

**IN THE EMPLOYMENT RELATIONS AUTHORITY**

**AUCKLAND**

[2013] NZERA Auckland 100  
5356025

BETWEEN

VIVIENNE MARY  
SHEPHERD  
Applicant

A N D

COMMUNITY BUSINESS  
AND ENVIRONMENT  
CENTRE COOPERATIVE  
SOCIETY LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person  
Bryce Quarrie, Advocate for Respondent

Investigation Meeting: 20 February 2013 at Whangarei

Date of Determination: 25 March 2013

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**DETERMINATION OF THE AUTHORITY**

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- A. The suspension of Ms Shepherd from her employment did not constitute unjustifiable disadvantage.**
- B. Ms Shepherd's dismissal for serious misconduct was justified.**
- C. Costs are reserved.**

**Employment relationship problem**

[1] Community Business and Environment Centre Cooperative Society Limited (CBEC) is an incorporated society under the Industrial and Provident Societies Act 1908. It was established by the current General Manager, Mr Cliff Colquhoun, over 20 years ago.

[2] CBEC has charitable status and is governed by a Board of Directors (the Board) to whom Mr Colquhoun reports and is accountable.

[3] CBEC provides waste reduction and recycling services for the Far North District. It also provides waste reduction advisory services and water and environmental education to a number of community groups, private enterprises and local authorities, one of which is the Whangarei District Council (the Council). CBEC has had contracts with the Council to provide such services for approximately 10-11 years and this business relationship is very important to CBEC.

[4] CBEC has a number of branches providing services, one of which is Eco Solutions in Whangarei, where the applicant, Ms Vivienne Shepherd worked.

[5] Ms Shepherd was initially employed by CBEC in July 2010 as project coordinator on a fixed term basis before being employed full time as the Office Manager, Eco Solutions pursuant to an individual employment agreement dated 11 April 2011. Ms Shepherd's role as Office Manager included administrative duties, training and recruitment, strategic planning and marketing. In addition, Ms Shepherd managed projects being run by Eco Solutions including healthy homes, recycling, sustainable living. Ms Shepherd enjoyed her role.

[6] Outside her work for CBEC, Ms Shepherd was, and continues to be, involved in and passionate about a number of community activities, one of which is the "*Save our Rail*" campaign. On 25 May 2011 at a public forum convened by the Council, Ms Shepherd, as a private citizen and in her role as spokesperson for the "*Save our Rail*" campaign attempted unsuccessfully to speak about the issue. Ms Shepherd was aggrieved that she had been prevented by the Chairperson, unfairly in her view, from completing her speech on an issue she believed to be of great importance.

[7] Following publicity in the local media around Ms Shepherd's attempt to speak at the Council's public meeting on 25 May, Ms Shepherd was issued with instructions by Mr Colquhoun about future conduct on behalf of and involving Eco Solutions.

[8] A further public forum was convened by the Council on 27 July. Ms Shepherd applied in advance to speak at the meeting on the topic of E-Cycle, in her capacity as Office Manager of Eco Solutions. Ms Shepherd's application to speak was declined by the Council. At Ms Shepherd's suggestion, an application was made to the Council by her colleague Ms Anna Murphy to speak instead. This application was

accepted. Ms Shepherd felt that the Council, by refusing her request to speak and by allowing her colleague's request to speak, was acting unfairly.

[9] When her colleague, Ms Murphy, did not attend the Council's public forum on 27 July, Ms Shepherd took it upon herself to attend the meeting and speak. Ms Shepherd was not allowed to speak at the meeting. In protest, Ms Shepherd placed a closed zip across her mouth, handed out documentation to the councillors and others present and emptied a box of electrical parts on the floor. These actions attracted further interest by the local media. Articles featuring pictures of Ms Shepherd with her mouth zipped were prominent in *The Northern Advocate* newspaper.

[10] When Mr Colquhoun became aware of Ms Shepherd's actions at the Council's public meeting on 27 July, he sought to meet with her to discuss the matter. On 2 August, Ms Shepherd was suspended from her employment and on 5 August Ms Shepherd was dismissed for serious misconduct.

[11] Ms Shepherd was dismissed for failing to follow a reasonable instruction and for acting in a manner which seriously damaged CBEC's reputation. Ms Shepherd says the suspension was unjustified and she has a disadvantage claim. Further, Ms Shepherd says her dismissal for serious misconduct was unjustified. Ms Shepherd seeks loss of wages and compensation as a result of CBEC's actions.

[12] CBEC denies the claims and says Ms Shepherd deliberately breached a clear instruction and her actions seriously damaged its reputation. CBEC says the suspension and dismissal were actions a fair and reasonable employer could take in all the circumstances.

## **Issues**

[13] The issues for the Authority to determine are:

- (a) Was Ms Shepherd's suspension by CBEC on 2 August 2011 justified and was the suspension carried out in a procedurally fair manner?
- (b) Was Ms Shepherd's dismissal for serious misconduct on 5 August 2011 justified and if so was it carried out in a procedurally fair manner?

- (c) If the answer to either or both questions is yes, what remedies are available?

### **First Issue**

#### **Was Ms Shepherd's suspension by CBEC on 2 August 2011 justified and was the suspension carried out in a procedurally fair manner?**

[14] Following the public meeting of Council on 25 May at which Ms Shepherd sought unsuccessfully to speak on "Save our Rail", and following Council's refusal to allow her to speak at its next public forum on 27 July, Ms Shepherd spoke to a journalist, Cameron Leslie. On 1 July an article by Mr Leslie was published in *The Northern Advocate* newspaper as follows:

#### ***Banned from Council Anger as Council bars speaker***

*By Cameron Leslie*

*A rare move from the Whangarei District Council has seen Whangarei businesswoman Vivienne Shepherd denied speaking rights at a Council meeting later this month. "I'm feeling discriminated against. I want to know why", she said yesterday when accusing Acting Mayor Phil Halse of bullying behaviour. Ms Shepherd, of Eco Solutions in Bank Street, was told she was barred because she had spent too long telling the Council about Northland-Auckland rail issues last month and it was feared she would use the public forum as a political platform. ... Ms Shepherd yesterday accused Mr Halse of assuming her planned talk about recycling would turn into a Save Our Rail speech. "Last time I spoke as spokesperson for Save Our Rail. This time I'm speaking as Vivienne Shepherd the office manager of Eco Solutions. He [Mr Halse] is not differentiating my different roles," she said. "They are completely mutually exclusive issues and he's moving everything together. I really want to know what he's frightened of. His behaviour is that of a bully and usually bully behaviour comes from a position of insecurity".*

[15] Upon hearing from CBEC staff about the article in *The Northern Advocate*, and after reading it himself, Mr Colquhoun became concerned about the impact of Ms Shepherd's actions and the associated media coverage, on CBEC's relationship with the Council. Mr Colquhoun contacted Mr Halse, Councillor about the newspaper article because he was anxious to preserve the relationship with the Council he had developed over more than twenty years. Mr Colquhoun explained to Mr Halse that Ms Shepherd would not be speaking at the upcoming Council meeting on behalf of Eco Solutions. Mr Colquhoun felt the media coverage which referred to "*Vivienne Shepherd the office manager of Eco Solutions*" was embarrassing for the

Council and damaging for CBEC. Mr Colquhoun says that if CBEC's contracts with the Council were discontinued, there would no longer be an Eco Solutions business. Mr Colquhoun was concerned about this and decided to issue an instruction to Ms Shepherd to prevent a repeat by her of similar type actions.

[16] On 4 July, Mr Colquhoun sent an email to Ms Shepherd as follows:

*Vivienne Shepherd, Eco Solutions, Whangarei*

*Re: Publicity around being denied speaking rights at Whangarei District Council meetings*

*Vivienne, Until further notice you are not to:*

- (a) Approach WDC, politicians or staff to discuss any issues involving Eco Solutions' contracts and projects without first obtaining my permission or unless specifically instructed.*
- (b) Use Eco Solutions name in any private contact with the media.*
- (c) Use Eco Solutions name or premises for any purpose except those contracts or projects that have been approved. Permission must be sought from either myself or Pete Hill before varying from this instruction. This includes the "Save the Rail" campaign.*

*Regards  
Cliff Colquhoun  
General Manager*

[17] Mr Colquhoun says and I agree that this email was a clear direction to Ms Shepherd regarding her future contact with the Council on behalf of Eco Solutions and her use of Eco Solutions name in the media without first obtaining permission.

[18] Ms Shepherd says she was upset and concerned by the email of 4 July from Mr Colquhoun which she says was not discussed with her. Ms Shepherd did not raise her concerns with Mr Colquhoun but on 11 July wrote a letter of complaint about a number of issues, including what she considered to be poor treatment by Mr Colquhoun, to the Chairperson of the CBEC Board, Mr Brian Brake. Ms Shepherd and Mr Brake had a lengthy telephone discussion about her letter and it was referred to Mr Colquhoun.

[19] On 5 July, Ms Shepherd's colleague, Ms Murphy was notified that her application to speak at the Council meeting on 27 July had been accepted by Council. Ms Shepherd says she was aggrieved that Council was prepared to allow Ms Murphy the opportunity to speak but had refused her request to speak.

[20] The Council meeting on 27 July, at which Ms Murphy had obtained permission to speak, fell during the school holidays. Ms Murphy had arranged to spend the holidays at her parents' place in Hamilton with her two sons and she forgot about her speaking slot at the Council meeting. Ms Murphy says that the Eco Solutions office is very small and communications are casual. Ms Murphy says she told Ms Shepherd of her plans to take time off over the school holidays. Ms Shepherd denies this and says she had no idea where Ms Murphy was but that right up until the Council meeting on 27 July, expected Ms Murphy to attend and speak.

[21] Ms Shepherd was the office manager, it seems unusual that she had no idea of Ms Murphy's whereabouts and took no steps to ascertain where she was. Ms Shepherd received a text message from Ms Murphy on 23 July, four days before the scheduled Council meeting telling her Ms Murphy was away from the office for the week.

[22] Ms Shepherd did not contact Ms Murphy by phone, text or email to clarify whether Ms Murphy would be attending the 27 July meeting despite being on holiday. Ms Shepherd did not make contact with Mr Colquhoun, despite his email of 4 July with clear instructions to her about her future actions on behalf of Eco Solutions.

[23] Ms Shepherd attended the Council meeting on 27 July and was not allowed to speak. Ms Shepherd then put a closed zip across her mouth in protest at being denied the opportunity to speak and handed out documents to councillors and others at the meeting. Ms Shepherd finished her "*silent*" protest by emptying electrical parts from a box, on to the floor. Ms Shepherd claims this was a harmless "*mime*" when she was not allowed to speak at the meeting and had not been planned by her prior. Ms Shepherd claims that as a seamstress she happened to have a zip in her pocket and she used it to cover her mouth when she was not allowed to speak.

[24] Later, in the Investigation Meeting, Ms Shepherd conceded that she had the zip in her pocket because if Councillor Halse was chairing the meeting, she thought she may not be allowed to speak. She said in such a case her plan was to use the zip to perform a mime in protest at his actions.

[25] Ms Shepherd's evidence was inconsistent and contradictory. It is my finding that Ms Shepherd knew Ms Murphy was away from the office on school holidays and would not be coming to the Council meeting on 27 July.

[26] Ms Shepherd prepared to speak in Ms Murphy's absence, indeed she had suggested to Ms Murphy that Ms Murphy apply to speak at the meeting but that she would speak in her place. Ms Shepherd had a plan in place to speak knowing she was not allowed and knowing to do so would be in breach of Mr Colquhoun's instruction. Ms Shepherd came to the Council meeting with a closed zip in her pocket, documents for distribution and electrical parts in a box. She came prepared to speak, she came prepared to be refused speaking rights and she came prepared to express her disquiet in a dramatic manner in the event she was not allowed to speak.

[27] After the meeting, Ms Shepherd was interviewed by and posed for members of the media with the closed zip across her mouth. Pictures of Ms Shepherd with her mouth zipped, appeared in the *Northern Advocate* newspaper the next day and in the days following with various headlines including " *Drama, discontent at council meeting*", " *Silent protest too noisy for council*", " *Protest over E-Cycle scheme fees*". Ms Shepherd was interviewed by *The Whangarei Report* and an article entitled " *Protest over E-Cycle scheme fees*" was published by it on 4 August alongside the picture of Ms Shepherd with her mouth zipped.

[28] On 29 July after hearing about events at the Council meeting on 27 July and reading the media coverage of it in the *Northern Advocate*, Mr Colquhoun sent Ms Shepherd a letter as follows;

*Re: Publicity around being denied speaking rights at Whangarei District Council Meetings.*

*I am concerned about your conduct and performance as the Manager of Eco Solutions for CBEC. I am concerned that you are endangering CBEC's reputation by jeopardising our Whangarei District Council contract.*

*It was reported that on 27<sup>th</sup> July you attended a Whangarei District Council meeting despite receiving a letter ( dated 7<sup>th</sup> July 2011) clearly instructing you not to engage with Whangarei District Council politicians and staff.*

*In your employment contract under section 8.2 it states;*

- (iv) serious or repeated failure to follow a reasonable instruction;*
- (vi) actions which seriously damage the Employer's reputation. CBEC consider your behaviour as potentially being Serious Misconduct..*

*I need to investigate the matter further and after doing so will want to meet with you to discuss the issue. You will receive a letter in relation that during next week.*

*In the interim, I am concerned that your conduct may have endangered and may continue to endanger CBEC's relationship with Council.*

*I am considering suspending you on full pay while the investigation is carried out and pending our meeting to discuss the findings of the investigation.*

*I wish to meet with you on Monday 1 August 2011, 10am to hear your views on possible suspension. At the end of that meeting I will make a decision as to whether suspension is appropriate. I will be present at this meeting on behalf of CBEC. You are invited to bring a support person to the meeting.*

*Yours faithfully  
Cliff Colquhoun  
General Manager*

[29] At the Investigation Meeting it was accepted that the reference by Mr Colquhoun in this email to "a letter(dated 7 July 2011)" was meant to be a reference to his email of 4 July 2011 to Ms Shepherd.

[30] Ms Shepherd was not happy to meet at the time requested by Mr Colquhoun as she believed she had not received adequate notice to prepare herself. Following an exchange of emails a meeting was agreed for 5 August.

[31] Ms Murphy returned from holiday on 2 August and says Ms Shepherd was extremely aggressive towards her. Ms Murphy felt so concerned by Ms Shepherd's attitude towards her she left the office and went to the library nearby in tears. Ms Shepherd's attitude and aggression was apparent to me during the Authority's Investigation Meeting.

[32] Ms Murphy rang Mr Colquhoun and then her husband from the library about what had happened. Ms Murphy was concerned for her safety and did not wish to return to the office without Mr Colquhoun. Mr Colquhoun says he felt the situation had got to a point where he needed to speak urgently with Ms Shepherd.

[33] Mr Colquhoun and Ms Murphy went into the office to talk with Ms Shepherd about what had happened earlier in the day. Ms Shepherd was in the office working but refused to discuss the matter because a meeting had not been scheduled in advance. Ms Shepherd picked up her keys and started to leave the office.

Mr Colquhoun felt the situation had escalated to the point that he needed to take immediate action to protect his business and he informed Ms Shepherd that she was to be suspended while he continued with his investigation into what had occurred at the Council meeting on 27 July.

[34] On 3 August a further letter was sent to Ms Shepherd from Mr Colquhoun, the first half of which is the same as the letter of 29 July, referred to above. The second part of the letter is as follows;

*“... Your conduct is endangering CBEC’s relationship with Whangarei District Council and has compromised other Eco Solutions staff. In following up our email and letter dated 4<sup>th</sup> and 29<sup>th</sup> July. As you have refused to discuss the possibility of suspension, I had no reason not to suspend you on full wages until you are prepared to attend a meeting with CBEC management. At this meeting we expect you to respond to our concerns raised above. The possible outcome of the meeting may be dismissal. You are welcome to bring a support person attend the meeting [sic]. We would like to take up your offer to meet with you on Friday 5 August at 2pm at the Eco Solutions office. Please advise that you will attend this meeting by contacting me on my cell phone or email...”*

[35] Ms Shepherd’s terms and conditions of employment are contained in an individual employment agreement dated 11 April 2011.

[36] Clause 29 of the agreement allows CBEC to suspend an employee from employment while it:

*“... conducts an investigation in relation to any matter that may concern the employee ... if in all the circumstances the employer considers it appropriate. The employer will seek the employee’s input before suspension. Suspension will be on full pay.”*

[37] Suspensions from employment on disciplinary grounds are actions by an employer which if unjustified may fall within the definition contained in s.103(1)(b) of the Act in that the employee’s employment may be affected to the employee’s disadvantage.

[38] Mr Colquhoun was concerned that Ms Shepherd’s actions at the Council meeting on 27 July amounted to a failure to follow a reasonable instruction issued to her by him on 4 July and amounted to actions which may seriously damage CBEC’s reputation. Mr Colquhoun was also very concerned about the working environment and the impact of this on the future of his business. Ms Shepherd says her suspension was unjustified.

[39] Section 103A of the Act is concerned with the employer's actions and whether they are justified. On an objective basis, was CBEC's action in suspending Ms Shepherd and then denying her access to the office, justified in the circumstances? Was Ms Shepherd's suspension within the range of responses open to a fair and reasonable employer? If the suspension was within the range then it will be justified<sup>1</sup>.

[40] It is my view that it was open to Mr Colquhoun to consider that Ms Shepherd may have acted in breach of the instruction he had issued to her and may have acted in a manner which could bring Eco Solutions into disrepute. Mr Colquhoun was entitled to consider Ms Shepherd's actions may constitute serious misconduct and to seek a meeting with her, the outcome of which could be suspension.

[41] Before the agreed meeting was able to take place, a situation arose in the office which required Mr Colquhoun's urgent input. Mr Colquhoun tried to discuss the issue with Ms Shepherd and the possibility of her suspension but was not able to do so.

[42] Mr Colquhoun made the decision to suspend Ms Shepherd on 2 August 2011 before the scheduled meeting on 5 August 2011 to discuss that matter.

[43] In considering whether or not the suspension was justified, I refer to the following passage in *Graham v Airways Corporation of New Zealand*<sup>2</sup>:

*[104] Each case about the justification for suspension of employment must take account of all the principles of procedural fairness and the particular circumstances of the employment including the consequences of both suspending and not suspending for the employee and the enterprise. There is no immutable rule requiring that an employee must be told of the employer's proposal to suspend with a view to giving the employee an opportunity to persuade the employer not to do so. The passage from **Tawhiwhirangi** set out at para 90 of this judgment confirms the case by case, flexible and sensible approach to these infinitely variable cases. Imminent danger to the employee or others and an inability to perform safety-sensitive work are two examples of circumstances in which it might be held to be inappropriate to delay an intended suspension to give the employee an opportunity to be heard about that intention. Ultimately the test in each case must be the fairness and reasonableness of the employer's conduct. In many cases that will call for advice and discussion before determining whether to suspend; in others, it may not.*

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<sup>1</sup> *Angus v. Ports of Auckland* [2011] NZEmpC 160

<sup>2</sup> [2005] 1 ERNZ 587 (AC40/05), Judge Colgan as he then was.

[44] The justification for the resulting decision to suspend must be assessed with reference to the circumstances which existed at the time. In my view, Mr Colquhoun was entitled to suspend Ms Shepherd pursuant to clause 29 of her employment. It was action a fair and reasonable employer could take in the circumstances that existed. For these reasons, I find Ms Shepherd's suspension was justified.

## **Second issue**

### **Was Ms Shepherd's dismissal for serious misconduct on 5 August 2011 justified and if so was it carried out in a procedurally fair manner?**

[45] Ms Shepherd and Mr Colquhoun agreed to meet on Friday, 5 August to discuss the allegations of serious misconduct which Mr Colquhoun had put to Ms Shepherd in his letters of 29 July and 3 August. Mr Colquhoun and Lanice Waitai attended as did Ms Shepherd and her support person, Monique Ansems. Mr Colquhoun outlined at the meeting the reasons for his issuing the instruction to Ms Shepherd on 4 July which related to projects it had with the Whangarei District Council and concerns that the contracts with the Council could be jeopardised. Ms Shepherd appeared to have no insight into her actions. Neither Ms Shepherd nor her support person addressed the substance of the matters that Mr Colquhoun was concerned about. Rather, they attacked the process being followed by him. Ms Shepherd was of the view that a four step warning process should have been followed by Mr Colquhoun. However, in cases where the employer believes there to be serious misconduct such a process does not apply. Clause 23 of the Agreement states;

*"23.1...No notice is required in the event of summary dismissal..."*

*23.7 Serious misconduct by an Employee may give rise to summary dismissal and no notice period will be given to the Employee by the Employer."*

[46] The outcome of the meeting was that Ms Shepherd's employment was terminated with immediate effect. A letter was forwarded to Ms Shepherd on

8 August confirming the reasons for her dismissal in that she was guilty of serious misconduct, namely:

- (iv) *Serious or repeated failure to follow a reasonable instruction;*
- (v) *Actions which seriously damaged the employer's reputation.*

[47] As with the test for determining whether Ms Shepherd's suspension was justified, the justification for Ms Shepherd's dismissal is determined pursuant to the statutory test in s.103A of the Act. On an objective basis, was Ms Shepherd's dismissal justified? Mr Colquhoun considered that he had issued Ms Shepherd a clear instruction on 4 July which she deliberately disobeyed by speaking at the Council meeting on 27 July and acting in a manner which embarrassed Council and brought CBEC into disrepute. Mr Colquhoun formed a preliminary view that Ms Shepherd had breached a clear instruction and her actions had brought CBEC into disrepute.

[48] On 8 August, Mr Colquhoun confirmed Ms Shepherd's dismissal on the grounds of serious misconduct.

[49] Clause 23.7 of Ms Shepherd's individual employment agreement defines serious misconduct and includes a non-exhaustive list of conduct which may constitute serious misconduct. The conduct referred to by Mr Colquhoun during the course of his investigation and when summarily dismissing Ms Shepherd are not found in the list. It appears Mr Colquhoun was relying on provisions in another document. I do not believe that to be an issue because the list of behaviours in clause 23.7 of the agreement was not an exhaustive list. Ms Shepherd had been issued with an instruction, which she breached. Her actions at the Council meeting on 27 July were actions which Mr Colquhoun considered may seriously damage CBEC's reputation and seriously jeopardise their business relationship. Mr Colquhoun made it clear to Ms Shepherd these actions could amount to serious misconduct and she may be dismissed.

[50] Further, Ms Shepherd's agreement contains a list of "Employee Obligations" in clause 17 which are relevant. Clause 17.11 states:

*No statements are to be made or interviews given to media representatives without the express written permission of the Employer*

[51] Not only had Ms Shepherd breached the instruction from Mr Colquhoun on 4 July she had gone to the Council meeting on 27 July to, in her words, perform a “mime” when not allowed to speak. Ms Shepherd was then interviewed by and posed for members of the media with a zip across her mouth which was, in my view, to be as dramatic as possible. At the Council meeting and in the subsequent media reports, Ms Shepherd was variously described as “*Eco Solutions Manager Vivienne Shepherd*”, “*Eco Solutions Whangarei office manager Vivienne Shepherd*” and “*Vivienne Shepherd of Eco Solutions*”. There was a clear and deliberate link by Ms Shepherd to Eco Solutions at the Council meeting and in the media reports. Ms Shepherd knew at the time of the Council meeting and when being interviewed by the media that Eco Solutions had important contracts with the Council.

[52] On the basis of the evidence before Mr Colquhoun, and now the Authority, I am satisfied that Mr Colquhoun was entitled to conclude that Ms Shepherd’s behaviour amounted to serious misconduct for which disciplinary action was appropriate.

[53] It is my view that Mr Colquhoun, on behalf of CBEC, sufficiently investigated the allegations which were presented to Ms Shepherd before suspension and before her dismissal. Ms Shepherd was given a reasonable opportunity to respond to Mr Colquhoun’s concerns before she was dismissed. Mr Colquhoun considered Ms Shepherd’s explanations and determined that dismissal was appropriate in the circumstances.

[54] It is my view that CBEC did act in a procedurally fair manner as specified in s.103A(3) of the Act. Accordingly, I find the dismissal justified.

[55] If I am incorrect in this finding, I consider Ms Shepherd contributed to her suspension and dismissal. Section 124 of the Act requires the Authority to consider the extent to which the actions of an employee contributed towards the situation that gave rise to the personal grievance/s. I consider Ms Shepherd wholly contributed to the situation. Any remedies that would have been awarded would be reduced by 100%. In those circumstances, no remedies are payable.

### **Costs**

[56] The parties are invited to agree on costs. If they are unable to do so, the respondent has 14 days from the date of this determination in which to file and

serve a memorandum as to costs. The applicant has a further 14 days to file and serve her reply.

Anna Fitzgibbon  
Member of the Employment Relations Authority