

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2023] NZERA 303  
3181700

BETWEEN	JOHN McKENZIE Applicant
AND	TRANZURBAN WELLINGTON LIMITED Respondent

Member of Authority:	Michael Loftus
Representatives:	Matthew Hague and Alexandra Miller, counsel for the Applicant Mike Gould and Conor Lennon, counsel for the Respondent
Investigation Meeting:	21 and 22 February 2023 at Wellington
Submissions Received:	At the investigation meeting
Date of Determination:	12 June 2023

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] The applicant, John McKenzie, has raised a number of claims against the respondent, Tranzurban Wellington Limited (Tranzurban). They are that:

- a. He was unjustifiably disadvantaged by reason of an unlawful suspension;
- b. He was disadvantaged by reason of Tranzurbans “unjustified access to his health information and referral of medical assessments”;
- c. He was discriminated against on the unlawful grounds of disability;

- d. Tranzurban breached the duty of good faith; and
- e. He was unjustifiably dismissed on 8 July 2022.

[2] Tranzurban contends its actions were justified and it can defend the allegations.

### **This Determination**

[3] 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 evidence and submissions received.

[4] This determination has not been issued within the three month period required by s 174C(3) of the Employment Relations Act (the Act). As permitted by s 174C(4) the Chief of the Authority decided exceptional circumstances existed to allow a written determination of findings at a later date.

### **Background**

[5] Mr McKenzie was engaged as a bus driver in June 2019. Contained in his employment agreement, and central to this application, is a clause which reads:

“If the Company has reasonable grounds for concerns about the employee’s ability to ensure their safety and/or the safety of any other person... the Company may require the employee to consent to undergo a medical examination by a medical practitioner... This may be required as a “second opinion” should the Company continue to have safety concerns after the employee has provided a report from another medical practitioner.” and,

“If the employee refuses to undergo a medical examination in accordance with the above... the Company may suspend the employee on pay for up to 5 days”

“If at the end of the Suspension Period the employee continues to refuse to undergo a medical examination and the Company still has concerns held on reasonable grounds about the employee’s ability to ensure their safety or the safety of others while performing their duties, then the Company may continue the suspension but without pay until the employee completes the medical examination. If the employee’s refusal continues for 4 weeks or longer, the employee’s employment may be terminated”.

[6] In 2020 covid struck and it is Mr McKenzie’s position that he was at above average risk due to various health conditions. Mr McKenzie’s evidence is that prior to

17 August 2021 which, he says, was his first day of absence a “mitigation process” was in place and everything was “ok”.

[7] That said, and in his statement of problem, he says that between May and August 2021 he produced four medical certificates asserting he was unable to return to work due to a “higher risk from covid”. It is said the last of these stated he was unable to work at covid level 2 or higher. In his brief of evidence he does not address these certificates, simply saying his first day of absence was 17 August 2021. That, however, is not what the four certificates produced as evidence say. Three cover the periods 1-10 June 2020 and 12 August to 6 September 2020. The fourth, dated 11 September 2020, states Mr McKenzie was unable to return till covid level one is attained.

[8] Given a reluctance by Mr McKenzie to answer questions and subsequent correspondence I conclude the certificates produced in evidence are probably dated correctly though it raises questions as to what was occurring prior to 17 August 2021. It is possible the certificates are all wrong and did relate to 2021 though it is unlikely such an error applies to all four and a letter from Mr Mersi, Tranzurban’s then General Manager, dated 29 September 2021 appears to confirm they were indeed 2020 documents.

[9] Conversely it may be that Mr McKenzie was in fact off for over a year but the evidence does not suggest that. If anything subsequent correspondence strongly suggests that was not the case. While noting one of the 2020 certificates is dated 17 August (effective 12 August 2020) I have neither the evidence, or even the suggestion, I not accept the claim 17 August 2021 was the first of absence and the start of the problems about which Mr McKenzie complains. If the actuality is different then all I can do is accept Mr McKenzie’s only answer regarding the period prior to August 2021 which was that arrangements were suitable. As already said Mr McKenzie exhibited reticence when answering questions and Tranzurban was unable to call anyone with direct involvement before about October 2021.

[10] From 8 September 2021 and until 13 October 2021 Mr McKenzie was using either annual leave or accrued days in lieu to cover his salary. It is unclear when this was arranged though there is an email dated 19 September 2021 in which the Tramways Union asks, on Mr McKenzie’s behalf, that he be paid any available leave (sick, annual and lieu) “for the remainder of alert level 2 till he is able to return to work when we

reach alert level 1". There is an earlier email dated 16 September 2021 which indicates that was part of what was by then an ongoing discussion.

[11] Also on 16 September 2021 there was an email from Mr McKenzie to an unidentified recipient though the evidence suggests it was Mr Mersi. The email advises Mr McKenzie had had a serious asthma attack along with migraines and in it he states "This has been brought on by excessive stress, anxiety and panic attacks from poor communication from Tranzurban and no individual solutions for support and lack of empathy". He says Tranzurban has a medical certificate that states he could not return till covid level 1 (though the evidence is that was now over a year old and had not been relied upon to justify an absence) before advising he had medical advice not to communicate further with Tranzurban "for now" as he needed to recover without extra pressure. The email then demands "full pay as normal".

[12] On 19 September there is a further email from Mr McKenzie to Mr Mersi advising that "under no circumstances are you to contact me" before making a similar request to that from the union that he be paid from whatever leave source might be available.

[13] On 28 September the Amalgamated Workers Union (AWUNZ) wrote to Mr Mersi. It opens with advice the email is to address only the issue of a return to work which Mr McKenzie cannot do till New Zealand returned to covid level 1. That said the email then advises AWUNZ questioned Tranzurban's assertion it was operating under Ministry of Health guidelines before going on to say:

While there has been dialogue between John and yourself that may have stretched the boundaries the stress that John has been under and the belief he had that no one was taking his concerns seriously has caused him to use words he would not normally use. That is a reason and not an excuse ..."

[14] The email goes on to assert Mr McKenzie would like to return and suggests a couple of things that might be done to assist that.

[15] Tranzurban replied the next day stating that as these concerns (undoubtedly a reference to those regarding adherence to the Health guidelines) had not been raised before the company would like to work through the issues. The email then turns to Mr McKenzie's return, noting there had been no medical certificate since September 2020 and asking for another. It goes on to advise "I am concerned as to John's ability

to return to work due to the stress and anxiety he has raised in his email to me”. It is noted driving heavy vehicles is safety sensitive work which requires an employee “in the right frame of mind”. The email notes that therefore Mr Mersi would require a medical assessment based on a task analysis provided by Transurban’s Health and Safety Manager and asked that Mr McKenzie complete and return an attached consent allowing the assessment to be completed.

[16] On 11 October AWUNZ advised Mr McKenzie was happy to provide a “driving medical certificate” provided Transurban paid but that he would not sign the consent form.

[17] That led to a letter from Mr Mersi on 14 October 2021 which now asked for two assessments/certificates. The first was a current medical certificate explaining why he could not return till covid level 1 (which, incidentally, suggests he might actually have been off for over a year when there is no evidence that is the case). The second was a repeat of the request Mr McKenzie undertake the task analysis medical assessment.

[18] On 18 October Mr McKenzie was placed on to leave without pay having exhausted other options. On 19 October 2021 he obtained another certificate which again states he could not work at covid level 2 or higher.

[19] On 19 November Transurban again sought Mr McKenzie’s consent to an examination which he declined on the grounds it was wide ranging and therefore unreasonable. He did however sign a version of the consent which he had amended and which allowed for a medical assessment based on access to medical information relating to current illnesses or injury. That was signed on 22 November though it appears it was not forwarded till the following day which was also that upon which Mr McKenzie obtained a medical certificate advising he was now vaccinated and “able to return to full driving with no restrictions”.

[20] Transurban did not accept that, instead asking by letter dated 30 November 2021 that Mr McKenzie complete a Drivers Medical Assessment (DL9). Included in such an assessment is consideration of “Mental disorder that may impair an individuals ability to drive safely”. The letter also makes a number of references to Mr McKenzie’s interaction with members of the HR team which, along with the claims of stress, had failed to allay Transurban’s concerns. The letter then states Transurban was

considering applying the suspension clause but gave Mr McKenzie an opportunity to comment before that occurred.

[21] That led to further correspondence and a meeting on 14 December attended by Mr McKenzie, an AWUNZ representative and three company personnel. The outcome was an agreement Mr McKenzie undertake the DL9 assessment. This occurred a couple of days later with Mr McKenzie successfully completing the assessment though issues immediately arose as the assessment results in a four page form but Mr McKenzie only forwarded pages 1 and 4 to Tranzurban. Page 1 gives the applicant's details and records information about the licence being sought. Page 4 is essentially the outcome. The missing pages contain the detail and perhaps most importantly from Tranzurban's perspective the section about mental disorders. Also noted was the fact the doctor had only completed a "partial" as opposed to "full" medical.

[22] As a result Tranzurban advised Mr McKenzie that he as not now allowed to return.

[23] On 20 December Tranzurban received an email from the doctor who had performed the assessment and who, it is assumed, had been approached by Mr McKenzie. In it he notes the DL9 is for Land Transport New Zealand (LTNZ) and not the employer. He states all that is relevant to the employer is whether or not the employee is medically fit to drive commercially which Mr McKenzie was. Furthermore, he says, that is all they are entitled to without good reason and the employees consent which, in this case, he saw no good reason to impart.

[24] With respect to the partial assessment he states the difference was the absence of a cognitive assessment. He states such an assessment would only be carried out on someone suspected of having dementia or returning to driving after a serious brain injury. He goes on to say he would not carry out such a test on someone of Mr McKenzie's age whose history was very well known to the practice and "who is clearly cognitively fine". Otherwise, the doctor states, the examination was thorough.

[25] Still unsatisfied Tranzurban advised Mr McKenzie it remained concerned by his behaviour and now required a second examination by a company doctor as the relevant clause in the employment agreement allowed. Mr McKenzie replied stating he agreed to "an appropriate medical examination". That, in turn, led to Tranzurban preparing a

referral which Mr McKenzie characterises as containing inflammatory remarks about his behaviour.

[26] The appointment was scheduled for 15 February but Mr McKenzie did not attend. Instead he contacted the provider and advised he was cancelling as he wished to seek legal advice. That led to Tranzurban writing to advise it saw Mr McKenzie's actions as a refusal to undertake the medical assessment and advised that should he continue to do so for another four weeks termination would be considered.

[27] Mr McKenzie's response was to raise a disadvantage personal grievance and that occurred on 25 February 2022. That led to correspondence seeking a solution with Tranzurban seeking to reschedule the cancelled referral and Mr McKenzie, through counsel, questioning its ability to do so. On 4 April Mr McKenzie suggested he book an occupational therapist of his choosing albeit at Tranzurban's expense. Tranzurban did not accept but forwarded an amended referral to the original provider on 26 April 2022.

[28] On 29 April Mr McKenzie wrote suggesting further changes to the referral and, in particular, requesting the use of less inflammatory terminology when describing Tranzurban's concerns. This led to a further amended referral being sent on 10 May 2022 to which Mr McKenzie replied that while not happy he would attend.

[29] The assessment occurred on 31 May 2022 and a report was provided by the Occupational Physician on 9 June 2022. While the report concludes there was no underlying health condition that might affect Mr McKenzie attending work or performing his job, it contained some caveats that concerned Tranzurban and in its view left various questions unanswered.

[30] The issues are, in Tranzurban's view, enunciated in the following passages:

*Mr McKenzie was mostly pleasant in manner, but very firm in his opinion that the assessment was a waste of time, both mine and his. He handed me a letter from his lawyer to accompany the information from Tranzurban, encouraging me to assess the information provided by Tranzurban cautiously.*

*The referral from Tranzurban highlighted the concerns over Mr McKenzie's behaviour, stating that they have observed escalating stress and anxiety in Mr McKenzie over the last few months and have queried whether he is fit to work as a bus driver.*

*I am sorry to report that I do not feel the consultation has been overall helpful for either party. I was unable to explore the issues raised by*

*Tranzurban in their referral because Mr McKenzie answered most questions by saying that my question was not relevant. I was therefore not able to explore the background to the referral and the issues raised, beyond the specific questions asked, despite reassurance that only relevant information would be included in my report. I was not able to gain sufficient rapport with him to gently explore whether there were any particular issues, either medical or psychological, that may be impacting on his fitness to work.*

[31] Essentially Tranzurban gave up at this point and dismissed Mr McKenzie on the basis he had been unable to satisfy it that he could safely return and that, as a result, termination was permissible under the employment agreement. That message was imparted by letter dated 8 July with the underlying rationale being that by refusing to engage with the Doctor an inconclusive report had resulted. That, exacerbated by the ongoing nature of the dispute and the timelines in the relevant employment agreement clause having been exceeded, left Tranzurban with no choice but to dismiss.

[32] The dismissal was challenged soon thereafter and Mr McKenzie sought interim reinstatement. With that he was unsuccessful and he has now withdrawn the reinstatement claim.<sup>1</sup>

## **Discussion**

[33] The statement of problem cited five claims though I shall not consider them in the order in which they were raised. I will start, as did Mr McKenzie, with the suspension but then move directly to the dismissal. In my view the two are inseparable in this instance.

[34] For Mr McKenzie, and relying on the statement in reply, it is submitted the suspension commenced on 6 December 2022.<sup>2</sup> The submission then argues Mr McKenzie was ready and willing to work which rendered the suspension unjustified.

[35] I am not sure the assertion the suspension took effect on 6 December is correct given that by then Mr McKenzie was not being paid but it was the day upon which he was sent the medical consent form. I have little doubt the accompanying letter, unavailable to the Authority, will have advised failure to attend could make suspension option, as was dismissal according to the employment agreement. By this time Mr

---

<sup>1</sup> *McKenzie v Transurban Wellington Limited* [2022] NZERA 448

<sup>2</sup> Closing submission at [6].

McKenzie was not paid but that was largely a result of what had preceded – he was at that point on leave without pay having exhausted other payment options.

[36] However all that changed, in my view, with the agreement Mr McKenzie complete the DL9 assessment. That occurred on 14 December. Tranzurban portrays the agreement as an attempt at compromise which, on the face of it, saw the company withdraw from its position Mr McKenzie’s mental health was the impediment to his return and a “standard” DL9 would suffice. That its witnesses accept was the import of the deal and it was but at that point Tranzurban had, in my view, bound itself to accept the outcome. The outcome was that Mr McKenzie was deemed fit to return and drive.

[37] I accept Tranzurban might have retained concerns given the way he advised the outcome and if Mr McKenzie’s approach at the investigation meeting was indicative of that which Tranzurban faced at the time I can see why. He was, as I have already said, uncooperative and often refused to answer questions including those that had no potential to compromise either him or his claims. He was also argumentative when there was no reason to be so. The impression was unfavourable.

[38] Notwithstanding that the fact remains it was agreed a DL9 pass was acceptable. The evidence is there was no discussion as to whether or not it would be “full” or “partial”. As of 17 December 2021 Mr McKenzie had, and forwarded to Tranzurban, evidence he was deemed to have passed. As at that point he was, according to the arrangement the parties had agreed, fit to return and I can only conclude Tranzurban should have conceded and allowed that to occur.

[39] Even if that was not the case the Doctors letter of 20 December 2021 should have made it clear any residual concerns had no apparent medical validity. The doctors comments survive perusal of the relevant LTNZ documentation and I can only conclude that as of 20 December 2021 when Tranzurban was advised of this the decision to preclude Mr McKenzie’s return became unjustified. At that point this became a suspension that Tranzurban cannot justify.

[40] That then turns me to the dismissal. What then followed must, by virtue of the fact Mr McKenzie was unjustifiably suspended, also be unjustified. Tranzurban was continuing to assert the view it still had insufficient clarity with respect to Mr Mckenzie’s mental health and, as a result, his ability to drive a commercial vehicle. I

cannot agree. As of 20 December and admittedly absent the detail it sought though with an adequate explanation as to why not, it had confirmation Mr McKenzie had met the criteria it had set.

[41] Notwithstanding that the debate continued with Tranzurban delaying a decision. I offer no opinion on that – it is what occurred and my conclusion the suspension was unjustified means wages will follow so I need not reach any conclusions with regard to the time a conclusion took.

[42] Ultimately, however, the parties agreed a consultation which raised further concerns if only because Mr McKenzie continued to be uncooperative. The reaction was, as Tranzurban concedes, one of exasperation and they dismissed. The problem it faces is that neither party should now have been in this position and Mr McKenzie should by then have been back on the job.

[43] There are two further problems. The first is notwithstanding Tranzurban's continuing concerns the doctor who conducted the final assessment does not say Mr McKenzie is incapable of returning. Indeed, the opposite was asserted and by then he had three medical certifications which essentially say he was fit to perform his duties,

[44] Second, and perhaps fatally to any attempt to justify a dismissal was evidence Tranzurban had, by then, lost all trust and confidence in Mr McKenzie and this was a significant consideration in the decision. To that I add the admission this was never put to Mr McKenzie meaning the requirements of s103A cannot be met with respect to a crucial part of the decision making process and this deficiency extends to the fact there is no evidence of any final discussion prior the final decision to dismiss.

[45] For these reasons the dismissal must be unjustified.

[46] Turning now to the other three claims.

[47] The first was that Mr McKenzie was unjustifiably disadvantaged by reason of Tranzurbans "unjustified access to his health information and referral of medical assessments". This claim was not pursued as pleaded but morphed into one Mr McKenzie had been bullied. There is simply no evidence of anything that can, in my view, constitute that which correlates to normally accepted definitions of bullying.

[48] Putting aside the fact I have found Tranzurban has fallen short in justifying its approach and its ultimate decision to dismiss, there is nothing to support such a claim. Perhaps misguided, Tranzurban was pursuing what are, on the face of it, valid concerns that Mr McKenzie posed a potential safety threat to himself, Tranzurban's clientele and road using public generally. All there is is evidence of a misguided approach to gaining answers to legitimate concerns. That is not bullying.

[49] Mr McKenzie also claims he was discriminated against on the unlawful grounds of disability. Again there is no evidence this was the case. Again, and as already said, there is nothing more than a misguided approach to gaining answers to what, on the face of it, was a legitimate concern Mr McKenzie might be incapable of safely performing his duties. That is duty Tranzurban had and does not constitute discrimination.

[50] Finally there is the claim Tranzurban breached the duty of good faith. Again I conclude the answer is no. The fact is the duty of good faith operates two ways and the evidence makes it clear Mr McKenzie adopted a belligerent approach designed to stymie Tranzurbans' attempts to have its concerns addressed.

[51] Even if that was not the case the alleged breaches relate to the way Tranzurban reached its conclusions to both suspend and dismiss and which have rendered both unjustified. The Court has made it clear such failures are addressed via the remedies awarded for the personal grievances and the respondent should not face what is effect a duplication of remedies.

## **Remedies**

[52] For the above reasons I conclude Mr McKenzie has been both unjustifiably suspended and unjustifiably dismissed. He seeks lost wages, compensation in the amount of \$40,000<sup>3</sup> and costs. Originally Mr McKenzie also sought reinstatement but as already said that claim has been withdrawn.

[53] The conclusion Mr McKenzie was unjustifiably suspended mean it follows wages are due from that point. In this case I consider that "point" to be 20 December which was the date upon which it should have become clear to Tranzurban the DL9 clearance complied with the agreement it had entered into with Mr McKenzie. The

---

<sup>3</sup> Section 123(1)(c)(i) of the Employment Relations Act 2000

period 17 December 2021 to the date of dismissal, 8 July 2022, is 29 weeks. That must, given my findings, be payable and to it must be added the 13 weeks wages s 128(2) of the Act mandates as payable assuming an unjustifiable dismissal. From these sums earnings during the period in question may be deducted.

[54] The big difficulty here is the fact Mr McKenzie evidenced he was, with effect 6 December 2021, driving an Uber and earning anywhere between \$500 and \$1100 a week though documents he produced would suggest lower earnings and shall be used. He also stated he had worked each and every week since commencement with Uber in December 2021. While that might bring into question whether or not he could have returned to Tranzurban I put that aside as he also stated, uncontested, that the arrangement did not become permanent until well after the period I am considering (ie prior to mid October 2022).

[55] While there is a specific hourly rate of pay in his employment agreement the actual hours worked could vary and I have no evidence as to what Mr McKenzie actually worked and therefore what his earning with Tranzurban were. That makes a definitive calculation very difficult.

[56] I have therefore concluded Mr McKenzie is due, as lost wages, pay for 42 weeks. As an indication that should be calculated at his average weekly earnings in the year prior to his departure from the payroll which according to the evidence before me was 13 October 2021. From that sum should then be deducted his earnings with Uber which documents he has produced suggest are in the order of \$24,131 (October 2022 is halved given the 42 weeks equals approximately 9.7 months).

[57] Mr McKenzie suggests a number of expenses which actually exceed the above amount should then be deducted from it. I do not accept all and concluded some such subscriptions and home phone as well as mobile is pushing it given what he was doing. Similarly “home office” which appears to include the rental on his home is far fetched without evidence supporting the claim and that is lacking. What I do accept are the obvious car running expenses variously listed as mileage and motor vehicle expenses. I also accept the mobile phone as a legitimate expense given what Mr McKenzie was doing.

[58] Here an additional problem arises and that is that the figures for the year commencing April 2022 are for a period exceeding that for which wages are due and I

have no evidence as to what part is attributable to the period of the wage award, That it 65% of the total period on the document so that shall be used as a divider. Applying the above logic and lacking evidence as to why the rest should apply I conclude \$5182.85 is legitimately claimable. That means \$18,948.15 should be deducted from the wages due.

[59] Having said that, and given the lack of knowledge about Mr McKenzie's earning with Tranzurban, and my doubts about his expenses and the conclusions I have reached regarding them, the parties are encouraged to discuss a sum but failing agreement leave is reserved for a return to the Authority for a determination.

[60] Turning to compensation. Notwithstanding the significant claim the evidence in support was minimal. Indeed, and when asked to explain the rationale for his claim, the answer was "It just explains itself". Short answer is it doesn't and the claim remains largely unexplained and unsupported. While I accept hurt must have emanated I cannot conclude the evidence supports anything other than a lower end award. Given those currently being ordered, I consider \$8,000 appropriate.

[61] The conclusion remedies accrue means I must also consider whether or not Mr McKenzie contributed to the situation that arose in a way that warrants a reduction in remedies.<sup>4</sup> Tranzurban submits I should and here I must be cognisant of my comments regarding Mr McKenzie's uncooperative approach to the investigation and his reticence to partake in the process and answer questions. The evidence of Tranzurban's witnesses, and some of answers Mr McKenzie did give, lead to a conclusion this was a continuation of the way he had been behaving throughout – uncooperative and difficult. The duty of good faith and the requirement parties assist each other in maintaining the employment relationship operates two ways.

[62] Given the evidence, and that which I observed, I conclude Mr McKenzie's actions gave rise to Tranzurban's concerns and he then tried to stymie Tranzurban's attempts to address what appeared valid concerns – namely that Mr McKenzie was by his own admission stressed and that he had acted inappropriately toward various HR staff in a way that suggested there were issues that had to be addressed. That was at least the situation until Tranzurban failed to reinstate when it should on 17 December 2021. Though it is hard to consider him culpable after that. As a result I conclude Mr

---

<sup>4</sup> Section 124 of the Employment Relations Act 2000

McKenzie did contribute to his demise in a way that warrants reduction of remedies. I consider 10% appropriate.

### **Conclusion and orders**

[63] For the above reasons I conclude Mr McKenzie has a personal grievance in that he was both unjustifiably dismissed and unjustifiably suspended. As a result I order the respondent, Tranzurban Wellington Limited, pay John McKenzie:

- (a) Lost wages, being Mr McKenzie's average earning for a period of 42 weeks minus the indicative sum of \$18,948.15 being earnings made during that period. From the resulting sum a further 10% should be deducted for contribution.
- (b) Notwithstanding (a) above it is accepted the evidence does not support a definitive conclusion as to the amount due and as a result I ask the parties calculate the amount using the above order as guidance. Should they be unable to do so leave is granted for a return to the Authority for a determination; and
- (c) A further \$7,200.00 (seven thousand, two hundred dollars) as compensation for humiliation, loss of dignity and injury to feelings pursuant to section 123(1)(c)(i) of the Act.

[60] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves but if they are not able to do so and an Authority determination on costs is needed Mr McKenzie may, as the successful party, lodge a memorandum on costs within 21 days of the date of issue of this determination. From that date Tranzurban will have 14 days to lodge any reply memorandum.<sup>5</sup>

Michael Loftus  
Member of the Employment Relations Authority

---

<sup>5</sup> [www.era.govt.nz/assets/Uploads/practice-note-2.pdf](http://www.era.govt.nz/assets/Uploads/practice-note-2.pdf)