IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2012] NZERA Auckland 200
5341970

	BETWEEN	SERVICE & FOOD WORKERS' UNION NGA RINGA TOTA INC First Applicant
	AND	VA'A NGAKAU Second Applicant
	AND	SONNY TUITI Third Applicant
	AND	KEVIN MEHANA Fourth Applicant
	AND	SALA PARKER Fifth Applicant
	AND	PACIFIC FLIGHT CATERING LIMITED First Respondent
	AND	PRI FLIGHT CATERING LIMITED Second Respondent
Member of Authority:	Alastair Dumbleton	
Representatives:	Simon Mitchell, counsel for Applicants Anthony Drake, counsel for Respondents	
Investigation Meeting:	11 April 2012	
Submissions Received	20 and 23 April 2012	
Determination:	13 June 2012	

DETERMINATION OF THE AUTHORITY (No 2)

A. The second to fifth applicants were employed by the first respondent company.

B. The first respondent breached s 130 of the Employment Relations Act 2000.

C. For that breach it is ordered to pay penalties of $20,000 in total. Of that sum $10,000 is to be paid to the second to fifth applicant employees ($2,500 each) and the remainder ($10,000) to the Crown.

D. Costs are reserved.

Further determination of the Authority

[1] In this determination I refer to the first applicant Service and Food Workers Union as the SFWU, the first respondent company Pacific Flight Catering Limited as PFC and the second respondent company PRI Flight Catering Limited as PRI. The *business* known as Pacific Flight Catering is referred to by that full name.

[2] This determination follows an earlier one dated 12 December 2011 (at [2011] NZERA Auckland 525) in which the Authority considered and decided several issues. They did not include the claims for penalties which had been brought by the five applicants against the two respondent companies under s 130 of the Employment Relations Act 2000.

[3] Section 130 requires every employer to keep a wages and time record showing certain information, including the wages paid to an employee in each pay period. Under s 130, if requested by an employee or authorised representative of an employee, an employer must immediately provide access to, or a copy of, or an extract from, the wages and time record relating to the employee at any time in the six years preceding the request.

[4] The Authority's 12 December determination reserved disposal of the penalty claims for a further meeting, to allow the parties a full opportunity to provide and examine all relevant evidence not already given to the Authority.

[5] In particular, the purpose of the further meeting was to allow the questioning of the applicants Va'a Ngakau, Sonny Tuiti, Kevin Mehana and Sala Parker, about their contended status as applicants joined by the Authority into the investigation, and

to enable any further evidence to be given as to the identity of the employer of those applicants.

[6] The Authority's intentions for concluding this investigation were expressed at paragraph [33] of its December determination:

> *After further evidence has been given the Authority will determine which respondent was the employer (it is possible in law that both were), whether the employer breached s 130(2) of the Employment Relations Act and if so what penalty should be imposed.*

Applications to re-open and challenge

[7] Soon after the Authority had issued the determination the respondents PFC and PRI applied to have the investigation reopened. The grounds for that were principally that the joinder by the Authority of the four applicant employees and the second respondent company had not been effected in accordance with law. Shortly after reopening had been applied for, on 9 January 2012 an appeal against the determination was commenced by the respondents in the Employment Court, by way of a point of law challenge. In response the applicants filed a cross-challenge.

[8] To hear the reopening application and, depending on the outcome of it, the issues left outstanding from the Authority's determination given in December 2011, a timetable was set in conjunction with the parties for a resumption of an investigation meeting to take place on 11 April 2012. In a telephone conference the parties were advised that its purpose was to consider;

(a) Whether the Authority's investigation into the substantive claims for penalties should be reopened;

(b) Any evidence and submissions in relation to the joinder of the four applicant employees and the second respondent company, PRI;

(c) The liability of either or both of the respondent companies PFC and PRI for penalties under s 130 of the Employment Relations Act 2000; and

(d) The imposition of any penalties for which either or both of the respondents might be found liable.

The Court's judgment on the challenge and cross challenge

[9] When the Authority resumed its investigation meeting on 11 April 2012 the Court had not given a decision on the challenges, which it had reserved following a hearing in March. On 18 April 2012 the Court issued its judgment, dismissing both the challenge and cross-challenge. The Court held that the disposal by it of the challenges meant that the Authority could continue to investigate and determine those aspects of the matters still before it between the applicant and respondent parties.

[10] The issues (a) and (b) above of reopening part of the investigation and joinder of parties are therefore no longer required to be addressed, as the Court has held that the four joined applicants and the one joined respondent had been properly brought before the Authority.

Employment relationship

[11] There is no dispute that the real nature of the relationship between the second to fifth applicants and the person or persons who had engaged them to work in the Pacific Flight Catering business was one of employment covered by the Employment Relations Act. For their work the applicant employees were paid wages and records were kept on computer of the times they worked and of their pay and leave entitlements. The business in which they were employed was owned or operated by PFC or PRI or both those companies.

Identity of the employer

[12] Some time after the investigation had been commenced in the Authority an issue emerged as to whether PFC was the employer or whether that had been PRI's role. The applicant and respondent parties were given opportunities during the investigation to provide evidence to the Authority about this issue. The applicants, the union and four employees, gave evidence and Ms Gerda Gorgner purported to give evidence for PFC and PRI.

[13] The first statement of problem [SOP] lodged had made reference to only "Pacific Flight Catering" and to "Pacific Flight Catering Ltd" in conjunction with a claim that the employer had failed to provide wages and time records when requested by SFWU. The company PFC was alleged to have been the employer and PRI was

not mentioned in the SOP. The first statement in reply [SIR] lodged did not contain a denial that PFC was the employer and made no mention of PRI.

2010 Investigation of PFC

[14] The SIR was lodged by Ms Gorgner on behalf of the respondent party PFC. Her role in the Pacific Flight Catering business had been described in the evidence she gave in 2010 during the investigation of another claim brought by SFWU against Pacific Flight Catering Ltd, in which she said;

> *1. I am employed by the respondent as the HR Manager. I also have additional duties and responsibilities, including overseeing tenders and the day to day running of the company.*

[15] Ms Gorgner in that case referred to her relatively long involvement in collective bargaining between PFC and SFWU, and also in contracting to provide flight catering services with international airlines such as Singapore Airlines. In the latter regard, and representing that she had reasonably high level or detailed knowledge of the Pacific Flight Catering business, Ms Gorgner referred to "the precarious commercial situation we are in." PRI was not mentioned in her evidence. Ms Gorgner was PFC's representative at the investigation meeting and its sole witness. Submissions were presented by her "For and on behalf of Pacific Flight Catering Limited."

[16] It is also significant that at the start of the 2010 investigation the respondent PFC was represented by law firm Bell Gully, which filed a SIR expressly admitting the allegation of the union made in the SOP that SFWU members had been "employed by the Respondent." PFC asserted in the SIR that its "employees" were at risk of losing their jobs in the circumstances to be investigated. The SIR made no reference to PRI.

[17] To resolve that particular employment relationship problem the Authority ordered PFC to pay a penalty of $6,000 – half to SFWU and half to the Crown – for breaching its obligations of good faith under the Employment Relations Act through the actions of undermining the union and undermining bargaining with the union; see [2011] NZERA Auckland 23. The determination was not challenged by PFC.

High Court judgment

[18] In February 2011 the High Court decided the matter of an application for an injunction brought against PFC as the sole defendant. In a judgment of Woolford J, at CIV–2011- 004–000277, unreported, 14 February 2011, the Court referred to evidence given for the defendant PFC (appearing through Bell Gully counsel) and for the plaintiff, LSG Sky Chefs NZ Ltd. The case concerned the operations of the Pacific Flight Catering business and some 60 of "the defendant's employees'' employed in it to provide catering services. PRI is not referred to in the judgment and there is no suggestion by the Court that anyone other than PFC was the employer.

[19] In an affidavit provided to the Court by Ms Gorgner, referred to in the judgment at para [38], she deposed that "PFC employs staff …. to provide catering services." It is clear that Ms Gorgner was referring to the company PFC and it seems unlikely the employer had not been properly identified by Ms Gorgner and her legal team.

Matsuoka v LSG

[20] In May 2011 the Employment Court gave judgment in the matter of an application brought by John Matsuoka against LSG Sky Chefs NZ Ltd; [2011] NZEmpC 44. The Court found, at para [13], that "PFC, not PRI" entered into contractual arrangements to provide food catering services to various airlines including Singapore Airlines. The Court also held;

> *[14] PRI is the company which operates the business of providing flight catering services and PFC is merely the trademark name of the business which appears on all signage and is how the business was referred to in the trade. PFC is not registered for GST nor for PAYE purposes. PRI is so registered …. It appears that PRI has the relevant bank accounts, pays all the employees involved in the flight catering business and PFC is merely there for name protection purposes.*

[21] The Court also held;

> *[25] The evidence establishes that PFC engaged employees, although they were paid by PRI. However, some of the contractual arrangements that PFC has with employees demonstrate a substantial degree of confusion as to the true identity of the employer. The Pacific Flight Catering Ltd Assistants Collective Agreement Auckland …. for example states that the employer is PFC but the document purports to be "Signed on behalf of PRI FLIGHT CATERING LTD."*

[22] Aware that there had been confusion as to the identity of the employer of the relevant employees, the Court nevertheless concluded that although the applicant Mr Matsuoka had been employed by PRI at least four workers in the Pacific Flight Catering business had been employed by PFC. It found that Messrs Tuiti, Ngakau, Parker and Sale "were all employees of PFC." Three of those four are applicant employees in the present case in which the respondents contend the employer was PRI and not PFC.

[23] The Authority gives due weight to any findings of the Court made from evidence it has considered. The particular finding that PFC had been an employer was expressed to be relevant to the case before the Court and should not be diminished by the label *obiter*, as the Court held the evidence was material to its decision.

[24] In yet another case, without objection, PFC was the employer party to an application by SFWU seeking to have collective bargaining referred to facilitation; see [2011] NZERA Auckland 99.

[25] For the respondents it has been submitted that the Employment Court in its recent judgment on the challenge and cross challenge had acknowledged at para [7] that the second respondent PRI was the proper employer of the second to fifth applicants. I do not read the Court as saying that. The Court had before it from the respondents a challenge limited to a point of law and probably for that reason there was no hearing and no evidence was taken although submissions were given. From the nature of the information or material before it the Court stated, at para [7], that PFC "is said never to have traded or employed any person." That is an observation about the view a party before the Court has of a matter rather than a finding.

[26] In any event the identity of the employer was not an issue before the Court for determination in the challenge and cross-challenge. What the Court did acknowledge in the last paragraph of its judgment at the last bullet point, was that the issue of identity is an aspect "still before" the Authority.

[27] PFC did not contend that PRI was the employer in the present case until very shortly before the investigation meeting commenced on 30 June 2011. It had not been raised by PFC in its SIR. At the meeting PFC, again represented by counsel, presented no evidence in support of the claim that PRI was the employer. PFC led

no evidence at all and neither did it exercise its right to cross examine evidence that was given by Mr Ngakau and Mr Tuiti of their having been employed by PFC.

[28] Later on, in an amended SIR, PRI claimed that it had been the employer of the four applicant employees, and then PRI sought to escape the reach of the investigation by arguing it had not been properly joined by the Authority in the first place. The Court subsequently held that PRI was properly before the Authority in this matter.

[29] Through the evidence of Ms Gorgner the respondent companies have claimed they were confused as to which of them was the employer of the applicant employees at material times. Ms Gorgner sought to blame legal advice given by Bell Gully. Even if the respondents were genuinely confused or mistaken, it cannot be any fault of the applicants who had an absolute right in law, personally or through an authorised representative, to have immediate access to the wage and time records kept for them by their employer, whoever that may have been. Both respondents through their agent and senior manager Ms Gorgner must be taken as knowing perfectly well that such a record had been kept, and that it was in the possession or control of both companies, regardless of which of them was technically the employer.

[30] The PFC collective agreement was expressed to be binding on that company as "the employer" party, although at the same time it had on it the signature of PRI. This is some indication that PFC and PRI had an intermingled role as the employer and paymaster of workers such as the employee applicants who worked in the Pacific Flight Catering business. An explanation for PRI's signature may be that because PRI owned PFC it signed the collective agreement on behalf of its subsidiary company. There is nothing unusual or irregular about the employees of one company being paid wages and having PAYE deducted by another company, especially when the companies are part of a group or are closely held.

[31] As a legal person PFC had the capacity to be an employer unless prevented by law. Whether the company itself paid wages and remitted PAYE to the IRD, it was able to enter into a relationship whose real nature was employment.

[32] I am satisfied that the closely related companies PFC and PRI have tried to use their separate corporate personality and the different functions or purposes they may have served in the business of Pacific Flight Catering simply as a smokescreen, to hide themselves from liability for an alleged failure to comply with the obligation of

every employer to immediately provide access to wages and time records to employees upon proper request being made.

[33] Up until just before the investigation meeting on 30 June 2011, PFC had held itself out to be the employer of the four applicant employees and a number of others who had worked in the Pacific Flight Catering business. PFC regarded itself as their employer because that was the reality, as Ms Gorgner could see from her close involvement in the business. The applicant employees were able to discern who their employer was and they too identified PFC to the Authority as having that role. Up until after this investigation had started PFC had identified itself several times as the employer and regard may be had to that circumstance by the Authority. PRI is the sole owner of PFC, yet no director or shareholder of PRI took the opportunity to give evidence that its subsidiary PFC had not been authorised to behave as if it was the employer. Such evidence might be expected if Ms Gorgner is correct that she had only a humble or minor role to play in PFC.

[34] I find that as submitted by Mr Mitchell on behalf of the applicants, PFC was the employer. If not *the* employer PFC may have been *an* employer together with PRI. The two companies appear to have comprised a consortium operating the Pacific Flight Catering business in which the applicant employees worked. Latterly PRI has claimed it was the employer and the two companies may therefore have had joint and several liability. In a case such as this where access to information has been sought by those who the information is about, the identity of the employer may well be a matter of "technicalities" and as such able to be disregarded by the Authority in discharging its role under s 157 of the Act. In a case such as this what is more important is to identify those who have possession or control of the information and are able to provide access to it when a request has been properly made under the Act.

[35] I find that as an employer of the four employee applicants, PFC was obliged to comply with the requirements of s 130 of the Employment Relations Act.

Liability for penalties under s 130

[36] I find that on 11 May 2011 the four applicant employees, through the SFWU as their authorised representative, made an effective request under s 130 for access to their wage and time records. That request I find was not immediately complied with as required.

[37] Each employee signed an authorisation sent by the union to Ms Gorgner, which read as follows:

> *To whom it may concern,*
>
> *I authorise the Service & Food Workers' Union Nga Ringa Tota Inc. to represent me under s 236 Employment Relations Act 2000 and authorise them to obtain wage and time records and holidays and leave records on my behalf, including from Pacific Flight Catering.*
>
> *Name:*
> *Signature:*
> *Date:*

[38] Each authorisation had printed on it the name of the authorising person, and each showed dates in either April or May 2011 when the document was signed by the person in each case.

[39] Ms Gorgner replied by letter to this request on 13 May 2011, acknowledging that;

> *Prior to receiving the letters authorising representation, we were not aware of who are currently members of the SFWU. None of these individuals have worked for PFC since 23 February 2011. Our wage records are accurate and no one has been disadvantaged.*
>
> *As the records are voluminous and intermingled with records that you have no rights to view, we require confidentiality agreements that ensure that (a) no information is passed on to LSG and (b) other employees' details are not disclosed.*
>
> *We pay weekly so for review for six years of records there will be 312 wage sheets for each individual and 312 pay records. That is potentially 624 documents per person or perhaps 8112 in total.*
>
> *You have finally presented us with appropriate authorisations and we really need to address our very serious concerns about confidentiality so that we can move forward. Your numerous unfounded and unsubstantiated accusations are severely resented.*
>
> *I suggest that you write to me with a proposal how we can address my concerns.*

[40] Mr Oldfield of the SFWU legal officer wrote back to Ms Gorgner on 16 May 2011, beginning his letter with the following;

> *1. The Union only wants to see its members' wage and time records and holidays and leave records. You should provide those employees' records alone. The Union is not going to provide a confidentiality agreement in respect of other employees because it is not interested in viewing their wage and time records. You are required to provide wage and time*

records "relating to the employment of the employee" under s.130(2) Employment Relations Act 2000 ("ERA") and should do so. If the information is intermingled PFC can either separate it or blank out irrelevant information.

2. *The Union is not going to provide a confidentiality agreement in respect of the wage and time records or holidays and leave records or promise not to pass them on to LSG because this is not a requirement or precursor for obtaining wage and time records or holiday and leave records under s.130(2) ERA.*

3. *In short, confidentiality agreements are not going to be provided because they are not a statutory condition for obtaining wage and time records or holidays and leave records. We are authorised under s.236 to obtain wage and time records and holidays and leave records and PFC's obligations under s.130 ERA and s.81 Holidays Act 2003 are clear. The records should be provided to us immediately. If they are not, we will persist with our claims for penalties and compliance.*

[41] The view put forward by the SFWU of the legal requirements was correct. I find that through its agent or manager Ms Gorgner, PFC had no reasonable excuse for failing to comply with the clearly stated requirements of s 130(2), which included a requirement to "immediately" provide the requested information.

[42] Mr Oldfield on behalf of the employees had also made a reasonable suggestion as to how PFC's professed concerns about confidentiality could be addressed, by redacting or separating out intermingled information, but the suggestion was not responded to at all by Ms Gorgner.

[43] Information in the wage and time records belonged as much to the employees as it did to their employer. The employer had no lawful right or power to impose restraint on the use to be made by employees of that personal information. Neither s 130, Part 6A nor any other provision of the Act allows such restrictions to be placed on the way information from s 130 records may be disseminated by employees who have exercised their right to obtain it.

[44] I am also satisfied that Ms Gorgner knew that the wage and time records and the information contained in pay slips given to the employees was likely raise in the mind of the new employer, LSG, questions about the accuracy or authenticity of that information and for that reason she ought to have known that the employees, through their union, were likely to seek clarification from the source wages and time records themselves.

[45] It has not been a function of the Authority in this investigation to determine why wages rates and annual leave balances were increased, substantially in some cases, for some employees (and were not increased for some others) just before the employees transferred to LSG. Such explanations as Ms Gorgner gave about this to the Authority were interesting but not convincing, as were her attempts to distance herself from having any responsibility or knowledge about the keeping of the wages and time records and recording correct information in them.

[46] It was not for PFC or Ms Gorgner to dictate how the employee applicants could exercise their right to information under s 130. The option of using an authorised agent was that of each employee, not the employer. As the employees said in evidence, they were not proficient in analysing wages and time records and may not have known what to look for in the computerised records even if they had viewed those themselves, as Ms Gorgner invited them to do. It was perfectly reasonable for them to rely on the knowledge and experience of their union in such matters and to have the union on their behalf examine the records for the information sought.

[47] I reject the submission that the respondents "genuinely believed" they were justified in withholding records until "a request to the correct employing entity" was provided. The identity of the employer was not raised as an issue until several weeks after PFC had received the letter from the SFWU enclosing the authorisations. Ms Gorgner's reply to that letter made no reference to such an issue existing at that time.

[48] I do not accept the submission that LSG was somehow acting in an illegal or underhand way by offering assistance to the transferring employees in getting access to the wages and time records that had been kept for them while they had worked in the Pacific Flight Catering business. By law LSG had become the new employer but had been given vital information whose reliability it had reason to doubt until some verification from the original wages and time records was obtained. Ms Marie Park the Human Resources Manager of LSG said in her evidence, which I accept, that employees transferring from Pacific Flight Catering had told her that the information about them supplied by PFC was inaccurate or incomplete. LSG naturally looked to the former employer's records to cross reference or check the information.

[49] I am satisfied that the employee applicants are fully behind the claims which were originally brought in the name of their union the SFWU and that they have

indeed wished to see a penalty imposed on their employer and to receive some or all of that penalty as a form of compensation for the alleged breaches of s 130. The suggestion made that they were not interested in the claims in pursuit of which they took time off to attend the meeting and give evidence, was derisory.

[50] The lack of wage records to verify their entitlements with their new employer LSG caused anxiety to the employees and they gave evidence of the impact on them of PFC's actions in that regard. Their new positions of employment with LSG were compromised and they were not afforded equal treatment while there were doubts remaining about their transferred PFC entitlements.

[51] Just as the Authority had found in the breach of good faith case referred to above, Ms Gerda Gorgner was an unreliable witness in this one too. I do not accept that she was merely an office junior or administration officer having minor functions and limited knowledge and responsibility within these companies, or that she acted on bad advice she claims was given by Bell Gully the firm of solicitors retained before Kensington Swan received instructions more recently. Up until this case Ms Gorgner has presented herself as being a person with a high degree of responsibility in the business of Pacific Flight Catering and a high level of knowledge of its affairs. I consider that she was both the hands and the mind of that business.

[52] I find that PFC deliberately and significantly breached s 130 of the Act in relation to each of the four employee applicants. Through its agent or manager Ms Gorgner, PFC set about imposing unreasonable and unlawful conditions on the employees having access to the relevant records and information. PFC unreasonably and unlawfully delayed their access to the records, which was only given after the Authority began making orders requiring their production.

[53] Penalties should therefore be imposed.

Penalty

[54] Since 1 April 2011 the maximum penalty for any breach of the Employment Relations Act 2000 has been $20,000 in the case of a company. The breaches in this case occurred after the increase became law.

[55] At the urging of counsel Mr Mitchell the Authority has reconsidered its earlier expressed tentative views as to the degree of fault present in the employer's actions

that caused the breach. The employer acted dictatorially and cynically with very little regard to the employee's rights to information. I agree that the penalty must reflect the deliberateness of PFC's actions and I take into account that PFC was well resourced with legal assistance it readily obtained, using at least two major law firms providing specialist advice. I agree there are aggravating features of PFC's conduct not the least of which is making the employees the meat in the sandwich of the commercial battle PFC started with LSG after it had lost the Singapore Airlines catering contract to its business rival.

[56] A further feature in this regard is that PFC did not comply with the Authority's direction of 20 June 2011 that the wages and time records were to be available at the 30 June 2011 for production if required. A summons to Ms Gorgner to produce the records was needed before they were obtained in July 2011. This was not a situation where PFC had reconsidered its actions and voluntarily supplied the information.

[57] The respondents' breach was in the nature of a continuing one by its failure to "immediately" comply with s 130 of the Act. In the case of each employee applicant the breach occurred over a period of time between about 11 May, when the request for access to the records was made, and about six weeks later when the remaining wages and time records were produced shortly after the investigation meeting held on 21 July.

[58] Further, I take into account that shortly before this application was made PFC was found by its conduct to have breached other provisions of the Employment Relations Act 2000. For that conduct it was fined $6,000, or 60% of the $10,000 maximum at that time. Two of the applicant employees, Mr Ngakau and Mr Tuiti, were involved in that case and so once again have become the victims of breaches by PFC.

[59] The applicant employees gave compelling evidence as to the consequences they suffered as a result of the failure by their former employer to comply with s 130 of the Act. Their correct pay rates and other entitlements could not be confirmed by LSG until, as the new employer, it had obtained some verification or clarification of their former pay rates and other entitlements relevant to establishing their new terms and conditions of employment. With some justification, the applicants are bitter about their treatment by their former employer and have urged the Authority to impose heavy penalties.

[60] The breaches in respect of four employees I regard as separate breaches, as the wages and time records the employees sought access to contained information that was unique to each of them in relation to days and hours worked, rates of pay and service related entitlements. This information was in a sense their DNA as employees.

[61] A penalty may also properly be imposed as a deterrent to other employers the size of PFC.

Determination

[62] I agree with the submissions for the applicants that in respect of each of the four employees PFC should be ordered to pay a penalty of $5,000 for breach of s 130 of the Employment Relations Act. This seems reasonable as in totality penalties of $20,000 are only 25% of the maximum that could have been imposed. I also agree it is appropriate that a part of the penalty should be awarded to each employee applicant. They may regard it if they wish as a form of compensation or reparation for the situation they have endured. As permitted by s 136(2) of the Act, each employee applicant is to be paid half the $5,000 penalty. The balance is to be paid to the Crown, which will therefore receive $10,000 in total.

Costs

[63] Costs are reserved for written submissions. Application may be made by the union and employee applicant parties within 14 days of the date of this determination.

[64] SFWU played a major part on behalf of its members in this case and in principle a claim for legal costs, expenses and disbursements incurred by it may be made. As well as any claim for legal costs arising from counsel Mr Mitchell being engaged under the circumstances in which in-house counsel Mr Oldfield was prevented from continuing to act in that capacity, the Authority will consider any claim by SFWU for Mr Oldfield's professional or executive time lost to SFWU during any part of this case. Any expenses or disbursements incurred by the employee applicants as well as the union may also be claimed.

[65] The respondents' application to reopen the investigation is also a matter relevant to costs. The application delayed further the completion of an investigation into what should have been a relatively straightforward situation in which employees

were seeking to enforce a clear and fundamental entitlement to have access to wage and time records their employer had kept for them, or to the information contained in those records.

[66] Any reply by the respondents to a costs application is to be filed within a further 14 day period.

A Dumbleton
Member of the Employment Relations Authority