

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 425/10
5302215

BETWEEN SARAH ANNE WATSON
Applicant

AND COUNTIES MANUKAU
DISTRICT HEALTH BOARD
Respondent

Member of Authority: R A Monaghan

Representatives: C Garvey, counsel for applicant
A Russell, counsel for respondent

Investigation Meeting: 13 August 2010

Determination: 29 September 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Sarah Watson says she has personal grievances in that her former employer, Counties Manukau District Health Board (the DHB) first suspended then dismissed her unjustifiably. She seeks reinstatement and has also sought an order for interim reinstatement. She has filed an undertaking as to damages.

[2] The DHB says Ms Watson's personal grievances were not raised during the 90 day period specified in s 114(1) of the Employment Relations Act 2000, and it does not consent to their late raising.

[3] Ms Watson says the grievances were raised in time. In the event the Authority finds otherwise an application is made under s 114(3) of the Act for leave to raise the grievances out of time, on the ground that exceptional circumstances occasioned the delay and it is just that leave be granted. The particular circumstance relied on concerns an error by counsel, being a circumstance specified in s 115(b) of the Act.

[4] By arrangement between the parties and the Authority this determination addresses both the raising of the grievances under s 114 and s 115, and the application for an order for interim reinstatement.

Background

[5] At the relevant time Ms Watson was a senior registered nurse. The DHB employed her at Middlemore Hospital as a nurse in its in-patient mental health unit for elderly patients. The unit is referred to as Ward 22.

[6] On 18 and 19 July 2009 Ms Watson was rostered for duty as shift co-ordinator, together with a nursing colleague and two psychiatric assistants. One of the psychiatric assistants complained to Jane Earl, the clinical nurse director, about the conduct of Ms Watson and her nursing colleague in that:

- (a) on 18 July, while body washing a patient in her bed, the two nurses were verbally abusive and disrespectful to the patient; and
- (b) on 19 July, while washing the same patient in the shower, the nurse was twisting the patient's fingers causing her to cry in pain, then afterwards Ms Watson kicked the patient's wheelchair and was abusive to the patient.

[7] The matter was referred to the service manager, Philippa Matthews. Ms Matthews held a preliminary meeting on 3 August to advise Ms Watson of the complaints, of the view that the associated allegations were serious, and that an investigation would be initiated under the DHB's disciplinary policy. Ms Matthews said she also gave Ms Watson a copy of the written complaints.

[8] According to the DHB's Discipline and Dismissal Policy, suspension was available while an allegation of a serious nature in relation to that employee was being investigated, or while a decision was being made following a formal investigation meeting. The policy set out the steps to be applied by the relevant manager when suspending an employee. Thus Ms Watson was further advised that her suspension

on full pay was being considered, and that her response to that matter would be sought the following day. This information was confirmed in a letter of the same date.

[9] Ms Watson responded in a letter also dated 3 August. She denied the allegations. She said further that the patient disliked being bathed or showered and had a history of displaying aggressive and resistant behaviour while being bathed. During the incident of 18 July the patient was biting, kicking and screaming and had to be held down.

[10] By letter dated 4 August Ms Matthews advised that, although the allegations were denied, they were very serious and a thorough investigation was necessary. Ms Watson was therefore suspended on full pay while the investigation was undertaken.

[11] Because of Ms Matthews' absence on annual leave the investigation was delegated to Leonie Picard, who was the service manager for another service. Separate investigations were conducted into allegations against Ms Watson and the other nurse respectively. Ms Picard delegated to another person the task of conducting the necessary questioning. Both of the nurses and both of the psychiatric assistants gave statements to the investigating officer, and a statement was also obtained from a third psychiatric assistant.

[12] Copies of the statements relevant to the allegations against Ms Watson were provided to her, and a meeting was convened on 9 September. Ms Watson presented a written submission again denying the allegations, and also presented character references. There was an adjournment while these matters were considered. Ms Watson said she was then advised that a preliminary decision to dismiss had been made. Ms Picard said she advised Ms Watson of her preliminary view that, in effect and with one exception, the actions complained of had occurred. These actions constituted a serious breach of the DHB's Code of Conduct and Discipline and Dismissal Policy. They were such a breach of the duty of care and of trust and confidence that the termination of employment should be appropriate.

[13] Submissions on Ms Picard's preliminary view were sought before a final decision was made. Meanwhile Ms Picard decided to speak to the psychiatric assistants herself. Ms Watson's then-representative was notified of that decision by

email message dated 21 September, and was advised that the relevant record would be provided.

[14] Ms Garvey replied by email message dated 23 September, advising that she had received instructions. By separate letter to Ms Picard dated 21 September (but received later) Ms Garvey raised a number of matters and sought a range of information, to which Ms Picard responded in a letter dated 30 September. Ms Garvey replied to Ms Picard in a letter dated 5 October. To the extent that they bear on whether a grievance was raised, I return to parts of those letters later in this determination.

[15] A further meeting was convened on 27 October. There was a detailed discussion of the contents of the various statements, with Ms Watson maintaining her denials and repeating her explanation of the extent of the patient's resistance to being bathed. After an adjournment Ms Picard said she believed there had been misconduct, explained why, and said the termination of Ms Watson's employment was an option open to her. She invited submissions on penalty.

[16] By letter dated 3 November 2009 Ms Picard gave a detailed response to matters arising out of the various accounts of the 18 and 19 July incidents, recording her findings about what had happened and her reasons for making those findings. The letter went on to say that Ms Watson's actions, as Ms Picard found them to be, amounted to serious misconduct. The letter recorded further that, at the meeting on 27 October, Ms Picard had advised that dismissal was an option being considered by the DHB. It referred to the invitation to make submissions on the disciplinary consequences that should follow, and re-stated that invitation.

[17] Ms Garvey replied by letter dated 4 November expressing the view that the decision had already been made, although Ms Watson was prepared to 'discuss penalties short of dismissal which the DHB was actually willing to contemplate.' Otherwise the letter said it was not for Ms Garvey to suggest alternative punitive measures.

[18] After a further exchange of correspondence, by letter dated 12 November Ms Garvey made detailed submissions about why Ms Watson should not be dismissed.

She reiterated a matter she had raised during the 27 October meeting, namely the possibility of counselling or a performance improvement session for Ms Watson. She also emphasised Ms Watson's favourable employment history and the contribution she had made. Some of this correspondence will also be referred to again in addressing whether a grievance was raised.

[19] A meeting to discuss whether dismissal should be imposed went ahead on 13 November. Following an adjournment, Ms Picard announced her conclusion that dismissal was the appropriate penalty.

[20] By letter dated 16 November 2009 Ms Picard confirmed in writing the conclusion that the alleged behaviour had occurred, and amounted to a serious failure to meet the standards required of a nurse. The relationship of trust and confidence was broken and Ms Watson's employment was terminated. Ms Watson would be paid 4 weeks' salary in lieu of notice.

[21] The separate investigation into the conduct of the other nurse led to a conclusion that although it amounted to misconduct the nurse's conduct on 18 July was less culpable than that of Ms Watson, while the allegation about the finger-twisting incident on 19 July was not substantiated to Ms Picard's satisfaction. The nurse was not dismissed.

Whether grievance based on unjustified suspension was raised within 90 days

[22] The relevant passage in Ms Garvey's letter dated 21 September 2009 read:

I have reviewed the letter by Pip Matthews to Ms Watson dated 3 August in which she indicates that she is considering suspension, and provides until 2 pm the following day to respond. This did not constitute a reasonable opportunity to comment on such a serious matter.

Suspension is inherently disadvantageous to any employee and Ms Watson is no exception. Please explain the basis on which it is considered the suspension was lawful and justified. My review of Ms Watson's collective employment agreement indicates that there is no contractual right to suspend.

[23] Ms Picard's reply of 30 September 2009 was:

Your letter also requests that I provide evidence that Ms Watson's suspension was lawful. I refer you to the CMDHB Discipline and Dismissal Policy (pages 11 – 12).... The allegations under investigation described events relating to alleged harm to a very vulnerable patient and as such it is the DHB's clear view that Ms Watson's suspension was both lawful and justified in the circumstances. It was also Ms Matthews view that suspension was necessary for a fair and impartial investigation to be carried out and directly impinged on Ms Watson's ability to carry out her duties given that it related to allegations of serious misconduct and patient safety.

[24] Ms Garvey's further reply dated 5 October 2009 said in respect of the suspension:

I remain of the view that Ms Watson's suspension ... [is] unjustified.

[25] According to the meeting notes from the meeting of 27 October Ms Garvey repeated that the suspension was unlawful and expanded on why.

[26] I could have found there was enough in all of these circumstances to amount to the raising of a grievance were it not for the sentence in parentheses in this passage in the further letter from Ms Garvey dated 4 November:

.... if that action is taken, a personal grievance will inevitably follow. (In saying that I do not discount the possibility of a grievance arising out of other matters including Sarah's suspension).

[27] The sentence indicates a grievance has not yet been raised in respect of the suspension. In referring to the possibility of a grievance arising it does not contain the element of a wish to embark on a process of resolution associated with the raising of a grievance there and then, only to a possibility that the suspension will be raised as a grievance in the future. This leaves the employer with nothing to address until the possibility of a grievance arising has been acted upon.¹

[28] For reasons I address in more detail in the next section of this determination, I find that a statement amounting to a notification of the possibility of the raising of a grievance is not sufficient to raise a grievance itself. Since I find the 4 November letter amounted to no more than advice of the possibility that a grievance in respect of the suspension would be raised in the future, I find also that the circumstances did not amount to the raising of the grievance at that time.

¹ I refer to tests of the kind discussed in *Winstone Wallboards Limited v Samate* [1993] 1 ERNZ 503 and *Goodall v Marigny (NZ) Limited* [2000] ERNZ 60

[29] If the raising of a grievance with the employer was being approached as if it were the same as the lodging in the Authority of a statement of problem alleging a personal grievance, such an approach is not consistent with the scheme under the Employment Relations Act. The Act is intended to assist the parties to an employment relationship to raise and discuss the problem directly between themselves², and to give special attention to facilitating the raising of grievances with employers³. Nor is it consistent with the object of the Act in recognising that employment relationships are more likely to be successful if problems are resolved promptly by the parties themselves⁴ and what is currently a less clearly-stated expectation that informal dispute resolution processes, including mediation, be invoked before recourse to the Authority.⁵ The applicable collective employment agreement was not produced, but it would be unusual if an approach of this kind was not reflected in it.

[30] Section 114 of the Act has been applied with reference to the raising of the matter directly with the employer, not with reference to the lodging of a matter in the Authority. The associated tests address the extent to which the grievance has been made clear to the employer, and in particular whether the grievance has been put to the employer in a way that allows the employer to address it. The provision is not aimed at the initiation of a legal proceeding, but rather at the initiation of discussions between the parties.

[31] There have been occasions where an employer is unaware that a grievance is being raised until it is served with a statement of problem. Treating the lodging of a statement of problem in the Authority as synonymous with the raising of a grievance with the employer is not an approach to be commended in terms of the scheme just summarised, although provided the grievance is adequately identified and the employer receives the statement of problem within the required 90-day period the grievance could proceed.⁶

² S 101 (ab)

³ S 101 (b)

⁴ S 143(b)

⁵ S 3 (a)(v) and (vi)

⁶ See for example *Morgan v Quality Environmental Consulting Ltd* 25 November 2008, R Arthur, AA404/08

[32] In turn, and in what appeared to be an approach of the above kind, Ms Garvey said in a memorandum in support of the raising of Ms Watson's grievances in time that, at the end of the 13 November meeting, she advised the DHB proceedings would be taken to challenge the respondent's actions in relation to the dismissal 'and in the context of the earlier concerns.' This advice was also relied on in support of the raising of both grievances.

[33] I discuss in the next section of this determination the effect of the statement in the context of whether a grievance was raised in respect of the dismissal. For present purposes I find the statement too vague to cure the uncertainty in respect of any grievance in respect of the suspension. The grievance was not raised in time.

Whether grievance based on unjustified dismissal was raised within 90 days

[34] Ms Garvey's letter dated 21 September opened by saying:

.... I understand that at present you have reached a 'preliminary' decision to dismiss Ms Watson and are awaiting submissions from her addressing that decision.

Ms Watson does intend to make submissions on that decision, and does not accept that dismissal is reasonable or justified.

[35] The letter went on to request the production of relevant information, queried aspects of the procedure the DHB had followed as well as the DHB's reasons for preferring other accounts over Ms Watson's, and said the production of this information would be necessary before submissions could be made.

[36] Those requests were also responded to in detail in the letter dated 30 September. In turn Ms Garvey's reply of 5 October advised that Ms Garvey remained of the view that the preliminary decision to dismiss was unjustified.

[37] I refer also to the letter of 4 November. The part-sentence set out at [26] of this determination read in full as follows:

I reiterate that we consider termination is not a legitimate option and, if that action is taken, a personal grievance will inevitably follow.

[38] All of this correspondence occurred before the dismissal. Mr Russell cited in submissions the decision of the Employment Court in *Creedy v Commissioner of Police*⁷, where Chief Judge Colgan said:

[28] The raising of a personal grievance is something that the statute contemplates is undertaken after the grievance comes into existence.

...

[30] Further, given that the scheme of the legislation is to allow an employer to remedy the grievance as soon as possible after being notified of it, it would be nonsense to give notification of an event that might or might not occur. I find against the plaintiff on this argument."

[39] That approach is determinative of whether the correspondence raised a personal grievance of Ms Watson's on the ground of unjustified dismissal. It did not do so because the dismissal had not yet occurred.

[40] However the effect of the information in Ms Garvey's memorandum regarding the 13 November meeting remains to be considered. Mr Russell accepted for the purposes of determining the 90-day issue that Ms Garvey said proceedings would be taken 'to challenge the DHB's actions', but, also in reliance on *Creedy*, said this did not suffice to raise a grievance.

[41] As it related to the dismissal, Ms Garvey's statement was too broad to meet the requirement that an employee who wishes an employer to address a grievance must raise the grievance with sufficient specificity to allow the employer to address it. It suffered in particular from the lack of any indication of the remedy sought.

[42] I conclude that no personal grievance of Ms Watson's on the ground of her unjustified dismissal was raised with the employer within the 90-day period.

Whether leave to raise grievances out of time should be granted

[43] Section 115 (b) of the Employment Relations Act provides that, for the purposes of an application for leave to raise a grievance out of time, exceptional circumstances include-

⁷ [2006] ERNZ 517, in passages not affected by the appeals.

Where the employee has made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time.

[44] In her memorandum provided to the Authority regarding the raising of the grievance, Ms Garvey said she had lodged a personal grievance on 18 December 2009. She indicated that the document had been directed to the address of the mediation service of the Department of Labour and acknowledged it was incorrectly addressed. Neither the Authority nor the DHB received it.

[45] I did not understand the DHB to dispute Ms Garvey's account of her attempt to lodge the grievance in December.

[46] A statement of problem dated 18 February 2010 was again directed to the address of the mediation service of the Department of Labour, but was re-directed to the Authority and was in turn received by the DHB on 23 February 2010. The DHB says the receipt of the statement of problem amounted to the first raising with it of any grievances. This was out of time for both grievances.

[47] Section 115 (b) has two limbs, of which the first concerns the arrangements made by the employee and the second concerns the action or inaction of the employee's agent. Both limbs must be met for a grant of leave under s 115(b).⁸

[48] There was no evidence of the arrangements Ms Watson made to have her grievances raised in time. Although the mis-direction of the statement of problem would fall within the second limb, in the absence of evidence about Ms Watson's instructions regarding the raising of her grievances the first limb is not met.

[49] Leave to raise the grievances out of time is therefore declined.

Whether interim reinstatement should be ordered

[50] The following is the determination of the application for an order for interim reinstatement. It assumes that the unjustified dismissal grievance was raised in time, or that a grant of leave to raise it out of time has been made.

⁸ *Commissioner of Police v Creedy* [2008] ERNZ 109 (SC)

[51] The issues to be addressed in determining the application for an order for interim reinstatement are:

- (i) whether there is an arguable case of unjustified dismissal;
- (ii) whether the balance of convenience favours Ms Watson or the DHB
and
- (iii) where overall justice lies.

1. Arguable case

[52] Mr Russell recognised there were conflicts in the evidence regarding the merits of the complaints against Ms Watson, but submitted that this does not necessarily constitute a serious issue to be tried. At the same time he acknowledged, correctly, that such conflicts are better dealt with in a substantive hearing.

[53] There were differing accounts of precisely what happened on 18 and 19 July, and in turn of the seriousness of the incidents. There are likely to be significant questions of credibility. In an interim application of this kind it is not possible to take a view on the credibility of the individuals concerned, or in turn of the conclusion Ms Picard reached on the matter.

[54] Ms Watson has also raised concerns that the decision to dismiss her was predetermined, and that there was a disparity between the disciplinary action taken against her and the action taken against the other nurse. These matters are at least arguable.

[55] Overall I find Ms Watson has an arguable case in respect of whether the alleged conduct occurred, and whether it was of such seriousness as to make dismissal the action a fair and reasonable employer would have taken.

2. Balance of convenience

[56] Mr Russell raised a number of issues which, he submitted, tip the balance of convenience in favour of the DHB.

[57] First, he pointed to the delays and overall lack of urgency in the pursuit of this matter. In particular the application for an order for reinstatement was not lodged until February 2010 with an affirmation in support being filed on 12 April; the matter was then referred to mediation (when an approach to the mediation service arguably should have been made promptly on the dismissal, particularly as reinstatement was sought) and did not come back before the Authority until 13 May; and a number of further steps were required before the matter was ready to be scheduled.

[58] Secondly Mr Russell referred to the status quo, being in particular that Ms Watson had arranged her financial situation to accommodate the fact that not only was she not currently employed by the DHB she was unable to work in any event.

[59] Further to Ms Watson's ability to work, on 30 September 2009 she was involved in an accident and suffered injuries including one to her ankle. In an affidavit dated 30 June 2010 Ms Watson described the effect of the injury and said she would have been unable to work prior that date. The information she provided in the affidavit suggested she would remain unable to work until at least mid-July 2010. A brief letter from her surgeon dated 22 July 2010, and filed in a further affidavit dated 28 July, referred to surgery having been carried out on 27 April 2010 and asserted that Ms Watson is ready to return to full time employment.

[60] It is unfortunate if her injury and its aftermath is the reason why Ms Watson's application for interim reinstatement was not pressed with the urgency usually attaching to such applications, and unfortunate that the Authority did not have the information bearing on Ms Watson's ability to work before 30 June 2010. On the basis of that information the application for interim relief was not necessary, and it is only because of delays not of the Authority's making that Ms Watson's alleged clearance for work now appears to coincide with the hearing of her application.

[61] Thirdly, Ms Watson has a long-standing medical condition - aside from the injuries suffered in September 2009 - which means she is unable to work on night duties where she is the sole registered nurse. Accordingly she has been unavailable for night shifts. During 2008 the DHB had negotiated roster patterns with Ms Watson's union on the basis that all nursing and psychiatric assistant staff be available for all shifts including night shifts. While Ms Watson's circumstances meant as at the

time of her dismissal she was not being obliged to make herself available for night shifts, the DHB regarded this as temporary until a resolution could be achieved.

[62] Ms Matthews considered this state of affairs to be anomalous in itself as well as in the context of the DHB's new integrated model of care for inpatients.

[63] Changes in the method of caring for patients gave rise to the fourth concern expressed by the DHB. New methods of care and a 'new culture' have been associated with the completion since the dismissal of a move from Ward 22 to a new facility known as Ward 35. The intention was that nursing staff obtain a full therapeutic view of the patients for whom they cared, which could not be obtained if the nurse did not work the full range of shifts and the patient was observed only at a certain time of day. Ms Matthews referred in addition to a continuum of care model, which required the maintenance of key therapeutic relationships between outpatient and inpatient teams.

[64] Further in relation to changes in the way in which patients are cared for, Ms Earl described a model where patients have more control in setting their own goals for recovery, rather than having plans developed for them without their active input. Also, rather than adhering to strict routines, patients are provided with more autonomy in their daily activities. For example, they have a choice about when to have showers rather than having that activity timetabled for them. Ms Earl doubted whether Ms Watson would be able to work in this way, although Ms Watson disputed the validity of that doubt.

[65] The fifth concern was that Ms Watson has been absent while these new methods were put into effect and has not received training in them. The DHB expressed a concern about the disruption if Ms Watson were reinstated on an interim basis, and her training began, only to have reinstatement declined in the substantive determination.

[66] Finally, concern was expressed at the possibility of divisions in the workplace between supporters of Ms Watson and others. There was a particular concern about the prospect of Ms Watson working with the complainants.

[67] Ms Watson says the balance of convenience favours her because she is now fit to return to work, she has difficulty in finding work elsewhere because of where she lives and limits on her ability to drive associated with her long-standing medical condition, and because she is suffering financial difficulties.

[68] In answer to the concerns expressed by the DHB about her ability to work under the new culture, Ms Watson said she is confident she will be able to work professionally on what is now Ward 35 and she is willing to undertake the necessary training. Regarding her availability for night shifts she pointed out, correctly, that her unavailability for night work had been permitted for several months prior to the dismissal even under the new arrangement with her union regarding rostering, and was not a valid reason for refusing interim reinstatement.

[69] As for workplace relationships, Ms Watson undertook not to discuss her dismissal and the complaints with anyone other than as agreed, and suggested that to the extent it might be necessary to do so, she be rostered separately from the complainants.

[70] In the present context I give no weight to the DHB's concerns about Ms Watson's availability for night shifts, since that matter remained to be resolved with her regardless of her personal grievances. Because of the relative lack of evidence beyond assertion I give little weight to the concerns about Ms Watson's ability to work under the new model, and to the concerns about the disruptive effect in the workplace of her return to work. Regarding the need for retraining in the new care procedures, issues of credibility coupled with the comparative lack of direct information about the effect on workplace relationships make it difficult to assess the likelihood of reinstatement following a substantive investigation. I accord little weight to that matter. Moreover these last two concerns are balanced by Ms Watson's undertakings and assurances regarding training, and her approach to workplace relationships.

[71] I give more weight to the remainder of the matters raised by the DHB. These are: the delays in pursuing the interim application; that Ms Watson was unable to work for some eight months after her dismissal in any event; that she has been able to make alternative financial and living arrangements; and the lack of satisfactory

evidence from an occupational health specialist regarding her ability to work as at the time of the investigation meeting.

[72] These factors also lead me to find that damages would be an adequate remedy in the event Ms Watson was successful in the substantive matter.

[73] These matters tip the balance of convenience in favour of the DHB regarding whether an order for interim reinstatement should be made.

[74] Mr Russell also referred to the DHB's obligations to the wider community as well as to the patients for whom it cares, as set out in s 22(1) of the New Zealand Public Health and Disability Act 2000. He focussed on a public interest concern, saying an order for Ms Watson's return to work could compromise the integrity and perception of the respondent in the eyes of the public.

[75] An argument of this kind failed in *Auckland District Health Board v X (No 1)*⁹ but I find the circumstances here are different. The allegations about Ms Watson's conduct are serious, and bear directly on the carrying out of her professional responsibilities and on her treatment of patients. If upheld they would compromise the integrity and perception of the DHB. If upheld they also call into question Ms Watson's respect for the dignity of vulnerable patients and in that regard the standard of care provided to them. This factor, too, tips the balance in favour of the DHB pending a determination of the substantive matter.

3. Overall justice

[76] Overall, while Ms Watson has an arguable case, this was so largely on the ground that there are issues of credibility which cannot be tested in an interim application. If Ms Watson's account were to be rejected in a determination of the substantive matter, then it is likely that her dismissal would be found justified and unlikely in any event that she would be reinstated. The nature of the allegations means that even if, for example, she was successful in her argument regarding disparity of treatment, reinstatement would remain unlikely.

⁹ [2005] ERNZ 487

[77] I consider that the balance of convenience favours the DHB to an extent that outweighs the arguable nature of Ms Watson's case.

[78] In particular Ms Watson's injury rendered her unable to work for a substantial period since her dismissal, and there was no satisfactory evidence from an occupational health point of view of her ability to work as at 13 August 2010. Meanwhile, Ms Watson has made other arrangements to address the effect of the inability to work.

[79] Secondly, the nature of Ms Watson's position and of the allegations against her mean it is not appropriate that she be reinstated while the merits of the allegations in a dismissal context remain unresolved.

[80] Finally, assuming that a grievance on the ground of unjustified dismissal has been raised, I find there is no reason to disturb the status quo.

4. Conclusion

[81] For these reasons the application for an order for interim reinstatement is declined.

Costs

[82] Costs are reserved.

[83] The parties are invited to agree on the matter. If they seek a determination from the Authority any party seeking an order shall have 28 days from the date of this determination in which to file and serve a memorandum setting out what is sought and why. The other party shall have a further 14 days in which to file and serve a reply.

R A Monaghan

Member of the Employment Relations Authority