

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Andrew James Goodwin (Applicant)
AND MacLeod & Associates (NZ) Limited (Respondent)
REPRESENTATIVES Mary Foley, Counsel for Applicant
Philip Roberts, Counsel for Respondent
MEMBER OF AUTHORITY Philip Cheyne
INVESTIGATION MEETING 28 October 2004
29 October 2004
DATE OF DETERMINATION 21 January 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Andrew Goodwin worked for MacLeod & Associates (NZ) Limited from about April 1994 until his resignation on 2 February 2004. In his statement of problem Mr Goodwin claims payments for overtime hours worked, meal allowances and general damages. Later, counsel accepted that a general damages claim cannot succeed so the problem to be determined is Mr Goodwin's claim for arrears of money payable pursuant to the relevant employment contracts and agreements.

[2] For its part, MacLeod & Associates says in a statement in reply that it paid Mr Goodwin all his entitlements throughout the employment. In later correspondence, MacLeod & Associates says that it is entitled to damages for losses associated with breaches by Mr Goodwin of his duty of fidelity that subsisted during the employment. Liability and quantum are disputed by Mr Goodwin though some breaches are acknowledged.

[3] Despite mediation, the parties could not resolve these problems.

Background Facts

[4] Mr Goodwin created an unfavourable impression as a witness. Counsel addressed that by suggesting naivety on his part. I doubt that is a complete explanation for the inability to rely on Mr Goodwin's evidence as a full and accurate account of events. In any event, it is sufficient to say that on crucial but disputed points, I was often not able to accept all of Mr Goodwin's evidence.

[5] MacLeod & Associates provide specialist electrical and mechanical engineering services to clients in the electricity industry. Its two founders, Stewart MacLeod and Karen MacLeod, are

vastly experienced in that work and they have employed a number of staff to assist them. The business is based in Dunedin. Tony Ross was MacLeod & Associates first full time employee and is now also a director.

[6] Mr Goodwin was initially employed part-time while he was completing his NZCE. He then worked full-time from January 1995. Mr Goodwin's work involved reproducing architect's floor plans with all unnecessary information removed and then drawing on the electrical building services designed by MacLeod & Associates. That was originally done using a drawing board but from 1995 Mr Goodwin began using CAD. Mr Goodwin developed an aptitude for the work and was given increasing responsibilities.

[7] In 1997 and 1998, Mr Goodwin went to Twizel for several periods with other MacLeod & Associates staff to work on project work secured by MacLeod & Associates with ECNZ. No claim is made in respect of this period.

[8] Mr Goodwin returned to Twizel alone in 1999 for about 4 months and worked on drawings and documentation for work associated with the Manapouri Power Station. His work was based at the ECNZ offices in Twizel. From about April 1999 ECNZ's Twizel operations became part of Meridian Energy Ltd. I accept Mr Goodwin's evidence that MacLeod & Associates accommodated him in a motel in Twizel, that he typically commuted between Mosgiel (his home) and Twizel for the working week and during the 4 months, he had a 2 week period where he worked in MacLeod & Associates Dunedin office. After the 4 month period, Mr Goodwin resumed working from the Dunedin office.

[9] In October 1999, MacLeod & Associates arranged with Mr Goodwin to return to work in Twizel. Mr Goodwin continued to work there until his resignation on 2 February 2004. Originally, MacLeod & Associates arranged motel accommodation for Mr Goodwin but they later rented a house for him to use. Mr Goodwin continued to commute from Twizel where he worked to Mosgiel for weekends.

[10] For the most part, the employment relationship was regarded as good and mutually beneficial. There are several other matters canvassed in evidence that I will mention. Mr Goodwin had access to a company credit card. Without approval, he used the company credit card in 2003 to pay about \$2,500.00 for a holiday. Soon after, he changed his mind, cancelled the booking and made arrangements for a refund to be processed to the company credit card. Mr Goodwin told me that his use of the credit card *...didn't seem a problem at the time ...* In fact, there was a delay (not attributable to Mr Goodwin) in processing the refund so MacLeod & Associates had to wait about 3 months before they recovered their \$2,500.00. Mrs MacLeod told me and I accept that she became quite disgruntled about this and eventually her calls to Mr Goodwin and his father produced a cheque to cover the \$2,500.00. Mr Goodwin next told me that he was never asked by MacLeod & Associates for payment and he voiced a complaint that Mrs MacLeod had approached his father. Mrs MacLeod then produced emails sent to Mr Goodwin requiring payment. Mr Goodwin's response was to say that he did not have a cheque account. I found Mr Goodwin's evidence about this matter to be misleading and self serving. It contributed to the impression of him as a witness referred to earlier.

[11] On another occasion, Mr Goodwin took the company vehicle available to him for work use to Southland to go duck shooting. He did this without approval. During this trip he submersed the car on a flooded section of road which resulted in substantial damage to the vehicle and costs incurred by MacLeod & Associates in recovering it and paying the insurance excess. Mr Goodwin was told not to use the car for private use again.

[12] About August 2003, Mr Goodwin drove from Twizel to Mosgiel for the weekend as usual in the company car. Instead of driving back to Twizel in the company car after the weekend, he took his own car to Te Anau then to Twizel. At the end of the week, he then drove back to Mosgiel in his own car. He returned to Twizel for the new week in the company vehicle as usual. After being questioned closely, Mr Goodwin eventually told me that he used the company petrol card to fill his own car at several points on this trip. At the time, he attempted to claim a mileage allowance for the standard return distance between Twizel and Mosgiel but Mrs MacLeod declined to make any payment to him because he had no prior approval for the arrangement. Mr Goodwin's evidence was that he had no sense at that time that his claim had been declined, but I disbelieve that evidence. He knew full well that the claim had been declined. I will expand on this point a little later.

[13] At some point in late 2003, Mr Goodwin began to consider resigning from his employment and setting up in business for himself doing the same or similar work in competition with MacLeod & Associates. He did not tell MacLeod & Associates about any of the steps taken by him in preparation for entering into competition with MacLeod & Associates. Mr Goodwin was on annual leave from about Friday 19 December 2003 until Monday 2 February 2004. He took a number of those steps while on leave.

[14] On Wednesday 28 January 2004 at 10.34 am Mr Goodwin used the company computer located in the Meridian office in Twizel to access a computer file containing the layout for his business letterhead and business card. He purchased a cellphone intended for his business use. He contacted Vodaphone and got them to change the identifier on his MacLeod & Associates cellphone from "Andrew Goodwin" to "Office Spare". He priced software for later purchase for his business use. He took the computer from the Meridian office to Mosgiel where he deleted various files off the hard drive in the early hours of 2 February 2004. He also copied some material from the hard drive to retain for his own use. He prepared a letter of resignation. At 8.28 am on 2 February 2004, Mr Goodwin used the company petrol card to put petrol in his own vehicle and to fill a 5 litre petrol can. Mr Goodwin justified the unauthorised use of the company petrol card by saying that it was to reimburse him for his unpaid mileage claim from August 2003 (the Te Anau trip). After the petrol purchase, Mr Goodwin returned to Mosgiel, collected the company vehicle then went to MacLeod & Associate's Dunedin office for a pre-arranged meeting.

[15] Mr Goodwin was late for the meeting and explained that by reference to a traffic hold-up. That provides a good insight into Mr Goodwin's credibility. As we now know, Mr Goodwin was late for his 8:30 am meeting because he was awake much of the night deleting files from the computer, filled up his own car with petrol, and returned to Mosgiel to collect the company vehicle. All that made him late. The traffic hold-up was immaterial but Mr Goodwin used it as a convenient excuse for the Macleods and persisted with it to some extent in evidence.

[16] It is useful to mention several events that preceded the 2 February 2004 meeting. On 14 November 2003, Mr Goodwin was called to a meeting with Mrs MacLeod and Mr Ross. It followed a report from a member of the public that the MacLeod & Associates vehicle used by Mr Goodwin had been driven in a dangerous manner on the main road north of Dunedin. The MacLeods were concerned because they had not known that Mr Goodwin was in Dunedin at the time. MacLeod & Associates in consultation with Mr Goodwin set out a framework about more appropriate travelling times. On 17 November 2003, Mrs MacLeod received Mr Goodwin's timesheet which showed up 17 hours as general office filing. She rang Mr Goodwin to query this. During that phone conversation, Mr Goodwin said that he had to make up time in the evenings having spent time during the day on non-work activities. Mrs MacLeod made it clear that they expected him to work standard office hours. Mr Goodwin was disgruntled about that. At a meeting with Mr MacLeod on 5 December 2003, Mr Goodwin said that he had become dissatisfied with his employment and was considering making an arrears claim for overtime and resigning. A further meeting was arranged for 15 December 2003.

[17] On 15 December 2003, Mr Goodwin complained that the reduced working hours had also reduced his salary and said that he had recently realised that he was entitled to time and a half for overtime hours that he had worked over the years. Mr and Mrs MacLeod disputed the overtime claim. The matter was left on the basis that the MacLeods would put together a salary package for discussion. Several days before the 2 February 2004 meeting, Mr McLeod sent Mr Goodwin a proposed contract. Mr McLeod intended the 2 February meeting as a staff assessment process with the contractual issues and a Twizel business plan for later discussion, but that is not how it panned out.

[18] On 2 February 2004, the discussion turned to the arrears claim and contractual issues. Mr McLeod did not agree to Mr Goodwin's demands. After some debate, Mr Goodwin handed over his prepared resignation letter. It reads:

Dear Stewart, This is to formally notify you that I am resigning from MacLeod & Associates (NZ) Ltd as Electrical Engineer, effective immediately.

Mr McLeod agreed to this. Mr Goodwin gave Mr McLeod the car keys and told him that MacLeod & Associate's equipment from the Twizel office was in the car. Mr Goodwin left the office shortly afterwards.

[19] Mr Goodwin returned to Twizel where he stayed for several days. He went into the Meridian office where he collated the work in progress into various files together with some notes about some jobs. Meridian managers told Mr Goodwin that it was better that he remain off-site until any employment issues were resolved. Mr Goodwin contacted the owner of the Twizel house rented for him by MacLeod & Associates and made arrangements to take over the lease of the property. Later, by 1 March 2004, he organised a final electricity meter reading on MacLeod & Associate's account for that property. Later in the week, Mr Goodwin returned to Mosgiel. There followed a meeting between Mr Goodwin and MacLeod & Associate's representative after which Mr McLeod sent a letter to Mr Goodwin confirming acceptance of the resignation but recording concern at Mr Goodwin's failure to give 4 weeks notice, the period specified in the employment agreement.

[20] Mr Goodwin obtained some work from Fraser & Chalmers Limited, a Dunedin business which had engaged MacLeod & Associates for a job on which Mr Goodwin had been working at the time of his resignation. Mr Goodwin told me that he took the physical file for this work with him from Twizel when he left there several days after 2 February 2004. He also copied the relevant MacLeod & Associates computer file before deleting it from the computer and used that to complete the work for Fraser & Chalmers Limited. That work was done in the first month or so after the registration. From 1 March 2004, Mr Goodwin commenced a business association with ICG, a business that contracts with Meridian. Mr Goodwin continues to work from the Meridian office doing similar work as he previously performed for MacLeod & Associates. He says that he did not speak to anyone at Meridian, ABB (another contractor to Meridian) or ICG about getting work on his own account until after he resigned from MacLeod & Associates.

[21] On 3 March 2004, Mr McLeod and Mr Ross went to Twizel. While there, they visited the house they had been renting for Mr Goodwin. Their key did not open the locked doors so they assumed the landlord and/or Mr Goodwin must have changed the locks. That was part of a complaint made by them to the Tenancy Tribunal about the landlord's breach of their tenancy rights. Mr Goodwin's evidence is that he was inside the house at the time, that he had used the snib on the lock to prevent the visitors opening the doors and that he did not open them because he knew it was Mr McLeod and Mr Ross at the door.

Employment Agreements

[22] During the relevant period, MacLeod & Associates and Mr Goodwin were bound by successive collective employment contracts. The documents set out normal hours of work being Monday to Friday 8:00 to 17:00 for a maximum of 40 hours per week. It then provided for other hours as follows:

3.1.2 *Non Standard Hours*

Where the Employee is requested to work additional hours, time in lieu shall be given, up to a maximum of 7 accumulated days which must be taken within the year and at a time suitable to the Employer.

Work done out of town (Dunedin), over and above standard work hours, must only be undertaken if the fee for the project reflects the additional cost. This decision must only be made by the Employer. An individual workplan must be decided on for all projects undertaken out of town. The overtime, if decided on, shall be paid for at time and a half of the hourly rate of the current salary.

[23] Provision is also made for travel expenses:

4.11 *Travel*

The Employee is expected to travel out of town to do work for the Employer. This may be to do a site inspection, attend a site meeting, promotion of the company or work from a clients office at, for example a Power Station, for as long as the job will take.

The Employer recognises that reasonable accommodation (up to 3 star level) has to be provided when work is being undertaken outside the city, where the office which the Employee works from, is situated. This cost will be reimbursed and will be put against the job.

An allowance for the use of the Employee's car during work time will be at the rates determined by the Inland Revenue Department. (See New Zealand Master Tax Guide).

<i>Annual Work – related km</i>	<i>Motorcars</i>	<i>Motorcycles</i>
<i>1 – 3,000km</i>	<i>62c per km</i>	<i>31c per km</i>
<i>3,001km and over</i>	<i>19c for each km over 3,000</i>	<i>10c for each km over 3,000</i>

Flat rate

(alternative method) 28c per km 14.5c per km

A meal allowance of \$25.00 / day will be allocated when the Employee undertakes work outside the city, where the office which the Employee works from, is situated.

It is expected that when an Employee attends a site meeting or is looking at a project out of the city, where the office which the Employee works from, is

situated, the Employee returns to the office that same day, even if the travel occurs over and above the normal working hours, unless the Employer states otherwise.

[24] Clause 2.4 of the contracts headed *Payment on Termination* provides *Employment may be terminated by either party giving four (4) weeks notice. In the absence of the appropriate notice being given by the Employee, salary equivalent to the length of notice that should have been given shall be forfeited.* Clause 4.13 says *Either party may terminate this contract on not less than four weeks notice in writing, or in the case of termination by the employer, pay in lieu thereof.*

[25] The contracts defined a full-time employee as any employee employed to work a minimum of 40 hours in each week. Clause 2 referred to remuneration. It provided that the rate of payment to an employee be at the discretion of the employer based on the employee's performance. Each employee received an individual contract setting out their actual rate of remuneration.

[26] I should note that the first collective contract with a term from 1 April 1997 to 31 March 2002 was expressed to apply to Mr Goodwin and other named employees, MacLeod & Associates and *...its operations in Dunedin*. A second collective contract applicable between 16 December 1999 and 31 March 2002 replaced the first contract. The second contract was expressed to apply to the named employees (including Mr Goodwin), MacLeod & Associates and *...its operations in Dunedin, Twizel and Christchurch*. Several individual contracts dealing with Mr Goodwin's rate of salary were also agreed. No replacement agreement was negotiated after the 31 March 2002 expiry date of the second collective contract so those terms remained in force until the termination of the employment.

[27] None of the employment contracts contain a restraint of trade or non-solicitation clause applicable to Mr Goodwin.

The overtime claim

[28] The claim is for the period from 2 January 1999 until the termination of the employment. Mr Goodwin calculates that he worked 4193.5 hours in excess of the normal 40 hours per week. Each pay period he submitted a time sheet with his hours of work and he was paid for all these hours at an hourly rate calculated by dividing his salary at the relevant time by 2080 (52 weeks times 40 hours). The claim is for the half time extra in reliance on clause 3.1.2.

[29] Mr Goodwin provided me with tables setting out each week his total hours broken down into sick leave, holidays, non-chargeable hours and chargeable hours. The last category refers to time worked that was attributable to and chargeable to clients. The tables also identify whether Mr Goodwin performed the work in Dunedin, Twizel or elsewhere. I accept the tables as an accurate summary of where and when Mr Goodwin worked.

[30] In *ASTE v Chief Executive of Bay of Plenty Polytechnic* [2002] 1 ERNZ 491 the Employment Court confirmed that the Employment Relations Act 2000 did not change the law of interpretation of employment agreements. The Court also summarised the correct approach:

Agreements should be interpreted with reference to their factual matrix or surrounding circumstances. One looks first at the words used and then the surrounding circumstances to ensure that the first impression of the meaning is correct and nothing in the circumstances requires modification of that most natural meaning of the words. An objective approach is required and evidence of the parties' subjective intentions is generally not admissible. The interpretation should not be narrowly literal but should accord with business common sense. Even if the drafting is inept, the Court should be able to give effect to the underlying intent

and if a literal interpretation gives rise to nonsense in practice, the Court should endeavour to find a more liberal interpretation that satisfies business common sense and fulfils the parties' purpose. Nonetheless, if the words are clear and can have only one possible meaning, that should generally determine the matter.

I adopt the approach indicated in the *ASTE* case.

[31] Clause 3.1.1 specifies the normal hours of work. It also provides that *Additional hours must be worked as requested by the Employer*. Some of the hours worked by Mr Goodwin outside Monday to Friday 8:00 – 17:00 resulted from his choice to attend to non-work activities such as personal use of the internet during normal work hours. It is difficult to do more than guess at the extent of work done in non-standard hours as a result but it would be a relatively minor part of the claim. Nonetheless, Mr Goodwin is not entitled to claim payment let alone overtime for such work outside normal hours.

[32] Clause 3.1.2 is linked to clause 3.1.1 by the opening phrase *Where the Employee is requested to work additional hours....* It then provides for time in lieu accumulating to a maximum of 7 days taken within the year at a time suitable to the employer. The parties treated this provision as applying only to non-standard hours worked in town (i.e. Dunedin). Where Mr Goodwin worked non-standard hours following a request to do so, he would have been entitled to time in lieu. The clause does not require any payment to be made and cannot support any claim for arrears. In any event, Mr Goodwin made no claim based on this clause.

[33] The second paragraph of clause 3.1.2 creates a subset of work in non-standard hours. Work done out of town (Dunedin) must only be undertaken if the fee for the project reflects the additional cost. Only the employer can make that decision. It requires an individual workplan. If so decided, it is overtime paid at the rate of time and a half of the hourly rate of the current salary. The case for Mr Goodwin is that MacLeod & Associates must be taken to have made a decision that the project reflected the additional cost and to have decided on an individual workplan for all of Mr Goodwin's non-standard hours of work because it paid him all those claimed hours at his ordinary rate.

[34] In consultation with clients, MacLeod & Associates set a price for Mr Goodwin's work. At the time, MacLeod & Associates gave no consideration to such work being performed outside Mr Goodwin's standard hours of work. Mr Goodwin started giving quotes and estimates to clients utilising the same hourly rate. Mr Goodwin decided when to perform the available work without approval from or consultation with MacLeod & Associates. There was no decision ever made by MacLeod & Associates that the Twizel work could be performed during non-standard hours because the project fee reflected the additional overtime cost and no individual workplan for such work was ever decided on. Mr Goodwin argued that the original *fee for the project reflected the additional cost* on the basis that the cost of non-salary overheads was met by the first 40 hours charged to the client. Hence the additional income to the business from his chargeable non-standard hours meant the work was profitable even if paid at the overtime rate. That naive analysis of business profitability misses the point that the decision about incurring the extra cost of overtime was solely one for the employer to make as the clause expressly makes clear in several places. On my analysis of the clause there is no room for the sort of implied ex post facto authorisation argued for by Mr Goodwin. His overtime claim must therefore fail.

[35] The claim for unpaid meal allowances is made in reliance on clause 4.11. Counsel submitted that the clause provides for a meal allowance of \$25.00 per day where the employee undertakes work outside Dunedin. That is certainly what the 1997 contract originally provided. That was varied at least as regards some employees (apparently not Mr Goodwin) from early 1999 to read....*outside city where our office is situated*. Then with effect from 16 December 1999, the new collective agreement was amended to read...*outside the city where the office which the Employee works from*

is situated. I note that the December 1999 contract also specifically referred to MacLeod & Associate's operations in Twizel. That reflects the fact that Mr Goodwin returned to Twizel in October 1999. No-one else then worked from the Twizel office. I consider it is sufficiently clear despite the imprecise drafting that there was an intention to exclude this payment applying to Mr Goodwin while working at the Twizel office being the office from which he was then working. It follows that there can be no valid claim for the meal allowance from the effective date of the second collective contract.

[36] I accept that Mr Goodwin is entitled to the meal allowance for the period claimed from January 1999 until 15 December 1999 for any day he worked outside of Dunedin. I make that 22 weeks at 5 days per week and \$25.00 per day, a total of \$2750.00. From that must be deducted \$25.00 for any day during the same period when a meal was provided at the employer's expense. If there is any dispute about that calculation, leave is reserved.

Counterclaims

[37] Mr Goodwin admitted owing MacLeod & Associates \$30.05 for a Contact Energy bill. He is ordered to repay that sum to MacLeods & Associates.

[38] Mr Goodwin used the MacLeod & Associates petrol card to purchase \$327.00 worth of petrol. These purchases were for his own use unrelated to MacLeod & Associates business. Mr Goodwin attempted to justify the unauthorised expenditure by reference to his claim for mileage for the use of his own car when he went from Mosgiel to Twizel and back via Te Anau. As explained above, not only was this unauthorised but it included an element of double-dipping since MacLeod & Associate's card had been used for at least some of the petrol bought during the Mosgiel/Te Anau/Twizel/Mosgiel trip. He must repay the value of the petrol which he puts at \$327.00. The actual amount to repay will be marginally less since MacLeod & Associates get a fuel card discount and it is the cost incurred by MacLeod & Associates that is to be repaid. Leave is reserved if there is any difficulty.

[39] As mentioned above Mr Goodwin copied and deleted the computer file and took the physical file relating to MacLeod & Associates work for Fraser & Chalmers Limited. He completed that work for Fraser & Chalmers Limited during the period that he should have been working out his notice with MacLeod & Associates. Applying *Schilling v Kidd Garrett Ltd* [1977] 1 NZLR 243, Mr Goodwin's duty of fidelity to MacLeod & Associates ended on either 2 February 2004 or perhaps 10 February 2004 when Mr McLeod wrote formally accepting the resignation. However, Mr Goodwin's actions in copying, deleting and taking the relevant files all occurred while the duty subsisted. Mr Goodwin copied, deleted and took the files either because he had arranged to complete the work or he believed he would be able to do so. The former appears more likely (despite Mr Goodwin's denial) but it does not matter. Mr Goodwin's failure to leave behind the Fraser & Chalmers file meant MacLeod & Associates had no chance to complete the work. Mr Goodwin's breaches caused MacLeod & Associates to lose profit on that work. Mr Goodwin is liable to MacLeod & Associates for damages amounting to the loss of profit. Mr Goodwin told me that he charged Fraser & Chalmers \$4,800.00 (ex GST) at the same hourly rate (\$65) chargeable by MacLeod & Associates. From that sum must be deducted the salary that MacLeod & Associates would have paid Mr Goodwin if he had completed the work in the name of his former employer. The remainder is the sum of damages due to MacLeod & Associates. Leave is reserved if there is any dispute.

[40] MacLeod & Associates also claim damages for the time, travel and transport costs that have or will be spent by directors or other staff sorting out work in progress issues. The essence of the claim is that the damage arises from Mr Goodwin's failure to give the four weeks notice stipulated in the employment agreement. It is also submitted that Mr Goodwin spent time prior to 2 February

2004 attempting to divert future Meridian and ABB work from MacLeod & Associates to himself but there is not sufficient evidence to confirm that allegation. At least some of these costs have not been or will not be caused by the failure to give proper notice. If Mr Goodwin had given proper notice, MacLeod & Associates may have elected to pay him in lieu rather than have him work in order to protect its interest in its clients. Even if Mr Goodwin had worked out the four weeks notice period, it is probable that MacLeod & Associates would have needed to travel to and from Twizel to consult with clients and Mr Goodwin about work in progress. It is also likely that there would have been unresolved loose-ends even at the end of a four week notice period. To some extent the costs now faced by MacLeod & Associates reflect the inherent disruption when a long serving employee in a responsible position resigns and are not caused by Mr Goodwin's failure to give notice.

[41] However, MacLeod & Associates is entitled to enforce the forfeiture provision of clause 2.4 as effectively liquidated damages to cover the very situation they faced. Mr Goodwin apparently thought that clause 2.4 allowed him to resign immediately and simply forgo the salary he would have otherwise earned but he is mistaken. It is relatively common for employment agreements to provide for the forfeiture by a defaulting employee of a sum of money equivalent to earnings during the notice period and that is what clause 2.4 does. Mr Goodwin's other defence to the claim is that his resignation was accepted by Mr McLeod on 2 February 2004 and again in the 10 February 2004 letter. Mr McLeod did not waive the employer's rights in either communication; he simply acknowledged the reality of the situation that Mr Goodwin had unilaterally terminated the employment relationship and that they could take no practical steps to avoid that. Accordingly, I order Mr Goodwin to pay MacLeod & Associates 4 weeks salary at the rate applicable at the time of the resignation amounting to \$2,880.00.

Summary of Orders

[42] MacLeod & Associates is to pay Mr Goodwin arrears of the meal allowance between January 1999 and 15 December 1999 for any day he worked outside of Dunedin less an allowance of \$25.00 for each day when a meal was provided at the employer's expense. If there is any dispute about that calculation, leave is reserved.

[43] Mr Goodwin is to repay the \$30.05 and the actual cost to MacLeod & Associates of his \$327.00 petrol purchase.

[44] Mr Goodwin is to pay damages to MacLeod & Associates for the breach of the duty of fidelity in respect of the Fraser & Chalmers work, assessed as \$4,800.00 less the direct salary cost. If there is any dispute about that calculation, leave is reserved.

[45] Mr Goodwin is to pay further damages to MacLeod & Associates pursuant to clause 2.4 of the employment contract in the sum of \$2,880.00.

[46] All other claims and counter-claims are dismissed.

[47] Costs are reserved.