

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 656
3313400

BETWEEN AMANDA VAN ZYL
Applicant
AND ANGLO ENGINEERING
LIMITED
Respondent

Member of Authority: Peter Fuiava
Representatives: John Burley, counsel for the Applicant
Philip Townsend, advocate for the Respondent
Investigation Meeting: 10-11 June 2025 at Auckland and by audio-visual link
Submissions received: 3 July 2025 from the Applicant
17 July 2025 from the Respondent
Determination: 17 October 2025

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Amanda Van Zyl a former customer services co-ordinator for Anglo Engineering Limited (Anglo or the company) has approached the Authority to investigate a claim of unjustified dismissal. Anglo considers the grievance to be without merit and says that its decision to dismiss Ms van Zyl for serious misconduct was substantively and procedurally justified.

How did the Authority investigate?

[2] For the Authority's investigation, written witness statements were lodged from Ms van Zyl and her daughter, Alicia Marx, who attended the investigation meeting via audio-visual link from South Africa. There were no audio or visual issues of note with Ms Marx's connection to the investigation meeting. For Anglo, witness statements from its general manager, John Forrest, external employment advisor and representative, Philip Townsend, and design manager, Chris Stanton, were provided.

All witnesses answered questions under oath or affirmation from me and the parties' representatives who also filed closing written submissions that have been considered.

[3] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

What were the issues?

[4] The issues requiring investigation and determination were:

- (a) Was Ms van Zyl unjustifiably dismissed?
- (b) Was the disciplinary meeting conducted fairly and reasonably?
- (c) How much did Anglo know of Ms van Zyl's personal circumstances?
- (d) Should she be compensated for hurt and humiliation under s 123(1)(c)(i) of the Act?
- (e) If so, should the amount awarded be reduced (under s 124 of the Act) for blameworthy conduct by Ms van Zyl that contributed to her own grievance?
- (f) Should either party contribute to the costs of representation of the other?

What happened?

[5] Ms van Zyl and her husband, Andries, emigrated from South Africa and arrived in New Zealand as work visa holders in June 2022. Anglo's general manager, John Forrest, candidly stated at the investigation meeting that he and Andries were "drinking buddies" as well as "brothers" (in the colloquial sense) and that Andries had previously worked for his former boss. The friendship was such that Mr Forrest sponsored and paid for Ms Marx's visitor visa application in order to travel to New Zealand to visit her mother, Ms van Zyl.

[6] Ms van Zyl commenced employment at Anglo as a customer services coordinator on 15 March 2023. Her individual employment agreement (signed 15 March 2023) relevantly states:

Employee Conduct

...

Disciplinary Proceedings

The Employer shall act fairly, promptly, and consistently in all disciplinary action.

...

Suspension

Where alleged serious misconduct is involved, the Employer *may* suspend the Employee on pay, for a reasonable period, while it conducts an investigation into the matter (emphasis added) ...

...

APPENDIX C – HOUSE RULES

Serious misconduct

The following are *examples* of the types of behaviour, which shall result in summary dismissal. Incidents of a similar nature or severity may additionally be treated as an act of serious misconduct:

...

- b. Falsification or being party to falsification of any Employer, supplier or client documents or records (whether electronic or otherwise). This includes any records or documents belonging to the Employer, supplier, or customer. This includes wage, time, accident, leave, expenses, records, etc.

...

- l. Dishonesty, theft and fraud

...

Personal Standards & Conduct

Anglo expects its employees to:

...

Be completely honest and loyal to Anglo at all times.

...

Dismissal will occur where repeated efforts to correct unacceptable behaviour has failed, or in case of serious misconduct.

Serious Misconduct

The following actions amount to serious misconduct:

...

Falsification of medical records, time records, policies, character references, application forms, or any other document presented to or belonging to Anglo.

...

The above is not an exhaustive list of all acts that could constitute serious misconduct. It is an indication only and there may be other acts of misconduct that are so serious as to warrant instant dismissal.

[7] Ms van Zyl's position description required her to report to Anglo's design manager who was Mr Stanton. Her primary responsibilities included connecting with clients, answering inbound calls, processing customer orders and meeting and greeting clients.

[8] In February/March 2024, Ms van Zyl let Mr Stanton and Mr Forrest know that she was having marital problems with her husband Andries. On one occasion while in the tea room at approximately 10 or 11 am, she showed her direct report Mr Stanton a text message that Andries was leaving her. Because she was emotionally distraught and was crying, Mr Stanton advised her to go home which she did.

[9] At my investigation meeting, Mr Stanton stated that Ms van Zyl was not shy about coming forward with her marriage problems at home. There was another occasion where Ms van Zyl was upset at work that Mr Stanton considered it best that she work in the board meeting room and not in the shared office area with the other members of the team.

[10] The shared office area is monitored by CCTV.

[11] It was common ground that there had been no previous disciplinary concerns with Ms van Zyl's work until Friday 8 March 2024 when she submitted a forged COVID-19 test module to Mr Stanton. The incident was caught on CCTV and a copy of the recording was submitted to the Authority by Anglo as part of its defence.

[12] Anglo submits that Ms van Zyl manually drew a positive red line onto a negative COVID result stick using a pink felt tip pen. Although she denied having retrieved a COVID test kit carton from another room, as will be seen, CCTV footage show her to have obtained two COVID test cartons and placing one in a shelf and taking the other to her desk.

[13] Upon being given the first of two test modules, Mr Stanton commented that it looked strange and he advised Ms van Zyl to take another test which he observed her do. The second test returned a negative result and she was instructed to return to work.

[14] Sensing that something was not quite right about Ms van Zyl's first COVID test, Mr Stanton reviewed the CCTV footage later that same afternoon on Friday 8 March 2024. Troubled by what he saw, he telephoned Mr Forrest to advise him of his concerns. At that time, Mr Forrest happened to be with Andries and he subsequently excused himself as a result of Mr Stanton's phone call.

[15] At 4.30 pm that same evening, Mr Forrest telephoned an external employment advisor namely Mr Townsend who immediately advised him that he needed to step away from the process because of his close friendship with Ms van Zyl's husband.

[16] On Anglo's behalf, Mr Townsend drafted a letter of concern to Ms van Zyl which he forwarded to Mr Forrest on Sunday 10 March 2024 for him to review. Mr Forrest gave the letter to Ms van Zyl on her return to work the following Monday, 11 March 2024. The letter was signed by Mr Forrest because Mr Stanton was away from work that morning due to medical emergency involving a member of his immediate family.

[17] The abovementioned letter invited Ms van Zyl to a formal disciplinary meeting on Wednesday 13 March 2024 at 11 am with Mr Stanton and Mr Townsend, the company's external HR advisor. The purpose of the meeting was to discuss Anglo's concerns regarding a recent positive COVID test that Ms van Zyl had presented that was not in fact a true test result. The invitation letter further stated:

You must appreciate that these allegations are considered extremely serious by Anglo management and that, should the allegation be substantiated, or your reasons not be acceptable to the company you could face disciplinary action, up to and including a **Summary dismissal**.

You are entitled to have a support person or representative to support you who must not be an employee of Anglo. I strongly urge you to seek advice on this matter before the meeting and invite you to bring a representative or support person with you to the meeting.

[18] Ms van Zyl attended the meeting with her daughter Ms Marx as her support person and although her representative was unavailable, Ms van Zyl indicated to Mr Stanton and Mr Townsend that she was comfortable for the meeting to proceed.

[19] Mr Stanton took notes of the disciplinary meeting the accuracy of which was accepted and not challenged at the investigation meeting. It records that Mr Stanton

had asked Ms van Zyl to confirm that she forged or doctored the first COVID test module which she admitted that she had. Ms van Zyl handed Mr Stanton a letter of apology and a note from her doctor (13 March 2024) that stated she was being provided with wellbeing support by her GP. The letter of apology confirmed that Ms van Zyl had falsified the COVID test and further stated:

Dear John [Forrest] & Chris [Stanton]

I am writing this letter to express my sincerest apologies for my recent actions that have compromised the trust and integrity of our workplace. I take full responsibility for my behaviour, and I deeply regret the impact it has had.

I did not know at that time what I was doing.

... I want to assure you that this lapse in judgment was an isolated incident and does not reflect my true character or commitment to our company's success.

As you are aware, I have been under a tremendous amount of stress recently, which has clouded my judgment.

To that end, I am taking the following steps to address the issue:

1. **Acknowledgement of wrongdoing:** ...
2. **Apology:** I sincerely apologise to everyone affected by my actions ...
3. **Accountability:** ... I am also actively seeking support from a **Health Improvement Practitioner, and my GP is aware of my circumstances. I have a weekly appointment for both marriage and personal counselling.**
4. **Rectification:** ...
5. **Learning and growth:** ...

I understand that rebuilding trust takes time and effort, and I am willing to do whatever it takes to regain the confidence of my managers. ... I did not do any harm to anyone I just needed some time off and did not know how to address it in that moment. It was a moment of weakness, my judgment is not clear (sic).

...

[20] Based on Ms van Zyl's admission, it was agreed at the disciplinary meeting that the CCTV footage did not need to be reviewed. Mr Stanton's meeting notes record that he asked Ms van Zyl why she had tried to get time off by falsifying the test. Her response was that there had been stress in the home with her husband and that five days off from work would "get her head straight and be what she needed".

[21] The meeting notes further record that Mr Stanton had asked Ms van Zyl why she simply did not ask him for some time off as she had done in the past. However, he did not get from her what he considered was a straight answer and felt that she was not

being honest with him. It was proposed that they break for a period of time while Mr Stanton considered what had been said in explanation of her actions.

[22] During the break and having regard to what had been said in reply to his questions, Mr Stanton formed the view that Ms van Zyl's actions amounted to serious misconduct. While he considered her admission to be a good step, it was Mr Stanton's view that Ms van Zyl was only sorry because she had been caught as following the re-test, she made no attempt to see him and request some time off from work. Mr Stanton was not satisfied with the answers Ms van Zyl had provided and sought to get a satisfactory answer from her after the disciplinary meeting resumed.

[23] When asked once more why she had lied/falsified the test instead of asking for stress leave, Ms van Zyl stated that she did not know why she did not ask and claimed that it was a momentary lapse on her part. It was proposed that the parties break off for a second time for Mr Stanton to consider what action to take. When the meeting restarted, he outlined to Ms van Zyl what his thoughts were which was that he believed her actions were calculated, deliberate and that she intended to deceive him and the company.

[24] Mr Stanton advised that trust and confidence had been completely lost and that Ms van Zyl was only sorry because she had been caught out. He further advised that serious misconduct had been established and because the level of misconduct was significant, he was considering summary dismissal. Mr Stanton asked Ms van Zyl or her support person Ms Marx if they had anything further they wished to say or add. Ms Marx stated that the outcome seemed harsh and asked if there could not be a way to earn back trust, for example, additional probation or a final warning.

[25] The parties took a third and final break for Mr Stanton to consider Ms van Zyl and Ms Marx's final comments. When the meeting resumed, Mr Stanton advised that unfortunately trust and confidence was gone, that the misconduct was sufficiently serious to warrant dismissal on notice for two weeks, and that Ms van Zyl would not be required to work out her notice period. The meeting ended and Ms van Zyl's final pay was processed shortly thereafter.

[26] Mr Townsend drafted Anglo's termination letter (14 March 2024) to Ms van Zyl which Mr Stanton signed. The letter relevantly stated:

The company confirms that during the Disciplinary Meeting we listened to your explanations and discussed the events and your reasoning for them your explanations were given due consideration, however, the company is of the opinion that they did not constitute a 'reasonable excuse' and that this behaviour is a breach of company Policy, Procedures, Code of Conduct and the terms and conditions of your Individual Employment Agreement for Serious Misconduct.

As a result of your actions, the confidence and trust placed in you by the Company has been lost. This document therefore serves to advise you in writing that your employment with Anglo Engineering Limited has been terminated on notice with immediate effect for Serious Misconduct, you were advised that the company has elected to not require you to work your notice period, and to pay you in lieu of your notice period.

The company is disappointed that it has had to make this decision, however, your behaviour in this instance has left us with no other choice.

[27] According to those who were present at the disciplinary meeting, the meeting lasted approximately 90 to 105 minutes which included the three breaks that were taken.

[28] On 16 April 2024, Ms van Zyl's lawyer, Mr Burley, wrote to Anglo and raised a personal grievance for unjustified dismissal. Proceedings commenced in the Authority by way of a statement of problem lodged on 29 July 2024. The company's statement in reply was lodged on 9 August 2024. The parties have been to mediation but matters did not resolve there.

What is serious misconduct?

[29] Generally serious misconduct is behaviour by an employee that fundamentally breaches the trust and confidence essential to the employment relationship rendering its continuation untenable. It is more than mere inadvertence, oversight or negligence and the Court of Appeal has said that summary dismissal usually involves conduct "that deeply impairs or is destructive of that basic trust that is an essential of the employment relationship."¹

[30] What serious misconduct may look like from one case to the next will inevitably vary because the conduct or breach in question and its circumstances, the particular contractual obligations on the employee arising from the employment relationship, the

¹ *BP Oil New Zealand Ltd v Northern Distribution Union* [1992] 3 CRNZ 483.

nature of the work place or industry, and aspects of the case that may engage the public interest, are not always the same and it is these subtle distinctions that make the difference between a breach that amounts to serious misconduct or something more benign.

[31] The relevant case law states that the assessment of serious misconduct involves a two-step approach which involves as a first step, considering whether the conduct in question is capable of amounting to serious misconduct; if it is, then the second step is to consider whether dismissal is warranted in all the circumstances.²

The first step: Did Ms van Zyl’s actions give rise to serious misconduct?

[32] Ms van Zyl was employed as a customer services coordinator for Anglo. Her position description in her individual employment agreement sets out her major responsibilities including client support, monitoring the sales inbox, taking all inbound customer inquiries and referring these to the required departments, entering jobs into the system, monitoring the company website and social media inquiries and updating social media content, and working with and assisting communication between all departments.

[33] Ms van Zyl’s position had not previously existed in Anglo and while it may have been created for her, she was very much an administrative customer support person who reported to Mr Stanton. Although it was alleged by Mr Forrest in his written witness statement to the Authority that the company no longer had trust in Ms van Zyl “going forward” particularly as she was in a position of controlling millions of dollars’ worth of orders, the evidence did not establish that Ms van Zyl was responsible for orders of such amounts.

[34] While it was not established that Ms van Zyl’s position required her to be responsible for placing orders of such magnitude, the CCTV footage showed that she worked in an open plan office where she sat at her own desk while the other Anglo employees, including Mr Stanton, sat at two composite tables where desks had been joined together. Presumably this was for ease of communication and collaboration

² *Auckland Provincial District Local Authorities Officers IUOW v Northland Area Health Board* [1991] 2 ERNZ 215 (LC) at 222; *Emmanuel v Waikato District Health Board* [2019] NZEmpC 81 at [59]; *Morris v Fire and Emergency New Zealand* [2025] NZERA 612 at [103].

between the design engineers. As Ms van Zyl was not a design engineer herself, but was responsible primarily for connecting and taking care of clients, this may explain why she sat away from the team to minimise disturbance from fielding calls and where she could go about her day-to-day work largely on her own.

[35] The work space was of a moderate size. I counted 11 chairs in the room of which six to eight were occupied at various times during the CCTV footage provided to the Authority. While individuals worked in close proximity with each other, they also worked independently and without supervision.

[36] Ms van Zyl's individual employment agreement does not define what is meant by serious misconduct but it nevertheless sets out examples which include falsifying medical records or any other "document". A COVID-19 test module would qualify as a document which has a broad meaning under s 217 of the Crimes Act 1961 and includes any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information.³

[37] Ms van Zyl has never denied that she forged the COVID test module. The admission is well made given that the CCTV footage relevantly records the following:

- (a) The footage begins at 10.20 am. Ms van Zyl is at her desk looking at her computer screens. There are four other staff members in the room who are working at their respective computer workstations on two separate composite tables.
- (b) At 10.31.37, Mr Stanton is observed walking into the office. He sits at the end of one of the grouped tables with a direct line of sight of Ms van Zyl.
- (c) At 10.36 am, one of Mr Stanton's staff (not Ms van Zyl) has a conversation with him and Mr Stanton moves his chair to the staff member's work station.
- (d) At 10.37.27 – Ms van Zyl gets up from her desk and leaves the office. She re-enters the room at 10.39.30 with two COVID test cartons in her left hand. She places one in what appears to be a shelf at the other end of the composite tables immediately opposite Mr Stanton's work station and takes the other carton to her desk.

³ Crimes Act 1961, s 217(d).

- (e) At 10.44.30 – While seated at her desk, Ms van Zyl opens one of the COVID test modules and takes the test shortly thereafter. Mr Stanton appears preoccupied talking with the abovementioned staff member. He returns to his own workstation at 10.48 am.
- (f) At 10.49.30 Mr Stanton walks over to Ms van Zyl's work station where she shows him the first COVID test. Ms van Zyl's throws it in her rubbish bin and Mr Stanton's head can be seen looking down into the bin. At 10.49.43, Mr Forrest enters the office and sits at a standalone mobile work station at the other end of the room opposite Mr Stanton but close to Ms van Zyl's desk.
- (g) At 10.50, Mr Stanton reaches into Ms van Zyl's rubbish bin to retrieve the COVID test which he examines. He then returns it to the bin and sanitises his hands.
- (h) At 10.52, Ms van Zyl undertakes a second COVID test which returns a negative result. Mr Stanton remains standing close to Ms van Zyl's desk while that test is undertaken.

[38] It was submitted that if Ms van Zyl's actions resulted in such an irreparable loss of trust for Anglo, it was counterintuitive that it would allow her to continue working from Friday 8 March 2024 and up to the disciplinary meeting held the following Wednesday, 13 March 2024. However, according to Ms van Zyl's individual employment agreement, suspension was not automatic and Anglo retained a discretion whether to suspend or not while it investigated an employee's actions further.

[39] In addition, Mr Stanton was not able to review the CCTV footage until after work that Friday which prompted him to telephone Mr Forrest later that evening. Anglo's letter inviting Ms van Zyl to its disciplinary was given to her by Mr Forrest the following Monday, 11 March, which was two days before the disciplinary meeting on Wednesday 13 March 2024. As there was close proximity between the receipt of the invitation letter by Ms van Zyl and her disciplinary meeting two days later, Anglo's decision not to suspend was an action that was fair and reasonably open to it at the time. It may have considered suspension differently had the disciplinary meeting been further adjourned but this was not the case.

[40] Mr Burley's submission may have had more force if following the dismissal decision, Anglo required Ms van Zyl to work out her notice period. However, that was also not the case as the notice period was paid in lieu by the company.

[41] If Mr Stanton had not detected the forged COVID test, the likely result would have been Ms van Zyl needing to be away from work for five days being the recommended period for self-isolation. If she did not feel better after that initial period, she may have been advised to continuing isolating at home until she felt better. The concern for Anglo has little to do with paying Ms van Zyl sick leave for which she was not entitled but her deceit which has resulted in a basic loss in trust and confidence in her as an employee.

Conclusion on serious misconduct

[42] Although Ms van Zyl was not in a high-trust position of taking customer orders valued in the millions of dollars, she was a member of a modest sized office that was close quartered and where there was an expectation of honesty and loyalty to Anglo. Given the nature of the work environment and Ms van Zyl's employment agreement as noted above, her actions in forging a document namely a COVID test module, qualifies as serious misconduct.

The second step: Was dismissal warranted in all the circumstances?

[43] The statutory test of s 103A of the Act is well understood and employment institutions cannot substitute their own view for that of an employer. Put differently, I am required to assess Anglo's actions on an objective basis and so long as what the company did (and how it did it) falls within the range of outcomes of what a fair and reasonable employer could have done in all the circumstances, the outcome will be justified.⁴

[44] Ms van Zyl's counsel Mr Burley stated in his written closing submissions to the Authority that I made an oral indication of preliminary findings at the conclusion of the second day of the investigation meeting. Counsel is mistaken, no preliminary indication was made other than that it appeared that Ms van Zyl had an arguable case of unjustified dismissal. This was due to Mr Stanton and Mr Forrest's knowledge of her personal circumstances around the breakdown of her marriage and the fact that she had not been subject to a disciplinary matter with her employer before.

⁴ Paraphrasing s 103A of the Act.

[45] Effectively Mr Burley submits that Anglo's decision to dismiss Ms van Zyl was disproportionate especially when she admitted to her "offending". It was further submitted that it was obvious that she was in a compromised mental and emotional state at the time which Anglo was well aware of but chose to ignore what were clear "red flags".

[46] This overstates matters. While Ms van Zyl admitted that she had forged the COVID test, the admission came the following Monday and after she had received Anglo's invitation letter to the disciplinary meeting and not the previous Friday after she been instructed by Mr Stanton to undertake a second COVID test. Further, while Mr Forrest had been a close friend to Ms van Zyl's husband and had sponsored Ms Marx's visitor visa application, he was not the decision maker.

[47] As noted already, Mr Stanton gave Ms van Zyl permission to leave work early sometime in February/March 2024 when she showed him a text that her husband had left her. She was visibly upset at that time. On another occasion when Ms van Zyl was upset, he let her work outside the main office area in what is understood to have been the boardroom or meeting room. While Mr Stanton had some understanding of Ms van Zyl's marriage problems, they did not socialise together outside work and he did not know her husband Andries personally. The support that Mr Stanton offered Ms van Zyl was no different to what he would provide to any staff member who might be in need of assistance. However, this did not make Mr Stanton a close friend or confidante to Ms van Zyl whom he had a superficial understanding only of her personal life.

[48] While Mr Stanton had some knowledge of what was going on with Ms van Zyl, the CCTV footage does not show her to be emotionally compromised or vulnerable. Nor does it show her to be overtly tired, stressed, overwhelmed or feeling under pressure as she has claimed during my investigation. Her recorded demeanour is one of normality with nothing out of the ordinary to alert Mr Stanton or Mr Forrest of something wrong with her. To the contrary, there are instances in the CCTV recording where she is seen to be joking and in good spirits with other staff.

[49] If it was merely a question of needing some time off from work, Ms van Zyl could have simply requested this from either Mr Stanton or Mr Forrest as she had done in the past with Anglo and was given permission to return home.

[50] Ms Marx suggested to Mr Stanton that a probationary period or a final warning as an alternative to dismissal. However, a probationary period or requiring Ms van Zyl to observe a good behaviour bond does not sit well with a disciplinary process particularly as she had already been subject to a 90-day trial period at the commencement of her employment. Placing her on subsequent probation period may not have been appropriate in all the circumstances.

[51] The test in this case is whether Anglo's actions were what a fair and reasonable employer could have done in the circumstances.⁵ In applying this test, I do not stand in the shoes of the employer but must instead stand back and consider the company's factual findings and evaluate whether a fair and reasonable employer could characterise what happened as conduct that deeply impaired or destroyed the basic confidence or trust essential to the employment relationship.

[52] I have found Ms van Zyl's forging of the COVID test module to amount to serious misconduct. This was not a 'brain explosion' as she stated at the investigation meeting but a deliberate act on her part to leave the office area and retrieve two boxed test kits knowing what she was about to do. The CCTV footage dispels any notion of her being emotionally distraught, wearied or overwhelmed.

[53] In terms of procedural fairness, it was correct for Mr Forrest to step away from the investigation due to his close friendship at the time with Ms van Zyl's husband. Apart from signing the invitation letter to the disciplinary meeting, he was not involved with the disciplinary process which had Mr Stanton as the decision maker.

[54] The disciplinary meeting was conducted fairly for Ms van Zyl who was offered the opportunity to bring a legal representative but elected to proceed with the support of her daughter Ms Marx only. The meeting was extensive lasting some 90 minutes and involved three breaks so that Mr Forrest could take into account the comments he received from both Ms van Zyl and her support person.

⁵ The Act, s 103A(2).

[55] Although another employer may have decided differently and may have given Ms van Zyl a second chance, I accept that Mr Stanton never received from her an adequate explanation as to why she did not simply ask him for time off from work given that she had done so before and leave provided. In the absence of an adequate explanation, Mr Stanton could not have had the necessary trust and confidence in Ms van Zyl as an employee going forward.

Conclusion on dismissal being warranted

[56] Standing back and looking at matters objectively through the test of justification, both the decision to dismiss Ms van Zyl, and the requirements of procedural fairness set by s 103A(3) of the Act were met by Anglo. The personal grievance application is unsuccessful and is declined.

What about costs?

[57] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[58] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Anglo may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum, Ms van Zyl will have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[59] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁶

Peter Fuiava
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.