

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Bryce Parker (Applicant)
AND Ruapehu Alpine Lifts Ltd (Respondent)
REPRESENTATIVES Patricia Mills, Counsel for Applicant
Peter Churchman, Counsel for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 3 August 2004, 4 August 2004
SUBMISSIONS RECEIVED 19 August, 27 August and 3 September 2004
DATE OF DETERMINATION 18 January 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

The applicant, Mr Parker worked as a maintenance attendant for the respondent from 9 September 2000. On 8 September 2003 he was dismissed for serious misconduct. He challenges this dismissal on the basis that it was both procedurally unfair and substantively unjustified. He lodged the matter with the Employment Relations Authority on 31 May 2004 and initially sought interim as well as permanent reinstatement to his employment. However, he subsequently withdrew his claim for interim reinstatement. He continues to seek:

- Reinstatement;
- Compensation for lost wages;
- Payment of wages due to him and unpaid holiday pay;
- A penalty under section 135 of the Employment Relations Act 2004 for breach of the employment agreement.

The respondent asserts that the dismissal was justified. Following what it says was a proper investigation into an accident that occurred on 29 August it concluded that Mr Parker had breached safety protocols. It says that the breaches amounted to serious misconduct and for this reason it was open to it as a fair and reasonable employer to dismiss the Applicant.

Chronology of events

1. Mr Parker was employed full time and on a permanent basis to perform routine maintenance duties as a lift mechanic at the ski fields on Ruapehu.

2. Mr Parker was licensed to use a snow mobile ('skidoo') on the Mountain having completed training in the operation of the vehicle in October 2000.
3. Mr Parker was dismissed following an incident in which a skidoo for which he was responsible ran away down the Mountain in an area open at the time to the public. The circumstances of the incident were as follows.
4. When a maintenance issue arises the maintenance staff are informed by way of walkie-talkie radio and the staff member closest to the affected area will attend, travelling there by way of skidoo.
5. On 29 August Mr Parker received such a call to indicate that the Far West T-Bar had stopped, with customers still on it. He travelled there and spoke briefly to the operator in an attempt to ascertain the problem before proceeding up the lift line to a point probably between Tower 9 and Tower 10 where he stopped the skidoo. Leaving the engine idling, he stopped and partially dismounted to check the lift. Before he had stepped right away from the vehicle it began to slide. Mr Parker remounted and attempted to regain control of the skidoo but failed to do so. He then turned it into the side of the T-bar line. The skidoo rolled on top of him and continued a short way down the line. Skiers on the T Bar saw the skidoo coming towards them and jumped clear. The skidoo then veered to the right and continued into a gully where it came to rest. Mr Parker sustained some injuries as a result but there were no other casualties.
6. A co-worker, Mr Te Whano, came to Mr Parker's assistance and conveyed him to where the skidoo had come to rest. Meanwhile, another worker had arrived at the skidoo. He found no visible sign of damage except that the motor's drive belt had inverted itself. The worker corrected this and when he arrived, Mr Parker rode the vehicle down back down the Mountain. Later that day, the other worker conducted a full mechanical inspection.
7. The Maintenance Supervisor (Mr Blair) was himself absent on 29 August however on Saturday 30 August he obtained a report from the worker who had inspected the vehicle about its state. This report indicated that the vehicle had not defects except that:
 - The brake lever 'had a lot of travel' but still functioned properly;
 - The drive belt was due for replacement but still functioned properly.
8. On either the Saturday or the Sunday Mr Blair also spoke to Mr Te Whano.
9. Two members of the public made contact with the respondent regarding the incident. Both were eye witnesses. The first was a woman who had jumped clear from the T-Bar as the skidoo approached her. She emailed a complaint in which she described what she recalled seeing of the incident and expressed great concern about what she considered to have been a serious risk to her safety. A second person (also a regular customer and someone with whom Mr Parker was acquainted) independently approached the respondent's safety officer, Mr Woods, advising that he had witnessed an incident, did not consider the operator concerned to be at fault, and was willing to give further information if required.
10. As a result of injuries Mr Parker had sustained in the incident of 29 August he was off work until Friday 5 September 2003. That day he reported for work on his own initiative although his doctor had not in fact cleared him for work. He did not tell Mr Blair this. He managed a part day before returning home as he was still in discomfort from his injuries.

11. The next day was very busy on the mountain and it was not until Sunday 7 September that Mr Blair (Mr Parker's supervisor) had an opportunity to talk to Mr Parker about what had happened. Mr Blair told Mr Parker that he wanted to know from him what had happened and to determine the cause of the accident. Mr Blair took notes of this conversation which were produced to the Authority.

12. The notes record that Mr Blair asked Mr Parker:

"How did the skidoo come to run away down the lift line?"

Stopped at tower 9 and had a look at the forks. Got off skidoo to look closer. Skidoo was going backwards when trying to get on. Couldn't stop so turned into bank and the skidoo rolled over the top of him and continued down the line. He then walked to the top of the lift and fixed the safety gate to run the lift.

What was the main cause of the accident?

Own judgement. State of skidoo."

13. At the end of the meeting Mr Blair advised the applicant that "there may be consequences as a result of the accident."

14. I was also shown the original handwritten notes of the meeting in which after the reference to Tower 9 there were the additional words:

"was 10 according to Johnny."

15. Mr Blair told me that this was what Mr Te Whano (Johnny) had told him earlier. He did not mention it to Mr Parker and did not consider it necessary to record it in his report because he considered the terrain too steep to safely park a skidoo either way.

16. Mr Blair then compiled an accident report which concludes as follows:

- "The decision to ride directly up the lift line was a serious lack of judgement given that the fault indicator on the lift showed a problem on the lift rather than further down. Riding lift lines at any time is considered very bad practice due to the fact that they are typically very slick and there are people within close proximity should any difficulties be experienced. In this instance an alternative route up the mountain was available via a trail called S-Bend. This is considered the standard route to the top of the far west T-Bar.
- The parking of the skidoo was the key to losing control. The skidoo operator's manual states under safety rules that machines must be parked across the fall line with the engine stopped when left unattended in a slope. The failure to ensure this was done resulted in the runaway skidoo.
- The mechanical condition of the skidoo was satisfactory and the inverted drive belt is consistent with freewheeling at high speed.
- The combination of deciding to ride up the T-bar line and neglecting to park the skidoo in a safe manner resulted in an incidence which was prevented from ending in tragedy only by good fortune. As such the incident constitutes a serious breach of safety requirements and serious negligence.

17. On the evening of Sunday 7 September, Mr Blair discussed the incident and what Mr Parker had told him about it with Mr Steve McGill, then Operations Manager. Mr McGill read the notes of Mr Blair's meeting with Mr Parker. It appears that Mr McGill had also seen and considered the written customer complaint and Mr Blair knew of its existence although he may not have read it at the time.

18. The two men concluded that Mr Parker breached safety procedures in two ways. First, he rode the skidoo up a lift line whilst customers were seated on the lift in question. Second, he parked the skidoo in such a way that it was able to slide away down the mountain out of his control. Both considered that that such conduct justified dismissal.

19. On the morning of Monday 8 September Mr Mazey and Human Resources Manager Marion Ross were informed of the results of the inquiry and that dismissal was being contemplated. Mr Mazey was satisfied that the conduct described warranted dismissal, but delegated the final decision to Mr McGill.
20. That afternoon Mr Blair and Mr McGill met again with Mr Parker. They did not advise him beforehand of the purpose of the meeting. The two men listened again to Mr Parker's account of what had happened (which was unchanged from that which he had given the day before.) They showed Mr Parker the letter of complaint against him but did not give him an opportunity to take it away and consider it. They then proceeded to tell him that they had concluded that his employment should be terminated, at which Mr Parker got up and left. Later the same day, Mr McGill went to talk to Mr Parker in the workshop as he was packing up 'to try to help him understand.' Mr Parker acknowledged this noting that Mr McGill was 'a genuinely kind man.'
21. Meanwhile, no-one had spoken to the second customer who had approached Mr Woods. This person had left his card with Mr Woods but the latter had no involvement in or knowledge of the investigation or disciplinary proceedings and failing to realise the significance of the approach, did not pass on the customer's details to his colleagues.
22. After the dismissal the customer in question left a message on the answer phone of the respondent's General Manager (Mr Mazey.) Mr Mazey spoke with the customer concerned to check whether the customer had any new information on the incident. He ascertained that the customer viewed the incident from the bottom of the lift, at least 700 m from the point where Mr Parker had parked the skidoo, and probably without a clear line of vision. He was therefore looking up a steep and uneven slope (much further away than the customer who had provided the written complaint.) The witness reported that he thought Mr Parker had averted a more serious accident by turning the runaway skidoo however he also stated that Mr Parker had dismounted from the skidoo. Mr Mazey concluded that taking this information into account would not change the respondent's decision.
23. Neither Mr Blair nor Mr McGill told Mr Parker at any stage that he was entitled to bring a representative or support person to the discussions that were held.
24. Mr Parker gave evidence that his relationship with Mr Blair was not good and that he did not trust him. However, he and Mr McGill had always had a good relationship indeed they socialised together and considered each other good friends.
25. In his evidence, the Respondent's general manager Dave Mazey stressed the importance of safety on the Mountain generally and described skidoos in this way:

"Skidoos are the equivalent for a motorbike for the snow. They can travel up to 70 kilometres an hour and because of the snow conditions they can often be difficult to control. As a result there are very clear rules about the use of skidoos by staff."
26. A significant part of the practical training in skidoo operation focuses on route selection and how to choose the safest path. In general the shortest, most direct route anywhere on the mountain is also the steepest and thus, least safe for the skidoo. Respondent witnesses stressed that all staff had been told not to ride up the lift line when the mountain was open to the public.
27. Some models of skidoo are equipped with a parking brake which locks the tread. However such brakes are of no assistance on slippery sloping ground since a skidoo can slide on a locked tread. The respondent tended to prefer skidoos without parking brakes since those with brakes were believed to create a false sense of security. The model Mr Parker was using on the

day of the incident did not come with a parking brake (Mr Blair checked this when checking what the vehicle's mechanical state had been.) Mr Blair told me that before moving off and leaving a machine the operator was expected to ensure that it would not be able to move by itself. Even parked across the fall line, he said, a skidoo could slide if the gradient were steep enough. Mr Mazey told me

"There are numerous points that could be made about parking skidoos but the bottom line is that it is incumbent on the skidoo rider to park their skidoo in such a manner that there is no chance it will roll away.

I am aware that the Applicant has advanced several different explanations about the skidoo rolling away. Those that I have heard are that he was not off the skidoo, that it was icy and that the brakes failed. Regardless of what response the Applicant advances it is company policy that a skidoo must be parked in such a way that it will not roll away. If it rolls away it is as a result of the operator's failure to park it correctly...

28. The Snowmobile Operator's handbook was produced in evidence. It states:

"Snow mobiles always give way and extra caution should always be used when operating around the general public" and "It is a good idea to avoid moderately steep slopes under all conditions but especially in deep snow"

29. The area around the Far West T Bar is more than moderately steep. At the time of the incident, as we have seen, members of the public were on the lift. Some of the runs from the top of this lift are intermediate level so not every skier on that lift could be expected to be experienced.

30. There is a five to six metre wide track for the T-Bar which is two metres wide. If it ran in a straight line would thus leave 1.5 to 2.0 metres on each side. However, because the rider's skis do not leave the ground and the cable for the lift is flexible, there is some movement of the line as it progresses up the mountainside. Respondent witnesses told me that it was important for skidoo operators to maintain speed to get up a steep slope and that there would be a risk of losing momentum if the operator were to try to manoeuvre round people or objects. In addition of course the lift line is very slippery.

31. Mr Parker told me that he chose to proceed up the T Bar line because few people were on the lift, he had assessed it as safe, to save time and so that he could check each Tower as he went. Respondent witnesses reject this explanation now as they did at the time of the investigation, for the following reasons:

- Mr Parker already knew that the fault was at the top of the lift as this showed on the lift indicator panel;
- If for some reason fixing that had not rectified the problem, the proper procedure would have been to walk back down and check each one.
- It was not possible, in any event, to check the towers from the skidoo (as it needed to travel quickly to get up the steep slope) and it was not possible to park along the line.

32. In the early stages of my investigation meeting, Mr Parker continued to hold to the view that the decision to ride up the lift line was a safe one. Regarding Mr Parker's claim for reinstatement the respondent's human resources manager, Marion Ross, noted that he had a poor accident record even prior to this incident and went on to say:

"The fact that Bryce Parker is now unwilling to acknowledge the stupidity of his actions and the fact that they were in fundamental breach of basic safety principles that you don't operate skidoos near people and don't take highly risky options when there is no need to do so and much safer alternatives are readily available makes me very concerned by the prospect that Bryce Parker is seeking reinstatement. We simply could not have someone on the mountain who showed so little understanding of important safety issues."

33. By the end of my investigation meeting and after hearing all the discussion there of proper safety practices, Mr Parker conceded that although he thought riding up the lift line the right decision at the time, he would not do it again.
34. The applicant's employment agreement sets out a procedure to be followed in the event that a grievance is raised. Once invoked, the first step of this process requires a meeting to be convened within 7 days. The applicant asserts that this procedure was invoked by 18 September at the latest and further asserts that the respondent was not co-operative in arranging the meeting required by the agreement.
35. Where credibility was an issue I note that I have preferred the evidence of respondent witnesses primarily because of Mr Parker's tendency to become confused and to make assertions which upon examination were not based on first hand knowledge. For example he changed his evidence about which skidoo he had been using on the day in question despite initially making a number of emphatic claims about its characteristics.

Submissions

36. The applicant has argued that his dismissal was both substantively and procedurally unjustified.
37. Paragraph 1.3 of the respondent's Disciplinary Policy states:
- "If the complaint or allegation has been established as being true, one of the following may occur:
- ...
- v. Summary dismissal. Instant dismissal where no notice is given. There must be a very sound reason for taking such action. Refer to serious breaches of conduct."
38. In relation to substantive justification the applicant argues in submissions that the respondent has not established that the allegation or complaint in this instance was true.
39. In relation to the first allegation, it is submitted that while it is not denied that the applicant took a decision to ride up the T-bar, there was nothing inherently dangerous in that decision. It is further argued that even if it was not the best decision (with the benefit of hindsight) it was 'an aberration' and not conduct which was so grave as would deeply impair the basic confidence in the employment relationship.
40. As to the second allegation, that the skidoo was parked in an unsafe manner, Mr Parker argues that the respondent's investigation did not establish that this was what happened. He says through Counsel that Mark Blair and Steve McGill simply assumed that because the vehicle slid it must have been parked in an unsafe manner.
41. Finally on the question of substantive fairness, Ms Mills has argued that the respondent did not provide adequate training in the safe operation of the skidoo and in particular, did not make it clear that the skidoo was never to be ridden up the lift line.
42. Regarding the issue of procedural fairness, the applicant submits that the respondent did not conduct a full and fair inquiry. Counsel has asserted that the following amounted to serious breaches:

- Neither the meeting of 7 September nor the meeting of 8 September met the requirement that Mr Parker be heard;
- he received no advice of the purpose of the meetings of 7 and 8 September;
- he was not advised that he was entitled to representation;
- the allegations against him were not properly put; specifically he was not acquainted with the detail of the customer complaint against him nor was he advised of the information the respondent had obtained from Mr Te Whano;
- he was not told, at the conclusion of the discussion on 7 September that his job could be in jeopardy;
- the respondent failed to pay regard to the fact that the applicant continued to be in pain from his injuries;
- the respondent failed to interview the customer who had approached Mr Woods;
- the decision to dismiss was made prior to the meeting on the afternoon of 8 September, and so there was no real hearing for the applicant in front of the decision maker, Steve McGill;
- thus neither of the meetings provided adequate opportunity to refute the allegations or to explain or mitigate his conduct.

43. In summary, Counsel for the applicant argued that :

“RAL conducted the investigation on the basis that the fact that the skidoo slid away proves the fact that Bryce was either negligent or breached safety rules, that there could be no other explanation. It is submitted that this predetermination tainted the process and as such the decision to summarily dismiss was substantially and procedurally unfair.”

In contrast, the applicant’s position is that:

“he stopped the skidoo in what he considered was a safe position and when the skidoo started to move took evasive action.”

44. There was also initially a suggestion from Counsel for the applicant that there was an issue relating to an alleged disparity of treatment. However insufficient evidence emerged to support this argument.
45. In relation to substantive justification, the respondent says that the safety of its customers is its number one priority and is of paramount importance. The fact that the complainant and her husband were not killed was purely fortuitous.
46. Regarding the first limb of the justification given for dismissal, the respondent notes that the applicant himself acknowledged that riding a skidoo up a full T-Bar would be dangerous yet he did not acknowledge the dangers involved in riding up this one, where by his own account at least four “Ts” were occupied. The respondent says a serious breach of safety procedures was established and that any such breach justifies termination.
47. As for the second limb, the respondent says that the only explanation proffered by the applicant for the skidoo’s slide was some sort of mechanical failure (such as a fault with the drive belt). However, no evidence was found of any mechanical failure capable of causing a slide. It was noted, that there was no connection between the drive belt and the braking system and it was:

“difficult to establish exactly how an alleged defect with the drive could have caused the skidoo to slide away.”

48. The respondent also points out that it would have been impossible to drive up the slope in the first place if the drive belt had been inverted, and after the incident, the applicant rode the skidoo back to the base without incident.

Determination

49. I accept that there were several ways in which the respondent's disciplinary process was not procedurally fair. In my view these resulted from the fact that the respondent did not clearly distinguish between the initial routine investigation into the accident, and the subsequent investigation into Mr Parker's conduct, which was disciplinary in nature. Although the need for an inquiry of a disciplinary nature became apparent as a result of the initial inquiry, the two processes should have been distinct, with the beginning, and import, of the disciplinary proceedings clearly signalled to Mr Parker. It was not for him to assume that disciplinary proceedings would necessarily follow as a result of an accident. Once a disciplinary process had been commenced, it was of course essential that the normal requirements of procedural fairness be met.
50. The discussion on 7 September consisted of a general inquiry into the causes of the accident. No allegation was put to Mr Parker for response. He was simply asked to explain what had happened, with no suggestion to him that what had happened may have been his fault. For this reason (and not because of its informality) the meeting of 7 September does not form part of the disciplinary process as such.
51. As a result of this first inquiry, Mr Blair was confirmed in his preliminary view that Mr Parker may have been in breach of safety requirements. I accept that it was entirely appropriate at this point for him to initiate disciplinary proceedings against Mr Parker. However, he did not put Mr Blair clearly on notice that this was about to happen. He did not put any allegation to him, or tell him that his job was in jeopardy. The brief comment from him at the conclusion of the conversation was not adequate to communicate the seriousness of the situation.
52. Only the meeting of 8 September can be considered truly disciplinary in nature. I accept that Mr McGill was open, at this meeting, to considering what Mr Parker had to say, despite the strong views that were already forming in his mind about the nature of the conduct complained of. (I have no doubt that as his friend, he was hoping for an opportunity to be able to save Mr Parker's job.) However, as Ms Mills has correctly pointed out, there was no prior advice of the meeting's purpose nor was there prior advice of the specific allegations against Mr Parker so that he had sufficient time to prepare a considered response. Finally there was no opportunity for him to seek advice or representation. For these reasons, the meeting did not amount to an adequate opportunity to be heard. Mr Parker's dismissal was not procedurally fair.
53. However, despite these not insignificant procedural failings, I accept unreservedly that dismissal would have been substantively justified for the reasons the respondent has given.
54. In relation to the first reason (that he rode the skidoo up the lift line when the lift was open and in use) Mr Parker's response appears to be that he had a discretion to do so and that he exercised that discretion appropriately in this situation. I reject both assertions.
55. Mr Parker had been told that moderately steep slopes were to be avoided and that the skidoo should not closely approach members of the public. Riding up the lift line breached both rules. There was no evidence of a discretion to depart from these rules, and I do not consider myself able to infer one, simply because of the potential risks of riding up the line when riders were on it. In the event that there had been a discretion, it would defy common sense to ride up the

line when there was no pressing reason to do so and alternative, safe routes were available (as there were in this case, without dispute.) In short, I accept that Mr Parker was in breach of safety protocols in riding up the lift line.

56. In relation to the second reason (failing to park the skidoo safely) I consider the applicant's explanation to have no bearing on the question of why the skidoo slid away down the Mountain. It is not in dispute that Mr Parker stopped the skidoo, and at least began to dismount. It was not being driven at the time it began to slide, that is to say, it began to slide from a stationary position. (Mr Parker by his own account acknowledged that the vehicle had already begun to slide before he attempted unsuccessfully to accelerate forward.) The error was in stopping in an unsafe position thus permitting the vehicle to slide. Even if there had been a failure in the drive (and none has been established) it would have merely compounded an existing problem. Indeed, respondent witnesses all told me of the need to maintain speed and so momentum when riding the skidoo; the chances of accelerating out of a backwards slide on even a moderate slope were, as I understand it, very slim.
57. Ms Mills has expressed the view that the respondent proceeded on the basis that the fact that the skidoo slid away proved that Mr Parker was either negligent or breached safety rules and that it was not open to any other explanation. I find rather that in the absence of any other explanation being identified, and given that Mr Parker agreed that he had stopped the vehicle, only one conclusion remained open to the respondent, and that is that the skidoo was parked in a manner that enabled it to slide.
58. I am satisfied that Mr Parker was seriously at fault in driving and parking a skidoo in an unsafe manner. He showed such poor judgement that he destroyed the trust and confidence necessary to the employment relationship. I am further satisfied that this conduct was sufficiently serious to justify dismissal. **The first consequence of this is that I do not consider it practicable for the applicant to be reinstated. The applicant's claim for reinstatement fails.**
59. These findings in relation to substantive justification also lead me to the issue of contributory conduct. The relevant provision is Section 124 of the Employment Relations Act 2000, which sets out:

"124 Remedy reduced if contributing behaviour by employee

Where the Authority or the Court determines that an employee has a personal grievance, the Authority or the Court must, in deciding both the nature and the extent of the remedies to be provided in respect of that personal grievance,-

- (a) consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance; and
- (b) if those actions so require, reduce the remedies that would otherwise have been awarded accordingly."

60. In the present case I am satisfied that the actions of the applicant contributed to the situation which gave rise to the grievance in a similar fashion to that described by the Court of Appeal in *Ark Aviation Ltd v Newton* [2001] 1 ERNZ 133. At paragraph [43] of that decision it was stated:

"The present case is one where the employer has dismissed the employee for misconduct without having conducted a fair and reasonable inquiry into its legitimate concerns. ...In our view, matters of which an employer was aware at the time which, directly or indirectly, impacted on its decision to dismiss may be shown to be actions contributing to the situation, or fault on the part of the employee resulting in the dismissal. They will then form part of the 'situation which gave rise to the personal grievance'... There is no threshold...that requires such knowledge or awareness to derive exclusively from a sound process, provided it is of sufficient substance to be the basis for legitimate concern at the time of dismissal."

61. In relation to the question of how this impacts on the remedy of lost earnings, I propose to adopt the approach described in an obiter comment of Justice William Young in the recent Court of Appeal decision in *Waitakere City Council v Ioane* (CA 21/03; CA 113/03 23 August 2004.) At paragraph [24] of the decision he noted:

“If a fair process would unquestionably have resulted in Mr Ioane’s justifiable dismissal, the Council’s “unfair” process was not causative of any significant loss of remuneration.”

62. In my view a fair process would have resulted in Mr Parker’s justifiable dismissal, hence the respondent’s unfair process was not causative of any significant loss of remuneration. **I therefore make no award for loss of earnings.**

63. However, I was left in no doubt that the respondent’s unsatisfactory process caused Mr Parker hurt and humiliation. He felt strongly that he had been denied a hearing and was mistrustful of the motives of his employer. In my view these feelings were not an unreasonable reaction. For want of a fair and transparent process Mr Parker remained genuinely confused about the reasoning behind his dismissal. **To remedy this distress, I order the respondent to pay to Mr Parker the sum of \$5,000.00 compensation for hurt and humiliation pursuant to s.123 of the Employment Relations Act 2000.**

64. Finally I come to the claim that the respondent breached the personal grievance procedure in the employment agreement. It is correct that the meeting required by the agreement did not take place within the required timeframe. However, it is by no means certain from the evidence I heard that this was entirely due to the actions of the respondent. I do not propose to go into that evidence in detail suffice rather to say that the requisite standard of proof to satisfy a penalty claim (which is ‘beyond reasonable doubt’) has not been made out. **The claim for penalty fails.**

65. The applicant continues to maintain that he took few holidays during his employment other than statutory holidays, and that he continues to be owed an unspecified amount of holiday pay. The respondent has produced to the Authority a wage and time schedule and the timesheets upon which the schedule is based. On the face of these documents it would appear that there is no outstanding annual leave owed to the applicant. However Counsel for the applicant advised through submissions that she had not received copies of these timesheets and so the applicant was unable to reconcile these records or make further comment on them.

66. The Authority will assist the parties by making copies of these timesheets available to Counsel for the applicant. **Leave is reserved for the applicant to pursue the issue of annual leave once the documentary record has been examined however I note that any claim should be quantified and fully particularised.**

Costs

67. The issue of costs is reserved. If the parties cannot resolve it between themselves either party may request that the Authority determine the issue.