IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2011] NZERA Auckland 497
5349611

	BETWEEN	HELEN MANOHARAN Applicant
	AND	THE CHIEF EXECUTIVE OF WAIARIKI INSTITUTE OF TECHNOLOGY Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Catherine Stewart, counsel for Applicant Richard Harrison, counsel for Respondent
Submissions Received:	28 October, 2 and 8 November 2011
Determination:	17 November 2011

DETERMINATION OF THE AUTHORITY NO 2

Determination of unjustifiable dismissal

[1] In its determination dated 3 October 2011 the Authority found that Ms Helen Manoharan had been unjustifiably dismissed by her employer the Chief Executive of the Waiariki Institute of Technology. The reasons for that finding and the circumstances surrounding the dismissal are set out in the determination.

[2] The Authority directed the parties to undertake further mediation and try to resolve Ms Manoharan's personal grievance themselves. It reserved any final determination of the remedies to be provided for the successful grievance claim until they had been to mediation. The Authority also reserved its final determination of the damages and penalties that had been claimed for contempt and for breach of the employment agreement, in respect of which the Chief Executive Mr Pim Borren was also found liable.

[3] Since the determination was issued the Authority has been advised by counsel Ms Stewart and Mr Harrison that mediation was attended by their clients on 18 October 2011 but did not resolve Ms Manoharan's claims. Remedies must now be determined by the Authority.

[4] Counsel advised that the grievance claim brought by Ms Ann Robinson, a colleague of Ms Manoharan employed at Waiariki whose employment had terminated at the same time and under the same circumstances, did settle in mediation. The grievances of Ms Manoharan and Ms Robinson had been investigated together and both were held to have been unjustifiably dismissed by the Authority in its 3 October determination. The direction to mediation had applied to Ms Robinson as well as Ms Manoharan.

[5] No further determination is required in relation to Ms Robinson and no findings are therefore made about her claims. If she is mentioned again it is only when that is necessary to explain the determination of Ms Manoharan's claims for the remedies she has sought to settle her successful grievance claim and the contempt and breach of agreement actions.

Contributory fault

[6] In providing any of the remedies that are available under s 123 of the Employment Relations Act 2000 to settle a personal grievance, the Authority must under s 124 consider whether the actions of the employee contributed towards the situation that gave rise to the grievance. The remedies that would otherwise have been awarded are to be reduced if there was contributory fault and if the employee's actions require some reduction.

[7] To try and assist the parties in mediation the Authority in its determination went as far as holding that contribution was present in relation to Ms Manoharan's grievance, although the Authority did not finally determine at what level or what the reduction to remedies should be, if any, to take account of that contribution.

[8] With regard to contribution I found in the 3 October determination that Ms Manoharan acted without authorisation and contrary to proper procedure in connection with claims made for her expenses. I found - from para [69] on - that Ms Manoharan had caused false documents to be produced and to be acted upon by Waiariki's finance section, which paid out the sums of money as claimed. The

claims in question were false in the sense that the forms Ms Manoharan filled in and signed or initialled, on their face represented her as being the approver of the claim rather than the claimant as she in fact was.

[9] Without fully determining what Ms Manoharan had done that was blameworthy I considered that on the most favourable account available to her Ms Manoharan had to be regarded as having acted at least carelessly in the way she went about making claims for her expenses. On the most favourable account she could be regarded as having acted honestly without intention to deceive Dr Borrren on 9 June when she had answered his question by saying, incorrectly, that her May expense claims then under investigation had been one off and she had not made any others before.

[10] I concluded from the evidence that the misrepresentation made within the claim forms was deliberate rather than merely inadvertent. Ms Manoharan had intended to claim back her own expenses, she had read the forms when she signed them and she had known that expense claims are not to be self-approved. Knowingly she created a false document. In employment that may be regarded as a dishonest thing to do and may be treated as misconduct.

[11] In Waiariki's Code of Conduct governing the employment relationship of Ms Manoharan, "wilfully submitting a false claim for expenses" is described as serious misconduct. Her actions in this regard were therefore blameworthy to a significant degree and were directly causative of her dismissal.

[12] In Ms Manohoran's favour, there was no evidence that her actions had been intended in any way to provide any personal financial or material advantage or benefit. She was claiming back her own money spent on goods or items that were intended for Waiariki's use and which had not been kept by her. She had been authorised to buy goods and services for that purpose and up to the level of spending that occurred. There had been no intention on Ms Manoharan's part to misappropriate goods or services or to divert any of Waiariki's money to herself.

[13] Also in Ms Manoharans's favour I now conclude from the totality of the evidence and on a balance of probabilities, that Ms Manoharan and Ms Robinson did not collaborate in telling the same story about their conduct. I do not consider that they contrived to give matching explanations of their conduct, to make them seem

more believable. The explanations were very similar but were offered independently by Ms Manohoran and Ms Robinson. There was no blameworthy action in that regard and therefore no contributory fault.

[14] The Authority must determine for itself what Ms Manoharan's actual contribution was. From the evidence provided in the course of that original enquiry the Authority now gives its finding that it was high. In particular I now find on a balance of probabilities that she knowingly gave an untrue answer to Dr Borren when he asked directly on 9 June whether there had been earlier instances of false claims before the May claims he was then investigating. Further, I find that she had intended by her actions to hide her expenses from scrutiny by Dr Borren.

[15] I am persuaded to these pivotal findings after consideration of the following evidence. On 17 January 2011, with her own money paid by bank card, Ms Manoharan bought from Farmers Trading some chairs to be used in the reception area of the Nursing School offices at Waiariki. She paid $636 for them. Following that an expense claim form was prepared on which Ms Robinson was stated to be the "Claimant." Ms Robinson, who had prepared the form, signed it in the space for "Claimant's Signature." Ms Manoharan signed it in the space for "Senior Manager's Signature," purportedly approving the claim.

[16] It appears from the date on the form that this was done on 26 January 2011. Ms Robinson on 8 February 2011 was duly paid the $636 to her account by the finance section. On 9 February that amount in cash was withdrawn from her account, either by Ms Robinson or her husband who managed the account, put into an envelope and taken by Ms Robinson to work at Waiariki where she gave it to Ms Manoharan. A similar procedure was followed in respect of the other payments made into Ms Robinson's account, following the other pre-May instances of misuse of the expense claims process.

[17] Ms Manoharan was put on formal notice on 19 May of the investigation into the 11 May claims, which were for amounts of $170, $174.90 and $236.51. Further, she was notified that the conduct being investigated "potentially represents serious misconduct in the form of deception." In her email of 20 May to Dr Borren she said she was "stunned" and "totally gutted" by notice of the investigation. In my view the notice she received would have given her both cause and time to think about what she had done previously in claiming expenses and how she in fact had been reimbursed

for those including the 26 January claim. It is clear that at the time she had fully appreciated the nature of the disciplinary investigation her employer intended to carry out and the seriousness of her situation. Her likely response was to reflect on her previous actions and in doing so call to mind one or more of the unauthorised and improper claims made before the ones in May which were about to be investigated by Dr Borren.

[18] The 11 May claims relate to expenditure Ms Manoharan incurred on 23 April and 2 May. I consider that the close sequence of events and the nature of the inquiry are likely to have brought to her memory the earlier claims made in January, even if initially she had forgotten them, which I consider unlikely.

[19] In the 20 May email Ms Manoharan sent to Dr Borren about the claims, she said of them:

> *"I do remember asking Ann to complete these – Pedre had left – my expenses were building up – I had gone to Ann's office she was sorting out some accounts and I asked if she would clear some of mine (or words to that effect)."*

[20] She also said in her email:

> *"I subsequently signed all the accounts off – again – not being careful I didn't go through them well as Ann is very meticulous. I didn't even think about it – it didn't register at all."*

[21] In my view, on 9 June when questioned about any earlier claims Ms Manoharan is likely, by then if not earlier, to have remembered Ms Robinson completing the claims in January, including the claim for $636. Ms Manoharan may be taken to have known when Pedre her personal assistant had left, and to have known that Pedre was still working in that role in January and could not have been the reason why a different and unauthorised procedure was required to be taken with the signing off of claims forms.

[22] At the disciplinary meeting of 9 June, Ms Manoharan again referred to Pedre as part of her explanation. She also expressed her acceptance that it was not normal for her to sign off her own expenses, which can be regarded as an acknowledgment by her that she knew the procedure required by her employer for that process. Ms Manoharan accepted that she would have read the forms before signing them (as the approving officer), that she had not been distracted and that she would have looked to see what the claim was for. I find that she must have realised that she was

signing her own claim when she knew the correct procedure for the claim process and the reason why that procedure was necessary. This unusual and irregular occurrence is likely to have remained in her memory.

[23] In her evidence, Ms Manoharan also said that signing off on her own expenses had been a mistake and one she had admitted immediately, having appreciated that it was a serious mistake. She described it as a mistake blown out of proportion.

[24] I consider significant the explanations or answers Ms Manoharan gave when asked by Dr Borren how the procedure she had used was intended to work. I accept that his questioning around that was accurately expressed in the meeting notes as follows:

> *Pim: What did Helen see as the process? Expense claims goes through Finance then to HR/Payroll and $ deposited in Ann's bank account. Ann then withdraws the money and pays it to Helen?*

[25] Further, I accept the notes as reasonably accurate in recording Ms Manoharan's answer as follows:

> *I hadn't thought about how the process would work and it was not what she had intended. It is not something I have done before. I suppose Ann would have paid the money to me. It was a mistake. I don't blame Ann, I take responsibility. The situation was: Ann was doing her own expenses, I had a pile of expenses that hadn't been claimed since Pedre left. It was a time when she* [Ms Manoharan] *was overworked and stressed. I asked Ann to do hers* [Ms Manoharan's] *at the same time. Ann made a mistake but Helen takes responsibility. Ann completed the forms and Helen signed them off. Accept it is not normal to sign off my own expenses.*

[26] I consider that it was at the least a misleading answer for Ms Manoharan to provide supposition about what happened, when she already knew from experience what had actually happened. The claims in January and March had been processed and she had been paid out on them, on one occasion with as much as $636 cash given to her by Ms Robinson. Ms Manoharan confirmed that she had received that amount in an envelope handed to her by Ms Robinson. She told the Authority that she was sure she had been given the cash by Ms Robinson but could not remember how much was in the envelope or whether she put it in her handbag or in her car.

[27] It is significant that in his letter of 9 June to Ms Manoharan exonerating her from deliberately acting dishonestly, Dr Borren emphasised his concerns about honesty with regard to signing expense claims. I consider that, upon receipt of his

letter and the advice in it, and no doubt feeling relieved at the outcome of the disciplinary meeting, she is likely to have recalled then, if she had not earlier, the previous instances of making and approving irregular expense claims, including the claim for $636.

[28] The following day she was called to account again about expense claims. I consider it is unlikely in the circumstances that she had not by then remembered the occurrence of earlier claims.

[29] Ms Manoharan in her email of 12 June to Dr Borren said:

> *I honestly 100%, promise on life – did not realise/remember these expense claims otherwise I definitely would have owned up immediately.*

[30] On a balance of probabilities I do not accept that statement was true when she made it. Neither do I accept her statement:

> *I really was not aware of the consequences of not using the correct process. These occurred prior to the process being highlighted to me.*

[31] In particular, Ms Manoharan said that the filling in of expense claims by her was not a big thing and "it hadn't truly dawned on me that this was what was happening". She also said "I can't see why they would have happened". She has acknowledged that it is not a normal process for anyone to sign off their own expense claims. Her explanations were implausible.

[32] Passages of Mr Harrison's submissions for the employer serve to summarise the proof the Authority relies upon in reaching its conclusion that the conduct of Ms Manoharan was not a genuine mistake and that she had not forgotten the earlier transactions when being interviewed by Dr Borren on 17 May and 9 June 2011. Mr Harrison submitted as follows:

> *In summary, Dr Borren:*
>
> *(a) Was satisfied that the earlier answers given by the Applicants which led him to believe there was an honest mistake in relation to the 11 May expenses were answers that were not made hastily nor unconsidered responses.*
>
> *(b) Was clear that both Applicants were emphatic that the 11 May expenses were a "one off" mistake and that this terminology was in fact used, or language consistent with this terminology.*

……

42. This is not a situation where there is one incident of forgetfulness or honest mistake. The number and nature of transactions makes this explanation implausible, amongst other things Dr Borren was being asked to believe what the Authority is being asked to believe, the Applicants:

(a) Falsely filled out and signed off an expense claim form for $380 on 5 January 2011; that this was an honest mistake despite Ms Manoharan having a PA at the time and Ms Robinson was not doing her own expense claims for this to get mixed in with.

(b) Forgot that $380 appeared in Ms Robinson's bank account (after being recorded in her payslip) which her husband apparently then withdrew and she in turn took this money and gave it to Ms Manoharan in cash and they both forgot this particular transaction and the receipt of this case.

(c) Falsely filled out an expense claim form and signed this off on 26 January 2011 for a significant purchase of chairs from Farmers Trading for $636, again completed when Ms Manoharan had a PA and there was no suggestion of this getting mixed up with Ms Robinson's expenses.

(d) Forgot a significant transaction in which Ms Robinson or her husband discovered $636 in their account (it being recorded on Ms Robinson's pay slip) which was then withdrawn, placed in an envelope and given to Ms Manoharan by Ms Robinson. They both forgot this significant cash transaction.

(e) Simply forgot the transaction for food purchased on Ms Manoharan's credit card from Pak'n'Save, another false expense claim filled out on 16 March 2011 and possibly subject to the same cash transaction which once again they both forgot.

(f) Expect Dr Borren to believe all of the above when he initially raised serious concerns about expense claims falsely filled out and signed off on 11 May 2011, but picked up by Payroll before these moneys were paid into Ms Robinson's bank account.

[33] The Authority concludes that when Ms Manoharan signed, as she did six times, the expense claim forms, she knew that all or most of them were for her own expenses and she also knew that she was not able to approve her own expenses. The Authority concludes it is likely that the statement by Ms Manoharan on 9 June to Dr

Borren denying there had been previous instances of improper claims made by her, was untrue.

[34] Further the Authority concludes it is likely that Ms Manoharan acted in the way she did not simply to make the claim process as quick and easy as possible but to hide her expenses from Dr Borren so that he would not have an opportunity to scrutinise them and question them if he wished to. Receiving and carrying around envelopes full of cash could not have been seen by Ms Manoharan as a way to simplify the claims procedure merely for her own convenience.

[35] Therefore I conclude that her actions were blameworthy to a high degree. The untrue explanations and deception caused Dr Borren to conclude that he had lost all trust and confidence in Ms Manoharan. This led him to dismiss her and in turn that action led Ms Manoharan to raise her personal grievance.

[36] I conclude that although Ms Manoharan did not contribute 100% to the situation that gave rise to her grievance, her fault was as high as 80%. I conclude that the nature of her contribution requires a reduction in remedies and to a corresponding degree.

Remedies

[37] To remedy her grievance Ms Manoharan has strongly sought reinstatement to her former position at Waiariki. She has also sought reimbursement of wages lost as a result of the grievance, and compensation for hurt feelings, humiliation and distress caused by her unjustifiable dismissal. In relation to the contempt claim, the remedies sought are compensation or damages, a penalty for breach of an employment agreement and a penalty for delaying or obstructing an Authority investigation.

[38] Causal connection between Ms Manoharan's conduct and the justification for her dismissal was broken at the point where, during the inquiry, neither she nor Ms Robinson was asked for an explanation with regard to Dr Borren's conclusion that there had been collusion over their answers given during the inquiry.

[39] With regard to reinstatement since 1 April 2011 the law has changed and it is no longer the primary remedy. The Employment Court has recently observed in *Angus v Ports of Auckland Ltd* [2011] NZEmpC 125, at para [5], that by this change

Parliament has sought to make it more difficult for employees to be reinstated if they have been unjustifiably dismissed.

[40] A finding of dishonest conduct by Ms Manoharan with the consequently high degree of fault attached to it leads me to conclude that the remedy of reinstatement is not available. It would not be reasonable in the circumstances, as the position of employment was the most senior below Dr Borren as Chief Executive in Waiariki's organisation. A high degree of trust and confidence in the holder of the position was inevitably required therefore. Dr Borren had asserted throughout his investigation and the disciplinary process the utmost importance he, as the employer, had placed on honesty and integrity among his employees, particularly those in very senior positions such as Ms Manoharan.

[41] I also accept from the evidence that there is significant division within staff of the School of Nursing about the prospect of Ms Manoharan returning. The existence of those opposing factions tends to make the remedy impracticable when the position is one of high level leadership. Reinstatement is therefore declined.

[42] I consider that an award of $3,000 pursuant to s123(1)(c)(i) of the Act, taking into account the high level of contribution, is appropriate for the lack of justification in the employer's action in failing to put to Ms Manoharan for her explanation, if she had one to give, the conclusion that she had collaborated with Ms Robinson in presenting explanations for their conduct. There was no loss of wages as a consequence of the grievance and no order for reimbursement is made.

Contempt - Dr Borren's 11 July instruction to staff

[43] The Authority held in its 3 October determination that the remedies of damages and a penalty were appropriate for the breach. The nature and seriousness of Dr Borren's actions in this regard must be viewed independently of the merits of Ms Manoharan's personal grievance. It was at least a serious and arguable claim and not a frivolous or vexatious one.

[44] Whether the grievance was strong or weak, Ms Manoharan had a legal right to raise it. She had a reasonable expectation that her grievance would be resolved according to the statutory and contractual procedures provided and without obstruction or interference from her employer. I have found that Dr Borren did try to

block the path to settlement or determination of the grievance by the instruction he gave to staff not to assist Ms Manoharan.

[45] Dr Borren had available to him ample resources internally and externally for obtaining professional advice about how he should act. Even when the problem was raised he took too long to adequately address it. For the breach of s 134A in delaying or obstructing without sufficient cause the Authority's investigation, the penalty shall be $6,000, payable in full to the Crown.

[46] In assessing damages I am guided by the Employment Court's approach in *Ho v The Chief of Defence Force* [2005] ERNZ 93, referred to in the Authority's determination of 3 October. In awarding $20,000 contractual damages for contempt the Court considered that whether or not a party's case was damaged by the contempt, "it is sufficient to show that the potential was there." I am satisfied the potential for harm or loss with regard to Ms Manoharan's right to resolve her grievance without obstruction was present. The instruction given by Dr Borren and the position he held as the employer of those he instructed, leads me to conclude that it is likely the potential was actually realised.

[47] Damages are fixed at $7,500, which sum is to be paid to Ms Manoharan.

Media coverage – 7 October 2011

[48] Following the Authority's determination, which was issued on 3 October, and before mediation had taken place as directed, the Rotorua Daily Post in its 7 October edition reported at length on the released decision. Included in the report were statements made by Dr Borren and Mr Bird to the journalist. Dr Borren was quoted as saying he was surprised and disappointed by the determination and was considering whether to challenge it. Mr Bird was quoted as saying that the Authority's finding of unjustified dismissal was on "procedural grounds." He said there was some frustration about the Authority directing the parties back to mediation instead of determining remedies, including possible reinstatement.

[49] On 8 October the Daily Post published a correction to the article of the previous day in which it was reported that Dr Borren had been found by the Authority to have acted "fairly and reasonably" in conducting the disciplinary investigation. This phrase was altered to "unfairly and unreasonably," the actual finding of the Authority.

[50] On behalf of Ms Manoharan, by memorandum from counsel Ms Stewart, a complaint was made to the Authority on 12 October about the media coverage and particularly the statements that had been made to the Daily Post by Dr Borren and Mr Bird.

[51] Ms Stewart also complained about an email Dr Borren had sent on 3 October to all staff of the Waiariki Institute. She drew attention to his advice to the staff that he had dismissed Ms Manoharan and Ms Robinson "due to serious dishonesty with respect to expenses claims" and that "the Employment Relations Authority has ruled that proper process was not followed."

[52] The complaint was that in making statements to the staff and to the general public through the media Dr Borren and Mr Bird had breached the *sub judice* rule, as they had commented on matters that were still being investigated and were yet to be fully determined by the Authority. Breach of good faith was also complained of.

[53] Following that complaint submissions were received from Ms Stewart and Mr Harrison and affidavits were provided from Mr Bird and Ms Manoharan.

[54] I do not consider that the matters complained of occurring after 3 October should be addressed in remedies or further remedies in finally determining Ms Manoharan's grievance claim. The Authority found, and the Daily Post accurately and prominently reported on the front page under a large bolded heading, that Dr Borren had unjustifiably dismissed Ms Manoharan. Whether that was for reasons of substance or procedure/process it amounts to this; Dr Borren had acted in breach of s 103A of the Employment Relations Act and had therefore acted unlawfully.

[55] What is process and what is substance is often misunderstood and confused even by professional representatives before the Authority and, as the Court of Appeal has observed, there is no bright line between procedure and substance. The key employment law case of *Hennessy v Auckland City Council* [1981] ACJ 313, well illustrates that the failure by an employer to seek an explanation for alleged misconduct is as much a substantive defect as procedural. The failure in that case was found to amount to a breach of a statutory and contractual obligation on the employer's part.

[56] A procedurally unjustified dismissal is as much an unjustifiable dismissal as a substantively unjustifiable dismissal, although since 1 April this year minor

procedural defects that do not result in unfair treatment to the affected employee are not to lead to a finding of unjustifiable dismissal. The Authority expressly held – at para [31] - this was not a case of minor defect.

[57] Dr Borren is quoted in the Daily Post as stating that the Authority determined that "the process was at fault not that the staff were not guilty of misconduct." The second part is true, as it was not the function of the Authority in determining justification to determine whether the employees were guilty of misconduct. However much Dr Borren may have tried to minimise the Authority's findings, a reader of the Daily Post could have been in no doubt from the headline blazoned across its front page on 7 October that the dismissal of Ms Manoharan (and of Ms Robinson) had been found to be "unjustified" and was therefore unlawful.

[58] In considering this complaint it is also relevant that Ms Manoharan's grievance claim arose from a workplace in which there are a large number of employees and in which she held a prominent leadership position. Many have naturally been interested in the case and concerned about it. Anyone who had sat through the Authority's public investigation meeting held in Rotorua over nearly three days listening to the evidence of about 18 witnesses, and at which vehemently at times Dr Borren and the managers of Waiariki opposed Ms Manoharan's claims and her bid for reinstatement, could not have been in the slightest bit surprised that Dr Borren would be disappointed with the Authority's determination. I do not consider that his freely saying so to staff and to the public undermined or tended to undermine this very public dismissal and the subsequent Authority investigation.

[59] By operation of law - s 159(2) of the Act – a direction to mediation suspends proceedings before the Authority, which at the time the direction was given had not been concluded. Although the investigation was on-going remained so until a final determination was given, of more concern to the Authority is that during the investigation phase debate in the media and through communications with employees may have a tendency to compromise the mediation process where that has been resumed. The parties were expressly required to act in good faith in attempting to reach settlement at mediation.

[60] How the parties behaved in mediation is not for the Authority to know, as it is not the regulator of good faith in that confidential process. The Authority does know that Dr Borren did manage to settle one of the grievances, Ms Robinson's, that had

been directed back to mediation. I can therefore assume he purposefully engaged in the process of trying settle Ms Manoharan's as well.

[61] Because of the high level of publicity if not notoriety the dismissal of Ms Manoharan had among the staff at Waiariki, it was reasonable for Dr Borren to make some statement to staff and the public generally about developments in the investigation of her grievance claim. I do not consider that his reference to "proper process" misrepresented or twisted the Authority's express finding that Dr Borren's dismissal of Ms Manoharan was not justifiable.

[62] The complained of statements should also not be read in isolation from the need for ongoing communications with the staff by the CEO of Waiariki and for public comment to be made by a public body about a well publicised occurrence. I do not consider the statements were an attempt to undermine the Authority or its investigation. With regard to her bid to be reinstated Ms Manoharan has attracted support and opposition in similar measure. Feelings about her being reinstated were well developed before 3 October and I do not consider the email of that date and the newspaper reporting of 7 October are likely to have altered the attitude many already had by the time of those communications.

[63] I therefore decline any remedies in respect of the communications by Dr Borren and Mr Bird with Waiariki staff and the Daily Post after the Authority's determination of 3 October had been issued to the parties.

Determination

[64] As remedies for the established personal grievance of Ms Manoharan and for her claims of contempt and breach of the employment agreement, the Chief Executive of Waiariki Institute of Technology, Dr Borren is ordered to;

a) Compensate her $3,000, pursuant to s 123(1)(c)(i) of the Employment Relations Act,

b) Pay damages to her of $7,500,

c) Pay to the Crown a penalty of $6,000, pursuant to ss 134A and 135 of the Employment Relations Act.

Costs

[65] Costs are reserved. Either party wishing to apply must do so in writing within 21 days of the date of this determination. Any reply must be within a further 14 days.

A Dumbleton
Member of the Employment Relations Authority