IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2021] NZERA 247
3100433

	BETWEEN	GURJIT SINGH Applicant
	AND	JARNAIL SINGH DHALIWAL First Respondent
	AND	VEER ENTERPRISE LIMITED Second Respondent

Member of Authority:	Robin Arthur
Representatives:	John Wood, advocate for the Applicant Himanshu Trivedi, counsel for the Respondent
Investigation Meeting:	7 April 2021
Determination:	10 June 2021

DETERMINATION OF THE AUTHORITY

A. Veer Enterprise Ltd (VEL) unjustifiably dismissed Gurjit Singh.

B. In settlement of his personal grievance for unjustified dismissal, VEL must pay Mr Singh:

(a) $6,750 as lost wages; and

(b) $10,000 as compensation for humiliation, loss of dignity and injury to his feelings.

C. VEL must also pay Mr Singh $3,801.25, with interest, in reimbursement of this amount unlawfully deducted from wages and holiday pay due to him. Interest is to be calculated from 30 March 2020 to the date of payment.

D. For unlawful deductions from Mr Singh's wages in breach of the Wages Protection Act 1983 VEL must also pay to the Authority, for transfer to the Crown Account, a penalty of $3,000.

E. VEL must pay the sums ordered within 28 days of the date of this determination.

F. Jarnail Singh Dhaliwal was involved in breaches of employment standards by authorising deductions from Mr Singh's wages and holiday pay. Mr Singh is granted leave under s 142Y(2)(a) of the Employment Relations Act 2000 to recover those amounts from Mr Dhaliwal personally if VEL is not able to pay the arrears ordered in this determination.

G. Costs are reserved. A timetable is set for memorandum in the event that any issue of costs cannot be resolved by the parties.

Employment Relationship Problem

[1] Veer Enterprises Ltd (VEL), a container haulage company, gave Gurjit Singh notice of dismissal from his position as a truck driver on 23 March 2020.

[2] The notice came in a text message from VEL's director Jarnail Singh Dhaliwal. Mr Dhaliwal sent his message less than 20 minutes after Mr Singh had posted a message to a WhatsApp group VEL had set up for communication between the seven drivers in its fleet of five trucks.

[3] Mr Singh's message contained a hyperlink to a column on the *Stuff* news website. The column, written by an employment lawyer, discussed issues concerning the Covid-19 Alert Level 4 lockdown about to take effect that week, including whether workers would still get paid if their employer was not able to provide work during the lockdown. The lockdown, announced on the same day that VEL gave notice to Mr Singh, came into effect from midnight on 25 March 2020.

[4] Mr Singh's message to the WhatsApp group included a headline or excerpt from the Stuff column which read: "If an employer is not able to provide work due to a Government shutdown, they will still likely be required to pay their employees."

[5] Mr Dhaliwal's text said:

> Hi Gurjit. I am giving you 2 weeks notice to find another job. And this notice will start from 23/03/20. I am going to send you an email as well.

[6] The email Mr Dhaliwal then sent Mr Singh read:

> Hi Gurjit. I Jarnail Singh Dhaliwal, Director of Veer Enterprise Ltd writing this email to inform you that I am giving you 2 weeks' notice to find you another job. And this notice will start from 23/3/2020. And your last working day at Veer Enterprise Ltd will be 6/4/2020. And the reasons for this termination are: you are not punctual and you did many damages. And reading Tyre and Toolbox damage amount is still pending which I am deducting from your salary as you agreed. Please pay that amount before 6/04/2020.

[7] Mr Dhaliwal also had Mr Singh removed from VEL's WhatsApp group for its drivers.

[8] Mr Singh responded to Mr Dhaliwal's email the next day:

> I don't agree. Can you give me any evidence of I'm not punctual on work like any warning letter! I have proof I never late start my work and never sick leave for work, I have proof. If you don't have work while covid-19 that's ok but don't give me this reason for terminating. Thank you be safe.

[9] Mr Singh worked his usual shifts during the nights of 23 and 24 March. In a text exchange with Mr Dhaliwal on 25 March Mr Singh asked about work that night. Mr Dhaliwal replied he should start at 6pm and Mr Singh then asked if he would be provided with a certificate showing he was working in an essential service and entitled to be travelling around. Mr Dhaliwal declined to provide the requested certificate. Mr Singh then asked: "how can we work without permission from government?" The exchange ended with this further text message from Mr Singh:

> As you called you don't have work for me tonight, also I received you notice for find another job. Please clear my wages and don't deduct any amount from my wages. Thank you very much and be safe.

[10] Mr Singh did not work again for VEL. He was sent a pay slip for the period from 16 to 22 March 2020 which showed he had worked "0.00 hrs" and had a take home pay of 0.00. A note on the payslip said: "your salary this week is $1,106.25 for 44.25 hours and we'll deduct all damage, balance pending $2,070".

[11] On 30 March VEL paid $760 to Mr Singh. His pay slip showed he was owed a total of $2,984.56 for 25.25 ordinary hours, one public holiday and his annual leave

balance of $2,101.91. From that total VEL deducted $2,070. A note on the pay slip said this amount was "damage cost deducted".

[12] While driving a VEL truck Mr Singh was involved in accidents on 18 October 2019 and 22 January 2020. The amounts deducted from his pay related to costs VEL incurred for the repair of damage to the truck on those two occasions.

[13] Mr Singh applied to the Authority for findings that he was unfairly dismissed and that VEL had acted unlawfully in deducting money from pay owed to him. He asked for orders for repayment of those deductions, totalling $3,801.25, along with two weeks' notice not paid to him at the end of his employment and for lost wages and compensation for distress caused by his dismissal. Mr Singh also sought a penalty against VEL under the Wages Protection Act 1983 (the WPA) for the deductions from his pay and a penalty against Mr Dhaliwal in person for not providing him with a written employment agreement.

[14] VEL denied Mr Singh was unfairly dismissed. Its statement in reply said VEL was entitled to deduct money from him for the cost of repairs to the truck. VEL also said it was entitled to dismiss Mr Singh for not being punctual, damaging the truck, because "work was going down at the time" and for posting "some very provocative comments" that were disruptive to its business operation at a time of crisis and uncertainty.

The Authority's investigation

[15] Mr Singh and Mr Dhaliwal provided extensive evidence in written statements and by answering questions at the Authority's investigation meeting. By agreement with the parties two other potential witnesses, VEL's fleet manager and a truck driver, were not needed. As well as asking questions of Mr Singh and Mr Dhaliwal at the investigation meeting, the parties' representatives each provided oral closing submissions addressing the matters for resolution of Mr Singh's application.

[16] As permitted by s 174E of the Employment Relations Act 2000 (the ER 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.

[17] There were a number of hotly contested points of difference in the accounts of events Mr Singh and Mr Dhaliwal each gave. In such situations the Authority reaches any necessary conclusions on the balance of probabilities, this is an assessment of what is more likely than to have occurred. This assessment weighs what each witness said and considers whether there is other available and reliable information that corroborates one or other account. Documents created near the time of relevant events are often helpful. There are also circumstances where neither account given in a 'he said, he said' contest is sufficiently convincing or inherently more likely than the other so the balance of probability is not tipped in favour of either party.

[18] In this case one such irresolvable contest concerned whether Mr Singh was offered, signed and then returned a written employment agreement, said to be on a casual basis, soon after he was employed in October 2019. However the contest over this issue, concerning the nature and terms of his employment by the time that it was terminated, was resolved by other evidence Mr Dhaliwal gave during the investigation meeting. In early March 2020 Mr Dhaliwal gave Mr Singh, at his request, a written employment agreement expressed to be on a permanent basis. Mr Singh wanted the agreement to help support an application for a visitor's visa to Canada. Although the evidence did not confirm Mr Singh had signed and returned that agreement, Mr Dhaliwal accepted its terms and conditions were those that were operative and binding on VEL at the time Mr Singh was given notice of termination of his employment.

The issues

[19] As they emerged and were clarified during the course of the investigation meeting, the necessary issues for resolution in this determination were these:

(a) Was Mr Singh offered a minimum of 50 hours work and pay for each week worked and, if so, was VEL liable to pay him arrears of pay totalling $1,225 for weeks where he worked fewer than 50 hours a week?

(b) Was VEL entitled to deduct money from Mr Singh's pay for the cost of damage to the truck he drove and, if not, should an order be made for payment to him of $3,801.25 in reimbursement of those deductions?

(c) If the deductions were found to be unlawfully made, should VEL be ordered to pay a penalty for breach of the WPA, by making deductions without consent of the worker and/or because the deductions amounted to a premium charged for employment?

(d) Did VEL act justifiably in deciding to dismiss Mr Singh when and how it did so?

(e) If VEL acted unjustifiably, what remedies should be awarded to Mr Singh, considering lost wages and compensation for humiliation, loss of dignity and injury to his feelings?

(f) If remedies are awarded, should any deduction be made from them for any blameworthy conduct by Mr Singh that contributed to the situation giving rise to his grievance?

(g) Was Mr Dhaliwal involved in a breach of employment standards and, if so, should Mr Singh be granted leave under s 142Y of the ER Act to pursue Mr Dhaliwal personally if VEL is unable to pay any arrears ordered by the company?

(h) Should either party contribute to the costs of representation incurred by the other party?

Were minimum hours agreed?

[20] Mr Singh said he was told before starting his job with VEL that there were "loads of hours", up to 60 or 70 hours a week, and he would get a minimum of 50 hours work and pay every week.

[21] Mr Dhaliwal denied any such firm commitment was given. He said the hours were on an "as required" basis, which were usually more than 50 each week but there was no guaranteed minimum pay.

[22] From 14 October until early December 2019 Mr Singh had worked 50 or more hours each week but for ten of the weeks in the period from mid-December 2019 through to late-February 2020 his hours dipped below that level. Mr Dhaliwal said the drop was typical during the Christmas and summer holiday season.

[23] This was an instance where the competing assertions of the parties, relying only on what was said to be a verbal agreement, could not easily be resolved. Mr Singh had asked Mr Dhaliwal repeatedly about getting more hours but that was not, in itself, confirmation that a guaranteed minimum had been agreed or that Mr Singh had not, as Mr Dhaliwal said, accepted there was a seasonal lull with fewer hours of work. During the weeks of March 2020, until he got the notice of dismissal, Mr Singh worked 50 or more hours a week.

[24] On the balance of probabilities Mr Singh had not established his terms of employment from the outset included a guarantee of a minimum of 50 hours work and pay each week. His claim for an order of arrears of wages for such hours failed.

Was VEL entitled to deduct the cost of repairs to the truck?

[25] While working his night shift on 18 October 2019 the truck Mr Singh was driving hit a pole inside the Ports of Auckland gates. The collision damaged four tyres. Mr Dhaliwal arranged for replacement tyres to be fitted at the wharf that evening. The cost of the tyres, call out and labour totalled $2,477.96.

[26] Mr Dhaliwal said Mr Singh admitted he was talking on his mobile phone at the time of the accident and agreed to pay for the repair costs. Mr Singh denied any such admission. He said Mr Dhaliwal had told him he must pay for the damage. Mr Singh said he had replied: "Ok, if you feel it was my mistake".

[27] On the date of that accident Mr Singh had been working for VEL for 10 days. No incident report was made and no investigation of the cause of the accident was carried out.

[28] On the evening of 22 January 2020 Mr Singh was involved in a second accident while at the Ports of Auckland. Earlier that evening he had scraped a mudguard of the truck while reversing out of a narrow site entrance. A temporary tie he placed on the mudguard came loose while he drove to the Port. While awaiting loading of a container on his truck Mr Singh contacted his despatcher who suggested attempting a repair using tools from the toolbox fitted in the truck deck. Mr Singh had opened the toolbox and returned to the truck cab to answer a call on his mobile phone from the despatcher. While he was in the cab a Port straddle crane loaded a container on to the deck of the truck, damaging the open toolbox. VEL incurred costs of $1,574.35 for repair of the tool box.

[29] Again Mr Singh was told he had to pay the cost of repair. He said he accepted his mistake resulted in damage to the mudguard but said he did not accept he was responsible for the damage to the toolbox and denied he agreed to pay for it.

[30] On 21 February 2020 VEL deducted $250 from Mr Singh's pay. His payslip included this note: "As you agreed, I have deducted your 10 hours salary ($250) damage

cost for truck and continue next". On 28 February a further $250 was deducted with the same note on his payslip. On 13 March a further $125 was deducted. On 26 March the full amount of Mr Singh's pay for the previous week, $1,106.25, was deducted. His final pay slip, dated 30 March, recorded a further deduction of $2,070 was made from what was owed to him for wages and holiday pay.

[31] The deductions made totalled $3,801.25. For the following reasons they were unlawfully made and Mr Singh was entitled to an order for payment to him of the amounts withheld.

[32] Firstly, the deduction was made on a dubious premise that an employer has a right to make a worker pay for the cost of errors made in the performance of their work. As explained by the Employment Court in *George v Auckland Council*:[1]

> Rather it is strongly arguable that in the modern context of employment relationships in New Zealand, and in light of the mutual obligations conferred on the parties under the Act, an employer may not seek to recover damages from an employee arising from acts of negligence committed during the course of their duties. If it were otherwise it would likely have a chilling effect on the way in which employees undertake their duties, could lead to reactive claims or threats of claims against those taking personal grievances which would undermine the statutory framework for resolving employment relationship issues, and expose employees to significant potential financial liability for a breach even in circumstances that could never justify a dismissal. It also raises policy concerns about the fair allocation of risk and which party is best placed to mitigate potential liability.

[33] VEL had an insurance policy for vehicle damage with an excess of $3,000. In Mr Dhaliwal's view drivers were liable to pay the costs incurred by VEL below that excess, effectively making those drivers VEL's insurer for those amounts. For the reasons given by the Court, a requirement for such a payment was not one the employer could justifiably make, given the employer had access to other means of addressing such issues, including disciplinary action where appropriate and the ability to mitigate potential damage by safety measures, including better driver training.

[34] Secondly, VEL could not reasonably rely on a term headed "Employee Responsibility" in the employment agreement provided to Mr Singh in March 2020 as authorising deductions (as written):

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[1] *George v Auckland Council* [2013] NZEmpC 179 at [147]. See also *Rainbow Falls Organic Farm Ltd v Rockell* [2014] NZEmpC 136 at [57] and [58]

> If Employee involved in any accident, he/she will responsible for the damage and will have to pay for that damage.

[35] A clause to similar effect was in the earlier agreement which Mr Singh may or may not have got, signed and returned.

[36] The clause was too broad, encompassing "any accident". It could also not be applied without the consultation required under s 5(1A) of the WPA for any specific deduction. The evidence did not establish Mr Singh was fairly consulted about the specific deductions and there was no written consent given for them.

[37] Fourthly, even if consent were given or the agreement clause was relied on as giving general consent, it was clearly withdrawn by Mr Singh's text of 25 March. Despite this unequivocal withdrawal, VEL breached WPA s 5(2) by making the deductions of $1,106.25 and $2,070 after that date.

[38] Fifthly, the deductions amount to a premium for employment which is not permitted under WPA s 12A. Even if Mr Singh consented to deductions of money from his wages for the costs incurred by VEL for damage to his truck, he did so in a situation where he potentially faced the prospect of disciplinary action and dismissal over the accidents. An agreement given in those circumstances was not freely made. Seeking to charge workers for those costs was seeking to recoup from them an ordinary cost of a trucking business where a certain level of scrapes and bumps will unfortunately occur from time to time. And, as the Authority has previously found, recouping costs of errors from workers' wages amounts to charging of a premium unlawful under WPA 12A.[2]

[39] Accordingly VEL must reimburse Mr Singh for the amount of $3,801.25 unlawfully deducted from wages and holiday pay due to him. This sum must be paid to him by no later than 28 days from the date of this determination, along with interest on that sum calculated from 30 March 2020 to the date of payment. The interest due must be calculated by using the Ministry of Justice's civil debt interest calculator.[3]

Liability to a penalty under the WPA

[40] For its breaches of WPA s 5 and s 12A VEL is liable to a penalty.

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[2] *Labour Inspector v Mittal & Sons Limited* [2019] NZERA 406 at [106]-[107].
[3] www.justice.govt.nz/fines/civil-debt-interest-calculator

[41] Globalising those breaches VEL was potentially liable to a single penalty of up to $20,000. The appropriate penalty to set in this case is determined by having regard to all relevant matters, including those listed in s 133A of the ER Act, and further factors identified in case law on such penalties.[4]

[42] VEL's action in making the deductions was intentional. It resulted in Mr Singh losing money he was entitled to have and use. Having regard to the objects of the Act, including addressing the inherent inequality of power in employment relationships, a penalty was appropriate. There was no information VEL had previously been penalised for breaches of employments standards, so the provisional penalty could be substantially reduced as a first offence. There was no information VEL was not presently able to pay a penalty. Balancing all relevant factors, and giving weight to the need to deter both this employer and all employers from making unlawful deductions, $3,000 was an appropriate penalty to impose.

[43] VEL must pay this penalty of $3,000 for breach of s 5 and s 12A of the WPA by no later than 28 days from the date of this determination.

[44] Mr Singh asked that a part of any penalty imposed be paid to him. In light of the other remedies awarded in this determination for wrongs done to him, this was a case where the whole of the penalty once recovered from VEL should be transferred to the Crown Account.

Did VEL act fairly and reasonably in dismissing Mr Singh?

[45] An employer who is considering ending its employment of a worker must give that worker information about that prospect and the opportunity to comment on the information before the decision is made.[5]

[46] Whether the prospect of such a decision arises from alleged misconduct or poor performance by the worker, or from a business need to reduce staff numbers, the employer must first conduct a fair investigation, give the worker a real opportunity to respond to any concerns and then genuinely consider the worker's explanation before making its decision about the future of the worker's employment.[6] If any defects in

[4] *Boorsboom v Preet PVT Limited* [2016] NZEmpC 143 at [138]-[151]; *Nicholson v Ford* [2018] NZEmpC 132 at [18] and *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [19].
[5] Employment Relations Act 2000, s4(1A)(c).
[6] Employment Relations Act 2000 s 103A(3).

that process are more than minor and result in the worker being treated unfairly, the Authority may find the resulting dismissal was unjustified.[7]

[47] The test of justification is whether what the employer did and how the employer acted was what a fair and reasonable employer could have done in all the circumstances at the time of dismissing the worker.[8]

[48] In its statement in reply, and through Mr Dhaliwal's written and oral evidence, VEL advanced several different and overlapping rationales for dismissing Mr Singh, on two weeks' notice, on 23 March 2020.

[49] For reasons that follow, each rationale VEL offered for its actions failed to pass the test of justification.

[50] Firstly, Mr Dhaliwal said Mr Singh's circulation of an article giving a lawyer's view on what an employer would have to pay its workers during lockdown was "a gross incitement" to other workers. The digital act of electronically circulating that article through the WhatsApp group was, in effect, no different than the physical act of a worker handing around a newspaper at work and suggesting other workers read it. While the venue for sharing that message was a 'virtual' work space this, again, was no different than workers sharing views in their physical workplace. If there was an issue about the appropriateness of using the group, it was a topic that Mr Dhaliwal could and should first have addressed with Mr Singh.

[51] Secondly, Mr Dhaliwal was annoyed he believed Mr Singh was circulating that article as a means of pressing VEL to apply for the wage subsidy. Mr Singh had spoken to him about VEL applying for the subsidy but Mr Dhaliwal did not agree with what he saw as workers being paid to sit at home. He described Mr Singh's enthusiasm for VEL to collect the subsidy as "want[ing] to pinch the pocket of the government".

[52] Mr Dhaliwal considered VEL did not need to apply for the subsidy as its trucking business would continue working through the lockdown.

[53] His decision to dismiss Mr Singh, with 20 minutes of him sending the WhatsApp message, was really an act of reprisal for sharing a view that Mr Dhaliwal

[7] Section 103A(5).
[8] Section 103A(2).

considered contrary to the interests of his business. And, as Mr Dhaliwal accepted in his oral evidence, he sent that message through the WhatsApp group so the other workers would see Mr Singh was dismissed for expressing that view. It was not what a fair and reasonable employer could have done in all the circumstances at the time.

[54] Thirdly, the email Mr Dhaliwal sent Mr Singh later on 23 March unfairly added two additional reasons for the dismissal: the allegation of poor punctuality and the damage done to his truck in two accidents.

[55] Mr Singh did not have a proper, prior opportunity to answer that allegation about punctuality. Even by the time of the Authority investigation meeting many months later, VEL provided no real evidence to support it.

[56] If the issue of damage to trucks was grounds for dismissal, Mr Dhaliwal had no sufficient explanation for why VEL had waited more than eight weeks since the second of the two accidents to move to dismiss Mr Singh for it.

[57] In all those circumstances, the decision Mr Dhaliwal made to dismiss Mr Singh, and the way he did so, was unjustified. A fair and reasonable employer could not have acted in that way without giving Mr Singh notice of those concerns and a real opportunity to respond before a decision was made. And, if that opportunity was provided, the evidence available for the Authority investigation suggested that a decision to dismiss Mr Singh was not within the range of responses open to such a fair and reasonable employer at that time. Accordingly, Mr Singh had established his grievance and was entitled to an assessment of remedies.

Remedies

Lost wages

[58] Mr Singh found another truck driving job from11 May 2020 onwards. This was not an unreasonable length of time given the circumstances of the Covid-19 Alert Level 4 and 3 restrictions in place during that period.

[59] VEL suggested the six week period Mr Singh claimed for lost wages should be reduced because Mr Singh could have, under his notice period, worked a week or so longer. However he, reasonably, formed the view that he could not have done so given

Mr Dhaliwal refused to provide any paperwork confirming the truck was part of an essential service and Mr Singh was entitled to be on the road.

[60] Assessing the appropriate level at which to award lost wages was difficult given Mr Singh had worked variable hours and some effect on the business resulting from the lockdown. More hours than usual might have been available because some of the other drivers chose not to work during that period and VEL got more work carting containers out of the Port.

[61] For the 10 weeks from early January through the first half of March 2020 his pay slips showed Mr Singh's work hours ranged from 32.75 to 51 a week. At the average of just on 45 hours, at $25 an hour, Mr Singh's average weekly was $1,125. Taking that as the weekly amount for calculating the six weeks' lost wages VEL must pay Mr Singh under 123(1)(b) of the ER Act, the total due on that count is $6,750. VEL must pay Mr Singh this amount within 28 days of the date of this determination.

Compensation

[62] Mr Singh's evidence, overall, showed he was a relatively robust person. It described no long term effects on him resulting from his grievance. He was however dismissed in a deliberately embarrassing way, through a WhatsApp message distributed to other drivers, and he felt humiliated by it. He also suffered embarrassment within his family because his sudden loss of income meant he was unable to contribute, as he had hoped to, towards the costs of his brother's wedding that occurred soon afterwards.

[63] Considering those circumstances and the general range of awards, $10,000 was an appropriate sum to order VEL pay Mr Singh as compensation under s 123(1)(c)(i) of the ER Act for humiliation, loss of dignity and injury to his feelings caused by his dismissal and how it happened. VEL must pay Mr Singh this amount within 28 days of the date of this determination.

No deduction from remedies for contributory conduct

[64] The situation giving rise to Mr Singh's grievance was the failure of VEL to observe fundamental obligations in its dealings with him. He did not contribute towards that situation so no reduction of remedies awarded was required.

Involvement in breach of employment standards

[65] Mr Dhaliwal accepted in his oral evidence that he was responsible, as sole director of VEL, for the decision to deduct amounts from Mr Singh's pay for the cost of damage to the truck and to withhold wages and holiday pay at the end of his employment on the same grounds. Those actions, for reasons given earlier in this determination, were breaches of the WPA. Accordingly, under s 142W of the ER Act, Mr Dhaliwal was a person involved in a breach of employment standards.

[66] Under s 142Y of the ER Act an employee may seek prior leave to recover wages and other money owed by an employer from a person involved in a breach of employment standards. Recovery may be made from such a person if the employer defaults in those payments.

[67] Mr Singh is granted that leave so he may seek to recover from Mr Dhaliwal wages or other money owed to him in breach of employment standards if VEL defaults on the payments due to him on that account. In this case the sum involved is the **$**3,801.25 due from VEL, with interest, for unlawfully deducted wages and holiday pay.

Costs

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

[69] The parties could expect the Authority to determine costs, if asked to do so, on its usual daily rate of $4,500 unless particular circumstances or factors required an upward or downward adjustment of that tariff.[9]

Robin Arthur
Member of the Employment Relations Authority

[9] *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].