

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 474  
3033731

BETWEEN                      JOBEN LIMITED  
   Applicant  
  
AND                                NICHOLAS ROUGHAN  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              John Benefield, advocate for the Applicant  
   Peter Redpath, counsel for the Respondent  
  
Investigation Meeting:        18, 19 and 20 June 2019 at Invercargill  
  
Submissions Received:        5 July 2019 from the Applicant  
   19 July 2019 from the Respondent  
  
Date of Determination:        14 August 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant Joben Limited (referred to throughout this determination as Graz4u as that was its trading name at the relevant time) alleges that the respondent (Mr Roughan), by various breaches of written and implied terms in his employment agreement caused loss to Graz4u in the sum of “at least \$183,192.61”. Indeed, in his oral evidence at my investigation meeting, Mr Benefield went so far as to say that Mr Roughan was “responsible for the demise of the business”. The factual position was that the business was sold at a loss in October 2015 and Mr Benefield’s evidence is that that loss was sustained because of breaches of the express and implied terms of Mr Roughan’s employment agreement.

[2] For his part, Mr Roughan, who was legally aided throughout the present proceeding, resists Graz4u's allegations.

[3] Mr Roughan was employed in August 2013 as the sales manager for the Southland Region for Graz4u. The business sought to find grazing land for stock and effectively acted as a broker bringing together dairy farmers on the one hand and graziers on the other.

[4] Unlike other similar businesses, Graz4u not only made the connection between the two parties but also helped with the management of the stock while they were on someone else's land grazing and in particular helped the owner to manage animal health issues for the subject stock.

[5] As well as bringing together graziers and dairy farmers, Mr Roughan's role in Southland was to cold call on potential clients, both dairy farmer and grazier, to see if he could sign them up as clients.

[6] Graz4u generated its revenue by a per head charge typically of 85 cents a head. In addition, Graz4u sold at a profit other services including animal health products and supplementary feed.

[7] Mr Roughan continued in the employment until his resignation on 18 October 2014, so he was an employee of Graz4u for not much more than one year.

[8] During the period of the employment, and before it, Mr Roughan's personal life had effectively been turned upside down by family tragedy and ill-health. By virtue of some of those distressing family events, Mr Roughan was effectively a full-time caregiver as well as being the sole breadwinner.

[9] I heard the evidence relating to these events and I am satisfied it need not be published in this determination.

[10] It is enough for me to say that this series of events would have placed a huge strain on Mr Roughan. Mr Roughan maintained in his evidence that Graz4u knew about these issues whereas the evidence for Graz4u from Mr Benefield was that "Nick (Mr Roughan) was a very poor communicator". That said, when pressed, Mr Benefield seemed to acknowledge that he knew that Mr Roughan had some serious family issues.

[11] Mr Benefield's recollection of not being told about these health and family problems is challenged by Mr Roughan's estranged wife, Ms Shana Ledesma, who gave evidence for Mr Roughan. She told me in her oral evidence that her estranged husband made "regular calls to notify Mr Benefield about the family's health issues". Ms Ledesma said that she had heard her estranged husband telephoning Mr Benefield on one occasion to report the family situation and on another she had seen a text exchange between the two men which confirmed to her satisfaction that there was an appropriate exchange of information.

[12] In addition to that evidence, Mr Matthew Bird who worked in a similar capacity to Mr Roughan but in mid and South Canterbury, said in his evidence that the health problems in the Roughan family were "reasonably well known" within Graz4u and that specifically Mr Benefield knew how unwell Ms Ledesma had been.

[13] Accordingly, I prefer the evidence for Mr Roughan that Graz4u knew about the personal and family challenges that Mr Roughan was facing during the employment.

[14] Moreover, in the second half of the employment, it is clear that Mr Roughan's own mental health deteriorated steadily as did his relationship with his wife, Ms Ledesma. The marriage relationship collapsed at about the time that Mr Roughan left the employment and by that stage, he was really unwell.

[15] I accept Mr Roughan's evidence that as his own health deteriorated, he did his best to communicate with Graz4u, but his deteriorating health precluded that to a great extent.

[16] Mr Roughan and his former wife are now apart with Mr Roughan being the full-time carer for the couple's five children. He lives on a benefit and the associated tax credits and has done so for the past three years. The fact that he qualifies for civil legal aid in this matter speaks volumes for his financial position.

### **Issues**

[17] It will be convenient if I consider and respond to each of the allegations made by Graz4u against Mr Roughan. It follows that I will address the following questions:

- (a) What are the relevant terms of the employment agreement?
- (b) Did Mr Roughan undertake work on his own behalf and if so, did he falsify timesheets?

- (c) Did Mr Roughan provide unauthorised discounts?
- (d) Did Mr Roughan take unauthorised annual leave?
- (e) Did Mr Roughan damage the company vehicle?
- (f) Did Mr Roughan fail to return company property?
- (g) Did Mr Roughan breach his duty of fidelity?
- (h) Did Mr Roughan undertake unauthorised advertising?
- (i) Did Mr Roughan use the company fuel card for personal use?
- (j) Did Mr Roughan contract additional labour without authorisation?

**What are the relevant terms of the employment agreement?**

[18] The employment agreement is quite unremarkable in that it contains clauses of the sort one would expect to see in an agreement of this kind.

[19] First, Mr Roughan is required to return company property on the termination of the employment. That is defined to include supplies that belong to the employer as well as presumably property allocated to Mr Roughan for company use.

[20] No doubt the largest single item of company property that is within the management of the employee is the vehicle and that of course is one of the items that must be returned. In addition, the employment agreement provides that the company vehicle is not generally available for private use.

[21] There is a provision which says that the employee can purchase goods and services through the employer, but he must obtain permission for any such purchases and abide by any rules the employer sets out.

[22] Clause 29 requires Mr Roughan to hold any confidential company information with “trust and strict confidence” and Mr Roughan is required not to use that for his own benefit or indeed to disclose that to third parties.

[23] By clause 30, Mr Roughan agrees that there are no conflicts to prevent him from performing his obligations to Graz4u and in the event that such conflicts develop during the employment, he is required to disclose them.

[24] Graz4u also maintains there are three implied terms namely, fidelity, confidentiality and trust and confidence.

**Did Mr Roughan undertake work on his own behalf and if so, did he falsify company timesheets?**

[25] Graz4u gave evidence that during a period between roughly October 2013 and November 2013, Mr Roughan undertook work solely for his own benefit during hours when he ought to have been working for Graz4u.

[26] Mr Roughan accepts that for a short period (some six weeks) during October and November 2013, he undertook the artificial insemination of cattle on behalf of another entity altogether without the consent of Graz4u.

[27] Mr Roughan's evidence was that some of that artificial insemination work was to assist clients of Graz4u but he readily conceded that the majority of it did not have that character.

[28] Mr Benefield for Graz4u freely admitted in his oral evidence at my investigation meeting that artificial insemination was not a service that was provided by Graz4u so by Mr Roughan doing that work he was not in fact competing with Graz4u.

[29] Moreover, Mr Benefield indicated that if Mr Roughan had only provided the artificial insemination services for Graz4u clients, he would not have been in any way concerned because that might well have been seen as an additional benefit to Graz4u clients.

[30] In cross-examination, Mr Benefield acknowledged he had no idea whether Mr Roughan was promoting Graz4u when he was doing the artificial insemination.

[31] For his part, Mr Roughan accepted that he did operate as an AI technician for another firm for a short period in October/November 2013, but he denies falsifying timesheets for Graz4u as a consequence.

[32] He stoutly maintained in his oral evidence that he had picked up clients for Graz4u as a consequence of doing the artificial insemination although he acknowledged that he was paid by the other entity for his services.

[33] Mr Roughan said that on the mornings that he was doing artificial insemination, he would start at 6:00 a.m. and would finish the artificial insemination during the morning and would then work late that day to make up the time.

[34] The employment agreement provides for payment of a salary to Mr Roughan. Given that it is common ground that no hours were kept of the time he worked on artificial insemination, nor indeed of his own contention that he made up the time at the end of the day, it is difficult to see how the matter can be proved one way or the other. What persuades me to take this issue no further is the intelligence that Mr Benefield found out about this particular matter during the employment and declined to pursue it. If that is the case, it is difficult to understand why it should be important to pursue it now.

[35] Mr Benefield says that Mr Roughan would not provide him with information about this matter during the employment; Mr Benefield as the agent of the employer was entitled to pursue the matter, could have made it a disciplinary matter and required Mr Roughan to provide the appropriate information. He did not take those steps and I am not persuaded that any steps should be taken now.

[36] On the face of it, Mr Roughan's acknowledgement that he did it, his acceptance to me anyway that he ought not to have done it, and his unchallenged statement that he made up the time on each and every occasion when he did it, makes it difficult to take the matter any further.

[37] While in itself not a significant factor, given Mr Roughan's distressing family circumstances, his clear evidence that he needed the extra money because of those family circumstances is difficult not to feel some sympathy for.

[38] Even if one were to take the contrary view to the one I have expressed and conclude that the evidence supports the conviction that Mr Roughan undertook work on his own account and entirely for his own purposes, there is no evidence at all that his timesheets were falsified. Nothing before me supports the conclusion that timesheets were altered to cover up what he was doing or even to maintain that he was working for Graz4u when he was not.

[39] I decline to take this claim any further.

**Did Mr Roughan provide unauthorised discounts?**

[40] This claim relates exclusively to an allegation that Mr Roughan negotiated down the per head rate from 85 cents per head down to 50 cents per head in order to get a particular deal.

[41] There is a conflict in the evidence here. Mr Roughan says that he discussed this issue with Mr Benefield and got his reluctant agreement. Mr Benefield says that no such discussion took place.

[42] What is certain is that the particular deal went through at 50 cents a head, but it is also clear that Mr Benefield was adamant that this was a one-off and in truth, that appears to have been the position.

[43] I accept there may have been some area of misunderstanding between the two men in relation to this particular matter, but I am not persuaded that the evidence on the balance of probabilities supports the allegation that there was an unauthorised discounting of a contract by Mr Roughan.

**Did Mr Roughan take unauthorised annual leave?**

[44] It is common ground that in December 2013 Mr Roughan took leave. Graz4u says this was unauthorised; Mr Roughan appeared to concede in his oral evidence that he might not have gone through the proper channels to get the leave approved but given his family circumstances at the time it is difficult not to be a little sympathetic about his personal circumstances.

[45] There was no evidence that there was any overpayment; given that Mr Roughan would have only been working for Graz4u for a matter of months at the time, he would not have been entitled to take annual leave and effectively leave would need to have been treated as leave in advance.

[46] The treatment of this particular allegation is bound up with the question of whether Mr Roughan adequately explained to Graz4u the enormity of his family difficulties; I have already indicated that I am satisfied certainly in the earlier part of the employment (which includes this period) Mr Roughan provided the employer with sufficient intelligence of his

family circumstances to enable the employer to make some reasonable allowances which is what a good and fair employer would do.

[47] I do not accept that there has been any unauthorised annual leave taken by Mr Roughan.

[48] I am supported in that conclusion by Mr Benefield's comment during cross-examination to the effect that he took no steps against Mr Roughan at the time of Mr Roughan's taking the holiday leave in question. It is difficult to see why, if the matter was not important enough to pursue in 2013, it should be important enough to pursue now.

**Did Mr Roughan damage the company vehicle?**

[49] The company vehicle is a Ford Ranger. Mr Benefield maintained in his evidence that Mr Roughan had regularly complained about the automatic transmission "slipping". Mr Roughan does not recall making that complaint.

[50] Mr Benefield says he was in Southland with Mr Roughan in September of 2013 and Mr Benefield says that the vehicle was "misbehaving" then.

[51] Mr Benefield's evidence is that it was not until December of that year that Mr Roughan took the vehicle to the Ford dealer in Gore and in order to make the vehicle roadworthy again, the dealers had to install a second-hand gearbox which cost Graz4u \$7,000. In addition, Mr Roughan was deprived of the vehicle from December 2013 through until the following February 2014 when Mr Benefield delivered a new Ford Ranger to him in Southland.

[52] Mr Roughan says that he looked after the vehicle, that he gave it regular services as required by the manufacturers and when it broke down in December 2013, he took it to the Ford dealer and they told him that the fault in the automatic transmission was a regular problem with that particular model. He denies any wrongdoing.

[53] Again, there is conflict in the evidence. Mr Benefield maintained that what Mr Roughan ought to have done was ask the dealers to service the automatic transmission rather than simply ask them to service the vehicle. Mr Benefield said that unless Mr Roughan was asking for the transmission to be serviced, the dealers would only service the engine.

[54] Mr Roughan said that he had never heard that particular proposition before and assumed that the dealers knew what needed to be done for their own vehicles.

[55] Moreover, Mr Roughan did not recall making any complaints about the vehicle until it broke down and did not recall Mr Benefield visiting Southland and noticing the vehicle misbehaving then.

[56] Put shortly, I am unable to make any finding against Mr Roughan in this matter because of the absence of evidence. There are no service records for this vehicle before me and in the absence of any evidence to suggest wrongdoing by Mr Roughan, Graz4u has not proved its allegation on the balance of probabilities.

**Did Mr Roughan fail to return company property?**

[57] Again, the regular refrain continues. Mr Benefield for Graz4u maintained that the company's property was not returned at the termination of the employment and indeed he went to the extraordinary lengths of hiring a private investigator to effectively spy on Mr Roughan and his family allegedly in pursuit of the company's property.

[58] But Mr Roughan says that he returned everything except a cell phone and used pair of gumboots to another company employee on the day of the resignation, 18 October 2014. He says the return of the property was documented in an email of even date.

[59] Mr Roughan satisfied me that everything that he had in his possession at the end of the employment was returned in the transaction I have just referred to, and I confess to finding it extraordinary that an employer would engage a private investigator to spy on a former employee ostensibly in pursuit of company property when on any reasonable construction, the property had already been returned.

[60] I note for the sake of completeness that I do not use the expression "spy on Mr Roughan" lightly; those are not my words but rather words which Mr Benefield himself agreed in cross-examination described the factual position.

[61] Even more extraordinary is the fact that Mr Benefield for Graz4u is now seeking to recover the large sum of money he spent on the private investigator from Mr Roughan. The amount in question is over \$13,000 and the person who provided the private inquiry services

was subsequently recruited by Mr Benefield to fill the role vacated by Mr Roughan's resignation.

[62] Mr Benefield represented that he had no choice but to engage the private investigator. He said he did that before Mr Roughan left the employment. He said that he endeavoured to engage with Mr Roughan including in a disciplinary context but could not get Mr Roughan to respond appropriately.

[63] I conclude that Mr Roughan did not fail to return company property.

### **Did Mr Roughan breach his duty of fidelity?**

[64] Graz4u maintains that Mr Roughan ran a competing business while he was an employee of Graz4u and that Mr Roughan used company animal health products to treat animals that were not part of the Graz4u system.

[65] Moreover, Graz4u says that Mr Roughan damaged the business significantly by placing animals on farms where there was no Graz4u contract in place.

[66] It was suggested that by virtue of doing this once, a precedent was set and, to quote from Graz4u's submissions the word quickly spread that (Mr Roughan) would locate grazing and bypass Graz4u.

[67] Mr Roughan, for his part, denies all the allegations "except to say there were some occasions when clients who were just not prepared to go with Graz4u were suggested possible grazing options purely and simply because the animals needed somewhere to go."

[68] Graz4u maintains that the evidence of two young women who worked for Graz4u in Southland at the relevant time, supports their allegations, as does the evidence of a farmer Mr Simon Harrison. It is true that those three witnesses gave evidence which might be interpreted as unhelpful to Mr Roughan's position, but I remain unpersuaded that the elements of the alleged breach of the duty of fidelity is made out. I interpreted Mr Harrison's evidence as being generally dismissive of Mr Roughan's skills and experience rather than being directed particularly at whether or not Mr Roughan was trying to source business on his own account.

[69] As to that latter point, Mr Harrison makes only one comment in his brief about work which Mr Roughan was offering to undertake on his behalf and which he assumed would be work for Mr Roughan personally rather than work for Graz4u.

[70] As to the two former staff members, neither appeared terribly enthusiastic about giving evidence at all (one more so than the other) and their evidence could certainly not be described as a ringing endorsement of Graz4u.

[71] The law on the duty of fidelity is clear enough. First the duty exists while the employment agreement is on foot (as is the case here) and second the contents of the implied term of fidelity is not susceptible to a fixed test: *Schilling v Kidd Garrett Limited* [1977] 1 NZLR 243 applied.

[72] In the words of Chief Judge Goddard in *Communication and Energy Workers Union v Tisco Limited* [1992] 2 ERNZ 1087, the implied duty of fidelity was "...a residual obligation not to do anything intended to injure the employer's business nor anything which, to an employee of reasonable understanding, would obviously have that effect by reason of the antagonism of the activity to the interest of the employer...".

[73] It is also clear from the decided cases that the conduct complained of need not actually be dishonest but rather would, when viewed objectively, undermine the relationship of trust and confidence which must exist between employer and employee.

[74] In the present case, I am satisfied that Mr Roughan is an employee of reasonable understanding, but equally, I have not been persuaded that he had any intention of hurting the business that he was employed by. Indeed, quite the reverse seems to be the position; on the evidence I heard, Mr Roughan "went the extra mile" for the business and was impressed with the basic business model.

[75] Nor am I persuaded that any of the actions Mr Roughan took could reasonably be construed as an activity that was antithetical to the employer's interests.

[76] For instance, Mr Roughan agrees that he undertook artificially inseminating cows and that he did that in the employer's time but then made the time up later on. Graz4u does not provide any artificial insemination services so it is difficult to see how that aspect could be damaging to the employer's interests.

[77] It is true that Mr Roughan presided over various grazing arrangements which fell outside of the Graz4u parameters but he says that was not because of any desire to relieve Graz4u of revenue it would otherwise have received, but rather because those parties chose not to engage with Graz4u. He says that the worst he can be accused of in relation to those matters is being concerned about animal welfare and arranging for grazing to be provided, despite the fact that the parties had chosen not to contract with Graz4u.

[78] Arguably, in those circumstances, he would have been far better to have walked away from the transaction altogether, so as not to be seen to be conflicted, because I think there is some force in Graz4u's argument that having done it once, that is, arranged a grazing contract outside of Graz4u, Mr Roughan effectively set a precedent for it to happen again, and it did.

[79] But in order for me to be satisfied that Mr Roughan had breached his duty of fidelity in respect to these matters, I would need to hear evidence that gave the lie to Mr Roughan's contention that the parties involved did not want to contract with Graz4u. There was no such evidence. It follows that the allegation against Mr Roughan by the applicant is not made out.

[80] Nor is there any evidence to suggest that animal health products sourced from Graz4u and used on a farm belonging to Mr Roughan's family were other than properly purchased by Mr Roughan and dutifully accounted for. Again, if the applicant's argument that Mr Roughan has breached his duty of fidelity is to be made out, it would need to have provided me with evidence that suggested that product sourced from Graz4u was not properly accounted for by Mr Roughan and there is no such evidence.

[81] Indeed, as Mr Roughan points out, the ordering of products such as animal health products from Graz4u is a centralised facility and he did not have authority to order product save through that centralised system.

[82] If, as Graz4u alleges, there is something over \$30,000 in animal health products that is unaccounted for, it is not enough to simply allege that Mr Roughan is somehow responsible for that; there must be evidence sheeting home the deficit to Mr Roughan, and there is not.

**Did Mr Roughan undertake unauthorised advertising?**

[83] Mr Roughan denies any unauthorised advertising and says that any advertising that he promoted with Graz4u was specifically for Graz4u's benefit.

[84] Moreover, Mr Roughan maintained that Graz4u had a poor reputation in Otago and Southland that it was necessary to advertise extensively in order to try to improve that perception.

[85] Further and finally, Mr Roughan maintained that he always discussed advertising with Mr Benefield of Graz4u, and he refers to a particular case where he remembers seeking Mr Benefield's blessing for advertising to continue to run beyond the originally stated end date.

[86] Mr Benefield denies agreeing to any advertising continuing, and maintains that on one occasion, when there was dispute about who had authorised a particular advertisement, Mr Roughan had undertaken to meet the cost personally.

[87] Again, I have not been persuaded that Mr Roughan has done anything wrong; there is simply a bare allegation that Mr Roughan undertook advertising that was not consented to by the employer but there is no documentary evidence to support the allegation that either Mr Roughan was solely responsible for the cost or indeed that Mr Roughan did not do as he says in his evidence he did, and seek the blessing of Mr Benefield at Graz4u.

[88] I have not been persuaded that this claim has any force or effect either.

**Did Mr Roughan use the company fuel card for personal use?**

[89] It appears to be common ground that the fuel consumption charged to the employer's fuel card in Mr Roughan's possession was out of step with the company's expectations, especially when measured against the fuel consumption of other employees operating similar vehicles in similar territories.

[90] That said, Mr Roughan denies absolutely that he either used the company Ford Ranger vehicle for personal use or that he ran his own vehicle off the company fuel card.

[91] His own vehicle is, like the Ford Ranger supplied by the employer, fuelled by diesel.

[92] Mr Roughan suggests that some of the extra fuel that was purchased on the company fuel card would have been fuel that he purchased for a twenty-litre fuel container that he carried in the company vehicle so as not to be caught short in rural areas.

[93] Mr Roughan also said that he drove very considerable mileages and that he “had a heavy foot”. Moreover, he indicated that from time to time, he towed a trailer for work purposes and that of course increases the fuel consumption.

[94] Mr Roughan’s evidence on this particular matter was supported by the evidence of his estranged wife who notwithstanding their estrangement, maintained that her former husband was absolutely hard working and ethical and that at no time did he either himself or through her, fuel their own vehicle using the company fuel card.

[95] Indeed, she maintained that as she principally drove the family vehicle, she was almost invariably responsible for refuelling that vehicle and that she did that “from their own money”.

[96] She flatly denied a particular allegation made to her by Mr Benefield for Graz4u that she had used the company fuel card twice to refill her family vehicle.

[97] I accept that the fuel purchased on the fuel card seems to be in excess of the fuel that one might expect a vehicle such as the Ford Ranger to require but again, the detail of the evidence is simply not before me to enable me to satisfy myself on the balance of probabilities that the claim made by the applicant employer is made out, and I therefore reject it.

**Did Mr Roughan contract additional labour without authorisation?**

[98] As is the case with most of the allegations in this matter, the parties disagree on the facts, with Mr Roughan maintaining that he only hired additional labour when that was necessary and that he always sought the appropriate authorisation.

[99] Conversely, Graz4u maintains that there were occasions when Mr Roughan proceeded to engage additional contract staff without proper authorisation.

[100] The evidence for the employer’s allegation is simply not before me and I decline to take it any further.

## Conclusion

[101] I have not been persuaded that Mr Roughan has committed any breaches of his employment agreement so as to cause loss to Graz4u and accordingly the applicant employer's claim fails in its entirety.

[102] This is especially so because I agree with submissions for Mr Roughan to the effect that "...it is now controversial and doubtful..." if an employer can sue an employee for unintentional damage or loss during the employment. That proposition is supported by dicta from Judge Inglis (as she then was) in *George v Auckland City Council* [2013] NZEmpC179 when Her Honour said:

...rather it is strongly arguable that in the modern context of employment relationships in New Zealand and in the light of the mutual obligations conferred on parties under the Employment Relations Act, an employer may not seek to recover damages from an employee arising from acts of negligence committed during the course of their duties. If it were otherwise it would likely have a chilling effect on the way in which employees undertake their duties, could lead to reactive claims or threats of claims against those taking personal grievances which would undermine the statutory framework for resolving employment relationship issues, and expose employees to significant potential financial liability for a breach even in circumstances that could never justify a dismissal.

[103] The learned judge returned to the issue in the subsequent judgement in *Rainbow Falls Organic Farm Ltd v. Rockell* [2014] NZ EmpC136 where she said:

The "double whammy" effect of dismissal plus a damages claim, both arising out of the same poor performance committed during the course of the employment relationship, sits uncomfortably with the statutory mechanisms for resolving employment relationship issues and may well have a chilling effect on employees considering a personal grievance, concerned not to prompt a retaliatory damages claim in response...

[104] Costs are reserved but the parties are encouraged to engage with each other with a view to costs being fixed by agreement. Any such agreement would reflect the legal position that costs follow the event such that in the present case, Mr Roughan can expect a contribution to the costs he has incurred from Graz4u.

[105] Because Mr Roughan is legally aided, any costs payable by Graz4u to Mr Roughan will be disbursed in accordance with the Legal Services Act.

[106] In the event that the parties are not able to resolve costs on their own terms, Mr Roughan may file and serve a memorandum asking the Authority to fix costs and Graz4u

will have fourteen days from the date of their receipt of that memorandum to file their memorandum in opposition. The Authority will then fix costs on the papers.

James Crichton  
Chief of the Employment Relations Authority