

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 430  
3129335

BETWEEN AMJAD NAZEER AMJAD  
Applicant

AND FAR NORTH DISTRICT  
COUNCIL  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person  
Jill Coyle representing the Respondent

Investigation Meeting: 18 August 2021 by Zoom

Submissions and/or further evidence: 9, 15 and 18 August 2021 from Applicant  
18 and 19 August 2021 from Respondent

Determination: 4 October 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Mr Amjad Nazeer Amjad, claims he has been unjustifiably dismissed by the Respondent, the Far North District Council (FNDC).

[2] FNDC denies that Mr Amjad was unjustifiably dismissed and claims that he was justifiably dismissed following the unsuccessful completion of a fair and reasonable Performance Improvement Plan (PIP).

**The Authority's investigation**

[3] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

## Issues

[4] The issues requiring investigation are whether or not:

- the non-publication order granted for the interim reinstatement application should be extended.
- Mr Amjad was unjustifiably dismissed by the FNDC.

### **Should the non-publication order be extended?**

[5] In determination [2021] NZERA 11 the application by Mr Amjad for a non-publication order was granted until further order of the Authority. The basis for that application being granted was that Mr Amjad, who was seeking alternative employment at that time, was concerned about: “the negative effect on his career prospects if he is publically identified.”<sup>1</sup>

[6] In considering this matter I note that the principle of open justice and the importance of that concept has been emphasised by the courts on many occasions, noting the judgments in *H v A Limited*, *XYZ v ABC*, *Crimson Consulting Ltd v Berry* and the Supreme Court decision in *Erceg v Erceg*.<sup>2</sup>

[7] In the latter case, the Supreme Court noted that a high standard must be met before departing from the principle of open justice, and observed that the principle of open justice is fundamental to the common law system of civil and criminal justice, describing it as: “a principle of constitutional importance”, and noting it has been described as: “an almost priceless inheritance”<sup>3</sup>.

[8] The Supreme Court held in *Erceg* that there are circumstances in which the interests of justice require the general rule of open justice to be departed from: “but only to the extent necessary to serve the ends of justice.” However the Supreme Court proceeded to observe that: “... the party seeking to justify a confidentiality order will have to show specific adverse consequences that are exceptional”.<sup>4</sup>

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<sup>1</sup> RSY v DYV [2021] NZERA 11 at [1]

<sup>2</sup> *H v A Ltd* [2014] ERNZ 38 at [78]; *XYZ v ABC* [2017]NZ EmpC 40; *Erceg v Erceg* [2016]NZSC 135

<sup>3</sup> *Erceg* [2016]NZSC 135 at [2]

<sup>4</sup> Above n 3 at [13]

[9] Pursuant to Schedule 2 clause 10(1) of the Act the Authority has a wide discretion to prohibit the publication of evidence. However in making such a prohibition, the Authority must carefully consider and balance the respective interests of the parties and determine whether there are sufficient grounds for displacing the presumption of open justice.

[10] Mr Amjad obtained alternative employment in June 2021 and his application that the non-publication order be extended is based upon his concern that if his current employer becomes aware of his termination of employment by FNDC it might be detrimental to his relationship with his new employer.

[11] FNDC do not oppose the application.

[12] I have carefully considered this issue. A party seeking a non-publication order must meet a high threshold because it is a serious matter to issue a non-publication order which sets aside the importance principle of open justice.

[13] The concern submitted by Mr Amjad as the basis of this application, that the fact that he has brought a claim before the Authority is not exceptional in that it is a concern that is experienced by thousands of applicants before the Authority. On that basis I do not find that it meets the high threshold required to displace the principle of open justice.

[14] The application to continue the interim non-publication order is declined.

### **Relevant Facts**

[15] Mr Amjad who at the time he applied for a position as a Project Manager (PM) with the FNDC was living and working in Auckland. He had seen the position advertised on the Seek job website. His application was successful and he commenced employment on 30 September 2019.

[16] Mr Amjad worked within a team of eight other project managers in the Project Delivery Team managed by Ms Tania Procter, Manager – Infrastructure Programme Delivery. The Project Delivery Team delivers Water, Wastewater, Stormwater and District Facilities projects with an annual programme value of between \$25 – 30m.

[17] At the time Mr Amjad commenced working in the Project Delivery Team three other PMs commenced with the team on or about that time. They, like Mr Amjad, were not local to the area covered by FNDC, and were from Australia, Tauranga and South Africa.

[18] Prior to the lockdown period which commenced in March 2020, Mr Amjad said no performance issues had been raised with him. However in a meeting when the lockdown arrangements were discussed with the Project Delivery Team Ms Procter had made a comment about not being confident that he and another team member would be working 40 hours a week from home. He said this comment made him feel embarrassed and surprised that it had been made about him in front of the rest of the team.

[19] Ms Procter said that Mr Amjad had been allocated low value, low risk projects as an introduction to the role but she had some concerns about Mr Amjad's performance prior to the lockdown, in particular his seeking advice and guidance not only from other team members, but also from employees in other departments.

[20] Mr Amjad said that he had sought assistance from other employees because he lacked local knowledge, for example of local contractors used by FNDC.

[21] Ms Procter said that none of the goals or the role of PM required a new employee to have FNDC or local knowledge.

[22] As a result of her concerns about Mr Amjad's performance she had contacted Ms Bonnee Hunter, People and Capability Business Partner, for guidance on how to address her concerns.

#### *June 2020 Performance Improvement Plan*

[23] Mr Amjad said Ms Procter had raised concerns about his performance during the lockdown. She had written to him on 2 June 2020 inviting him to a meeting to be held on 8 June 2020. In the letter Ms Procter proposed putting in place a Performance Improvement Plan (PIP) and set out her concerns as being:

My issues of concern relate to your ability to:

- Understanding of Project Management Principles
  - Your lack of understanding project management which is causing delays to projects assigned to you.
  - Your lack of understanding of terms and conditions of contract creating potential risks to Council eg: paying a contractor for goods and services not received
  
- Deliverable workload and time management
  - The time it is taking to comprehend and produce suitable approval documents for approval.
  - Flexible working hours have been permitted but that you are not always working the hours requested and approved.
  - The work produced is insufficient for the hours worked.

[24] It was also stated in the letter that the purpose of the PIP was to assist Mr Amjad in reaching a satisfactory level of performance. The possible consequences of not reaching the required performance levels were stated as being a first written warning, a final written warning, or summary dismissal.

[25] Mr Amjad was provided with a draft PIP attached to the letter, and his feedback was invited in addition to any explanations or comments about the issues and concerns Ms Procter had raised, and his view on whether a PIP should be put in place. The PIP was proposed to start on 12 June 2020 and Ms Procter proposed meeting weekly with Mr Amjad to discuss his progress and assist him.

[26] Mr Amjad said that he did not accept that Ms Procter's concerns about his application of project management principles. In addition it had been his first experience of working from home.

*Formal Meeting 8 June 2020*

[27] The first formal meeting was held online on 8 June 2020 and was attended by Ms Procter, Ms Hunter, Mr Amjad and Mr Ken Lomas from the PSA union who was representing Mr Amjad.

[28] During the meeting Mr Amjad said that he raised his concerns which were that

- a. he was a project management professional and had no difficulty understanding project management principles;
- b. he had the capability to complete the projects assigned to him;
- c. some projects had underlying issues which were critical to developing the project plans and were causing delay;
- d. there was a lack of budget and information in relation to one project, and a lack of prior information being provided in another project; and
- e. his overall score for project delivery was good.

[29] Ms Hunter said it had been explained to Mr Amjad that the PIP was a proposal and following the meeting on 8 June 2020 Mr Amjad had sent more information regarding the PIP.

[30] Ms Procter responded to the further information provided by Mr Amjad by letter dated 10 June 2020. Ms Procter acknowledged that Mr Amjad's observation that all processes were not documented was correct, but commented that: "the Project Management Frame work used alongside project management principle knowledge and team weekly training meetings should be enough to alleviate the standard operating procedure gaps."

[31] The letter set out Mr Amjad's written feedback points and provided a response, proposing to hold a meeting to discuss the response comments on 10 June 2020. However in the event that Mr Amjad accepted the comments advised that the PIP process would commence on 15 June 2020.

[32] No response was received from Mr Amjad and the offered meeting was not accepted by Mr Amjad and as a result it did not take place, however on 12 June 2020

Ms Procter did respond to further enquiries which had been raised by Mr Amjad about the PIP.

#### *Weekly Meetings*

[33] As part of the PIP process Ms Procter held weekly one-on-one meetings with Mr Amjad. Mr Amjad said that at the meeting his weekly goals were assessed and discussed, and he had the opportunity to raise issues about his work.

[34] Ms Procter said there would be discussion about why Mr Amjad had not met the set goals. As part of the process, training was offered, being either provided by her or by other means, such as internal financial training and in other areas of the FNDC operation, or external courses if appropriate.

[35] In addition to the one-on-one PIP meetings, Ms Procter said she also held weekly meetings with team members at which training was provided, and there were online training tools available which Mr Amjad was encouraged to use.

#### *Formal Review Meeting 16 July 2020*

[36] By letter dated 13 July 2020 Ms Hunter advised of a meeting to be held on 16 July 2020 with Mr Amjad to discuss his performance during the PIP process. In the letter Ms Procter stated that she did not think Mr Amjad's performance had improved to a satisfactory level and advised that she was proposing to issue a written warning and extend the PIP for a second period: "with the aim of improving your performance."

[37] The meeting held on 16 July 2020 was attended by Mr Amjad, Mr Lewis, Ms Procter and Ms Hunter. Mr Amjad said that he did not accept that a written warning was justified.

[38] Ms Hunter said that Mr Amjad had been surprised by the written warning and did not appear to have realised that the PIP was a serious process, so she had explained this to him and confirmed the process.

[39] At that meeting Ms Hunter said they had gone through the notes of each weekly meeting between Ms Procter and Mr Amjad so Mr Lewis was aware of how Mr Amjad

was progressing. As a result she and Ms Procter suggested that Mr Lewis should attend the weekly one-on-one PIP meetings with Mr Amjad.

[40] Following the meeting Ms Procter confirmed the written warning for poor performance in a letter dated 20 July 2020. The letter confirmed that the PIP process would be continued for a further five weeks starting that same day, and the weekly meetings would continue at which Mr Amjad's performance and current goals would be discussed and support offered. The letter also advised:

We have discussed that you are required to improve and keep your performance at an acceptable level by the end of the next review period. We have also discussed that if you don't a final written warning for poor performance may be issued, which may result in your employment with us may be terminated on notice for continued poor performance.

[41] The weekly PIP meetings continued during the following five week period with both Mr Lewis and Ms Hunter in attendance.

[42] Ms Procter said that during the meetings she and Ms Hunter repeatedly explained and asked Mr Amjad if he understood, and he would nod that he did understand, but at the end of each stage of the PIP he would say that he did not understand.

[43] Mr Amjad said that he had not understood the red, amber and green system which was used in the PIP to chart his performance. When questioned at the Investigation Meeting Mr Amjad said he had not understood the system but said he had been told that he was not yet at the required standard.

[44] Ms Hunter said she believed Mr Amjad had sufficient information in regard to the assessment standard to conclude that he was not achieving the required goals, however he did not at any stage accept his performance was below standard.

[45] Mr Amjad said he believed the assessments had not been carried out honestly and that he had not been exactly certain about the standards against which his performance was being assessed.

*Final Written Warning 31 August 2020*

[46] Ms Procter said that there had been no significant improvement in Mr Amjad's performance at the end of the five week period after 20 July 2020, and she decided to hold a formal meeting with Mr Amjad on 31 August 2020.

[47] The meeting was attended by Ms Procter, Ms Hunter, Mr Amjad and Mr Lewis. During the meeting Ms Procter proposed issuing a final written warning and extending the PIP for a further five week period. Mr Amjad had asked what would happen after the end of that period but Mr Procter had told him that had not been decided at that stage.

[48] In a letter dated 1 September 2020 Ms Procter confirmed her decision to issue a final written warning. Ms Procter set out in the letter the reason for the final written warning and the next steps:

I proposed to you that we continue the PIP for another 5 weeks starting Monday 7 September, in the hopes that we could see improvements in your performance. I decided to continue to monitor your performance using the PIP for a third period. This is because the same initial concerns are there, and I have not seen significant improvements. We discussed the existing goals in the PIP documents for clarity agreed to adding more notes each week to the document and agreed that you would discuss further with your support person understanding of goal 2 and 5.

During this period I will continue to meet with you weekly each Monday to discuss your performance, current goals and support you. We have discussed that you are required to improve and keep your performance at an acceptable level by the end of the next review period.

[49] Mr Amjad said that he had been surprised that the final written warning was proposed.

[50] Mr Amjad provided a lengthy detailed response to the final written warning by letter on 7 September 2020. He stated:

... I have got grave concerns the way goals in 2<sup>nd</sup> PIP commenced 20<sup>th</sup> July 2020 were marked as red and it was manipulated to be a failure of first PIP was of same nature. I urge this final warning to be withdrawn as its totally unjustified based on evidences provided below,

...the goals set were not well defined. Matrix to make goals red, amber and green was never clarified. Merely few generic statements made goals red. Moreover, a clear path or steps to achieve those goals was never put in place or defined. Whatever approach I did use to the achieve goals with the best of my efforts, I was told in the end that I did not achieve them.

[51] Mr Amjad set out a detailed analysis of the areas in which he had concerns the letter and stated that relative peer performance: “sets a benchmark on an individual performance ... I imagine that compared to peers my performance has not been that bad.”

[52] Ms Procter responded by letter dated 8 September 202 noting that Mr Amjad disagreed with the decision to issue the final written warning and stated:

... During that time, you have had every opportunity to input into the process and request extra support, so I am surprised that only now have you raised concerns with the goals that have been discussed and agreed with you for the PIP.

[53] Ms Procter proceeded to set out her response to each of the concerns Mr Amjad had raised in his letter. She concluded the letter with an observation that she was surprised that after more than 13 weeks of support on the PIP, Mr Amjad had decided he had concerns and did not agree with the outcome, She confirmed her decision to continue with the PIP: “... in the hopes of achieving satisfactory performance.”

#### *Decision to dismiss*

[54] Ms Procter said that by the end of the third period there had been no improvement in Mr Amjad’s performance and he had not reached the required

performance level. Accordingly she reached a preliminary decision to terminate his employment with FNDC in a letter dated 6 November 2020.

[55] Ms Hunter said that she had considered if there was an alternative to dismissal, however there were no suitable jobs available within FNDC.

[56] Ms Procter set out the reason for her decision in the letter and stated that she would like to hear Mr Amjad's response about his performance against each of the objectives and her preliminary views.

[57] A meeting was proposed for that purpose on 12 November 2020.

[58] Mr Amjad responded to the preliminary decision to terminate his employment by letter dated 12 November 2020 in which he stated that he disagreed with the decision and was shocked by it. He noted that he had grave concerns about the fairness of the process and stated:

.. I am quite worried how its results are interpreted and manipulated to get rid of a staff member. Looking at the amber status of the goals, I was satisfied that I had achieved significant progress and now my performance is satisfactory, but the termination proposal is disappointing.

*Dismissal 17 November 2020*

[59] Mr Amjad's response was addressed in a meeting held on 17 November 2020 at which the decision to terminate Mr Amjad was confirmed in a meeting. Ms Hunter and Mr Amjad said that Mr Lewis had commented that although the process had been long, it had been fair.

[60] Mr Lewis had asked if there were any alternatives to dismissal including the possibility of resignation, but Ms Hunter said the decision had been made and it would not have been fair so late in the process to allow resignation. It was also explained that other deployment possibilities had been examined, but there were none at that time.

[61] The decision was confirmed and Mr Amjad was given the choice of working the notice period or of being paid in lieu. He chose to work his notice period with his last day being 15 December 2020.

[62] On 18 December 2020 Mr Amjad filed a personal grievance with the Authority claiming unjustifiable dismissal.

### **Was Mr Amjad unjustifiably dismissed by the FNDC?**

[63] Mr Amjad was dismissed on 17 November 2020 as the resultant outcome of the unsatisfactory completion of the PIP. Justification for dismissal is stated in the Employment Relations Act 2000 (the Act), which at s 103A sets out the Test of Justification as being:

#### **S103A Test of Justification**

(1) For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).

(2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[64] In the situation in which a dismissal is for unsatisfactory work performance, an employer has obligations which include (i) disclosing to the employee specific reasons for the dissatisfaction, (ii) identifying a reasonable period of time for the employee to demonstrate the required improvement; and (iii) at the end of the PIP, giving objective consideration to whether the employee has made enough progress to avert dismissal.

[65] Two main areas arise for examination therefore, these being:

- a) Did FNDC conclude on reasonable grounds that Mr Amjad's performance was not satisfactory?

And if so:

- b) Did FNDC act as a fair and reasonable employer by:
  - i. Disclosing to Mr Amjad specific reasons for its dissatisfaction with his performance?
  - ii. Identifying a specific and measurable improvement?
  - iii. Allowing a reasonable time to demonstrate the improvement?
  - iv. At the end of each period, assessing objectively whether measurable targets were met;
  - v. Offering Mr Amjad an opportunity to be heard on its preliminary conclusions before deciding to dismiss;
  - vi. Taking Mr Amjad's responses into account before deciding to dismiss; and
  - vii. Considering alternatives to dismissal.

*Did FNDC conclude on reasonable grounds that Mr Amjad's performance was not satisfactory?*

[66] Ms Procter's evidence was that she had become concerned by Mr Amjad's apparent lack of understanding of Project Management as demonstrated by the fact that that prior to the lockdown period commencing in March 2020 he had sought a significant amount of assistance from other members of the Project Delivery Team and also from employees in other FNDC departments.

[67] Ms Procter had been made aware of this by other Project Delivery Team members voicing their frustration with the number of interruptions by Mr Amjad. Her evidence was that the level of support provided to Mr Amjad, and which had been necessary for him to successfully complete his work tasks, had become apparent when this was withdrawn during the lockdown period.

[68] In addition the financial amount of the work being delivered by Mr Amjad was significantly below that of his colleagues. She had not accepted that this was attributable to the fact that he was not local to the area covered by FNDC since this was true of the other three employees who commenced at the same time as Mr Amjad.

*Did FNDC act as a fair and reasonable employer by:*

(i) *Disclosing to Mr Amjad specific reasons for its dissatisfaction with his performance?*

[69] The PIP set out to Mr Amjad with the letter dated 2 June 2020 provided him with the opportunity give his feedback on it, in addition to any explanations or comments about the issues and concerns Ms Procter had raised and his view on whether a PIP should be put in place.

[70] Mr Amjad provided his feedback in a meeting held on 8 June 2020 at which he provided his feedback. Ms Procter:

- a) responded to the feedback by letter to Mr Amjad;
- b) acknowledged his concern that not all processes were documented and addressed this; and
- c) offered a meeting to discuss.

[71] The offer to meet was not accepted by Mr Amjad however he raised further concerns to which Ms Procter responded by letter dated 12 June 2020.

[72] Notes were prepared and provided to Mr Amjad after the weekly one-on-one meetings with Ms Procter so he was aware of the employer's concerns and approach on each issue.

[73] Mr Amjad's evidence was that he had not understood the red, amber and green assessment standard, however he confirmed that he was aware that he was not achieving the standard.

[74] Mr Amjad made a detailed response to the final written warning and Ms Procter provided a detailed response to his concerns.

[75] I find that FNDC acted as a fair and reasonable employer in disclosing to Mr Amjad specific reasons for its dissatisfaction with his performance and responding to his concerns to assist his understanding.

(ii) *Did FNDC act as a fair and reasonable employer by identifying a specific and measurable improvement?*

[76] The standards Mr Amjad was expected to achieve were set out in the PIP against each performance area.

[77] Mr Amjad's evidence was that he did not understand the red, amber and green assessment standard, however as observed in the preceding paragraphs he was nonetheless aware from it that he was not achieving the standard required by PIP.

[78] I find that FNDC acted as a fair and reasonable employer by identifying a specific and measurable improvement.

(iii) *Did FNDC act as a fair and reasonable employer by allowing a reasonable time to demonstrate the improvement?*

[79] The PIP was conducted in three stages. The initial period from 15 June 2020 was reviewed on 16 July 2020 when it was extended for a further five weeks, and reviewed and extended again on 31 July 2020.

[80] At the time of the preliminary decision to dismiss the PIP had been running for 21 weeks. I consider that Mr Amjad had been provided with a reasonable period of time in which to demonstrate his improvement in performance.

[81] I find that FNDC acted as a fair and reasonable employer by allowing a reasonable time to demonstrate the improvement.

(iv) *Did FNDC act as a fair and reasonable employer by, at the end of each period, assessing objectively whether measurable targets were met?*

[82] At the end of each stage of the PIP there was a formal review meeting, attended by Mr Lewis, when Mr Amjad's performance was measured and explained.

[83] Mr Amjad's evidence was that he considered there had been manipulation of the results (letter dated 7 September 2020) and that he had grave concerns about the fairness of the process, again referring to manipulation (letter dated 12 November 2020).

[84] I note that Mr Lewis was present at the initial meeting in June 2020 and at each of the formal meetings, he had also been present at the weekly meetings held after the meeting on 16 July 2020.

[85] Mr Amjad and Ms Hunter both gave evidence that Mr Lewis's observation at the end of the process was that it had been a fair process.

[86] I find that FNDC acted as a fair and reasonable employer by at the end of each period, assessing objectively whether measurable targets were met.

(v) *Did FNDC act as a fair and reasonable employer by offering Mr Amjad an opportunity to be heard on its preliminary conclusions before deciding to dismiss?*

[87] In the letter dated 6 November 2020 in which she set out her preliminary decision Ms Procter invited Mr Amjad provide his response about his performance against each of the objectives and about her preliminary view.

[88] Mr Amjad did so in the letter dated 12 November 2020.

[89] Mr Amjad's response was considered in the meeting dated 17 November 2020, at which the preliminary decision was confirmed.

[90] I find that FNDC acted as a fair and reasonable employer by offering Mr Amjad an opportunity to be heard on its preliminary conclusions before deciding to dismiss.

(vi) *Did FNDC act as a fair and reasonable employer by taking Mr Amjad's responses into consideration before deciding to dismiss?*

[91] Not only prior to the meeting on 17 November 2020 but throughout the process I note that Mr Amjad made lengthy and detailed comments and responses about the PIP process.

[92] Ms Procter provided a detailed response on each occasion, this included prior to conforming the decision to dismiss.

[93] I find that FNDC acted as a fair and reasonable employer by taking Mr Amjad's responses into consideration before deciding to dismiss.

(vii) *Did FNDC act as a fair and reasonable employer by taking considering alternatives to dismissal?*

[94] Ms Procter's evidence was that prior to the preliminary dismissal decision she had considered whether or not there was a suitable redeployment opportunity for Mr Amjad within FNDC.

[95] At the meeting on 17 November 2020 Mr Lewis had asked whether or not Mr Amjad could be allowed to resign. This was not considered to be a suitable option by FNDC given the lengthy PIP process.

[96] Mr Lewis also enquired about the possibility of redeployment, but there was no suitable position within FNDC available.

[97] I find that FNDC acted as a fair and reasonable employer by considering alternatives to dismissal.

[98] In considering the PIP process I find that FNDC acted as a fair and reasonable employer could have done in all the circumstances at the relevant time.

[99] I determine that Mr Amjad was not unjustifiably dismissed by FNDC.

## **Costs**

[100] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[101] If they are not able to do so and an Authority determination on costs is needed the Respondent may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the Applicant would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[102] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[103] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>5</sup>

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>5</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].