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Lynch v Marlborough Vintners 2011 Limited (Christchurch) [2018] NZERA 1105; [2018] NZERA Christchurch 105 (27 July 2018)

Last Updated: 1 August 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2018] NZERA Christchurch 105

3016572

BETWEEN ANNA-MAREE LYNCH Applicant

AND MARLBOROUGH VINTNERS

2011 LIMITED Respondent

Member of Authority: Christine Hickey

Representatives: Peter McRae, Counsel for the Applicant

Miriam Radich and Sarah Wadworth, Counsel for the

Respondent

Investigation meeting: 13 April 2018

Submissions received: 20 April from the Applicant and Respondent and 30 April from the Applicant

Determination: 27 July 2018

DETERMINATION OF THE AUTHORITY

- A. Marlborough Vintners 2011 Limited unjustifiably dismissed**

Anna-Maree Lynch.

- B. Marlborough Vintners 2011 Limited must pay Anna-Maree**

Lynch:

(i) lost remuneration of \$19,326.96 gross; and

(ii) compensation of \$18,000.

- C. Costs are reserved.**

Employment relationship problem

[1] Anna-Maree Lynch worked as the Accounting and Administration Manager for Marlborough Vintners 2011 Limited (MVL) until she was dismissed by way of redundancy on about 10 February 2017. Ms Lynch claims that there was not a genuine redundancy. She also claims that she suffered unjustifiable disadvantage in her employment when Anthony Moore failed to deal with her in good faith in relation to the dismissal.

[2] Ms Lynch claims lost wages of \$3,240 and compensation of \$30,000 for humiliation, loss of dignity and injury to her feelings.

[3] MVL denies that the redundancy was not genuine, but agrees that it did not carry out a fair process. MVL agrees that it should compensate Ms Lynch, in an amount of no more than \$10,000, for hurt and humiliation. However, because MVL says the redundancy was genuine, it considers does not owe her any lost wages.

The investigation meeting

[4] At the investigation meeting, I heard evidence from Ms Lynch, Anthony Moore, MVL's sole director, and Kathryn Walker, MVL's General Manager since May 2017. These three witnesses provided written statements in advance.

[5] Mr Moore gave evidence and participated in the investigation meeting by telephone from his home in Tasmania.

[6] I also heard from Ben Halliday, MVL's former CEO, and Ben Douglas, a director of Johnston Associates South Chartered Accountants (Johnston's). They were summoned to give evidence and had not prepared written witness statements.

[7] All of the witnesses gave sworn or affirmed evidence and were questioned by me and by counsel.

[8] Although I have not recorded all the evidence or submissions in this determination, I have considered them in reaching my conclusions.

Issues

[9] I need to consider whether Ms Lynch suffered unjustifiable disadvantage and/or whether MVL unjustifiably dismissed her.

[10] MVL needs to prove that its decision to disestablish Ms Lynch's role was a decision a fair and reasonable employer could have made in all the circumstances.

[11] If the redundancy was procedurally unjustified, but was substantively justified, Ms Lynch can only be compensated for the harm or loss she suffered because of the procedurally unfair process. Otherwise, she may be eligible for lost wages as well as compensation for the effects of the unfair process and the unjustified substantive decision to make her role redundant.

Background facts

[12] Ms Lynch started work in July 2013 as the Management Accountant for MVL. Her role changed in 2014, following a formal restructuring process that resulted in two accounting roles being removed, including Ms Lynch's then role. Ms Lynch was appointed to the one in-house accounting role as Accounting Manager.

[13] For the whole time Ms Lynch worked at MVL an external accountancy firm, Johnston's, was in charge of final annual accounts and tax returns for MVL and its many associated companies. Ms Lynch worked closely with Ben Douglas.

[14] She also worked closely with, and reported directly to, Ben Halliday, MVL's CEO until his resignation in September 2016. From September 2016, Ms Lynch worked directly with and reported to Mr Moore.

Announcement of redundancy

[15] On 10 February 2017, a Friday afternoon, Mr Moore called Ms Lynch into an office and told her that her position was to end and she would be made redundant. He told her MVL had decided to use the services of Accounts Department, a bookkeeping bureau run by Johnston's, to do her role.

[16] In that meeting, Mr Moore also mentioned to Ms Lynch that he was concerned that she had given sensitive company information to a person outside the company, who he named. Ms Lynch says that was the first time she had heard the allegation.

She denied the allegation at the time, and in her evidence for the investigation meeting.

[17] Mr Moore gave Ms Lynch one month's notice and told her it was up to her to decide whether she would come back in the following week to handover to a named person that Ms Lynch understood was an Accounts Department staff member. Ms Lynch initially said that she did not think she wanted to do that.

After the redundancy was announced

[18] Ms Lynch reconsidered her decision. She rang Mr Moore that evening and arranged to meet him on the Monday morning to make a number of changes, such as removing her access to bank accounts, including foreign exchange accounts, and giving Mr Moore log-ins and email addresses. She also realised she would have to handover her pay roll function. During that call, Mr Moore told her that the Accounts Department staff person would be there on the Monday morning. She understood that Mr Douglas would also be there.

[19] On the Monday morning, Mr Moore was about ¼ of an hour late to meet Ms Lynch and was then only available very briefly. They agreed to a number of things necessary to allow MVL to continue to function without Ms Lynch, including her

removal from bank accounts at two different banks and that Mr Douglas would remove her access to accounts with another bank. However, Mr Douglas and the expected Accounts Department staff member were not there.

[20] Mr Moore agreed to Ms Lynch retaining her phone and phone number. Ms Lynch handed over the hard drive and post office box key and left the office and desk drawer keys on Mr Moore's desk.

[21] Mr Moore agreed that Ms Lynch should be paid for the previous week, four weeks redundancy pay and her final leave pay, which she was to calculate and ask Mr Douglas to approve.

[22] Mr Moore also agreed to give her a letter notifying of her redundancy with her last day to be stated as 10 February 2017, and for a letter of reference to be written and signed by Mr Moore and Mr Douglas.

[23] Ms Lynch calculated her final pay and sent her calculation to Mr Douglas for approval. She copied Mr Moore into the email.

[24] Mr Moore responded:

Hey AM

Can you clarify for me the holiday pay? As everyone used up all their

days last year, and before as ... Ben H worked on getting it all down to no big amounts.

I thought you may have a couple of weeks due, as you came in here and there, but you did take a good amount off during the year when you were dealing with your daughter and then your mum, plus Christmas this year you had at least a couple of weeks.

[25] The following day Mr Moore sent another email asking Ms Lynch to meet Mr Douglas the next day to agree on the content of a reference letter and a letter confirming that she had lost her job because of redundancy. Mr Moore also wrote:

Also, need to have a look at your holiday pay. As it can't be over 3 weeks. We got everyone's holidays down under Ben H., and you had plenty of time off in middle of the year when you had some family issues and then again this Christmas.

[26] Ms Lynch was upset by Mr Moore querying her leave entitlement. Ms Lynch replied to Mr Moore by email later the same day clearly explaining why she had 15 days of annual leave due, and that in addition she would be paid 8% on her final year's earnings. Mr Douglas approved her final pay including her leave.

[27] Ms Lynch met Mr Douglas at the office the next day to help with the handover. Ms Lynch assumed that the Accounts Department employee would be there with Mr Douglas. However, when Ms Lynch arrived Mr Douglas introduced her to an office "temp" who was to work there for a few weeks until an Accounts Department employee could take over.

[28] The temp had not worked as an accounting temp previously and had never done pay roll work. Ms Lynch agreed to train the temp that morning and the following day in other areas of work she would need to do at MVL, such as Xero, how to enter and load up payments, how to enter information in spreadsheets and daily cashflow.

[29] Ms Lynch's last day of work was during the week ended 17 February 2017,

she had the balance of the four weeks' notice off work.

[30] In mid-March 2017, Ms Lynch received a reference letter and a letter setting out that she had been dismissed by way of redundancy. Ms Lynch had redundancy insurance for loss of income. It is her evidence that since because she was sure redundancy was not the reason MVL terminated her employment she has not made a claim on the insurance.

[31] Accounts Department and Johnston's took over some of Ms Lynch's former duties a few weeks after she finished work. MVL engaged an office manager in March 2017.

[32] In April 2017, in response to a letter from Mr McRae raising Ms Lynch's personal grievances, Mr Moore responded that Mr McRae's assertions about Ms Lynch's termination were not correct and she "was not able to do the tasks for which she was employed." He wrote "I could have terminated Anna Maree instantly for breach of contract."

[33] He made a number of negative assertions about Ms Lynch's capacity to do the tasks required of her. He wrote that she gave away privileged and private information and that she had been dishonest. Mr Moore also wrote that he had "retained Deloitte to do a forensic audit" because of issues discovered after Ms Lynch left MVL.

[34] In May 2017, MVL appointed a general manager, Ms Walker, who has accountancy qualifications.

[35] At the time of the investigation meeting, MVL had undergone some further restructuring. Ms Walker's evidence was that she and an office manager would be undertaking Ms Lynch's previous role and that MVL intended to stop outsourcing accounts work to Johnston's in order to save about \$200,000 per year.

Law on redundancy

[36] A redundancy is a “no fault” dismissal; that is, an employee loses their job usually through no fault of their own when they are made redundant. However, an employee whose role is made redundant may still suffer the same disadvantageous consequences from the dismissal as if she had been dismissed for breach of her employment agreement.¹

[37] Because a redundancy is a dismissal, an employer needs to comply with the tests set out in s 103 and 103A(3) of the Employment Relations Act (the Act), insofar as the procedural tests can be applied to a redundancy process.

[38] Essentially, the employer must prove that the dismissal by way of redundancy was a decision a fair and reasonable employer could have made in all the circumstances at the time, having used a process that a fair and reasonable employer could have used.

[39] An employer is entitled to have a working plan in mind for its business when it puts a proposal to the employee for consultation. However, such a plan must be based on more than a “gut feeling” that a role needs to be disestablished². For example, if an employer decides to propose that a role is to be disestablished because it needs to save money it must have accurately assessed how much it needs to save and be satisfied, by evidence, that disestablishing the position will actually save that amount of money.

[40] In the Court of Appeal decision in *Grace Team Accounting Limited v Brake*³

the Court decided:

If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer ... could do.

...

In the end the focus of the Employment Court has to be on the objective standard of fair and reasonable employer, so the subjective

findings about what the particular employer has done in any case still

have to be measured against the Employment Court’s assessment of what a fair and reasonable employer [could] have done in the circumstances.⁴

[41] So, the disestablishment of the role must not be carried out for another hidden purpose, such as getting rid of an underperforming employee or one who you suspect

¹ *Simpsons Farms Ltd v Aberhart* [2006] NZEmpC 92; [2006] ERNZ 825, at[37]-[38]

² *Stormont v Peddle Thorp Aitken Limited* [2017] NZEmpC 71

³ [2014] NZCA 541; [2014] ERNZ 129, Court of Appeal.

⁴ At [85].

of serious misconduct. That is, a genuine reason for restructuring leading to the redundancy must have been the predominant motive. The Court and the Authority are entitled to look into the merits of an employer’s decision to determine whether the decision, and how it was reached, were what a fair and reasonable employer could have done in all the relevant circumstances.

[42] The Court and the Authority are justified in assessing the evidence the employer relied on to propose redundancy and to proceed with it.

[43] An employer must carry out consultation with an affected employee about the proposal with an open mind. It must be true consultation where the employer listens to the employee’s feedback, considers it fairly and is open to changing its view on the proposal.

[44] A fair and reasonable employer will act in good faith. There are specific additional duties of good faith on an employer who proposes to disestablish a position by way of redundancy. Section 4(1A)(c) of the Act requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of an employee to provide:

- the affected employee with access to information relating to the continuation

of the employee’s employment, and

- an opportunity to comment on that information before the employer makes its decision.

Discussion

Was there a substantively justified reason for Ms Lynch's redundancy at the time she was made redundant?

[45] Mr Moore says that in 2016 it became apparent to him that MVL's business structures were not efficient and were not working sufficiently well. He says that, with the assistance of Johnston's, he decided to undertake a major restructure and refinancing over the next 12 months. Mr Moore says that he sought external advice from Deloitte as to how to progress such a major reorganisation. Mr Moore has not produced any written advice from Deloitte for me, and did not give any to Ms Lynch before she was dismissed.

[46] Mr Moore's evidence is that the restructuring began in May 2016 and involved a change of bank and a new board.

[47] Mr Moore says that in mid-September 2016 he approached Ms Lynch and explained that there was an intended restructure that would mean her position was not viable "in the foreseeable future". He says that Ms Lynch "confirmed that she intended to move to the North Island" but asked for no changes to her position until the new year. Mr Moore says that because of that discussion Ms Lynch was aware that her position would change and eventually become superfluous.

[48] Ms Lynch denies that and says she had an informal discussion in September or October 2016 after Mr Halliday left. She says the tenor of the meeting was MVL's worry that she would also leave at some stage in the foreseeable future and asked her to commit to staying on.

[49] Ms Lynch agrees she told Mr Moore that in about a year, although she had not made any definite plans, she might consider moving to the North Island to be closer to her mother.

[50] Mr Moore's written statement also says that by the time he approached Ms Lynch to announce her role was redundant "Accounts Department and Johnston had already taken over the accounting side of the business".

[51] Mr Douglas had been involved with MVL since its incorporation. During the time Mr Halliday and Ms Lynch worked there, he had a financial management role. His role included bank reporting and liaising with Mr Moore, Mr Halliday when he was the CEO and the board. He did MVL's financial reports and the tax returns for all of Mr Moore's companies. Ms Lynch and Mr Douglas worked closely together on at least a weekly basis. He reviewed the work she prepared.

[52] Mr Douglas says that because of poor trading in the 2015 and 2016 years, it was clear in 2016 that MVL needed to save money. To that end, when a staff member left in 2016 she was not replaced. In addition, in October 2016 he and Mr Moore met with a person from an external business and human resources consultancy about what the best structure of the business might be.

[53] Mr Douglas had discussions with Mr Moore in January or February 2017 about the possibility of instituting an office manager role, rather than Ms Lynch's role, and the possibility of Accounts Department being used to do some of Ms Lynch's accounting tasks. However, Mr Douglas said he would have had some work to do before that proposal could be solidified as at that time Accounts Department did not have the capacity to take on the extra work.

[54] He says news of Ms Lynch's redundancy and MVL wanting to use Accounts Department immediately was a surprise as "it was out of the blue". The work that was proposed to go to Accounts Department could not go to it straight away, because of its lack of capacity.

[55] Despite Mr Douglas' key role in financial management of MVL, Mr Moore did not consult him on what making Ms Lynch redundant as at 10 February 2017 would mean for MVL's financial management on a day-to-day basis. Mr Douglas said he had to engage a temp from an agency at short notice and his team had to increase its active oversight of that temp's work at least until the office manager was appointed in March 2017.

[56] The vintage, MVL's busiest time of year, was due to start in March 2017. Mr Halliday's evidence was that it would have been counter-productive to dismiss Ms Lynch at a time of year when the ability of the business to have high functioning financial and accounting processes was essential, without alternative arrangements in place.

Was Ms Lynch performing her role adequately?

[57] Mr Douglas's view of Ms Lynch's work was that it was "to an OK standard." He said that for every business there is always tidying up to do at the end of the month. MVL's accounts were no different.

[58] Mr Moore did not produce the Deloitte forensic audit he referred to in his April email to Mr McRae. There is no evidence that Ms Lynch was dishonest or less than competent in her role with MVL.

[59] Even if MVL had those kind of concerns, the proper course for it to follow was to investigate those concerns, put its concerns to her and allow her a reasonable

opportunity to respond and take those responses into consideration before making any decisions about the concerns.

What evidence supports the substantive need to make Ms Lynch's role redundant on

10 February 2017?

[60] Mr Moore defended the lack of documentation supporting his decision to make Ms Lynch's position redundant. He said he was a "big picture" as opposed to a "details" person. He said he did not need to write down anything leading to the decision, that he knew his business well, and that was the way he worked. He also says he took advice from one of the new board members, who began giving him advice well before Mr Halliday left.

[61] When Mr Halliday left, MVL lost a staff member who was an accountant and therefore its costs for external accountancy advice increased. However, that would have been balanced out to an extent by not having to pay a CEO salary over that period. There was no analysis of this period or a comparison of the costs over that time presented to Ms Lynch or to the Authority.

[62] While MVL may not have been under an obligation to carry out a formal review prior to restructuring the financial and accounting side of the business, it was under an obligation to adequately explain the rationale for the proposal and provide Ms Lynch with relevant information about the proposal and an opportunity to comment on it. MVL's failure to do that was not a minor failing and resulted in Ms Lynch being treated unfairly.

[63] MVL accepts that the process it used to make Ms Lynch redundant was lacking, and on that basis it was not fair. However, it asserts that nonetheless the redundancy was substantively justified.

[64] Mr Moore and Ms Walker both gave evidence that the completion of the restructuring that began with a new banking arrangement and a new board, will be that on the accounting side alone there will be eventual savings of up to \$200,000 per year. There was no evidence about how much MVL sought to save from Ms Lynch's February 2017 redundancy and whether that had been achieved.

[65] Mr Moore did not produce either of the Deloitte reviews he said had been undertaken. He did not produce any result of the October 2016 consultation with Mr

Douglas and the business consultancy/human resources firm. He did not produce any written evidence of advice from the board member he referred to, or call that man as a witness.

[66] In the words of Chief Judge Inglis of the Employment Court in *Stormont v*

Peddle Thorp Aitken Limited, the problem with such an approach is:

... that it makes the task of demonstrating substantive justification harder, due to a paucity of documentation and supporting analysis for disestablishing [Ms Lynch's] position. 5

[67] The problem with MVL's assertion of substantive justification is that there is simply no evidence before me of what MVL set out to achieve with Ms Lynch's redundancy at that juncture, and whether Ms Lynch's redundancy achieved that aim.

[68] Clause 18.4 of Ms Lynch's individual employment agreement stated that:

All meaningful alternatives to redundancy will be explored and discussed with the Employee.

[69] However, Mr Moore did not explore any alternative to redundancy with Ms Lynch. For example, he did not offer to redeploy her to the office manager's role that was filled in March 2017.

[70] Given all of that, and the fact that Accounts Department was not ready and able to replace Ms Lynch's functions at the time Mr Moore made her redundant, it is impossible for MVL to prove that it acted in the way a fair and reasonable employer could have acted.

[71] MVL unjustifiably dismissed Ms Lynch and she is entitled to a consideration of remedies.

Unjustified disadvantage and breach of good faith

[72] MVL did breach its duty of good faith to Ms Lynch by the way it treated her in relation to the redundancy. However, no specific remedy has been claimed for this.

[73] I consider that I do not need to make a determination on the issue of whether

Ms Lynch was disadvantaged in her employment, as well as unjustifiably dismissed,

5 Note 2, at paragraph [67]

as the same facts are relied on for both claims. In reality, any negative effects on Ms Lynch over the last few days of her employment were because of her unjustified dismissal.

Remedies

Lost remuneration – three months

[74] Section 128 of the Act Section 128(2) of the Act provides that I must order MVL to pay Ms Lynch the lesser of a sum equal to her lost remuneration or to 3 months⁶ ordinary time remuneration. Since Ms Lynch obtained work on 29 May

2017, within the three months after her dismissal, I need to award her actual lost remuneration for the three months after her dismissal. Ms Lynch's new role is a less senior one and not full-time. She earns less than she earned at MVL.

[75] Submissions for MVL ask me to take into account a number of factors, including Ms Lynch's endeavours to mitigate her loss. I consider Ms Lynch used reasonable endeavours to mitigate her loss by seeking new employment.

[76] The date Ms Lynch was told she was dismissed is not the date of termination of her employment. That date is four weeks after that, when her paid notice period expired, on 10 March 2017. Three months after that is 9 June 2017.

[77] Ms Lynch was entirely without income for 11 weeks after her dismissal up until 29 May 2017. Ms Lynch's weekly salary at MVL was \$1,442.31 gross. 11 x

\$1,442.31 = \$15,865.41.

[78] Ms Lynch earns an average of \$692.31 per week less in her new role, so for two further weeks (to make up to three months) 2 x \$692.31 = \$1,384.62. Therefore, under sections 123 and 128 of the Act MVL must pay Ms Lynch \$17,250.03 actual lost income for the first three months after her dismissal.

Further lost remuneration?

[79] In addition, s 128(3) gives the Authority discretion to order an employer to pay an employee a sum of lost remuneration greater than is compulsory under s

128(2); that is, for more than three months.

⁶ Which is 13 weeks.

[80] Ms Lynch claims further lost income until 13 April 2018, the date of the investigation meeting. That is a further 10 months beyond the three months after the termination of her employment.

[81] Further submissions from MVL suggest I also need to take into account Ms

Lynch's:

- intention to ultimately leave MVL's employment; and
- endeavours to seek full-time employment once she got part-time employment on 29 May 2017.

[82] In exercising my discretion, I need to assess whether but for the unjustified dismissal Ms Lynch would have remained employed by MVL in the same role past 9

June 2017. I need to undertake a counter-factual analysis. In all the circumstances, including that Ms Walker was appointed as the new general manager in May 2017, I consider it unlikely that Ms Lynch's role would have remained past the end of June

2017, even if appropriate consultation had taken place.

[83] That being the case, the mere possibility that Ms Lynch might have decided to move to the North Island in late 2017 is not relevant.

[84] Ms Lynch's evidence was that she had continued to seek further suitable full-time employment for some time, even after obtaining her job in May 2017. I consider that Ms Lynch adequately mitigated her loss by her ongoing search for full-time work.

[85] Ms Lynch's evidence at the investigation meeting was that apart from her part-time employment, since November 2017 she had carried out some payroll work for one client through a bookkeeping company she and her mother have set up. Her evidence was that work was for a maximum of five hours a week but that she had never received any income for that work from the company.

[86] Given the fact that I have limited MVL's responsibility for Ms Lynch's lost remuneration to the end of June 2017, I do not need to take into account any income Ms Lynch may have received from the bookkeeping company. That is because the first invoice it rendered to its client for her work is for work done in September and October 2017.

[87] I consider MVL must pay Ms Lynch a further three weeks of lost remuneration up to the end of June 2017, being 3 x \$692.31

= \$2,076.93.

[88] The total lost remuneration MVL must pay is \$19,326.96.

Compensation

[89] Ms Lynch's evidence was that she was very hurt by her dismissal after working for MVL for six years because she had never received any complaints and understood she was well respected by the staff. She says she "felt really, really downgraded".

[90] Ms Lynch also relies on Mr Moore's two emails questioning how much leave she had left to be paid out as having increased the distress and hurt she felt during the period immediately following the notification of her redundancy. She feels he was questioning her integrity. Objectively speaking, Mr Moore's emails do not question Ms Lynch's integrity but merely show that he was not in touch with how much leave she had left. Ms Lynch was able to clearly respond to Mr Moore's queries and her final pay was approved without any further questioning by Mr Moore. I do not consider Mr Moore's questions and their effect on Ms Lynch at the time should increase the compensation MVL should pay Ms Lynch.

[91] Ms Lynch says that the financial effect on her was significant but that the mental effect has been even greater. She felt very angry about how Mr Moore treated her and particularly that later he made up stories about why she was dismissed.

[92] Ms Lynch says that her dismissal caused her to suffer ongoing feelings of anger, loss and grief that are still with her. She has struggled to come to terms with her significantly "worsened" circumstances and has been put on medication for depression for the first time in her life. Her evidence is also that she was diagnosed with high blood pressure for the first time following on from her dismissal.

[93] Her self-confidence has suffered and she doubts she will ever be able to work again with the "initiative and independence needed of a senior finance manager ... this is directly because of how I was treated".

[94] The negative effect on Ms Lynch of the dismissal were exacerbated after Mr McRae notified MVL of her personal grievances by Mr Moore's unfounded personal attacks on Ms Lynch and her work.

[95] I consider MVL should compensate Ms Lynch for the humiliation, loss of dignity and injury to her feelings it caused by her unjustified dismissal by paying her

\$18,000.

Contribution

[96] I need to consider the extent to which Ms Lynch's actions contributed to the situation giving rise to her personal grievance. If there was a causal connection between those actions and the situation that gave rise to the dismissal and if those actions so require, I must reduce the remedy that would otherwise be awarded.

[97] Ms Lynch did not contribute to her dismissal in any way, let alone a blameworthy way.

Interest

[98] In his submissions, Mr McRae claimed that I should award interest on the amounts owed by MVL. However, I will not grant interest because it was not identified as part of the remedies claimed in the statement of problem, and MVL has not had an opportunity to make submissions on the issue.

Costs

[99] I reserve the issue of costs. The unsuccessful party can usually expect to pay a reasonable contribution towards the successful party's costs.

[100] I invite the parties to agree on costs. I am likely to adopt the Authority's notional daily tariff-based approach to costs. The daily tariff for the first day of an investigation meeting is \$4,500. The investigation meeting lasted less than one full day.

[101] If the parties cannot reach an agreement, the party seeking costs has 28 days from the date of this determination to file and serve its submissions on costs. The other party has 14 days from the date they receive those submissions to file submissions in reply. The parties should identify any factors they say should result in an adjustment to the notional daily tariff.

Christine Hickey

Member of the Employment Relations Authority