

counterclaims that he was unjustifiably dismissed by the Applicant on 24 June 2006 by being told to leave the Applicant's salon and not return.

[3] The Applicant also seeks penalties against the Second Respondent ("Nirvana"), for aiding and abetting breaches of his employment agreement. That claim – which Nirvana denies – is not dealt with in this determination. The director of Nirvana, Cheryl McDuff, was unwell at the time of the scheduled investigation meeting. In response to a request supported by her specialist physician, investigation of the Applicant's claim against Nirvana was adjourned for three months. A schedule for resuming that aspect of the proceedings is to be considered shortly. Accordingly this determination deals only with the claims between the Applicant and Mr Dominguez.

The investigation

[4] This matter was not resolved in mediation. For the investigation I was provided with written witness statements from the Applicant's joint owners at the time of the relevant events, Rodney Foley and William Boyd, and from Mr Dominguez. Each witness also answered additional questions at the investigation meeting. Paul Mathews, acting manager of Nirvana's salon at which Mr Dominguez now works, also attended and provided some additional information about his salon's invoices for certain clients. The parties' representatives asked additional questions of witnesses and provided oral closing arguments.

[5] As part of its investigation, the Authority also conducted separate telephone interviews (under affirmation) with nine clients to whom Mr Dominguez had provided hairdressing services while employed by the Applicant. Notes of those interviews were provided to the parties prior to the investigation meeting.

[6] Information required to be produced for the investigation included records of appointments made by, and invoices rendered to, nine people who Mr Dominguez had served at the Applicant's salon and who subsequently attended the Nirvana salon.

The issues

[7] Resolution of this problem requires determination of the following issues:

- (i) Was Mr Dominguez unjustifiably dismissed or did he resign?
- (ii) If he were unjustifiably dismissed, what remedies are due?
- (iii) Was the restraint of trade in his employment agreement, or as subsequently agreed, reasonable and enforceable?
- (iv) If so, were there breaches of that restraint?
- (v) If so, did damage result?
- (vi) If so, can the damage be quantified?

The end of Mr Dominguez's employment

[8] Mr Dominguez is a professional hairdresser with more than 20 years working experience in salons in Chile, Argentina, Australia and New Zealand. He began working for the Applicant in August 2005. A Chilean citizen, he was granted permanent residency of New Zealand in May 2006.

[9] His evidence was that through 2005 and 2006 he was unhappy with how Mr Foley spoke to him and treated him in front of customers. A fellow employee had remonstrated with Mr Foley but was told to leave if he did not like it. That hairdresser did leave soon after and got a job at Nirvana. The distance between the Nirvana salon and the Applicant's salon was about 50 metres across Remuera Road.

[10] Mr Dominguez appears to have contemplated leaving at that time too. His written statement said:

I myself was still in the middle of NZ Residency formalities and could not just leave without putting this in jeopardy. Happily in May 2006 I was granted Permanent Resident status but my work environment was getting steadily worse.

[11] He was concerned he was not getting enough clients and he had bills to pay, including increased debts from a recently purchased car.

[12] He says that on Thursday 22 June 2006 he spoke informally with Mr Boyd about looking for another job in the near future. Mr Boyd suggested he talk with Mr Foley who was away from the salon that day but would be at work on Saturday.

[13] On Saturday 24 June Mr Foley spoke to Mr Dominguez in the tea room, saying that he had heard the news that Mr Dominguez was leaving. Mr Dominguez

says he emphatically stated that he was not leaving but wanted to talk about what to do and suggested doing so on the following Monday when the salon was not busy.

[14] He says that Mr Foley said not to bother coming in Monday but that he would pay Mr Dominguez his holiday pay and two weeks notice. Mr Dominguez says he again asked to talk on Monday but Mr Foley said: "No, you finish today".

[15] On Monday 26 June 2006 Mr Dominguez took a typed letter to the salon but Mr Foley would not take it from him. He then sent the letter by post to the Applicant. It stated:

I Jorge Daniel Dominguez H am writing in reference to the conversation had by you on Saturday 24th June 2006, at which time you told me to leave the salon and not return to my employment with you.

I am now notifying you of my resignation of my employment to War Hair Design. I am givio g (sic) the one weeks notice as is required by me this takes my termination date to the 1st July 2006.

At the point of termination I need to be payed (sic) all monies owed to me in full amount, which shall include all Holiday pay and wages owing.

[16] Mr Dominguez says that over the weekend he had met with his former colleague who had gone to work at Nirvana and discussed a job there. During the following week he met with Nirvana's owner Ms McDuff and arranged to start work there on Monday 4 July.

[17] The evidence of Mr Foley and Mr Boyd differs from Mr Dominguez on a number of points.

[18] Mr Boyd says that when Mr Dominguez talked with him on 22 June he said that he already had another job which was closer to his home in Herne Bay. He understood that Mr Dominguez wanted to finish on Saturday so he could start his new job the next week.

[19] Mr Foley insists that Mr Dominguez spoke with him on Friday 23 June and asked to finish the next day. He understood from Mr Boyd that Mr Dominguez had

resigned on the Thursday. Mr Foley says that he told Mr Dominguez that he could work out his notice – a week – or leave on the Saturday.

[20] He accepts that Mr Dominguez turned up in an agitated state on Monday 26 June and claimed he had been dismissed. He says that he explained that he understood Mr Dominguez had resigned and they had agreed on a departure date. He suggested Mr Dominguez could work out a week's notice if he had changed his mind, to which he says Mr Dominguez agreed saying he would be in the next day but he did not turn up.

[21] The dispute of facts is whether Mr Foley and Mr Boyd confused a statement by Mr Dominguez of an intention to leave – and a wish to do so – with a statement of resignation. The standard of proof in employment proceedings is “*the balance of probabilities flexibly applied according to the gravity of the matter*”.¹

[22] It is clear that Mr Dominguez was dissatisfied with his job with the Applicant. He wanted to leave and once his permanent residency status was confirmed in May 2006 felt confident about considering the possibility.

[23] English is not Mr Dominguez's native tongue. While he gave his evidence at the investigation meeting in English, some of the questions put to him were translated from English to Spanish for him by his representative, and personal partner, Mr Gonzales. From this process I observed that while Mr Dominguez can communicate effectively in English, there is room for confusion around the complexities of some questions and the subtleties of informal speech. I have concluded this occurred in the relevant conversations with Mr Foley and Mr Boyd.

[24] While the evidence about conversations on 22 and 23 or 24 June, and then subsequently on Monday 26 June, is not unequivocal, I am not satisfied that the events comprised a dismissal. From the information available to me I consider it more likely than not that Mr Dominguez had, with the benefit of recently granted permanent residency realised he was free to leave an unsatisfactory work environment and told Mr Boyd of his plans to do so. When he came to speak with Mr Foley of

¹ See *Whangarei College Board of Trustees v Lewis* [2000] 1 ERNZ 397 at [20] (CA) and *Kostic v Dodd & Milligan* (unreported, EC, CC 14/07, 11 July 2007) at [79].

these plans, confusion arose over being told that he need not serve out a notice period and that this was misunderstood as a direction to leave immediately.

[25] The wording of Mr Dominguez's letter of 26 June is consistent with having resigned and then disagreed about whether he should or could serve a period of notice. It either states or restates an intention to resign and is concerned with ensuring that he receives entitlements to paid notice and holiday pay rather than challenging the fact of termination of his employment. While the letter refers to "notifying" his employer of the resignation, his employment agreement required notice to be in writing, and he had previously only given his notice verbally.

[26] Accordingly I dismiss Mr Dominguez's claim that he was unjustifiably dismissed.

The restraint of trade

[27] Mr Dominguez had signed an employment agreement on starting work in August 2005 which included these restrictive covenants:

In consideration of the sums to be paid as remuneration under this agreement you will not (without our express written consent) at any time, during the term of this employment or for a period of three (3) months after the termination of this employment:

Non-solicitation of employees (omitted)

Non-solicitation of clients/customers

b. Either on your own account or on behalf of or in conjunction with any other person, firm, or company:

i. Solicit business or custom for services identical or similar to those supplied by us at the date of termination of this employment from; or

ii. Deal with;

any customer of ours with who you had material dealings in the course of your employment during the six months immediately preceding the termination of this employment.

Non-competition

c. Carry on or be connected, engaged, or interested either directly or indirectly or alone or with any other person or persons whether as principal, partner, agent, director, shareholder, employee, or otherwise in any business which is:

- i. Carried on within a radius of three (3) kilometres of the Employer's premises at Remuera; and
- ii. Competitive or likely to be competitive with any part of our business in which you were actively involved during the course of this employment during the six months immediately preceding the termination of this employment.

[28] I accept that the Applicant has a proprietary interest in its connection with customers provided with hairdressing services by Mr Dominguez as its employee. An interest of that kind has been described this way in *Dawnay Day & Co Ltd v de Braconier d'Alphen* [1997] IRLR 285 (HC) at 290:²

This principle is from time to time applied in the hairdressing business. Restrictive covenants are common in that business and from time to time come before the court (see for instance Steiner (UK) v Spray Court of Appeal, 1 December 1993). As Hoffman LJ said in that case, it is common knowledge that people are loyal to their hairdressers. That loyalty is founded primarily on the individual hairdresser's skill in cutting and setting hair, and on his or her pleasant and sympathetic personality. Nevertheless the customer's loyalty is in law, as Hoffman LJ says, part of the employer's goodwill. It is the employer who provided the employee with the opportunity to improve his or her skills and to establish and develop a personal relationship with the customer; and it is the employer who has borne the cost of providing attractive premises and facilities which may help to cement the personal relationship (see also Marion White Ltd v Francis [1972] 1 WLR 1423, 1429).

[29] On that basis I find the present restraint was valid and enforceable to the extent it was reasonable in geographical scope and length of time. As noted in the Applicant's submissions, the Employment Court has found on an interim basis, subsequently made permanent by consent, that a restraint of six months in a five kilometre radius was arguably not unreasonable in a case involving a hair stylist and his former employer: *Servilles Ltd v Whiting* (unreported, EC, 2 June 2000, AC47/00, Colgan J). The restraint in the present case was for a shorter period – three months – and a narrower scope – three kilometres.

[30] While this excluded the Remuera and Newmarket shopping centres (with their many hair salons) as places he could work, Mr Dominguez remained free to earn a living from using his specialist skills elsewhere in Auckland – including areas such as

² Upheld by the English Court of Appeal in *Dawnay, Day & Co Ltd & Anor v D'Alphen & Ors* [1997] EWCA Civ 1753 (22nd May, 1997), a case followed by the New Zealand Court of Appeal in *Fletcher Aluminium Ltd v O'Sullivan* [2001] 1 ERNZ 46 at [54].

Ponsonby, Parnell, the central City and on the North Shore, all within easy reach of his Herne Bay home.

[31] With customers typically returning between four and eight weeks after each salon appointment, I also consider three months would not have been an unreasonable period for the Applicant to have the opportunity to protect its customer connection from competition by Mr Dominguez, or rather his new employer. I note too that the restriction on contact with former customers was on those that he had actually dealt with in the previous six months so had a reasonably 'fresh' connection in the context of the typical pattern of customer contact in the hairdressing industry.

[32] However in the particular circumstances of this case, the Applicant's claim does not rely solely on the terms of the restraint in the employment agreement. That is because the parties subsequently made another agreement about Mr Dominguez's obligations to the Applicant, which I consider, for reasons explained below, put beyond doubt any arguments about Mr Dominguez's acceptance of the reasonableness of the restraints entered into.

[33] Within a fortnight of Mr Dominguez leaving their salon, Mr Foley and Mr Boyd became aware that Mr Dominguez was working at Nirvana. Mr Boyd's evidence was that he was told by one client that Mr Dominguez had spoken to her in a local supermarket and mentioned that she could go to Nirvana if she wanted to use his hairdressing services.

[34] Mr Boyd then made telephone enquiries of some other clients. As a result of those conversations he became suspicious that Mr Dominguez was actively soliciting the business of clients that he had previously seen when working for the Applicant.

[35] This resulted in the Applicant's solicitors writing to Mr Dominguez and reminding him of his obligations. Its solicitors also wrote to Ms McDuff at Nirvana.

[36] Mr Dominguez, in turn, through his own employment law advisor, denied the restraint was enforceable but even if it were, denied he was breaching it. He offered to give undertakings that he "*will not solicit any clients of [the Applicant] for the*

duration of the covenants (ie before 24 September), regardless of whether all or any of them are enforceable or not”.

[37] The Applicant replied that it was not prepared to accept that undertaking was sufficient, instead naming a number of clients it believed Mr Dominguez had solicited or dealt with at Nirvana. It proposed a fuller, written undertaking. In part this referred to company information which is not at issue in the present matter. The part of the undertaking relevant for present purposes read:

I hereby undertake and covenant as follows

1. I will not for a period of three months following the termination of my employment with WAR Hair Design (such period ending on Sunday 24 September 2006) either on my own account or on behalf of or in conjunction with any other person, firm or company:

a. Solicit or attempt to solicit business or custom for services identical or similar to those supplied by War Hair Design from any customer of War Hair Design with whom I had material dealings in the course of my employment with WAR Hair Design during the six months from 24 December 2005 to 24 June 2006; or

b. Deal with (including approaching or undertaking any work for) any customer of War Hair Design with whom I had material dealings in the course of my employment during the six months from 24 December 2005 to 24 June 2006.

...

[38] In effect it was a restatement of the terms of Mr Dominguez's former employment agreement. He signed it on 14 August 2006 and his advisor sent it to the Applicant's solicitors. The parties continued to disagree on any liability that Mr Dominguez had for alleged breaches of the restraint terms prior to signing the undertaking with its identical terms of non-solicitation and non-dealing.

[39] Throughout this stage of the dispute between the parties Mr Dominguez was represented by an experienced employment law advisor. Although he was no longer represented by that advisor by the time of the investigation meeting (a matter of economy), I am satisfied that at the time of signing the undertaking he had access to advice on the implications of its terms. I am also satisfied that, if it were necessary, there was valuable consideration given by the Applicant in return for the undertaking. It was not in the form of a mutual exchange of promises because the Applicant made none. Rather it was in the form of the Applicant compromising on the issue of Mr

Dominguez working at Nirvana. His job there was, at the time, a breach of the terms of the restraint under his former employment agreement. The Applicant could have continued to take issue with that by steps including seeking an interim injunction or urgent compliance order which, among other things, would have sought to stop Mr Dominguez working at Nirvana. However it compromised on that position – accepting that Mr Dominguez could keep working at Nirvana – provided that he did not solicit or deal with the Applicant’s clients.

[40] Consequently, I find, that Mr Dominguez was obliged to honour non-solicitation and non-dealing obligations regarding clients that he had previously served from 24 December 2005 to 24 June 2006 while an employee of the Applicant. Those obligations arose in the period from 24 June to 14 August 2006 solely from the terms of his employment agreement. From 15 August 2006 to 24 September 2006 the obligations arose from both the employment agreement and the undertaking.

Breaches of the restraint

[41] In securing the undertaking the Applicant had not promised to drop its claim for damages for breaches already said to have been committed by Mr Dominguez. It subsequently lodged a statement of problem seeking, among other things, such damages. By the time of the investigation meeting the Applicant alleged that Mr Dominguez had breached not only the non-solicitation and non-dealing terms of his employment agreement but also the subsequent 14 August undertaking.

[42] The Applicant’s claim initially identified ten customers allegedly contacted by Mr Dominguez. Before the investigation it added another four but later accepted some of the 14 were either not contacted or had not subsequently been seen by Mr Dominguez at Nirvana. By the time of the investigation meeting the allegations of breaches were limited to hairdressing services provided to nine individuals.

[43] The Applicant’s allegations were partly based on information that it had received through a ‘phone around’ by Mr Boyd of some clients formerly seen by Mr Dominguez who had not returned to the Applicant’s salon, and partly on various ‘second hand’ stories passed on by various customers or other individuals.

[44] By the time of the investigation meeting I was able to establish, from my own interviews of nine clients and the client records at both salons, who Mr Dominguez had actually dealt with at both places over the relevant periods.

[45] For that reason I need not extensively describe or record the evidence on whether or not Mr Dominguez had actively solicited the custom of particular individuals. From my interviews with nine clients, I am satisfied that he did make phone calls to at least three of them. Others, I accept, simply heard from friends, family or workmates that he had moved salons and took the initiative to contact him or make an appointment with him at Nirvana.

[46] However those clients came to find him at Nirvana, the real question, in respect of whether there were breaches in the restraint period of 24 June to 24 September, is whether Mr Dominguez “dealt” with those clients. The employment agreement restraint specifically prohibited dealing with former clients of the Applicant. Restatement of this limitation in the 14 August undertaking included a parenthetical explanation that such dealing included “undertaking any work for” any customer he had seen in his last six months of working for the Applicant.

[47] I am satisfied from Mr Dominguez’s answers to my questions at the investigation meeting that he understood what not soliciting and not dealing with customers meant and what activities those terms covered.

[48] Invoices provided under Authority direction show that Mr Dominguez did provide services the premises of Nirvana to eight such customers during the restraint period – including five instances after he had signed the 14 August undertaking. One of these customers had services provided by both Mr Dominguez and another hairdresser at Nirvana. One former client was dealt with solely by another hairdresser at Nirvana. Six of those clients, seen within the restraint period, later came back to Nirvana for hairdressing services after it expired.

[49] From information in the invoices produced by Nirvana I prepared a table identifying these appointments and the periods in which they occurred. A copy of the table was provided to the parties at the investigation meeting.

[50] Mr Dominguez's signed statement provided for the investigation meeting included this comment:

Although my dismissal from WaR did not seem to restrict me, as I assumed the contract was broken, I was still respectful of the conditions and in no way approached WaR clientele or went out of my way to attract them to Nirvana. Any previous clientele that came into Nirvana looking for me were serviced by Nirvana stylists.

[51] Sadly Nirvana's client records show at least that last sentence to be plainly untrue. Faced with this information at the investigation Mr Dominguez accepted he had provided hairdressing services at Nirvana to a number of former clients he had seen when previously employed by the Applicant.

[52] His explanation in the case of two women was that they simply "insisted" he cut their hair as they did not like anyone else doing so.

[53] Clients of hairdressers are of course free to leave a salon and 'follow' their preferred stylist. However when a stylist has entered into a solemn contractual arrangement – as Mr Dominguez here had done both through his former employment agreement and the 14 August undertaking – he had an obligation to turn away such customers for the agreed period. Here Mr Dominguez clearly did not and was in breach of the agreements.

[54] He appears to have believed that he was not obliged to honour those commitments because of his view that he was unjustifiably dismissed from the Applicant and that because he had signed the 14 August undertaking, the Applicant should not have pursued damages for earlier breaches. However the obligations could not be ignored on his view and say so alone. I need not deal with the legal argument – still said by some commentators to remain an open question in New Zealand employment law – as to whether restraint obligations survive an unjustified dismissal, because I have already determined that Mr Dominguez's employment with the Applicant did not end that way. However if he seriously believed the restraint obligations no longer applied he could have sought declarations to that effect from this Authority – as his employment law advisor at the time could have told him. He did not but proceeded to commit the breaches.

[55] I acknowledge that in the case of at least one former customer of the Applicant, Mr Dominguez did take care to ensure she was attended to by another stylist at Nirvana for two appointments during the restraint period. However that was arguably dealing with a former customer “in conjunction” with another person or company, which was also forbidden under the restraint. And in that same period he accepted appointments with and provided hairdressing services – that is directly dealt with – eight other such former customers.

Damages for the breaches

[56] It is not enough for the Applicant to show that Mr Dominguez dealt with some of its clients in the restraint period. As the terms of the employment agreement and 14 August undertaking make clear, the Applicant must also show that those clients were people to whom Mr Dominguez had provided services in the last six months of this employment with the Applicant. I am satisfied from accounts information provided by the Applicant that Mr Dominguez had provided services in that period to the identified nine clients. Mr Dominguez did not dispute this in his evidence.

[57] Accordingly the question now is to assess what damages may be due to the Applicant as a result of Mr Dominguez’s breaches.

[58] From the Nirvana client accounts, the following summary of income from appointments of Mr Dominguez with the relevant clients can be made:

	24 June – 14 August 2006	15 August – 24 September 2006	25 September 2006 – 13 January 2007
Number of appointments	10	5	16
Number of clients seen	7	5	5
Value of services (amount charged to clients)	\$1600	\$492	\$1673

[59] The Applicant’s claim for damages arising from the loss of future business – caused by Mr Dominguez’s interference with the customer connection within restraint

period – has the relatively unusual advantage of a clearly defined period. It sold the business on 13 January 2007 and that marks the end of future losses.

[60] The Applicant says the appropriate measure of its damages is an amount equivalent to what the nine customers spent with it for Mr Dominguez's services in the last six months of working at the Applicant's salon, that is \$5433. Alternatively it seeks the amount spent by the nine customers at Nirvana in the period from 4 July 2006 to 13 January 2007, a total of \$5307.30. That latter amount includes money spent on services provided to three customers by other Nirvana stylists.

[61] My assessment of damages, in the circumstances of this particular case, begins by considering the amounts spent by the customers both before at the Applicant's salon and then after at Nirvana's salon – here conveniently at almost the same amount of between \$5300 and \$5400. However there are three factors which must also be taken into account.

[62] Firstly, I accept that the revenue gained by Nirvana through Mr Dominguez's services is an appropriate measure of the Applicant's losses. It is the stream of revenue – although there might be some difference charges between salons for various services – which the Applicant would, more likely than not, otherwise have had to meet overheads (staff wages, rent of premises, products, power and so on) and from which it would have taken its profit. It is what is required to put the Applicant back in the position it would have been but for the unlawful activity of Mr Dominguez. For that reason I do not limit the assessment of loss to an account of actual profit.

[63] Secondly, I doubt that the assessment of damages in this case should include the revenue from hairdressing services provided by other Nirvana stylists to former clients of the Applicant (involving 17 appointments with four other Nirvana employees between 6 July and 22 December 2006). This is because I am not satisfied that the evidence clearly establishes the involvement of Mr Dominguez in all of that work such as would amount to him “dealing” with those clients by way of being the point of contact with Nirvana and then handing them over to other stylists. I give the benefit of that doubt to Mr Dominguez.

[64] Thirdly, I must consider whether but for Mr Dominguez's breaches all of the customers – and the revenue from their appointments – would have stayed with the Applicant. The evidence of Mr Foley was that turnover in the salon clientele was between 70 and 80 per cent in a year. Put another way, as many as 30 per cent of the clients at the beginning of the year would no longer be customers by the end of the year. For that reason I consider it appropriate to deduct 20 per cent from the actual amount of revenue as an approximate measure of business that the Applicant would have lost in any event and therefore not attributable to Mr Dominguez's breaches.

[65] Accordingly I set the measure of damages as being 80 per cent of the total of the value of services delivered to the Applicant's former clients by Mr Dominguez – as set out in the table above. That figure is \$3012. That is the amount Mr Dominguez is ordered to pay to the Applicant as damages for his breaches of the non-solicitation and non-dealing obligations he entered into with it.

[66] This award includes a certain amount of 'future losses' – that is the revenue lost in the period after the expiry of the restraint (25 September 2006 to 13 January 2007) by subsequent repeat business of five clients seen at Nirvana during the restraint period. It is included because the Applicant lost, through Mr Dominguez's breaches, the opportunity to attempt to retain those clients and that revenue is a measure of the costs of chances lost.

[67] The Applicant has also sought interest on the amount of any damages awarded. I accept an award of interest is appropriate. Under clause 11 of Schedule 2 of the Act I award interest on the damages now due at the rate of 10.67% (being the 90 day bill rate plus two per cent). That interest rate is to apply from 13 January 2007 until the date that the damages and interest are paid to the Applicant. It amounts to interest of \$205 for the period from 13 January 2007 until the date of this determination (3 September 2007) and additional interest of \$0.88 a day until payment is made.

[68] I make no award of penalties against Mr Dominguez. While his breaches were deliberate and involvement an element of deception, I consider the obligation to pay damages is a significant and sufficient burden and remedy in the particular circumstances. In doing so I take account of Mr Dominguez's submission that his

ability to pay a penalty is limited because of his financial responsibilities for family in Chile. Whether there may yet be penalties awarded against the Second Defendant is a matter for another investigation and determination.

[69] The Applicant is entitled to an award of costs and seeks an award at what it describes as the usual daily rate of \$2500 per hearing day. Its actual legal costs up to the morning of the investigation meeting were more than \$10,000 but I was told that the Applicant had pursued its issues with Mr Dominguez because of wider implications for its business and other staff. The hearing did not take a full day. In all the circumstances an award of \$1500 is made as a reasonable contribution to the Applicant's costs.

Summary of orders

[70] Mr Dominguez is ordered to pay the following amounts to the Applicant:

- (i) \$3012 as damages for breaches of non-solicitation and non-dealing obligations; and
- (ii) \$205 as interest on the damages awarded for the period from 13 January to 3 September 2007, and \$0.88 a day from 4 September 2007 until the damages and interest awarded are paid; and
- (iii) \$1500 as a reasonable contribution to the Applicant's costs.

Robin Arthur
Member of the Employment Relations Authority