taken. However I find that dismissal on notice was action a fair and reasonable employer would have taken.

## **Remedies**

[66] Since I have found a dismissal on notice would have been justified, Ms Brodie's entitlement to the reimbursement of lost remuneration is limited to any

payment she would have received in lieu of notice, and I order accordingly. Interest is payable on that amount at the rate of 8.7 % from the date of dismissal to the date of payment.

[67] I do not believe these circumstances call for any further award.

### **Costs**

[68] Costs are reserved.

[69] I record that Ms Brodie is in receipt of a grant of legal aid.

[70] If the parties seek a determination of costs from the Authority they shall have 28 days from the date of this determination in which to file and serve memoranda setting out their positions. If either party wishes to reply there shall be a further 7 days from the date of receipt of the relevant memorandum in which to file and serve the reply.

[71] For the parties' information, if I am asked to make a determination on costs I will take into account OPAC's unexplained failures to: file a statement in reply in this matter; respond when a teleconference was arranged; file statements of evidence in accordance with the notified timetable for such filing (eventually filing the statements only at the last minute); and confirm it would be attending the investigation meeting so that inferences about its intentions had to be drawn from the fact of the filing of the statements. These actions did not assist in the efficient conduct of the investigation.

R A Monaghan

Member of the Employment Relations Authority