

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Anesia Taurima (Applicant)  
**AND** White Gloves Television Productions Limited (Respondent)  
**REPRESENTATIVES** Damon Thomas, for Applicant  
David Wackrow and L Payne, for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 15 December 2006  
**SUBMISSIONS RECEIVED** 16, 23 and 30 January 2007  
**DATE OF DETERMINATION** 27 April 2007

DETERMINATION OF THE AUTHORITY

[1] Anesia Taurima was employed as a production manager by White Gloves Television Productions Limited for about five years. White Gloves is owned by Te Hira Henderson and Mere Johnston. They are domestic partners and Mr Henderson is Ms Taurima's maternal uncle. Ms Taurima's employment with White Gloves ended on 9 June 2006 following a discussion with Mr Henderson and Ms Johnston about Ms Taurima's wage rate and the nature of her employment. The parties dispute the nature of this discussion; Ms Taurima says she was dismissed, Ms Johnston and Mr Henderson say Ms Taurima's fixed term employment agreement ended or in the alternative that she resigned.

[2] Ms Taurima says she was unjustifiably dismissed; that on the same day she was promised ongoing work when she requested payment of outstanding wages she was dismissed. She seeks remedies of lost wages for work already agreed and compensation for hurt and humiliation consequent to her dismissal. Ms Taurima also seeks wage arrears for the 29 week period preceding her alleged dismissal at the rate of \$400 per week and payment for days in lieu for public holidays worked. I record that Ms Taurima's claim for holiday pay entitlement was settled to the parties' satisfaction during the course of the investigation meeting. Ms Taurima's claim for reinstatement was withdrawn at investigation meeting. She also seeks penalties for White Gloves' alleged failure to comply with its statutory obligations to provide Ms Taurima with a written employment agreement.

[3] White Gloves says that throughout her employment Mr Taurima was employed on a series of fixed term employment agreements based on funding it received to either develop or

produce television programmes. White Gloves says Ms Taurima was well aware that this was the basis of her employment. It says there is no basis for the wage arrears claim because Ms Taurima received the total budgeted funding for the production manager position allocated to the relevant production. It says there was no ongoing employment for Ms Taurima after 9 June 2006 because the production had finished and a fresh contract had not yet been secured. White Gloves says Ms Taurima's employment ended by effect of the fixed term agreement or alternatively that she resigned.

[4] The issues for the Authority to determine are:

- (i) what was the nature of Ms Taurima's employment – was she a permanent employee or one employed on a series of fixed term agreements?
- (ii) what was Ms Taurima's pay rate for the Kiwi Maara Series 3?
- (iii) was Ms Taurima dismissed or did she resign? and
- (iv) if she was dismissed, was that dismissal unjustified?

### **The nature of Ms Taurima's employment**

[5] Ms Taurima has built up her expertise in television production whilst in the employ of White Gloves. There is no dispute between the parties that when Ms Taurima started employment with White Gloves she had no experience in television production; until then her career had been in auditing educational standards.

[6] Mr Henderson and Ms Johnston have extensive experience in the television and film industry. White Gloves specialises in making Maori language programming and the company has a strong commitment to training staff and developing infrastructure to support the making of Maori language programming. Mr Henderson said he saw Ms Taurima's employment in this context.

[7] Ms Taurima described the work place as flexible and family friendly. She was able to bring her children to work if they were unwell or during school holidays. She worked very hard for White Gloves and appears to have been very satisfied with her employment up until the events which gave rise to this employment relationship problem.

[8] Ms Taurima says she never had a written employment agreement, that the basis of her employment was never made clear to her and that she understood that she was White Gloves' production manager.

[9] Ms Johnston said in evidence that from the outset of her employment with White Gloves Ms Taurima was employed on a contract to contract basis and that these were verbal contracts.

Ms Johnston said Ms Taurima was offered written fixed term agreements but declined them and that as verbal agreements are common practice in the television industry White Gloves accepted that this would be the basis of the agreements. Ms Taurima denied that she had ever been offered a written agreement.

[10] The pay sheets provided to the Authority show Ms Taurima's work for White Gloves covered twelve distinct terms from 21 May 2001 until her employment ended in June 2006. These terms were separated by periods where no work was provided and Ms Taurima received no pay. Ms Taurima accepted that this pay information was accurate and that if there was no work available she was not paid. Ms Taurima said in evidence that the periods of no work occurred when a production schedule was completed on time before the next production was ready to commence.

[11] Section 66(1) – (3) Employment Relations Act 2000 sets out the lawful basis upon which an employee could be employed on a fixed term agreement prior to 1 December 2004:

**66 Fixed term employment**

(1) An employee and an employer may agree that the employment of the employee will end-

- (a) at the close of a specified date or period; or
- (b) on the occurrence of a specified event; or
- (c) at the conclusion of a specified project.

(2) Before an employee and an employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must –

- (a) have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and
- (b) advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.

(3) The following reasons are not genuine reasons for the purposes of subsection (2)(a):

- (a) to exclude or limit the rights of the employee under this Act.
- (b) to establish the suitability of the employee for permanent employment.
- (c) to exclude or limit the rights of an employee under the Holidays Act 2003.

[12] I have no difficulty in finding that Ms Taurima was employed on a series of fixed term employment agreements prior to 1 December 2004. The pay records, evidence of production funding applications and Ms Taurima's own evidence support a finding that she was employed to work on specific events (television productions or development work), that those events ended for genuine reasons (the television production or development was completed) and Ms Taurima was aware her employment would end and the reasons why before she was engaged on each succeeding production.

[13] However, the situation between the parties is not so clear after 1 December 2004 due to

the potential impact of the following amendment to section 66 effective on that date:

(4) If an employee and an employer agree that the employment of the employee will end in a way specified in subsection (1), the employee's employment agreement must state in writing –

- (a) the way in which the employment will end; and
- (b) the reasons for ending the employment in that way.

(5) Failure to comply with subsection (4), including failure to comply because the reasons for ending the employment are not genuine reasons based on reasonable grounds, does not affect the validity of the employment agreement between the employee and the employer.

(6) However, if the employer does not comply with subsection (4), the employer may not rely on any term agreed under subsection (1) –

- (a) to end the employee's employment if the employee elects, at any time, to treat that term as in effect; or
- (b) as having been effective to end the employee's employment, if the former employee elects to treat that term as ineffective."

[14] Kiwi Maara is the White Gloves' television production central to this employment relationship problem. Kiwi Maara is a series of gardening programmes commissioned by Te Māngai Pāho produced to screen on Maori Television. Ms Taurima was employed as the production manager on Series 1 – 3 of Kiwi Maara. Her employment ended at the conclusion of the production schedule for Series 3.

[15] White Gloves' says the 1 December 2004 amendments to section 66 are not relevant to its employment agreement with Ms Taurima because by 28 November 2004 Ms Taurima and White Gloves had agreed the terms of her fixed term employment agreement for the first 48 episodes of Kiwi Maara. In support of this proposition White Gloves seeks to rely on the Kiwi Maara funding application submitted to Te Māngai Pāho and in particular, the appendix to that document "Key Personnel Acknowledgement Form – Television". The relevant sections of the form are:

*"Appendix 5:*

*Key Personnel Acknowledgement Form – Television*

*This information will be inserted in Schedule 3 of your contract*

*Name of Production Company: White Gloves Television Productions Ltd*

*Name of Programme: 2K100 Kiwi Maara*

*Number Episodes & Duration: x 48 Episodes, 26 mins*

*The key personnel acknowledge their designated roles in the proposed production as evidence by their signature below – or if you cannot get the signature a letter from them acknowledging their place on the production will suffice.*

<i>KEY PERSONNEL</i>	<i>NAME</i>	<i>SIGNATURE</i>	<i>DATE</i>
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*Producer/Financial Mere Johnston* [signed]  
*Manager*

*Producer/Director* *Te Hira Henderson* [signed]

...

*Production Manager* *Anesia Taurima* [signed] ] 29.11.04

..."

[16] Ms Taurima said the purpose of the Key Personnel Form was to advise Te Māngai Pāho that the production house had people available to work. She said that when she signed the form on 29 November 2004 White Gloves was hoping to get funding for 48 episodes of Kiwi Maara which would have meant a year's work which she said would have been "fantastic".

[17] Is the Key Performance Form evidence that a fixed term employment agreement existed between the parties prior to 1 December 2004? It is clear from this document that Ms Taurima acknowledged she would be available to perform the role of production manager for the first 48 episodes of the proposed production of Kiwi Maara. The document was completed for the purposes of White Gloves' funding allocation to Te Māngai Pāho to confirm that key personal for the proposed production had been secured. Ms Taurima accepted this in her evidence. It follows that Ms Taurima would not have signed this form if she had not agreed with White Gloves that she would be employed as the Production Manager on Kiwi Maara for 48 episodes.

[18] I am satisfied that the Key Performance Form is evidence of a fixed term agreement entered between the parties prior to 1 December 2004 and that the obligations of section 66 (1) – (3) of the Act have been met. I am further satisfied that the amendments to section 66 would not superimpose obligations on existing fixed term agreements and that they have no bearing on the arrangements entered between the parties for the production of the first 48 episodes of Kiwi Maara.

### **Pay rate - Kiwi Maara Series 3**

[19] Production for Kiwi Maara Series 1 and 2 commenced on 21 March 2005 and ended on 31 October 2005. The "serialisation" of Kiwi Maara was a consequence of the funding allocation for the first 48 episodes of the production; the episodes were split into three series for the purposes of funding allocation rounds.

[20] For the 33 weeks of production of Kiwi Maara Series 1 and 2 Ms Taurima was paid \$1200 gross per week. Ms Taurima said in her written evidence that Ms Johnston told her in March 2005 that she would be paid \$1200 per week and that when Ms Taurima queried the amount as not what was budgeted for (ie, \$1000 per week) Ms Johnston told her not to worry about it

because it was her (Ms Johnston's) job to worry about the budget.

[21] Ms Johnston says in her written evidence that the budgeted rate for the production manager role for Kiwi Maara Series 1 – 3 was \$1000 (gross), that Ms Taurima knew that was the budgeted rate and that White Gloves agreed to advance her \$200 per week for the first 29 weeks of the production which would later be compensated for by paying Ms Taurima \$800 (gross) per week for the second 29 week period. Ms Johnston says that this arrangement was discussed with Ms Taurima many times and that she did not raise any objection until 8 June 2006. There was no record of the arrangement asserted by Ms Johnston.

[22] From 28 November 2006 Ms Taurima was paid \$800 (gross) per week. This was the start of the production of Kiwi Maara Series 3.

[23] Ms Taurima said she did not notice the reduction in her pay until the New Year when she applied for a personal loan and her bank advised her what her wages were. She said she asked Ms Johnston about the funding for her position, that Ms Johnston said she was having cash flow problems and Ms Taurima would be fixed up at the end of production.

[24] Teremoana Jones, who was contracted by White Gloves as a presenter for Kiwi Maara, said she was present in the office when Ms Taurima and Ms Johnston discussed Ms Taurima's pay rate for Kiwi Maara Series 3. She heard Ms Taurima say to Ms Johnston that the bank manager had rung saying she did not have enough money to cover her automatic payments, that Ms Taurima said her payments were less than she had received in the past, that Ms Johnston apologised and said she had been meaning to discuss it with her and that she would "fix her up" at the end of production, that Ms Taurima said that if there was a problem with the budget she would take a cut and Ms Johnston said there was no problem and that she would be "fixed up" at the end of production.

[25] Ms Johnston's recollection of this discussion was that Ms Taurima told her she was applying for a personal loan and expressed surprise that she was receiving \$800. Ms Johnston said Ms Taurima did not force the issue and she (Ms Johnston) thought that was the end of the matter. Ms Johnston said she would not have said that she would "fix [Ms Taurima] up" at the end of production, this would not have been possible because the production budget would already have been spent.

[26] On Thursday 8 June Ms Taurima prepared some figures to go through with Ms Johnston regarding the outstanding wages. Ms Taurima said she wanted to raise the matter on that Thursday so Ms Johnston could pay her at the end of production the following day. Earlier that day, in the kitchen, Ms Johnston had spoken with Ms Taurima and other Kiwi Maara staff about ongoing work over the next eight weeks prior to the expected commencement of production of

Kiwi Maara Series 4. Ms Taurima asked if she was included in that ongoing work and Ms Johnston said "of course". At this stage funding had not yet been allocated to Kiwi Maara Series 4 but Ms Johnston was confident it would.

[27] Ms Taurima then spoke with Ms Johnston and Mr Henderson in the office and raised the issue of the outstanding wages. Ms Taurima said Ms Johnston denied that Ms Taurima was owed any money and denied the conversation earlier in the year which Ms Jones had overheard. Ms Taurima said Ms Johnston said that if she insisted on being paid there would be no money to pay her for the next eight weeks. Ms Taurima said she then asked about working on Kiwi Maara Series 4 and that Ms Johnston said she would have to think about it now. Ms Taurima said Mr Henderson then told Ms Johnston to be quiet and that he would do the talking. Ms Taurima said she would go to the 'Employment Tribunal' to sought the matter out and that Mr Henderson asked her when she would finish. Ms Taurima said she thought she and Mr Henderson had reached an agreement to sought the matter out, that she was not certain but she thought she had been dismissed and if she had wanted to resign she would have written a letter.

[28] Ms Johnston accepted Ms Taurima's recollection of the kitchen discussion. She said that Ms Taurima then asked if they could talk about her pay, that they went into the office and Ms Taurima took her by surprise by raising the \$200 difference in the pay rate and demanded that she be paid the difference. Ms Johnston said she got out the wage records and there was a discussion that the \$1200 she had been paid had been recouped. Ms Johnston then said she agreed to pay Ms Taurima \$5800 as a gesture of good faith. Ms Taurima then demanded a letter of permanent employment at \$1200 per week and Ms Johnston responded that they could not give Ms Taurima that because the industry was project to project. Ms Taurima then said she would take White Gloves to the employment institutions because they had made illegal deductions from her wages. Ms Johnston said Mr Henderson then joined the discussion and queried why Ms Taurima would want this matter determined, that Ms Taurima then said she would "quit" and when Mr Henderson said "did I hear you right" Ms Taurima said "yes".

[29] Ms Johnston said she had some money in the Series 3 budget to cover the episodes of Series 3 which could not be shot until Christmas and that was were the \$5800 would come from. Ms Johnston said she told Ms Taurima she would have to think about work for her for Series 4 in the context of Ms Taurima's request for a letter of permanent employment.

[30] Mr Henderson said he was called into the office and listened to Ms Johnston and Ms Taurima's discussion. He recalled that they agreed to pay Ms Taurima \$5800 and that Ms Taurima then asked for a letter of permanent employment, that she said she would not do things the Maori way and that the Pakeha way was the only way with reference to going to the employment institutions for a determination as to her employment status. Mr Henderson said

Ms Taurima did not want to work for them anymore and that he asked her three times if she quit, which she confirmed. Mr Henderson then asked Ms Taurima about the shooting schedule and she said she would be back the following day to complete it. Mr Henderson said he telephoned Ms Taurima the following day when she did not attend work, that she did not reply and that he completed the shooting schedule late on Saturday night.

[31] The next day Mr Henderson received a telephone call from a friend of Ms Taurima's who said he was ringing on her behalf to discuss the employment situation. Mr Henderson said he told him that she had told him three times that she "quit". Mr Thomas, who is Ms Taurima's domestic partner, also rang Mr Henderson, who asked if there was any chance of Ms Taurima returning to work because she "didn't mean it" and that Mr Henderson said he had agreed to give Ms Taurima the \$5800, that there was no work dispute, that she said she would not come back after 9 June as that was the end of the contract. Mr Henderson said he did not pay Ms Taurima the \$5800 as agreed because Ms Taurima had decided to bring the matter to the employment institutions. Mr Thomas declined the opportunity to comment on Mr Henderson's evidence.

[32] In an undated letter received by White Gloves on 12 June 2006 Mr Thomas wrote on Ms Taurima's behalf:

"...

*Ms Taurima considers that she has a personal grievance arising from her dismissal on 8/6/06.*

*This letter is*

1. *To ensure you are aware, in terms of Section 114 of the Employment Relations Act 2000, that Ms Taurima has raised a personal grievance which she wants you to address;*
2. *To request that you set out in writing and send to me the reasons for the dismissal. Under Section 120 of the Employment Relations Act 2000, you are obliged to provide the Union with a statement in writing of the reasons for the dismissal within 14 days of a request to do so. The date by which you must comply is 23/6/06.*
3. *The nature of the Grievance is that Ms Taurima has been dismissed from her employment as Production Manager at White Gloves Television Productions Ltd. Ms Taurima has a wage arrears claim in relation to previous 29 weeks work where an agreement was made that \$200 per week would be paid at the end of production 9/6/06.*
4. *We will be seeking immediate reinstatement of Ms Taurima, recovery of lost wages, wage arrears, and holiday pay for the past 5 years.*

..."

[33] On 21 June 2006 White Gloves' solicitors responded to Mr Thomas' letter including:

"...

5. *Further Ms Taurima met with the directors of our client on or about 9 June 2006 as she was well aware that this was the last day of production of the recent Kiwi Maara series. As such our client's contractual obligation to the broadcaster was complete on that day. There are no current contracts between our client and any broadcaster at this time and as such our client was not able to offer Ms*

*Taurima continued employment as the funding for her position does not presently exist. I am instructed that Ms Taurima advised the directors of our client company that Ms Taurima intended to quit anyway.*

..."

### **Does White Gloves owe Ms Taurima wage arrears for Kiwi Maara Series 3?**

[34] In submissions Ms Taurima says the payment of \$800 per week for the 29 week period of production of Kiwi Maara Series 3 (28 November 2005 – 5 June 2005) was an unlawful deduction of \$400 from the \$1200 per week she should have received as the production manager. Ms Taurima says she is owed the shortfall. Ms Taurima's evidence of the meeting with Ms Johnstone in early 2006 and 8 June 2006 was that the agreed rate was \$1000 and that was the rate at which she sought payment. There is no dispute that Ms Taurima received, in total earnings, the total budgeted amount for the Kiwi Maara Series 1 – 3 production manager role plus payment for work performed during extensions to that production schedule as negotiated by White Gloves and the funding body.

[35] An assertion of unlawful deduction references the Wages Protection Act 1983. In *Sealord Group Limited v New Zealand Fishing Industry Guild Inc* [2005] ERNZ 535 at 539 a full bench of the Employment Court commented:

"The Wages Protection Act 1983 deals with the manner in which wages are to be paid once they become payable. The *time* at which wages are to be paid is an issue to be determined in each case by reference to the employment agreement governing the employment relationship. In some cases, there will be express agreement when wages are to be paid. In other cases, the time of payment will be a matter of inference from the practice of the parties over time."

[36] I do not believe this is a situation of unlawful deductions. I think it is one where the terms of Ms Taurima's employment agreement, as to the timing of payments, have been varied without her consent.

[37] Based on the evidence received I think what has occurred is that Ms Johnston has varied Ms Taurima's payments to address a perceived personal need of Ms Taurima, that the recouping of that variation was not discussed or agreed with Ms Taurima, that when Ms Johnston was confronted with this in early 2006, she undertook to repay Ms Taurima at the end of production at the budgeted rate and when Ms Taurima raised the issue on 8 June 2006, Ms Johnston gave her the option of taking the \$5800 then or using that money to effectively pay her own wages over the 8 week break in production and that Ms Taurima elected to receive the \$5800. I have formed this view because Ms Johnston's evidence as to her discussions with Ms Taurima about the pay rate lacked detail; there was no detail of when the alleged agreement to vary the pay rate or recoup the difference was reached. Ms Taurima's evidence as to the discussion in early 2006 was very clear and was supported by Ms Jones'

evidence.

[38] Ms Taurima's election to take the \$5800 was entirely understandable given that was what had been agreed earlier in the year and \$1000 per week was the budgeted amount for the production manager role. That White Gloves paid Ms Taurima in excess of the budgeted amount for the first period of production was its decision. In the absence of clear evidence of Ms Taurima's agreement that her wages would be massaged as they were, a shortfall exists and that shortfall must be met by White Gloves.

**[39] White Gloves Television Productions Limited is ordered to pay Anesia Taurima wage arrears of \$5800 (gross).**

### **Was Ms Taurima dismissed?**

[40] I have found Ms Taurima was employed on a lawful fixed term agreement. There is no dispute between the parties that that agreement ended on 9 June 2006 at the end of production (refer undated personal grievance letter). Ms Taurima was paid to the end of production and her employment ended by expiry of the fixed term agreement on that date. Ms Taurima was not dismissed.

### **Ongoing work**

[41] What of the offer of eight weeks work? Ms Taurima and Ms Johnson agreed in evidence that Ms Johnston told Ms Taurima she could receive the \$5800 or use that money to fund eight weeks work before the next production commenced. Ms Taurima elected to take the \$5800 and the consequence of that was there was no funding to pay for the next eight weeks work.

[42] There was no justifiable basis for Ms Johnston to put such an election to Ms Taurima. The \$5800 was back pay owed to Ms Taurima for work already performed. There was no justifiable basis to make the offer of eight weeks work during the production break conditional on Ms Taurima forfeiting the Kiwi Maara Series 3 wage arrears.

[43] I am satisfied that the terms of the offer of work were clear enough to be accepted and that a binding agreement was formed between the parties; Ms Taurima had expressed her interest in working during the break, Ms Johnston offered her the work and the period and rate of pay were clear. Ms Taurima was an employee intending to work<sup>1</sup>.

**[44] Ms Taurima is entitled to payment for the eight week period at the rate**

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<sup>1</sup> Section 5 Employment Relations Act 2000

specified by Ms Johnston during the meeting on 8 June ie, \$5800 (gross) and I so order.

#### **Payment 7 November 2005 – 21 November 2005**

[45] Ms Taurima claims payment for the two week period between the end of production of Kiwi Maara Series 1 and 2 and the start of Kiwi Maara Series 3. The pay records show she was not paid from 14 November 2005 to 25 November 2005. Ms Taurima says she continued to work as normal over this period and that she is entitled to be paid.

[46] White Gloves says no work was available during this period because there was a two week break between productions. The wage and time records show Ms Taurima was not paid for those two weeks. The following annotation was made beside the 14 November 2005 date on the pay records:

“Break between production schedule”

[47] There is no evidence that Ms Taurima claimed payment for this period at the time. There is no evidence that Ms Taurima was directed to attend work during this period or directed to perform any work during this period. There is no record of any hours worked or work performed.

[48] To support her claim Ms Taurima relies on personal emails she sent from her work computer on 14 November 2005, a purchase she made on 9 November 2005 at shops near White Gloves and calls to her mobile telephone from Mr Thomas. Ms Taurima said in her evidence that she would not have sent these emails, made the purchase or received the calls to her mobile telephone if she had not been at work. Also in support of her claim Ms Taurima relies on a letter from Ms Johnston to Te Māngai Pāho dated 7 November 2005, which includes:

“...and our production manager is scheduling links for 23 and a shoot schedule for episode 24...”

[49] Ms Johnston says Ms Taurima was paid for all the work she performed for White Gloves and that she was always paid for all the work she performed.

[50] I am not satisfied that Ms Taurima worked over the period 14 November to 24 November 2005. There is no record of hours to support the claim or any detail of what work was performed. There is no evidence Ms Taurima claimed payment for the hours worked at the time. The 7 November 2005 letter to Te Māngai Pāho does not support Ms Taurima’s claim because the pay records show she was paid for that week. The personal email Ms Taurima

sent from work on 14 November 2005 concerns family matters which it is evident, from the email chain produced, she was arranging with the support of Mr Henderson and Ms Johnston. Given this it is credible that Ms Taurima would conduct personal business in the work place during a break in production.

[51] Ms Taurima's claim for two weeks pay between Series 1 & 2 and Series 3 is declined.

### **Rate of pay – \$1200 or \$1000 per week?**

[52] Ms Taurima also claims that she entitled to be paid at the rate of \$1200 for all production work performed. The basis for this claim is that \$1200 is the 'going rate' for such a position, she had been paid at that rate for some productions she had worked on during her employment with White Gloves and that her pay rate was never negotiated with her.

[53] Ms Johnston says Ms Taurima's pay rate was tied closely to the nature of the production and the work involved and that this was closely monitored by the funding body. Ms Johnston also said that Ms Taurima did not have to accept work with White Gloves if the pay rate was not acceptable to her and, in the manner of a contractor, she was free to take work wherever she wanted.

[54] I accept that the funding body has a high degree of control over funding allocation to a budget and that the producer has some scope for movement of those funds within a budget. This is supported by the following extract from the White Gloves Kiwi Maara 3 funding agreement with Te Māngai Pāho:

**"Use of Funding:** The Producer must only use the Te Māngai Pāho Funding for the purposes of meeting the Producer's expenses recorded in the approved budget. The Producer may alter the allocation of expenditure on the Programme between the different cost centres in the Approved Budget provided that any changes to the Producer's fees or Director's fees have the prior written approval of Te Māngai Pāho before any part of the Te Māngai Pāho Funding may be used to meet the cost of any increased Producer's fees or Director's fees."

[55] I do not accept that the rate of pay for a production manager is \$1200 per week. The pay records do not support this claim; during periods of employment Ms Taurima was variously paid between \$800 and \$1300 per week while performing the role of production manager. There is no evidence that Ms Taurima and Ms Johnston negotiated that Ms Taurima's pay rate for Kiwi Maara would be \$1200 per week; Ms Taurima's evidence of the back pay claim for Kiwi Maara Series 3 is based on the rate of pay being \$1000 per week. The claim for payment at the rate of \$1200 is dismissed.

### **Public holidays**

[56] Ms Taurima seeks payment for days in lieu to compensate her for public holidays that she says she worked during her employment with White Gloves. Ms Taurima seeks payment for the following public holidays in 2006; Waitangi Day, Good Friday and ANZAC day. She was unable to say how many hours she worked on these days or what work she performed on these days.

[57] Ms Taurima stated in her written evidence that she often worked public holidays and this was an ongoing source of tension with her family. Ms Taurima said she was unable to accurately claim for years prior to 2006. In support of her claim Ms Taurima has provided statements from Mr Thomas and Mr Thomas' mother Alex Thomas as to what they recall of work on public holidays.

[58] Ms Johnston denies that Ms Taurima was required to work on public holidays during the period of her claim. This evidence is supported by that of John McWilliam, who was contracted as an editor on Kiwi Maara Series 1 – 4. He said his position was office based like Ms Taurima, that he worked Monday to Friday, 40 hours per week and that he could not recall being required to work on a public holiday.

[59] I am not satisfied on the evidence received that Ms Taurima was required to work on public holidays. There is no record of hours worked on these public holidays or evidence that Ms Taurima was directed to work on those public holidays for which she seeks payment of days in lieu. The evidence was that White Gloves was not involved in productions which would have required work on particular public holidays eg, Waitangi or ANZAC Day productions. Weighing the evidence I am of the view that Ms Taurima was not required to work on the public holidays claimed. The claim for payment for days in lieu for public holidays worked is dismissed.

### **Penalty**

[60] I decline to award the penalty sought for failure to provide a written employment agreement. Though White Gloves was unable to provide an adequate explanation as to why no written employment agreement had been provided to Ms Taurima I accept that her employment status was anomalous to that of all others engaged at White Gloves who were contractors and that this failure must be viewed in that context.

### **Costs**

[61] Ms Taurima is entitled to reimbursement of the \$70 filing fee incurred in lodging this application. If there are any other issues as to costs memoranda should be filed within 28 days of the date of this determination.

Marija Urlich

Member, Employment Relations Authority