

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Simon Thompson (Applicant)
AND Gaze Commercial Ltd (Respondent)
REPRESENTATIVES Lawrence Ponniah, Counsel for Applicant
Richard Harrison, Counsel for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 23 March 2005
SUBMISSIONS RECEIVED 11 April 2005
17 May 2005
1 July 2005
DATE OF DETERMINATION 12 October 2005

DETERMINATION OF THE AUTHORITY

The Problem

[1] Mr Simon Thompson (“Mr Thompson”) claims that his dismissal for redundancy was unjustifiable. He further seeks a bonus entitlement, damages for breach of a share option arrangement, penalties against his former employer Gaze Commercial Limited (“Gaze”), costs and interest.

[2] The parties were unable to resolve their differences by the use of mediation.

The Issues

[3] A number of issues arise for determination:-

- (i) Was Mr Thompson unjustifiably dismissed?
- (ii) What monies are due to Mr Thompson under his employment agreement upon termination?
- (iii) What penalties is Mr Thompson entitled to?

These issues are dealt with in turn.

Unjustifiable dismissal

[4] Mr Thompson and Gaze signed an employment agreement which was operative from 14 January 2002 (“the Agreement”). Mr Thompson was employed as Chief Operating Officer. His role included responsibility for human resources, the information technology function, and general administration. Additionally, he was responsible for strategy to grow the business. Mr Thompson carried out his role in conjunction with the Chief Executive Officer Mr Jeff Cowan (“Mr Cowan”). Mr Thompson had specific responsibility for the retail and maintenance divisions while Mr Cowan was responsible for core business, marketing and sales.

[5] The managing director of Gaze, Mr David Gaze (“Mr Gaze”) became concerned with the financial position of the company in early 2004. The maintenance division was shut down in June 2004.

[6] Mr Thompson was sent a letter dated 15 July 2004 signed by Mr Gaze endorsed as from Mr Gaze’s London residence, which materially provided as follows:-

...
Accordingly as discussed yesterday I have determined that it was necessary to make the roles of joint managing directors redundant and to merge the responsibilities into a single position of managing director. In doing so I have considered the attributes of both Jeff and yourself against the ongoing requirements of the new position and after having given considerable thought to the matter I have made a decision to appoint Jeff to this position.

In reaching this decision I have taken into account the various changes impacting on the business which have necessitated the restructure. In doing so I have based my decision on my assessment of the respective skills and attributes of both Jeff and yourself and decided that on balance Jeff has the required skills necessary for the restructured role and is also best suited to provide the ongoing continuity necessary for the business. I have also recognised that the majority of the changes resulting from the restructure will impact your current role most significantly (e.g. the closure of the maintenance division) and that Jeff’s role has not been impacted on to the same degree.

I have reviewed the business to determine whether there were other opportunities available within the group which could be suitable for you to consider, however there are currently no such roles available or likely to become available in the near future.

Therefore as we discussed at our meeting yesterday the only option available in the circumstances was to declare your role redundant in accordance with the terms of your employment agreement. The terms of your employment agreement provide for you to receive three months notice or payment in lieu in the case of redundancy and redundancy compensation of two months basic salary and pro rata bonus. In addition to this you will obviously have leave entitlements which are due.

...

[7] Mr Gaze had first written to Mr Thompson about Gaze’s financial performance by a letter dated 28 June 2004 attached to an email of 29 June 2004. Mr Gaze considered Gaze was underperforming and its position at that time was no longer sustainable. Mr Gaze required Mr Thompson to develop a clear strategy for Gaze’s future direction by the end of that week.

[8] Mr Thompson duly provided a strategic plan and supplied the same to Mr Gaze by email of 2 July 2004.

[9] Mr Gaze responded by an email dated 7 July 2004. He detailed 17 concerns with Mr Thompson’s strategic plan and stated:-

Simon, as you can know (sic) doubt tell I am exceptionally concerned with the present stability of the company. A company that I have basically left you to strategically control, with Jeff primarily creating sales. We produce reports, we produce minutes but little is actioned because of these meetings & I list as per follows.

[10] Mr Gaze and Mr Thompson met in person in Auckland on Tuesday 13 July 2004. Mr Thompson provided Mr Gaze with a response to Mr Gaze's email of 7 July 2004, background information including WIP calculations and budget calculations.

[11] Mr Gaze stated that Gaze needed a strong strategic direction. Mr Gaze disagreed with funding other business opportunities such as importing furniture or expanding CAD services. He added that perhaps "strategy" was not the correct word whereupon Mr Thompson enquired as to what he actually meant and whether he had any particular agenda. Mr Gaze did not reply. The meeting then ended and Mr Thompson went on to a further meeting with clients.

[12] Later that evening Mr Gaze telephoned Mr Thompson and arranged a further meeting for a drink at the Metropolis Hotel. At that meeting, there was further discussion of the matters earlier discussed as well as discussion about zero based budgets.

[13] The following day on Wednesday 14 July 2004, Mr Thompson and Mr Gaze met again at Gaze's offices. Mr Gaze had before him business records and documents including performance review notes. There was an initial discussion about the accuracy of the company's reported losses. Eventually Mr Gaze raised the subject of strategy again. He enquired about further cash contributions from Mr Thompson and Mr Jeff Cowan. They then discussed Mr Thompson's bonus and whether it was legitimately deducted prior to Mr Gaze's salary. They proceeded to discuss various matters raised by Mr Thompson's strategy document and the payment of staff bonuses. Eventually Mr Thompson challenged Mr Gaze "*what is your agenda, just lay your cards on the table*". Mr Gaze did not comment.

[14] Mr Thompson stated that he believed Gaze was a good company and that the existing situation was a short-term cash flow issue. He said that joining Gaze was an investment and long-term lifestyle commitment intended to be part of the company's future. Mr Gaze then said that perhaps Mr Thompson could take the retail opportunity himself and make more money than at Gaze or, alternatively, he (Mr Gaze) could return to New Zealand to run the business which he was reluctant to do. Mr Thompson then enquired what Mr Gaze meant.

[15] Mr Gaze then said that he could input cash, close the retail division, ask staff to take pay cuts, remove bonuses and make Mr Thompson redundant. Mr Thompson said that it came as a surprise to him. He asked who would lead the business. Mr Gaze said Mr Cowan would. Mr Thompson asked if Mr Gaze had discussed the matter with Mr Cowan. Mr Gaze said he had not. Mr Gaze said that drastic steps were needed, that it was his money and that if he drew money from the company, it was his choice to do so and not Mr Thompson's. Mr Gaze said he could see no other option. Mr Thompson asked where to from there. Mr Gaze said he would get a letter to Mr Thompson that same day and asked for his home address. Mr Thompson asked if Mr Cowan was aware of the situation and Mr Gaze said he (Mr Cowan) was not. Mr Gaze suggested that Mr Thompson discuss the next step with Mr Cowan.

[16] Mr Thompson met with Mr Cowan the following day on 15 July 2004. Mr Cowan reassured Mr Thompson he had no knowledge of the situation. Mr Cowan asked Mr Thompson to go into the office and act normally as though nothing had happened. Mr Cowan was due to meet with Mr Gaze and the other directors. He asked what staff should be told. Mr Thompson said he would await formal notification from Mr Gaze. Mr Thompson returned to work and continued his duties.

[17] At 12.30 pm Mr Cowan arrived and told Mr Thompson that Mr Gaze had requested that Mr Thompson announce to staff that he (Mr Thompson) was leaving. At 3.00 pm the letter at paragraph 6 above was delivered by courier to Mr Thompson. At 4.00 pm Mr Thompson gathered staff together and informed them that he had been made redundant and that it had come as a surprise to him. Mr Thompson eventually gathered his belongings, said farewell and then left.

[18] I have concluded that Mr Thompson's dismissal for redundancy was unjustifiable.

[19] Mr Gaze says that Mr Thompson's role was redundant due to the closure of the maintenance and retail divisions which impacted mainly on Mr Thompson's position. The changes to Mr Cowan's role were insignificant. The essence of the advice of 15 July 2004 is that two "managing directors" was no longer sustainable. I am satisfied that decision was a genuine commercial decision aimed at reducing costs intended to ensure business was more profitable. Mr Gaze was entitled to make that decision as part of his management prerogative. It is not for the Authority to second guess what is properly the domain of the employer. Mr Thompson's counsel alleges that Gaze's real and actual concern was in relation to unsatisfactory performance. I am not persuaded that the evidence establishes that the decision was a sham or that it was a guise contrived to dismiss Mr Thompson for poor performance.

[20] However, the decision to terminate Mr Thompson's employment must be carried fairly and sensitively. That is because the *Employment Relations Act 2000* ("the Act") obliges the parties to act towards each other in good faith and additionally, the law implies in all contracts of employment a duty of fair and reasonable treatment. These are duties which both parties owe to each other.

[21] The parties are also obliged to deal with each other in good faith. Section 4 of the Act required Mr Gaze to provide to Mr Thompson access to information relevant to the continuation of his employment about the decision as well as an opportunity to comment on the information before the decision was made.

[22] I am satisfied that this was not the case and Mr Thompson was not provided with any real opportunity to comment prior to the decision being made. He was never invited to comment on whether his position was redundant or whether he ought to have remained employed as opposed to Mr Cowan.

[23] The two meetings which preceded the decision were not meetings at which information was provided to Mr Thompson for his comment. Quite the contrary, they were meetings in which he was to provide information and he did. Nor were the meetings about eliciting his comment. The two meetings were about Mr Thompson providing suggestions for strategy or improvement. They were not consultation meetings about Mr Thompson's potential individual redundancy. As such, their purpose was entirely different and they did not constitute consultation with Mr Thompson for present purposes.

[24] I accept Mr Thompson's evidence that his redundancy was simply declared to him at the conclusion of rather fluid discussions about various business strategies and as such the suggestion of redundancy came right out of left field for Mr Thompson. The first time there was any mention of redundancy was in the discussion of 14 July 2005. The suggestion was formalised one day later.

[25] I find that Mr Thompson had no input as to whether he or Mr Cowan's position was redundant. Neither was he provided any opportunity to have input as to redeployment within the company. He ought to have been involved in both of those matters but he was not.

[26] I agree that Mr Thompson was not given reasonable notice or any notice at all of the possibility of the loss of his employment. I agree that he was not involved in any selection process as between him and Mr Cowan.

[27] Gaze did not act towards Mr Thompson in good faith. I am satisfied that Mr Thompson's input was never sought in relation to the justification for his dismissal and therefore, he had no opportunity to provide feedback on the decision before it was taken. I am satisfied that it was practicable for there to have been consultation with him. It must follow then, that his dismissal for redundancy was unjustifiable because it was not effected in a fair and reasonable manner. Gaze did not treat Mr Thompson fairly and sensitively. **I find that Mr Thompson has a personal grievance. He is entitled to remedies in settlement of that personal grievance.**

[28] Having made that finding and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the Act to consider the extent to which Mr Thompson's actions contributed towards the situation that gave rise his personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[29] I find that Mr Thompson did not contribute to the situation that gave rise to the personal grievance and there was no blameworthy conduct on his part which could constitute contributory fault which led to that situation, nor which requires a reduction. There is therefore no basis for reducing the nature and extent of the remedies to be granted to Mr Thompson.

[30] Mr Thompson is entitled to be compensated for the unfairness in the process by which his position was deemed to be redundant.

[31] I accept that he has suffered humiliation, loss of dignity and injury to his feelings because of that unfairness. His dismissal was carried out in an abrupt fashion. He was required to leave within hours of receiving written notification. I accept he was humiliated by the swiftness of his required departure. He says it was difficult to explain such a rapid departure from a senior managerial position. His exit caused him and his family much stress and anxiety. Mr Thompson had to relocate overseas to Melbourne to find alternative employment.

[32] Although counsel's submissions do not repeat a claim for compensation as specified in the amended statement of problem, Mr Thompson is entitled to compensation which I award in the sum of \$12,500.00. **Gaze Commercial Limited is ordered to pay Simon Thompson the sum of \$12,500.00 as compensation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.**

[33] As I have determined that I am unable to find the redundancy was not genuine, there is no basis for an award of reimbursement. There will no orders in relation to this claim.

The bonus

[34] Mr Thompson claims he is entitled to be paid a bonus pursuant to clause 3(b) of his employment agreement. That clause is as follows:-

3. Remuneration

...

(b) The Employee will be entitled to a performance based incentive bonus ("Bonus"). The Bonus will be calculated upon completion of the Company's annual financial statements and will be confirmed on the following formula:

10% of EBIT up to \$500,000

15% of EBIT up to \$500,000

EBIT will, for the purposes of the Bonus be calculated with deduction only of the amount calculated pursuant to clause 6(h) below. For the purposes of clarity payments of dividends and loans are not deducted prior to calculation of EBIT for Bonus purposes. The first period will be to 31 March 2003 (to be adjusted pro-rata).

[35] Clause 6(h) is as follows:-

(h) The existing Shareholders will be entitled to an annual salary and benefits of \$200,000 plus GST, subject to annual reviews. However for the purposes of any calculation of Company profit ("EBIT"), only a fair value for effort amount will be deducted and not \$200,000 plus GST. The parties will first attempt to agree what is fair value between them, failing which the matter will be referred to a mutually agreeable Management Consultancy practice for arbitration.

[36] Mr Thompson was paid a bonus of \$45,000.00 for the financial year ended 31 March 2003. He was paid a bonus of \$36,000 in respect of the year to 31 March 2004 but the precise entitlement could not be ascertained due to his termination preceding the preparation of the final accounts.

[37] The parties cannot agree on how much Mr Thompson is entitled to in respect of the financial year ended 31 March 2004. I apply the contractual provision.

[38] The first question is to ascertain EBIT. I find that figure is \$817,072.00. That sum I accept from accountant Mr Gary Hitchcock's calculations. It is calculated from the reported operating loss of \$175,818, adding back and deducting interest paid and received and then adding back a subvention payment of \$1,012.231. The amortisation provision is not taken into account in this exercise.

[39] Deducted from EBIT is an amount for shareholders salary and benefits. Clause 6(h) says that such a sum shall **not** be \$200,000.00 plus GST, but rather a fair value as may be agreed between the parties, and failing agreement, by arbitration. Unfortunately, there has been neither agreement nor arbitration. They parties also failed at mediation to resolve the matter by agreement between them. Mr Thompson says \$50,000.00 is a fair value. Gaze by its counsel says the parties have accepted \$200,000.00 is that fair value.

[40] I reject the submission that I should find there was an agreement that the figure for fair value for effort was \$200,000.00. While there was an acknowledgement of Mr Gaze's entitlement to salary in principle, no detail of the quantum of that entitlement can be inferred. The clause itself expressly excludes that sum.

[41] Nor will I impose the figure for fair value on the parties. They have agreed a specific mechanism by which that value is to be ascertained. It is appropriate to give effect to the mechanism the parties agreed would operate but which neither of them invoked. I do so by an order for compliance of my own motion pursuant to section 137(2) of the Act 2000. **I order the parties to comply with clause 6(h) of the employment agreement, by referring the question of fair value for shareholders salary and benefits to a mutually agreeable Management Consultancy practice for arbitration. That order is to be complied with within 14 days of the date of this Determination.**

[42] I expect both parties to co-operate in good faith to agree on a satisfactory Management Consultancy.

[43] Once that order for compliance is met, I expect the parties to then be in a position to calculate

Mr Thompson's bonus on the basis of the EBIT figure I have found above. I also consider any interim payments made to him ought to be taken into account as well as well as any overpayment. If the parties cannot agree that bonus entitlement within 7 days of the arbitrator's determination of fair value, I will determine the matter for them on an application by either or both parties that I do so.

The share purchase scheme option

[44] Mr Thompson was entitled to exercise an option to purchase up to 20% of the shares in Gaze as specified by clause 4 of the Agreement:-

4. Share Purchase Scheme

(a) *During the term of this agreement until 31 March 2003 the existing shareholders of the Company ("Existing Shareholders") will regularly and openly review with the Employee the performance of the Company, and the Employee's performance in managing the business of the Company. The parties acknowledge that it is fundamental to any relationship that there be excellent co-operation, trust and goodwill between the Employee and the Existing Shareholders. If the performance of the Employee, based on KPI's to be agreed between both parties within the first month of employment and the performance of the Company, based on the profit and loss forecasts annexed to this agreement is in accordance with the expectations of the Existing Shareholders, then the Existing Shareholders (who also have signed this letter of agreement) will grant the Employee an option to purchase shares in the Company ("Option"). If the Option is granted, the Employee will be entitled to purchase shares in the Company on the following principal terms.*

(i) *Exercise Date: Subject to subclause (ix) below the Option can be exercised after 31 March 2003 ("Exercise Date").*

(ii) *Obligation: The Employee will be under no obligation to exercise the Option.*

(iii) *Shares: The Employee will be entitled to purchase not less than 10% and up to 20% of the shares in the Company ("Shares") being fully paid up shares.*

(iv) *Unconditional Agreement: An exercise of the Option will create an unconditional agreement to purchase and sell the Shares.*

(v) *Purchase Price: The purchase price of the Shares will be calculated as at the date upon which the Option is to be exercised and will be four times (4x) the average (for the years ending 31 March 2000, 2001, 2002) of the company's earnings before interest and tax ("EBIT") before deduction of payments to existing shareholders (but after deduction of a reasonable notional salary and benefits for the attendances of David Glaze), and dividing that by the number of fully paid shares on issue. The Company will be valued by Stockwells Chartered Accountancy firm during the month of December 2001, utilising the FY2000 and FY2001 audited accounts, and FY2002 estimated accounts, to produce and "Agreed Value" for the purposes of this Clause. Stockwells Valuation is to be reviewed by Ernst & Young, after which the parties will review both reports and finalise the Agreed Value between them.*

(vi) *Payment Terms: Not more than two thirds of the purchase price for the Shares may, at the option of the Employee, be funded by way of loan by the Company or the existing Shareholders to the Employee to be repaid over a five year term. Interest will be payable on the loan at the Company's bank loan rate as advised by the Company's bank from time to time. The Company (and the existing Shareholders) will be entitled to take and register a mortgage over the Shares. The principal and interest amount of the loan will be repaid by the Employee using Bonus payments otherwise payable to the Employee in accordance with clause 3(b) of this agreement. If dividend payments are made by the Company then in the first instance they will be applied first to interest payments and then to repaying principal. If necessary, the Employee will top up to 50% of the purchase price at the end of year three unless otherwise agreed.*

(vii) *Companies Act 1993: Any advance by the Company to the Employee of the purchase price for the Shares will be conditional on the Company complying with the financial assistance provisions of the Companies Act 1993.*

(viii) *Shareholders Agreement: The Employee parties shall enter into a shareholders agreement if requested by either party at the time of the exercise of the option the principal terms of which are set out in clause 6 of this agreement.*

(ix) *Expiry of Option: The Option will expire on the earlier of the termination of employment (for any reason), or twelve months after the Exercise Date.*

(x) *No Transfer: The Option cannot be transferred, sold, mortgaged or assigned except to interests controlled by and for the benefit of the Employee, and then only with the consent of the existing Shareholders - not to be unreasonably withheld.*

(xi) *Staff Bonus/Share Scheme: The existing Shareholders and the Employee agree that the Company will introduce a Company Bonus scheme (based on Company profitability) for valued employees; and may offer a small percentage of the shares in a Share Option Scheme to one or two selected very senior employees who are critical to the business of the Company.*

[45] By letter dated 19 June 2003, Mr Gaze wrote to Mr Thompson in these terms:-

Firstly, apologies for the delay with this letter. Also, may I sincerely thank you for your conscientious approach to the running of my personal company. After 20 odd years, this means heaps, thank you.

...

It is formally recognised that you wish to exercise your right to purchase 10% to 20% of Gaze Commercial Limited. This is a 12 month option. I am also aware that you would like to increase this percentage depending on my future direction.

[46] Mr Thompson took steps to exercise his option by email dated 15 March 2004. He said:-

Dave, for the sake of good order - do we need to agree to an extension on the expiry date for the share option. Our original contract has an expiry date of 31/3/04 - not sure if we will get an official shareholders agreement signed by then? A one month extension might be prudent. What do you think?

[47] Mr Gaze responded by email of 17 March 2004 and said:-

I believe we have the agreement, what we now need to do is dot the "i"s & I list the concerns as per follows

Bank exposure as I mentioned needs to alter now you guys appear to what to come on board. Under the present structure the bank will not release shareholding, so this now needs to change, naturally. You & Jeff need to agree on your PG's relating to overdraft exposure, i.e. \$200k or \$300k? Everybody needs to agree on existing liabilities e.g. leases. I have discussed with Jeff going onto a flat salary of \$150,000, with the take up naturally relating to dividends. This has not been discussed with you & I believe both packages need to be very similar. Dividend policy, 50% retained within company, 50% taken as dividend is suggested. Jeff & I discussed the retainer for myself dropping to \$150,000, from \$200k you at one stage wanted this deleted! Naturally I would like left as is! Needs a uniform agreement.

Even with the above, I believe the agreement can be based off 1st April 2004. What my big concern is to reduce my exposure with the bank, so as to allow the release of the shares.

In summary I believe we can move forward, but we must unravel some of the above & I have not been proactive on these due to your comments last December. It now appears we have moved forward & I must naturally action accordingly. Interested in your comments.

[48] Mr Thompson says that his dismissal resulted in denying him the right to exercise his share option or alternatively denied him the benefits that would have flowed from the purchase of the shareholding.

[49] Gaze says that the email correspondence of 15 & 17 March 2004 does not evidence an election to purchase shares within the terms of the Agreement and that the parties did not reach agreement on fundamental aspects such that there is no binding legal agreement.

[50] It is clear that Mr Thompson did give notice that he wished to exercise the share option before its expiry date of 31 March 2004. The parties do not dispute that. What was next to occur was the granting by the existing shareholders of that option to purchase. The shareholders were obliged to grant the option but the matter did not progress to that stage because of continuing correspondence between the parties.

[51] It is to be noted that the exercise of the option created an unconditional agreement to purchase and sell the shares (clause 4(a)(iv)).

[52] Notwithstanding that clause, Mr Thompson having given notice of his election, then sought to vary the terms of it. I accept that at a meeting prior to a board meeting on 21 March 2004, Mr Thompson stated that he wished to withdraw his proposal presented at Christmas and was prepared to accept an earlier signed agreement on the condition that Mr Cowan was also to become a shareholder. Mr Thompson sought to introduce a condition to the agreement for sale and purchase of shares. That was a departure from the express terms of the Agreement. It appears that Mr Thompson did not pursue that condition and advice confirming the same is not familiar to Mr Gaze.

[53] I find that the issue of the option became a concern for Mr Thompson because he felt that he would be financially significantly worse off than he would be if he remained a non-shareholding employee. That is a concern he expressed to Mr Colin Wise in a meeting held on 22 March 2004.

[54] Mr Thompson introduced a condition to his share option. He wanted remuneration parity with Mr Cowan. He and Mr Cowan submitted a proposal for remuneration parity in a memorandum dated 7 April 2004. I find that this proposal was submitted as a condition of the exercise of his option. The memorandum concluded:-

If you are able to sign off on these and we are able to exercise our options as you have outlined that then gives us all the focus and incentive to get on and make Gaze Commercial the bigger, brighter business that we are all after.

[55] I find that Mr Thompson sought to vary the terms of the Agreement relating to the share option by introducing conditions of the exercise. In doing so, he departed from the terms of the Agreement. There was no agreement ultimately concluded. The proposal attached to the memorandum of 7 April 2004 constituted a counter-offer which was never concluded. It was then incumbent upon Mr Thompson to re-invoke the provisions of clause 4 and exercise his option in those terms, but he did not do so. Nor had he reserved his position to revert to the same.

[56] I find that there was no agreement to extend the date by which the option could be exercised. Certainly the discussions which proceeded beyond the exercise date were not concerned with obtaining the grant of the option as specified, from the shareholders. They were discussions in which Mr Thompson proposed conditions of his purchase. The terms of the Agreement did not entitle him to seek conditions for his purchase of shares. In seeking to make his purchase of shares conditional, Mr Thompson rejected the terms of the option as specified in the Agreement. As such, he is not entitled to seek exercise the option set out in the Agreement.

Penalties

[57] I am not satisfied that there is a case for penalties against Gaze and I make no orders in relation to these claims.

Costs

[58] In the event that costs are sought, I invite the parties to reach an agreement between them, but failing such agreement, Mr Ponniah is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Harrison is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe.

Leon Robinson

Member of Employment Relations Authority