IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 155/08
5091211

	BETWEEN	Janusz Jacek Maryniak
	AND	Waikato Institute of Technology (WINTEC)

Member of Authority:	Janet Scott
Representatives:	David Hayes for applicant Sam Hood for respondent
Investigation Meeting:	19 December 2007 in Hamilton
Submissions Received	28 March & 9 April for applicant 2 April for respondent
Determination:	28 April 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant submits that he was unjustifiably dismissed from his employment with the respondent and that he has a personal grievance. To remedy his alleged grievance, the applicant seeks reinstatement, retraining and redeployment to a suitable position with a salary equalisation payment and compensation pursuant to s.123 (1) (c) (i) of the Employment Relations Act 2000.

[2] The applicant also seeks lost remuneration in the sum of $192.64 per week being the difference between his salary and his earnings on ACC.

[3] The respondent denies that the applicant was unjustifiably dismissed and submits that Mr Maryniak was terminated due to his position being disestablished. This was for genuine reasons and it was carried out following a fair and proper process.

Background

[4] Mr Maryniak commenced employment with Waikato Polytech (Wintec) in 1989. At the time of the events in question, he was employed as technical producer/ educational media providing audiovisual services (AV services) to internal users across all Wintec campuses. His employment was covered by the Allied Staff Collective Employment Agreement.

[5] On 9 December 2004, Mark Flowers (CEO Wintec) wrote to all staff regarding an organisation-wide review of Wintec's operations and structures. He advised that the Tertiary Advisory Monitoring Unit (TAMU) had pointed out its concerns *about the high level of our operating and staffing costs compared with our income for several years now*.

[6] He also advised that Wintec had told TAMU that it would:

- Modernise all processes to operate more effectively in a competitive environment;
- Build strong relationships with business and industry;
- Become less reliant on Ministry funding and ensure long term sustainability.

[7] He also advised that Wintec would meet these objectives through six initiatives, including "*a review of allied staffing ratios to bring Wintec into line with sector wide benchmarking to be completed early in the New Year"*.

[8] Staff were advised that:

- It would be necessary to make some reduction in staffing as this was a major cost to Wintec;
- Affected staff would receive a proposal for consultation;
- Staff were encouraged to participate in the consultation process and to comment on proposals for change. The period of consultation was to be agreed between the staff member and his/her manager and employees were invited to make submissions during the consultative process;
- Submissions received would be considered and the final proposal determined with the worker being advised of the outcome;

- If the decision for change was made, unions would be consulted on the process and support systems put in place, with staff having the option to talk through the options available.

[9] On 10 December, Mr Maryniak received a memorandum from his manager, Mauritz Slabbert, advising him that in light of the CEO's memorandum of 9 December, the support services group had been asked to review allied staffing and that he was reviewing the AV centre's activities in line with that request. Mr Maryniak was advised that Mr Slabbert was *developing a proposal to start the formal consultation process* and that a meeting would be arranged for the following week to discuss the proposal. Mr Maryniak was advised that the proposal would be tabled at the meeting to be arranged.

[10] On 16 December, the parties met. Mr Maryniak was supported by a Mr Brian Main and Kathy Murphy (TIASA representative). At the meeting, Mr Slabbert submitted a written proposal. That document set out a proposal to close the AV centre and to disestablish the position of technical producer/educational media. The proposal also included a statement as to how AV services would be provided in future – through the transfer of services to ITS and out-sourcing.

[11] Mr Maryniak was invited to provide submissions on the proposal by 14 January 2005. As a result of discussions at that meeting, the time for receipt of submissions was extended to 1 February 2005.

[12] That meeting was followed up by Mr Slabbert in a formal letter to Mr Maryniak (17 December 2004) confirming the proposal and inviting him to participate in the consultation process and to comment on it. His submissions were sought by 1 February 2005. Mr Maryniak was advised of the support processes available to him.

[13] Mr Maryniak and his advisers (including the union) sought further information on the proposal, including a detailed business case, an extension of the time for consultation and detailed information on how the current services would be delivered (including requests for information regarding the capacity of other departments to deliver AV services).

[14] On 23 December Mr Slabbert provided information on the future delivery of AV services in accordance with a request from Mr Main at the 16 December meeting and in response to Mr Maryniak's 17 December request for additional information.

However, as I understand the evidence, no detailed business plan was provided and there was no further extension of time to present submissions.

[15] On 4 February, Mr Maryniak submitted a very extensive submission on the proposal to close the AV centre and disestablish his position. Submissions were also made on the proposal by the executive committee of TIASA and by ASTE (Unions).

[16] On 16 February 2005, Mr Slabbert wrote to Mr Maryniak advising that submissions made had now been considered. Mr Maryniak was invited to attend a meeting at 2pm on Tuesday, 22 February where the decision on the proposal would be communicated to him. Mr Maryniak was invited to bring a support person.

[17] On 22 February, following discussion with Kathy Murphy who advised that Mr Maryniak did not intend to attend the 22 February meeting, Mr Slabbert again wrote to Mr Maryniak advising that he would like to communicate the respondent's decision on the proposal to him personally. A new meeting time was set for 11am on 25 February. Mr Maryniak was advised that if he decided not to attend the meeting, the decision would be advised to TIASA and to him in writing. Again, Mr Maryniak was invited to bring a support person to the meeting.

[18] Mr Maryniak did not attend at the planned meeting and on 25 February 2005, Mr Slabbert wrote to him communicating that a decision had been taken to close the AV centre and to disestablish his position. Mr Maryniak's entitlements were advised to him (notice, annual leave and severance), and he was advised of the financial, emotional and career-planning support available to him.

[19] It must be recorded as part of the background to this matter that the process adopted in relation to the consultation and subsequent disestablishment of Mr Maryniak's position was complicated by the fact that on 20 January 2005 Mr Maryniak injured his back in a workplace accident and thereafter was on leave from the workplace and was covered by ACC. His medical situation was being closely monitored at this time and attempts were made to facilitate his return to work from early February. This situation impacted on the consideration of alternatives to redundancy (required under the terms of the Collective Agreement governing Mr Maryniak's employment) once the decision to disestablish Mr Maryniak's position was taken. Medical notes from late January 2005 reveal, that from the perspective of his back injury, Mr Maryniak was cleared fit to return to work on light duties but that he was also suffering from another medical problem (not specified) and his work readiness would be reviewed in two weeks time. This situation was modified by Mr

Maryniak's medical advisor following two reviews of his situation in February where it was acknowledged he was fit to return to work for four hours per day but that other medical problems still militated against a return to work. The evidence discloses that at the time that alternatives to redundancy were considered i.e. after the decision to disestablish Mr Maryniak's position had been taken, the employer was faced with the position there was a freeze on recruitment; that there were no part-time positions available for a person with Mr Maryniak's skills and he did not have a clearance to return to work. As I understand it Mr Maryniak remains on ACC although it is his evidence that he is available for a graduated return to work.

[20] The illness suffered by Mr Maryniak was later clarified in a letter to Wintec from his doctor dated 12 March 2005. Mr Maryniak was suffering from stress associated with the handling of his injury claim by Work Aon and Wintec; from the proposal to disestablish his position and the subsequent disestablishment of that position and from his efforts to assist other Wintec employees faced with the prospect of job loss as a result of the review.

[21] On 4 April 2005, Mr Maryniak lodged his personal grievance. The matter was not resolved in mediation and on 22 June 2007, Mr Maryniak lodged his personal grievance with the Authority seeking a determination in the matter.

Issues to be determined

- Was the termination of Mr Maryniak's employment the result of a genuine redundancy?

- If so, was the termination for redundancy attended by a fair process?

Collective Agreement

[22] At the time in question Mr Maryniak's employment was covered by the Allied Staff Collective Agreement the parties to which were Wintec and TIASA (The Tertiary Institutes Allied Staff Association).

[23] This agreement addresses surplus staffing at Clause 32. The preamble to this clause provides that not less than 4 weeks notification of any impending redundancy shall be given to the national office of the Union.

[24] Clause 32.1 goes on to require that once a surplus staffing situation is identified the employer is give advice - not less than 2 months prior to the date of discharge - to

the general secretary of TIASA, the local branch chair and the staff affected. Details to be advised include:

- The number of surplus staff
- The salary, grade, step and names of affected TIASA members
- The location of surplus staff
- The date by which the surplus needs to be discharged.

[25] The effect of this provision is, among other things, that an employee who loses his or her position because of redundancy must receive not less than two months notice. Clause 3.1 (d) of the CEA confirms this.

[26] The employer is also required to take all practical steps to provide relevant information requested by TIASA.

[27] Clause 32.2 provides that a number of options are to be applied to staff in a surplus situation. They include attrition, re-deployment, retraining and severance – the aim being to minimize severance. These options are defined in the agreement. It is noted that the retraining option provides that the *"employer may, following application from the employee, offer retraining to enhance the employee's employment prospects"*. The financial assistance associated with this option includes maintenance of salary, course fees costs, cost of books and course materials etc. This option is for retraining taken within the Institute and is to commence within the two-month notice period. The total cost is not to be more than 110% of the value of the net severance payment. If retraining commences outside the two month notice period severance is to be paid and then financial assistance is limited to 10% of the net value of severance.

[28] Employees declared surplus are also entitled to reasonable time off to attend interviews, a reference and counselling.

[29] Clause 33 of the Agreement contains the Employee Protection Provision inserted pursuant to Part 6A of the Act. It is not relevant to the matter I must determine.

Legal Considerations

[30] The Employment Relations Act 2000 was amended in 2004 by the insertion of a new section 103A:

> ***103A Test of justification***
>
> *For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.*

[31] The Court first considered the effect of this new provision in a redundancy situation in *Simpsons Farms Ltd v Geoffrey Ian Aberhart* AC 52/06. In that case the Chief Judge said:

> *"Parliament has made no distinction in the enactment of s.103A between different sorts of personal grievance. The new section applies to all dismissal and disadvantages grievances. So the new s.103A is applicable to the issues for decision in this case"*

[32] Mr Maryniak was given notice of the termination of his employment in February 2005, so the test of justification described above is applicable to considering the justification or otherwise of his dismissal. In determining the matter I must make an objective assessment of the employer's actions and weigh those actions against those of ***a fair and reasonable employer …in all the circumstances …at the time….***

[33] Also relevant to weighing the issues in question here are the provisions of s. 4 of the Act which provides that parties to employment relationships must deal with each other in good faith. S. 4 (1A) (which came into force in December 2004) elaborated on the duty of good faith making it clear that the duty of good faith is wider in scope than the implied common law mutual obligations of trust and confidence. The good faith obligation requires parties to an employment relationship to be "*active and constructive in maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative".*

[34] An employer called upon to justify a dismissal on the grounds of redundancy must be able to show that it has meet its statutory obligations of good faith dealing and in particular the requirements set out in s.4(1A)(c) of the Act. That subsection provides that where an employer is proposing to make a decision that could have an adverse effect on the continuation of employee's employment that employee is to be provided access to information, relevant to the continuation of that employment, about

the decision and an opportunity to comment on the information before the decision is made. While consultation with an affected employee has long been held an appropriate and (usually) necessary element to a justifiable termination on the grounds of redundancy the Chief Judge confirmed in *Aberhart* (cited above) that the effect of the 2004 amendments to the Act mean that consultation is now mandatory.

[35] The essential elements of an appropriate consultative process are set out in *Communication and Energy Workers Union Inc v Telecom New Zealand* [1993] 2 ERNZ 429. The Chief Judge summarised these elements in *Aberhart (above).*

- Consultation requires more than a mere prior notification and must be allowed sufficient time. It is to be a reality, not a charade. Consultation is never to be treated perfunctorily or as a mere formality.
- If consultation must precede change, a proposal must not be acted on until after consultation. Employees must know what is proposed before they can be expected to give their view.
- Sufficient precise information must be given to enable the employees to state a view, together with a reasonable opportunity to do so. This may include an opportunity to state views in writing or orally.
- Genuine efforts must be made to accommodate the views of the employees. It follows from consultation that there should be a tendency to at least seek consensus. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done.
- The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.

[36] However, consultation does not imply that the worker's agreement is necessary. *Cammish v Parliamentary Service* [1996] 1 ERNZ 404.

[37] The above discussion goes to the process adopted by an employer in dealings with an employee or employees in a situation where staff are surplus to requirements. On the matter of the substantive justification for redundancy, the Chief Judge has confirmed (also in *Aberhart*) that the principles handed down by the Court of Appeal

in *G N Hale and Son Ltd v Wellington Caretakers etc IUOW* [1990] 2 NZILR 1079; [1991] 1 NZLR 151 are still applicable. There Cooke P stated at pg 1084:

> *"…an employer is entitled to make his business more efficient, as for example by automation, abandonment of unprofitable activities, re-organisation or other cost-saving steps, no matter whether or not the business would otherwise go to the wall. A worker does not have a right to continued employment if the business can be run more efficiently without him. The personal grievance provisions of the Labour Relations Act, and in particular the existence of remedies for unjustifiable dismissal, should not be treated as derogating from the rights of employers to make management decisions genuinely on such grounds. Nor could it be right for the Labour Court to substitute its own opinion as to the wisdom or expediency of the employer's decision. When a dismissal is based on redundancy, it is the good faith of that basis and the fairness of the procedure followed that may fall to be examined on a complaint of unjustifiable dismissal"…*

[38] Other principles drawn from *Hale* (cited above) and other cases which address the substantive justification for termination on the grounds of redundancy include acceptance of the fact the employer's business decision may eventually be shown to have been unwise or wrong and/or that it did not result in the cost savings anticipated. All that is required is that the termination be genuinely for the reason of redundancy - that it is not a camouflage for termination for another reason e.g. poor performance and that there is an adequate commercial explanation for the termination on these grounds. This does not extend to a requirement that employers open their books (although they may do). Nor is it necessary for an employer to provide a detailed business plan to justify the proposed change.

Discussion and Findings

[39] The issue is raised for Mr Maryniak that the respondent has been unable to bring a number of those directly involved in the consultative process with Mr Maryniak to provide witness evidence at the Authority. It is submitted, therefore, that because first hand witness evidence in respect of the consultative meetings was not led by the respondent that I should accept the applicant's evidence without question.

[40] I don't accept this position for a number of reasons. Mr Maryniak is asking to be the beneficiary of his own delay of 28 months in lodging his grievance with the Authority. It is often the case that such delay results in personnel involved in these matters having moved on. And this is the case here.

[41] I did consider subpoenaing Mr Slabbert the former director of Support Services at Wintec. He has since retired from his position. On inquiry, however, I was advised that Mr Slabbert had expressed a very strong preference not to be involved in this investigation On balance, given the very good documentary records in the matter (over which there is little dispute), I decided not to require him to attend an investigation meeting. Counsel either agreed or did not object to this approach.

[42] It is clear too that there are no real issues of credibility to be decided here. The differences between parties are largely a matter of perception and are readily resolved on the evidence including the documentary evidence.

[43] Mr Maryniak has been badly affected by the loss of his job and has formed the view that the AV centre and his job were randomly targeted, that the consultation was not genuine and the outcome was predetermined.

[44] On an *objective* assessment of the evidence I must find that this is not the case and that the termination of Mr Maryniak's employment came about as a result of a genuine restructuring situation. It was not a single redundancy focussing only on the AV centre and Mr Maryniak's position, but came about as a result of an institution-wide review as Wintec was faced with meeting TAMU requirements that it address the high level of its operating and staffing costs in relation to its income[1]. Further I must find that Mr Maryniak was treated fairly in the process adopted by the employer to manage the potential/actual surplus staffing situation.

[45] To elaborate on this conclusion I first address the question of the genuineness of the redundancy. I find the rationale for it was clearly and logically explained to all Wintec staff by the Chief Executive, Mark Flowers, in his communication dated 9 December. The rationale for the proposal to close the AV centre and to disestablish Mr Maryniak's position was reiterated in the proposal put to Mr Maryniak for consultation i.e. that the organisation was seeking greater efficiencies in terms of

[1] It is noted that efficiency reviews have been ongoing at Wintec and other similar tertiary institutions. Wintec alone has seen the loss of 130 FTE positions since 2004.

quality, customer satisfaction, performance output and delivery with the aim of improving (to bring within acceptable industry standards) the ratio between staff and students and operating costs to earnings. The evidence discloses, too, that a particular issue impacting on the delivery of AV services was the fact that improvements in technology had led to more user friendly products and an increase in skills and competencies of staff in general and with that the ability for them to manage at least some of their AV needs. This was a factor to be weighed in determining the most efficient means of delivering AV services in future and called into question the need for a centralised, dedicated provider of AV services

[46] It is a significant part of Mr Maryniak's case that the redundancy was not genuine because the employer did not provide a detailed business case to show that the closure of the AV centre and the disestablishment of Mr Maryniak's position was financially justified.

[47] The law does not require that an employer provide a detailed business case to show a redundancy is justified (*Hale* cited above). I am satisfied on the evidence that the respondent has provided an adequate explanation for the closure of the AV centre and the disestablishment of Mr Maryniak's position and that the termination of Mr Maryniak's employment came about as a result of a genuine redundancy.

[48] On the issues going to the process adopted by the respondent in its dealings with Mr Maryniak over the review and his subsequent termination on the grounds of redundancy Mr Maryniak raises a number of concerns.

[49] Mr Maryniak relies on the Chief Executive's statement in his letter of 9 December 2004 that the period for consultation would be agreed between himself and his manager and he takes strong exception to the respondent's submissions that the one month proposed for consultation on the proposal to close the AV centre and disestablish his position was extended by agreement between the parties at the meeting held on 16 December 2004. It is Mr Maryniak's position that he sought an extension of the consultative period until March 2005 and that he did not agree to the 1 February 2005 date offered by the respondent.

[50] On this, I note that the minutes of that meeting record no dissension from Mr Maryniak or his advisors to the respondent's offer to extend the consultative period to the end of January and those minutes also record agreement between Mr Maryniak's Union representative Ms Murphy and Ms Fletcher, the HR advisor for Wintec that

because the last day of January was a holiday that Mr Maryniak's submission would be due on 1 February.

[51] I accept, however, that it was and early and persistent criticism by Mr Maryniak and his advisors that there had been no agreement and the time allowed for consultation was too short.

[52] On balance, however, I find that the absence of dissension by the applicant and/or his advisors to the respondent's offer (at the 16 December meeting) of a two week extension to the consultative period supports the respondent's position that it believed agreement had been reached on the matter.

[53] If I among wrong on this point, I also find that a six-week consultative period allowed was reasonable in all the circumstances. It is Wintec's practice to allow one month for consultation in these circumstances because this is the period of notice that must be given to the Union of impending redundancy. It is a perfectly reasonable approach (in the absence of a specified consultative period in the CEA) to imply that the period of notice given to the Union should also be extended to potentially affected employees to allow them to comment on any proposal to restructure and disestablish positions.

[54] At the 16 December meeting between the parties Mr Maryniak sought an extension to the consultative period. The respondent was responsive to this request and allowed an additional two weeks for Mr Maryniak to consider and comment on the proposals in question. Mr Maryniak wanted an extension to the consultative period until March 2005 because he wanted to obtain the views of the internal users of his services. He says these users were absent on leave during the consultative period and unable to be contacted. On the evidence, I don't accept that Mr Maryniak could not have contacted a sample of these users had he wished and he certainly provided no evidence of having tried. More importantly, however, I find that Mr Maryniak has put undue influence on obtaining the views of users of his services. As the provider of those services he was well placed himself to make submissions to his manager on the impact of the proposal on internal users. The evidence also shows that Mr Slabbert was also reviewing the provision of AV services and the potential impact on other departments and the users of those services arising from the proposal to close the AV Centre.

[55] On balance I find that the respondent's approach to the timeframe for consultation and the extension of time it gave to Mr Maryniak was principled and reasonable in all the circumstances.

[56] It is also argued for Mr Maryniak that the outcome of the proposal to close the AV centre and to disestablish his position was predetermined. This submission relies principally on the applicant's evidence that at the 16 December meeting between the parties where the proposal to close the centre and disestablish Mr Maryniak's position was tabled that Mr Main asked Mr Slabbert *"if he intended making Mr Maryniak redundant"* and that Mr Slabbert answered *"yes"* to this question. It is submitted that as no respondent witness contradicted this evidence of predetermination it was admitted.

[57] The respondent denies this.

[58] I accept Wintec representatives at the 16 December meeting did not appear at the Investigation Meeting. However, there is clear documentary evidence which is contemporaneous and which establishes the respondent's position on the issue. On 23 and 24 December 2004 there was an email exchange between Mr Maryniak's Union representative, Kathy Murphy and Sam Fletcher, Wintec's HR advisor. Mr Main's question and the alleged response was put to Ms Fletcher and vigorously responded to by her. She advised that at that stage there was a *"proposal"* to close the AV centre and disestablish Mr Maryniak's position. It was reiterated it was a proposal and only that and that it was important to reiterate that no final decision had been made and that the consultative period provided for submissions to be made regarding the proposal and alternatives.

[59] I am satisfied on the evidence in its entirety that there was no predetermination by the respondent in this matter.

[60] Another significant submission made for Mr Maryniak is that the respondent did not consider the options set out in Clause 32.2 to minimize the use of severance after the surplus staffing situation had been identified. The situation was complicated in this case by the workplace accident suffered by Mr Maryniak on 20 January and the consideration of alternatives to severance became intertwined with the consultations on facilitating a return to work following the injury suffered by him. I am satisfied on the evidence of two things – that Mr Maryniak was never fit to resume normal duties and that this situation pertained throughout the remainder of his employment with Wintec. Mr Maryniak is still fit only for a graduated return to work. I find, too, that

the respondent did consider the options to severance and that consideration revealed there was a freeze on employment and there was an absence of any part-time employment for a person with Mr Maryniak's skills. This and the fact he did not have a medical clearance to return to work prevented the implementation of most of the options available.

[61] I must also say that I don't accept that Mr Maryniak was unable to meet with the respondent on 22 or 25 February 2005 and in failing to do so he was not engaging actively and constructively with the respondent to consider alternatives to severance. I note that under the CEA it was up to Mr Maryniak to initiate consideration of one of the options available to him i.e. the option of retraining.

Conclusion

[62] I have not dealt in depth with all the submissions made on Mr Maryniak's behalf and for the sake of certainty I find the respondent's interpretation of the CEA is preferred to that promulgated for Mr Maryniak. I find further that there was no issue with the quality of Mr Maryniak's work and neither does the subsequent publication of a newsletter which suggested that decisions had yet to be made about future delivery of AV services undermine the justification for the decision to close the centre and disestablish Mr Maryniak's position. I am satisfied that the decision had been made in principle to have services provided by ITS with some contracting out and that is what has happened.

[63] I conclude by reiterating that I am satisfied that the proposal to close the AV Centre and to disestablish Mr Maryniak's position was part of an Wintec-wide review of services that was driven (broadly) by the need to better align operating costs with income and in particular to address unacceptable staff/students ratio. The rationale for the review was carefully explained to all staff and reiterated in the specific proposal put to Mr Maryniak. The process adopted in implementing the review and in dealing with Mr Maryniak and his advisors on the proposal to close the AV centre and disestablish his role conformed to the provisions of the CEA and relevant case law. The respondent was responsive to Mr Maryniak's request for an extended period of consultation and the time available for consultation was reasonable in all the circumstances. The respondent was also responsive to Mr Maryniak's requests for information on the proposal albeit it did not provide the detailed business case sought. It was not required to go that far.

[64] Mr Maryniak provided an extensive submission on the proposal which was carefully considered with the other information the respondent gleaned from its own research into the proposal. Options to avoid severance were considered as required under the Collective and support services were made available to Mr Maryniak. His contractual entitlements were paid on the termination of his employment.

[65] I find, therefore, that the respondent's actions were typical of those of a fair and reasonable employer in the circumstances at the time and Mr Maryniak's application must be declined. This is not to say that I am not cognisant of the fact that the loss of his job on the grounds of redundancy has had a severe impact on Mr Maryniak. However, I have had to find on the evidence that it has been established that the termination of Mr Maryniak's employment was genuinely for the reason of redundancy and he was fairly treated in the process.

Determination

[66] Mr Maryniak's claim is declined. He was not unjustifiably dismissed from his employment.

Costs

[67] Costs are reserved. The parties are directed to attempt to resolve the question of costs between them. If they cannot do so they are to file and serve submissions on the subject and the matter will be determined

Janet Scott
Member of the Employment Relations Authority