

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 398
3119080

BETWEEN

AMIT KUMAR
Applicant

AND

HOSPITALITY SERVICES
LIMITED
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Phillip Drummond, counsel for the Applicant
Andrew Scott-Howman, counsel for the Respondent

Investigation Meeting: 18 May 2022 at Palmerston North

Submissions Received: At the Investigation Meeting

Date of Determination: 18 August 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Amit Kumar commenced his employment with Hospitality Services Limited (HSL) in 2006 and at the time of his dismissal was employed as a Chef de Partie for a minimum of 30 hours per week. He worked at the Copthorne Hotel in Palmerston North.

[2] Mr Kumar says that at a staff meeting on 25 March 2020 just prior to the first Covid lockdown, he and others were advised that there were going to be redundancies for some staff and reduced hours for others.

[3] On 11 April 2020, Mr Kumar was advised that HSL was proposing to disestablish his position which would mean the end of his employment by way of redundancy. He says he was

given till 12 noon on 15 April to provide feedback but that he only saw that advice when he opened his emails on 15 April. He says he made written submissions but was unhappy with the short timeframe and felt he needed more information. He says he raised the issue that once the lockdown had concluded, HSL would still have a requirement for a Chef de Partie and further, no information was provided regarding a proposed restructure of the kitchen staff. On 15 April 2020 he received a letter from HSL advising him that his role was disestablished and his employment was to end as a result of redundancy.

[4] Mr Kumar alleges that the decision to disestablish the position and make him redundant, constituted an unjustified dismissal. He says that the process by which he was selected for redundancy and had his employment terminated, breached his terms of employment and created an unjustified disadvantage. He seeks lost wages and compensation.

[5] On 17 November 2021 the Authority in a preliminary determination found:

- (a) Mr Kumar's grievance was raised within the 90-day statutory timeframe;
- (b) Mr Kumar was entitled to receive and was paid 10 weeks' notice of termination of employment.

[6] HSL denies the claims. It says HSL employed Mr Kumar essentially on a part time basis so that he could maintain and run his own private business. It noted that the Copthorne Hotel in Palmerston North was one of a number of properties owned and run by HSL in New Zealand. It acknowledged the kitchen was an important part of the business of the hotel, but the situation changed dramatically as a result of the Covid pandemic. It says its business was confronted with the situation where occupancy of its hotels became very uncertain and could not be guaranteed for the foreseeable future. It consulted with staff including Mr Kumar and made a decision that his role at that time was superfluous to requirement and his employment ended as a result of redundancy. It denies any improper motive and says it followed a procedurally fair process in concluding that Mr Kumar's employment should end on the basis of redundancy.

The Authority's Investigation

[7] For the Authority's investigation witness statements were received from Mr Kumar, his wife Anurading Singh and for HSL from Mr Takeshi Ito and Mr Carey James Lister. All witnesses affirmed their evidence.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all the evidence and submissions received.

Issues

[9] At the investigation meeting the following issues were identified:

- (a) Was Mr Kumar given sufficient information so that he could give meaningful feedback?
- (b) Was Mr Kumar's feedback considered by the decision maker and indeed, who was the decision maker?
- (c) How was Mr Kumar selected for redundancy?
- (d) Was consultation meaningful and sufficient in terms of the test in s 103A of the Act?
- (e) If Mr Kumar was unjustifiably dismissed, what remedies would flow?

Background

[10] On 23 March 2020, the Prime Minister announced New Zealand would be moving into an alert level 3 lockdown immediately and this would be followed by an alert level 4 lockdown from 1.30pm on Wednesday 25 March 2020. The impact of Covid-19 on HSL had commenced earlier when the New Zealand Government had imposed entry restrictions on foreign nationals travelling to New Zealand and on 14 March 2020, three days after the World Health Organisation had declared a global pandemic, the New Zealand Government announced its decision to effectively close the international borders.

[11] This created significant uncertainty for HSL which concluded there would need to be a dramatical fall in costs if its hotels were to remain operative. HSL considered it was faced with a genuine crisis and with low or zero occupancy, needed to ascertain which staff in which hotels were superfluous to its needs during this phase of the pandemic.

[12] Immediately prior to the commencement of the 25 March 2020 lockdown, Mr Kumar attended a meeting at the Copthorne Hotel with other staff and was advised there were going to be redundancies for some staff and reduced hours for others.

[13] Mr Kumar received a letter dated the same day which proposed to reduce his guaranteed hours down from 30 hours per week to 10.

[14] On 26 March he received a further letter which although received on 26 March was dated 25 March. The letter, signed by Kim-Marie Rixson, Vice President Human Resources, advised Mr Kumar that after re-assessing their proposal to him, his hours would remain the same as his current employment agreement for the next three months.

[15] On 11 April, Mr Kumar received a further letter again signed by Ms Rixson but this time advising that following a review of each department and the projected workload in each department, it was proposed that his position of Chef de Partie would be disestablished and his employment would end by way of redundancy. Ms Rixson advised that Mr Kumar's feedback was required as part of the process and any other solutions would be considered before a final decision was made. The letter provided for feedback to have been received and digested, with the decision being made after 5.00 pm on Wednesday 15 April. Feedback needed to be received by no later than midday, Wednesday 15 April.

[16] As it transpired, Mr Kumar did not open his email until 15 April 2020. Mr Kumar made submissions which he forwarded to Ms Rixson at 11.50 am on 15 April. He complained about the short timeframe to make submissions. It is noted that Friday 10 April was Good Friday and Monday 13 April was Easter Monday. On the face of it, this was a very short time for Mr Kumar to make submissions and indeed take legal advice. As it transpires however, Mr Kumar had not read his email but did manage to get his submissions in on time.

[17] On 15 April at 6.47 pm, Mr Kumar received notice that his employment with HSL would end on 24 June 2020 on the grounds of redundancy. There was no mention of any selection criteria and the letter was signed by Ms Rixson.

[18] Mr Kumar had pointed out in his submission that after the lockdown had concluded there would still be a need for a Chef de Partie and that further he had received no information regarding the proposed restructure of kitchen staff. He also asked about the selection.

[19] The 15 April termination letter blamed the redundancies on New Zealand being currently in Covid-19 alert level four lockdown. It noted a number of its hotels were closed except for one which was open to accommodate overseas travellers who had been unable to

leave the country. It noted that hotels would have to rely solely upon domestic travel for the foreseeable future which it saw as minimal.

Evidence

Amit Kumar

[20] Mr Kumar's evidence in terms of the events leading to the termination of his employment was straightforward. He received the 11 April letter from Ms Rixson advising of the proposal to end his employment by reason of redundancy and was given to 15 April 2020 to provide feedback. Mr Kumar overlooked the email and did not open it until the same day. Nonetheless, he returned his feedback which included his complaint of a lack of time to consider and absorb the information, posed a number of questions and asked for further information. For instance, he asked:

Is only my position as Chef de Partie is getting disestablished? [sic] If yes, then why? My understanding is if there is a requirement of two CDP's out of three then this process should be the same for all Chef de Parties'. When the lockdown period will be over there will still be requirement for a chef for the breakfast/lunch. So this means position is and still will be there but instead of me doing/covering my hours will get distributed between the other two. How this selection got done? [sic]

...

If no, then there is no information about the proposed structure even just for my dept or I should say kitchen dept.

...

[21] Hours later Mr Kumar received his termination letter. On 15 April at 1.48 pm, Mr Kumar had also been advised that his feedback was being considered as was the length of his service and the structure of the kitchen.

[22] However, at 6.47 pm on 15 April, Mr Kumar received the letter of termination.

[23] Mr Kumar has questioned the genuineness of his redundancy. He says that when he went back to work on 22 June, he was surprised to learn that the two other Chef de Partie chefs were still employed. He also gave evidence that the roster for the week of 21 July recorded that breakfast and lunch shifts were being undertaken by other chefs. In other words, Mr Kumar's role continued to exist. Further, on 29 September 2020, the Copthorne advertised for a Chef de Partie for a minimum of 30 hours per week. Mr Kumar saw that position as being the one he held prior to termination.

[24] Mr Kumar gave evidence as to the hurt, humiliation and injury to feelings. He says he suffered as a result of his dismissal. He says he felt very let down and hurt. He had been employed with HSL for some 14 years and believed he should not have lost his job. He said that finding out that other chefs of the same level had been kept on, who had not had the same length of service he had, was really hurtful. He said he was concerned about being without income for a period of some 14 weeks and this was a worry for him. He felt guilty that his wife was in full time employment but wanted to leave and could not do so because of his employment status. He said it was his job to be the primary income earner and provide for and support his family. He felt he had let them down. He stated as the eldest son in an Indian family, he would send money back to India for his father as part of his culture. His father needed money for an operation, but he was unable to send money because he was not earning any income.

[25] Mr Kumar also gave evidence about Seven Spices Limited, his Indian takeaway business. He said he had started this business in 2009 and had checked and obtained permission from his employer. He submitted accounts showing the net profit for the year ending 2020 was \$12,465 and for the year ending 2021, \$12,634. His evidence was that he had always run this business since 2009 but that it was not particularly profitable. It did not interfere with his work at the Copthorne and nor did it become a replacement source of income once he was made redundant.

[26] In terms of Mr Kumar's disadvantage claims, it was clear that these revolved around the process that had been followed. Mr Kumar was most concerned that he had not been given proper reasons, nor was he aware of any selection criteria. He said he asked for further information but this was not forthcoming.

Anurading Singh

[27] Ms Singh is Mr Kumar's wife. She noted that they had been married for some 23 years. She said that the time period following the termination of her husband's employment was a worrying time for everyone. She stated that prior to termination of employment, her husband was happy and contented in his work. She said the interface with his business worked out well. Her husband was able to work in the mornings and then run the takeaway business in the early evenings. When Mr Kumar was advised of his redundancy, she said he was really disappointed and hurt. She said he suffered a loss of pride and was very concerned about the uncertainty of obtaining new employment. She said her husband became lethargic and down in the dumps.

She noted he was stressed and was continually pacing up and down. He was not talking and acted as a very different person. He continually asked her, what could he say to people, what could he tell them when he was thrown out but others weren't.

[28] After three months her husband had found new work albeit at a lower pay, and his demeanour improved.

Takeshi Ito

[29] Mr Ito is currently the Vice President Legal and Company Secretary for Millennium and Copthorne Hotels New Zealand Limited. He is also the Company Secretary and Legal Counsel for HSL. He gave evidence that as a member of the Executive Management Team, he was familiar with what happened during the 2020 lockdowns as a consequence of Covid-19. In the three years prior to the Covid pandemic, he said that New Zealand enjoyed significant growth in tourism, this had led to the sector becoming New Zealand's largest export industry. He felt it important that in order to provide the proper context regarding HSL's reaction to the Covid pandemic, it was necessary to look at what the industry and Government thought about the prospects for tourism to New Zealand prior to the pandemic. He relied on international visitor forecasts published by the Ministry of Business Innovation and Employment noting the following:

- (a) Visitor arrivals were forecast to reach 5.1 million by 2025 with an average growth of four percent annually;
- (b) Total annual international spend was forecast to reach \$14.9 billion in 2025, equating to a 4.3 percent growth rate per year;
- (c) China was expected to become our largest market by spend which was forecast to be \$1.92 billion in 2020 and \$2.8 billion by 2025, which was forecast with a 95 percent chance of certainty by the Ministry;
- (d) China visitor numbers were expected to reach 476,000 in 2020 and just under 700,000 by the end of the forecast period.

[30] In other words, Mr Ito said the forecasts showed a strong tourism industry. However, on 2 February 2020 the New Zealand Government imposed entry restrictions on foreign nationals travelling to New Zealand from or transiting through mainland China. This was because of the growing Covid-19 pandemic. Even without the subsequent impact of Covid-

19, Mr Ito said the February travel ban would have triggered a review of HSL's operations particularly for the hotels that had a high percentage of Chinese business.

[31] He said the February travel ban had an immediate impact. It resulted in immediate and significant cancellations of approximately 37 percent of room nights across the hotel network.

[32] Mr Ito noted that on 14 March 2020, the New Zealand Government effectively closed the international borders. He said this came as a surprise to HSL. It caused it to consider its operations and consider what levels of reductions of occupancy might result, along with what reductions in revenue would likely occur. He said at this time, no Government support was on offer and there was no mention of a wage subsidy. Employers were on their own and had to make decisions based on what they knew and were forecasting. It was this view that caused the business to look at staff and he was part of the meeting on 14 March where HSL's Executive Team ran through the possible scenarios for the business. The answers he said were predictably all bad. He described the situation as a genuine crisis and HSL felt it needed to take action as quickly as possible. They needed to look at the current operational costs as well as the number of current employees.

[33] Mr Ito said a process was started with all of the hotel General Managers including Mr Lister, the General Manager of Copthorne Hotel Palmerston North. They were to review their hotel budgets and their business plans and work with the then Vice President of Human Resources, Kim-Marie Rixson to ensure hotels would be staffed appropriately to deal with the expected decrease in business.

[34] Much of Mr Ito's evidence explained the nature of HSL's business. However, in answer to direct questions, he confirmed his evidence as to what happened on the ground especially in relation to Mr Kumar, was second hand. He said he had no first-hand information regarding how the restructure was implemented in the Copthorne Hotel Palmerston North. His comments were general not specific. Again, in answer to direct questions, he said he was not the decision maker and he was not the person who terminated Mr Kumar's employment. He felt most of the decisions were group corporate decisions, although he said he had no direct evidence on the process. He said though, that he understood that Mr Kumar was selected for redundancy because he could not do certain shifts. Again, in answer to direct questioning, he did not know whether this assumption by HSL had been put to Mr Kumar for comment. He confirmed that because he was not hands on in the Copthorne restructure, he personally gave

no information regarding the restructure to Mr Kumar. He reiterated he was part of the discussions regarding restructure for the hotels but not for Mr Kumar personally.

[35] Mr Ito was not clear about who the decision maker was. He did not know who made the decision to terminate Mr Kumar's employment. He said that the person who responded to feedback was meant to be Ms Jones. She reported to Human Resource. But when pushed, he confirmed he could not say with certainty who the decision maker was. He ended his evidence on this point, by indicating he thought Mr Lister would have been the decision maker.

[36] Again, in answer to direct questions in cross examination, Mr Ito said that it was the need to move quickly that was the justification for not looking at alternatives to redundancies such as continuing with wage subsidies. He said they did not know whether wage subsidies would be extended.

[37] To summarise Mr Ito's evidence, it was clear that none of the material documentation relating to Mr Kumar was prepared by him. He had at best a second-hand knowledge of these documents and in essence was a step back from the process. His evidence did however explain the genuineness of the need for the restructure.

[38] Mr Ito gave some evidence about the application for the wage subsidy. He said in late March when the wage subsidy became available, HSL did apply but it depended on the notice provisions in each agreement. In other words, in respect of how the company intended to apply the wage subsidy, it seems it was attempting to keep employees going provided there was no cost to it.

Carey Lister

[39] Mr Lister gave evidence that he had been the General Manager of Copthorne Hotel Palmerston North since November 2013. He had an impressive background in hospitality and hotel management.

[40] Mr Lister gave evidence that the hotel had 89 guest rooms and suites. It also had conference facilities with the majority of rooms containing one bed. This he said, reflected the fact that the Copthorne Hotel was predominantly a corporate-orientated hotel relying on the domestic market as opposed to the international market.

[41] He said that the effects of the pandemic on the hotel were significant. Total revenue declined by some 31.2 per-cent in 2020 as opposed to the 2019 year. 2021 still reflected a decline of some 25 percent on 2019 results. He said that in Mr Kumar's case, he was of the view that Mr Kumar had specifically stated he was only available to do breakfasts and daytime conference catering work which consisted of morning tea and lunches. He said that therefore the company made allowances for Mr Kumar's inability to work afternoon shifts by ensuring he was rostered on only in the mornings and allocated afternoon work to other members. He accepted that he had made untested assumptions.

[42] Mr Lister explained that the redundancy process was a fractionated process. He said he was one of three decision makers, but the feedback went to Human Resources. He said he did not make the decision to terminate Mr Kumar's employment. He said he was uncertain as to who saw feedback or who dealt with it. He said he knew what he prepared, but he did not know who made the final decision in respect of Mr Kumar's dismissal.

[43] Mr Lister advised that financial forecasts were prepared and they looked at three different levels needed in terms of assessing what was viable and what was not. He said that this required a department by department review of each of the hotel's operations but this was not put in writing. They had a staffing document which they looked at, identified in the bundle of documents as document 42. He confirmed that that was not sent to staff but contained reduced hours for Mr Kumar.

[44] In cross-examination, he stated that no assessments or other information was sent to Mr Kumar. He said that HSL went through line by line discussing each employee and looking at their salaries but did not record this in writing. He confirmed that with others he reached a consensus about Mr Kumar, namely in respect of the fact he had his takeaway business to fall back on and a belief he could not change his hours. He accepted that there was no comment on these conclusions from Mr Kumar because they were never put to him.

[45] Mr Lister accepted that there was a selection criterion which Mr Kumar was not told about. He said they decided that the Executive Chef needed to keep his duties. Three chefs were therefore left. One position was safe based on that Chef de Partie's prior experience, availability and skillset. Another Chef de Partie was made redundant, but this was reversed on 11 June. Out of him and Mr Kumar, they felt he was more flexible in terms of hours/availability and also Mr Kumar would not be affected so much by redundancy because

he had the Spice Kitchen. He confirmed that these conclusions were reached with no input from Mr Kumar and no discussion with him.

Discussion and Analysis

[46] Mr Kumar has alleged that his dismissal by way of redundancy constitutes an unjustified dismissal. As the fact of the dismissal is acknowledged by HSL, therefore it falls to it to justify its actions. There are a number of areas where it seems the process followed in considering and selection Mr Kumar for redundancy are difficult to justify. As the Court of Appeal noted in *Grace Team Accounting Limited v Judith Brake*¹:

... the fact that it was not a decision used as a pretext to remove an unwanted employee (and therefore genuine) did not alter the fact that s 103A was breached.

Consultation

[47] It is accepted by both parties that the consultation period as set out by Mr Kumar is correct. That is namely, the period for consultation was truncated. Mr Kumar was advised of the proposal to end his employment by way of redundancy on 11 April 2020. That was the Saturday of Easter. Accordingly, if Mr Kumar had wanted to take legal advice, he could not have done so between that date and Wednesday 15 April when his feedback was required.

[48] However, as it transpired, Mr Kumar did not see the email until 15 April thus responded at 11.50 am to Ms Rixson with his feedback. He noted his concern that he had not been given a proper opportunity to reply. He also posed a number of questions. These included asking whether or not it was only his position that was being disestablished and if so, why, if others were staying what was the selection criteria? He also noted that he had not been given information about the proposed restructure of the kitchen department.

[49] Approximately two hours later, Mr Kumar received a reply from Lynley Jones, the Corporate HR Manager acknowledging his feedback and advising it would be considered. There was no mention of his other concerns other than a statement that HSL believed consultation timelines were appropriate.

[50] At 6.47 pm on 15 April, Mr Kumar received confirmation his role had been disestablished and that his employment would end on Wednesday 24 June 2020. This was a

¹ [2014] NZCA 541.

very short time for consultation. I do not accept that the opportunity for consultation was real. There was simply insufficient time for HSL to consider Mr Kumar's feedback. It did not answer his questions and I cannot conclude that consultation was meaningful in this instance.

Access to the Decision Maker

[51] Consultation in a redundancy context is mandatory. The situation HSL found itself in does not affect the obligation it had to do so. Section 4(1A) of the Act contains an explicit requirement for the disclosure of information and consultation in redundancy situations. When assessing HSL's actions in terms of s 103A of the Act, the lack of consultation and non-disclosure of information means that their actions were not actions that a fair and reasonable employer could have done.

[52] The evidence of Mr Ito and Mr Lister highlight the difficulties with consultation. Mr Kumar sent his feedback and request for more information to Ms Rixson, Vice President Human Resources. He received a reply from Ms Jones, the Corporate HR Manager.

[53] He then received an email from Mr Lister attaching the termination letter signed by Ms Rixson. Neither Mr Ito or Mr Lister could say who the decision maker was and who considered the feedback. Mr Ito was clear that he was not the decision maker and likewise, Mr Lister said neither was he. Both confirmed that neither of them saw or considered Mr Kumar's feedback. I conclude that the level of consultation and consideration of Mr Kumar's feedback was inadequate and does not meet the standards imposed on HSL as a fair and reasonable employer by s 103A of the Act. Further information relied on by HSL which Mr Kumar clearly disagreed with, was not provided.

[54] Ms Rixson did not give evidence. However, Mr Lister was clear as to the reasons why Mr Kumar was selected. In summary, these were because:

- (a) Mr Kumar may not have been able to work the times HSL would have wanted him to;
- (b) Mr Kumar had another business thus he would not be affected as badly by redundancy as other staff might.

[55] At no stage were any of the assumptions mentioned above put to Mr Kumar. For instance, there was no discussion with him regarding any change to hours which may have protected his job. There was no discussion with him regarding the impact redundancy might

have on him because of the fact he had for a number of years, carried on with his takeaway business outside his usual work hours. Certainly, there was no discussion whether he would be prepared to change his hours in order to save his position. Indeed, Mr Kumar said he would have been happy to do anything he could including rearranging his hours to enable his employment to continue.

[56] I conclude that if the witnesses for HSL did not know who the decision maker was, how could Mr Kumar. He had no access to the decision maker. Although Mr Lister and Mr Ito were part of a group who considered the redundancies, they did not receive or analyse Mr Kumar's feedback, nor did they consult with him.

[57] Mr Kumar made a request for information but did not receive it. It was obvious during the investigation meeting and from Mr Ito's and Mr Lister's evidence that there were a number of documents and/or conversations which Mr Kumar was not aware of which were instrumental in his selection for redundancy. Mr Kumar had no chance to make out an adequate case to be retained in his employment because he simply did not have sufficient information. He was unaware of a selection criterion. It follows therefore that Mr Kumar has made out his claim he was unjustifiably dismissed.

[58] Although I accept that Mr Kumar was also disadvantaged in his employment and has made out that grievance, nonetheless it is clear that his complaints in that regard are the very reasons why his dismissal for redundancy is unjustified and accordingly do not warrant a separate award.

Remedies

[59] Section 124 of the Act requires me to consider whether or not remedies should be reduced because of contributory conduct by Mr Kumar. In this case, Mr Kumar was dismissed by way of a no-fault redundancy. Accordingly, there is no question of reduction of remedies.

[60] Mr Kumar gave evidence that it took him some three months to find alternative employment. Section 128(2) of the Act requires the payment of three months wages or the actual loss, which is the lesser. Mr Kumar has been paid ten weeks salary by way of notice which he worked out. Accordingly, I award a further three months' salary totalling \$10,010.00. He is also entitled to the KiwiSaver contribution of three percent on gross wages.

[61] Mr Kumar and his wife both gave compelling evidence as to the hurt and humiliation and injury to feelings Mr Kumar had suffered. I have set that out earlier in this determination. Taking into account the Court's guidelines in similar cases, I consider an award of \$20,000 appropriate.

[62] As penalties were requested, I have considered that aspect but do not see a penalty is appropriate in this case. There is no doubt that HSL was justified in looking at its structure and I accept it would have had a need to react quickly. It certainly seems that Mr Kumar was a valued employee who under normal circumstances, the company would have wished to keep. This is highlighted by the fact that is noted in Mr Kumar's evidence, when the lockdown finished Mr Kumar would have been welcomed back. Nonetheless, the process adopted by HSL was unfair and has resulted in Mr Kumar's unjustified dismissal.

Summary of Orders

[63] Hospitality Services Limited must pay Mr Kumar the sum of \$10,010 being three months' salary. It must also pay the three percent KiwiSaver on gross wages.

[64] Hospitality Services Limited must pay Mr Kumar a sum of \$20,000 pursuant to s 123(1)(c)(i) of the Act.

Costs

[65] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Mr Kumar may lodge and then should serve a memorandum on costs within 14 days to the date of issue of this determination. From the date of service of that memorandum, Hospitality Services Limited would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[66] If the Authority were asked to determine costs, the parties could expect the Authority to apply its usual daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.²

Geoff O’Sullivan
Member of the Employment Relations Authority

² For further information about the factors considered in assessing costs, see www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-