IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2022] NZERA 693
3161281

	BETWEEN	BENJAMIN HARWOOD Applicant
	AND	WHANGAMATA GOLF CLUB INCORPORATED Respondent
Member of Authority:	Marija Urlich	
Representatives:	Victor Corbett, counsel for the Applicant Russell Drake, advocate for the Respondent	
Investigation Meeting:	8 and 21 September 2022	
Determination:	22 December 2022	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Benjamin Harwood was employed by the Whangamata Golf Club Incorporated (the Club) as the director of golf from November 2020 until his dismissal effective 31 December 2021. Mr Harwood was dismissed for failure to comply with the Club's vaccination policy. He says his dismissal was unjustified because the Club's policy was unreasonable and unfair and it failed to fairly consider alternatives to dismissal. Mr Harwood also raises a personal grievance for unjustified disadvantage – he says prior to his dismissal the Club failed to keep him safe at work. He seeks remedies in respect of the personal grievances including lost wages and compensatory damages. Mr Harwood also says the Club has breached the statutory duty of good faith and that a penalty should be awarded a portion of which to him.

[2] The Club says it went through a fair consultation process with Mr Harwood regarding the vaccination policy, implemented it fairly and engaged with him regarding

the consequences of his non-compliance with the policy including considering alternatives to dismissal. It says he is not entitled to any of the remedies sought.

The Authority's investigation

[3] In the course of investigating this employment relationship problem the Authority heard evidence from Mr Harwood, Richard White, the Club's general manager and Terry Wilson, the chairperson of the Club's governance committee.

[4] 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

[5] The issues identified for investigation and determination are:

a) Was Mr Harwood unjustifiably disadvantaged in his employment or unjustifiably dismissed on or about 31 December 2021?

b) If so, is Mr Harwood entitled to a consideration of remedies sought including:

   i. Reimbursement of lost remuneration under s123(1)(b) and s 128 of the Act; and

   ii. Compensation of $20,000 under s123(1)(c)(i) of the Act.

c) Should any remedy awarded be reduced (under section 124 of the Act) for blameworthy conduct by Mr Harwood which contributed to the circumstances which gave rise to his grievance?

d) Has the Club breached the statutory duty of good faith and if so should a penalty be awarded a portion or all to be ordered to Mr Harwood?

e) Is either party entitled to an award of costs?

Relevant law

The test for justification

[6] When the Authority considers justification for the actions of the Club including the dismissal decision it does so by applying the test of justification in s 103A of the Employment Relations Act 2000 (the Act). In determining justification of actions or a dismissal the Authority does not consider what it may have done in the circumstances. It is required to consider on an objective basis whether the actions of the Club and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[7] As part of this process the Authority must consider the four procedural fairness factors set out in s 103A(3) of the Act. In a dismissal setting these are whether allegations against Mr Harwood were sufficiently investigated, concerns were then raised with him, he had a reasonable opportunity to respond to them and his explanations were considered genuinely by the Club before dismissal. The Authority may take into account other factors as appropriate and must not determine an action or a dismissal to be unjustified solely because of defects in the process if they were minor and did not result in Mr Harwood being treated unfairly.

[8] The Club could also be expected as a fair and reasonable employer to comply with the good faith obligations set out in s 4 of the Act.

Schedule 3A - Provisions relating to COVID-19 Vaccinations

[9] In addition to the general statutory obligations in a dismissal setting such as this the schedule 3A Provisions relating to COVID-19 Vaccinations of the Act are applicable:[1]

> **Termination of employment agreement for failure to comply with relevant duties or determination**
>
> (1) This clause applies to the following employees:

[1] Schedule 3A was inserted into the Employment Relations Act 2000 on 26 November 2021, by section 22 of the COVID-19 Response (Vaccinations) Legislation Act 2021 (2021 No 51).

(a) an employee who has a duty imposed by or under the COVID-19 Public Health Response Act 2020 not to carry out work (however described) unless they are—

(i) vaccinated; or

(ii) required to undergo medical examination or testing for COVID-19; or

(iii) otherwise permitted to perform the work under a COVID-19 order:

(b) an employee whose employer has determined the employee must be vaccinated to carry out the work of the employee.

(2) For the purposes of subclause (1)(b), the employer must give the employee reasonable written notice specifying the date (the **specified date**) by which the employee must be vaccinated in order to carry out the work of the employee.

(3) If the employee is unable to comply with a duty referred to in subclause (1)(a) or a determination referred to in subclause (1)(b) because they fail to comply with the relevant requirements of the COVID-19 Public Health Response Act 2020 or a COVID-19 order, or they are not vaccinated by the specified date, their employer may terminate the employee's employment agreement by giving the employee the greater of—

(a) 4 weeks' paid written notice of the termination:

(b) the paid notice period specified in the employee's terms and conditions of employment relating to termination of the agreement.

(4) Before giving a termination notice under subclause (3), the employer must ensure that all other reasonable alternatives that would not lead to termination of the employee's employment agreement have been exhausted.

(5) A termination notice given under subclause (3) is cancelled and is of no effect if, before the close of the period to which the notice relates, the employee becomes—

(a) vaccinated; or

(b) otherwise permitted to perform the work under a COVID-19 order.

(6) Subclause (5) does not apply if cancelling the notice would unreasonably disrupt the employer's business.

(7) Nothing in this clause—

(a) prevents an employee whose employment agreement is terminated under subclause (3) from bringing a personal grievance or legal proceedings in respect of the dismissal:

(b) prevents the parties to the employment relationship from mutually agreeing—

(i) to terminate the employee's employment agreement; and

(ii) that the employer will pay the employee in accordance with subclause (3).

The parties' employment agreement

[10] The parties' written employment agreement provides for matters relating to policies:

15.0 HOUSE RULES AND GENERAL POLICIES

15.1 Various General Rules and Policies may be developed for the effective and safe operation of the Employer's business and for the welfare and interests of the Employees and visitors. The Employee must comply with such particular rules and policies of which they are informed. The Employer may amend such rules or policies from time to time as operational requirements dictate. The Employer shall ensure that the Employee is given appropriate notice of any alterations.

Background

[11] On 2 November 2021 Mr White and Mr Wilson met with staff to update them on the vaccination situation at the Club and to encourage staff to think about their vaccination status. Mr Harwood attended the meeting. Mr White had prepared for the meeting including having sent Mr Wilson a summary of the issues he wished to raise in an email dated 1 November. I am satisfied the matters set out in the 1 November email are the issues raised at the 2 November staff meeting including:

(i) that golf clubs throughout New Zealand were moving to a mandatory vaccination policy for members and players;

(ii) the Club was considering this but would first survey members, get official guidance from Golf NZ, conduct a health and safety assessment and get legal advice;

(iii) information from golf authorities, other clubs and Club members suggested golfers were becoming increasingly concerned about the risk to their health and safety if unvaccinated people were also on golf club facilities, that this concern was increased by the risks associated with the Delta Covid variant;

(iv) this concern was taken seriously by the Club due to the age and health status of a number of members;

(v) the current Board policy was to encourage vaccination and a 'no jab, no play' policy would be considered in the next few weeks;

(vi) if a 'no jab, no play' policy was implemented unvaccinated staff and members would have four weeks to get fully vaccinated or resign their positions;

(vii) encouraged staff to think about the issue and talk to a trusted person; and

(viii) that Mr White, Mr Wilson or any other Board members was available to talk on a confidential basis.

[12] On 22 November Mr White wrote to the Club employee team leaders in the pro shop, accounts, green keeping and the café asking them to complete the WorkSafe NZ Covid 19 assessment tool of the transmission risk of Covid 19 in their various work areas. As a team leader Mr Harwood was included in the request. Mr White prefaced the questions with reference to the Club's consideration of a COVID-19 transmission policy and its health and safety obligations under the Health & Safety at Work Act 2015 and the duties of employees under s 45 of that Act. He described the identification of risk 'as a joint exercise' between the Club and the employees and asked the employees to provide their own assessment of the risk in their particular work environment. He acknowledged these would be different given the different work environments, encouraged them to discuss the assessment with their teams, to base their responses on daily averages of the peak summer season and return the responses by the following day. Mr White provided his answers to the questions by way of guide and transparency.

[13] Mr Harwood provided his assessment the following day as requested noting it was based on all the areas covered by his job roles – as a professional golf coach, as the director of golf and his role in the retail shop with sale and customer service. He assessed the risk as 'low/medium'.

[14] Mr White replied the following day with comments in green to Mr Harwood's questionnaire where his assessment differed from that of Mr Harwood. He had given Mr Harwood's role an overall rating of high risk. Mr White noted he had reviewed Mr Harwood's responses with Board members and invited his further response "…if you feel we're wide of the mark".

[15] By reply Mr Harwood stated he did not agree with the comments in green and included:

(i) a concern that the WorkSafe assessment tool was generic and not focussed on the Club's golf business or his role in the Club;

(ii) that such assessments are subjective;

(iii) he had given an honest risk assessment;

(iv) on 3 December a new government assessment tool was to be introduced which would be more targeted; and

(v) under current guidelines retail spaces and professional gold coaches were not identified as a high-risk business.

[16] On 25 November Mr Harwood wrote to Mr White and the Board:

(i) his employment agreement did not require that he undergo a medical procedure to carry out his role as golf coach and director of golf;
(ii) on 25 November the Club had requested he undergo such a procedure by receiving the covid vaccination; and
(iii) the covid vaccination order did not specify people employed in roles such as his were required to be vaccinated.

[17] The letter goes on to set out Mr Harwood's real concerns about the Covid 19 vaccination and its efficacy and that the vaccination had 'provisional approval' from the authorising agency. He referred to his rights under the New Zealand Bill of Rights Act 1990 to refuse medical treatment, not be subjected to medical or scientific experimentation and to give informed consent to any medical treatment. The letter set out his view the risk of Covid-19 was not substantial other than to limited categories of people and that the risk to any vulnerable group he may interact with in his role could be managed under current health and safety practises. Mr Harwood confirmed in the letter that if he developed any Covid-19 symptoms he would self-isolate and get tested and if he tested positive would isolate and get tested again before returning to work. The letter then asked the Club to revoke the vaccination request and set out a number of questions.

[18] Later on 25 November Mr White wrote to Mr Harwood advising:

(i) all staff, contractors and visitors to the pro shop and clubhouse would have to be fully vaccinated to use those facilities and unvaccinated golfers could play golf but not use the clubhouse facilities;
(ii) no later than 25 December all employees and contractors would be required to show a vaccine certificate as evidence they were fully vaccinated;
(iii) he would have to have had his first vaccine by 3 December; and
(iv) employment with the Club would end on 26 December if the required proof of vaccination had not been provided, the effected person was

unable to be redeployed or a vaccination exemption could not be obtained.

[19] The letter ended:

> All our employees are valued, so of course we hope everyone will be fully vaccinated and able to continue working here. The policy applies to all staff in all positions so realistically, redeployment is an unlikely option, however, the board remains open to discussion and ideas from those who may be affected.
>
> You are welcome to discuss your situation with me or another board member, and to bring a support person along with you to a meeting if you wish.

[20] On 30 November Mr Wilson wrote to all Club members advising that from 3 December only fully vaccinated people (over the age of 12) could access the Club. The reasons for the policy were set out in the letter. The letter does not expressly refer to any potential impact of the policy on unvaccinated staff.

[21] Also on 30 November, Mr White wrote to Mr Harwood replying to his 25 November letter. The first part of the letter acknowledged the significant issues raised in his letter and set out the Club's view of the impact of the soon to be introduced Covid Vaccination Certificate (CVC) requirements for businesses operating a food and beverage service having taken professional advice:

(i) the government CVC mandate applied to any business which operates a food and beverage service from 3 December;
(ii) the requirements extend to the entire business premises;
(iii) because this is government mandated, individual role risk assessments are not required and the advice the Club has received is it cannot exclude any role from the mandate scope; and
(iv) if the Club does not comply with the CVC requirements it may be subject to a financial penalty.

[22] The last part of the letter set out the potential impact on Mr Harwood including:

(i) if he remained unvaccinated at 3 December he could not perform his usual duties and responsibilities;

(ii) he would be stood down on full pay from the date and could not re-enter the premises as an employee;

(iii) if he came to play golf as a player he would have to take a Covid-19 test as other unvaccinated players were required in accordance with CVC regulations; and

(iv) he would then receive 4 weeks' notice of dismissal which would be superseded if he became vaccinated or received a vaccination exemption;

[23] The letter ends:

> We trust you understand the Club's position, although we respect that you may not agree with it, however as a business subject to the Government's Covid-19 Health and Safety Protection requirements this is a process that the Club is now legally obligated to implement.

[24] On 3 December Mr White wrote to Mr Harwood giving notice of his dismissal effective 31 December 2021. The grounds are those set out in the 30 November letter. Further correspondence was exchanged between the parties between 6 December to 13 December. The 13 December letter is significant because the Club updated Mr Harwood with a change in the CVC mandate scope and its view of how that would impact on his employment circumstances. Specifically, the letter stated the Club had received guidance and advice and now understood the mandate scope had been clarified from a blanket application to all operations a part of which involved a food and beverage service, such as operated by the Club, to allow different Covid-19 procedures to be applied to different operational areas. The Club's view was notwithstanding the change in mandate scope it would not alter its policy based on the survey of members and the risk assessment it had undertaken.

[25] By letter dated 14 December Mr Harwood wrote to the Club in a letter addressed to all members of the management board expressing his disappointment at the Board's decision to dismiss him, that the letter did not address the three proposals he had made and raising a personal grievance for unjustified dismissal. The penultimate paragraph of the letter states:

> Finally, I wish to record the fact that I categorically dispute the assertion made in that letter that: *"In providing this notice, and in good faith, we also looked at all possible options to be able to retain you in some other capacity."* The

> relevant facts do not support this claim whatsoever and it's my submission that a proper examination of the facts will clearly establish the actual process that has occurred here. And this will constitute breach of section 4 of Schedule 3A of the ERA.

[26] The letter ends inviting the Club to further consider resolving the dispute between the parties.

[27] The Club through its representative replied to Mr Harwood by letter dated 17 December. The parties attended mediation on 22 December in an attempt to resolve the employment relationship problem.

[28] The parties were unable to resolve matters and Mr Harwood's representative wrote to the Club on 11 January 2022 setting out the basis of his personal grievance and the remedies he sought by way of resolution. The Club duly replied on 18 January responding to the personal grievance claims and denying the remedies sought.

[29] On 28 March 2022 the Board lifted the vaccination requirement to play golf and use Club facilities from 5 April 2022. The Board minutes record the decision was made "follow[ing] the lead of government and guidance from Golf NZ…". In his 30 March Club newsletter Mr Wilson notified member of the change in policy.

Discussion

[30] Mr Harwood says his dismissal was unjustified because the Club's actions were not those a fair and reasonable employer could have taken in all the circumstances given its failure to:

- (i) give him a fair opportunity to comment on its COVID-19 policies before putting it in place on 25 November;
- (ii) genuinely consider his documents;
- (iii) reconsider his dismissal following the 13 December change in mandate scope; and
- (iv) exhaust all reasonable alternatives to termination as required by schedule 3A of the Act.

[31] The Club says it has discharged the s 103A statutory duty and the decision to dismiss was one open to a fair and reasonable employer in all the circumstances. In

particular the circumstances including the unprecedented and fluid nature of the situation, that it took and relied on professional advice throughout and genuinely consulted with Mr Harwood in the period 2 November to 22 December 2021.

Did the Club fail to give Mr Harwood a fair opportunity to comment on its COVID-19 policies before its implementation on 3 December 2021?

[32] The parties agreed in the employment agreement that from time to time the Club may develop and implement policies "…for the effective and safe operation of the [Club] and for the welfare and interests of the Employees and visitors". Mr Harwood agreed to be bound by such policies. Any such policies must be reasonable and lawful. In a setting where new policies are introduced during the course of an employment relationship and where the new policy may cut across other statutory rights, discussion must occur prior to implementation.

[33] I am satisfied the Club has met these obligations and Mr Harwood has been given a fair opportunity to comment on the policy prior to its implementation. The 2 November meeting clearly set out the context for the policy implementation. Mr Harwood along with other staff were invited to speak to Mr White or a Board member. The risk assessment process was undertaken within the context of that policy development. Mr Harwood was invited to and made detailed submissions on the appropriateness of and implementation of a blanket vaccination policy. In particular, he set out how the policy would impact on him and his role.

[34] Mr Harwood is critical of the Club's reliance on its member survey to justify the vaccination policy. He says the Club has used the survey to avoid having to engage with the issues he raised including the safety of the vaccination, the true threat of the Covid virus and an appropriate assessment of his position. He has referred to comments on the Club's website critical of the vaccination policy. I do not believe this criticism is fair – the Club is a membership-based organisation and the views of its membership were a proper consideration which I am satisfied the Club weighed along with the information and advice it had received including that provided by Mr Harwood.

Did the Club fail to genuinely consider his documents?

[35] The documents referred to are those electronically linked to Mr Harwood's letter of 25 November. I understand he provided those links in support of and to provide information to the Club regarding his concerns about the vaccination and its efficacy. Mr Harwood's letter raised a number of related questions at paragraphs 30 – 38 for the Club to answer.

[36] The Club responded by letter dated 30 November. I am satisfied the letter demonstrates the Club has genuinely considered the concerns Mr Harwood has raised about the requirement that all staff be vaccinated. In broad terms, the Club's response was that it was required to follow the law and as it understood the legal requirements at that date, the mandate covered the whole premises because of the food and beverage service and it was not required to undertake an individual role assessment.

Did the Club fail to fairly reconsider Mr Harwood's dismissal following the 13 December change in mandate scope and/or did the Club exhaust all reasonable alternatives to termination: schedule 3A of the Act?

[37] The Club gave Mr Harwood four weeks' notice of his dismissal on 3 December 2021. The grounds of dismissal are that Club employees were legally obliged to be vaccinated (or obtain a medical exemption from vaccination) as set out in the 30 November letter:

(i) the Club operates a food and beverage service from 3 December 2021 the government's Covid vaccination certificate process applies to the entire premises;

(ii) all employees who undertake duties on the business premises are required to be vaccinated regardless of the functions they perform; and

(iii) if Mr Harwood remained unvaccinated by 3 December, he would be stood down for a four week notice period.

[38] The 3 December notice of dismissal relies on the Club's understanding Mr Harwood was required under a duty imposed by or under the COVID-19 Public Health Response Act 2020 to be vaccinated to carry out his work: clause (1)(a)(i) of Schedule

3A. Whether that assessment was correct or not is overtaken by subsequent events notified to Mr Harwood by letter dated 13 December.

[39] The 13 December letter stated the grounds of dismissal were that Mr Harwood was an employee whose employer had determined he must be vaccinated to carry out his work. The ground of dismissal changed because the Club understood by then, from a clarification of the rules applicable to hospitality, that the vaccination mandate applied only to the hospitality and beverage service area of its business and it relied on its vaccination policy implemented from 25 November. For the reasons set out above I have found the Club was able to implement a vaccination policy.

[40] Clause (2) of Schedule 3A then is the relevant provision applicable to such a scenario. Under clause (2) the Club was obliged to give Mr Harwood reasonable notice of a specified date by which he was required to be vaccinated to carry out his work. Implicit in any reasonable notice is that it includes the grounds upon which the notice is exercised.

[41] Did Mr Harwood receive reasonable notice of the clause (2) specified date? He received 2 weeks' notice of the date by which he was to be vaccinated which, alone may well have been reasonable given the preceding communications between the parties regarding such, however, the flaw in the Club's approach is that it collapsed the specified date notice into the dismissal notice. This was an incorrect approach because, having satisfied itself Mr Harwood could not fulfil the vaccination requirement by the specified date, the statutory scheme required it to then turn its mind to exhausting all possible alternatives to dismissal before giving notice of termination: clause 3(4) of Schedule 3A.

[42] If I am wrong and the specified date notice and reasonable alternatives to dismissal consideration could be fulfilled concurrently, then on the evidence before the Authority the Club is unable to satisfy me it has met that high threshold. The Club's initial consideration of redeployment was that it was not possible – in the 25 November letter to Mr Harwood the Club stated redeployment was an unlikely option given its understanding at that time of the application of the vaccination mandate but it was open to discussion. As set out above, matters progressed and the Club is unable to

demonstrate it turned its mind further to alternatives to dismissal, to the request high standard, prior to issuing the notice of dismissal.

[43] For these reasons the Club is unable to establish it has discharged the statutory requirements to give reasonable written notice of the specified date for vaccination (Schedule 3A, clause 3(2)) and ensured all other reasonable alternatives to dismissal had been exhausted (Schedule 3A, clause 3(4)) prior to dismissal.

[44] These failures render Mr Harwood's dismissal unjustified because the Club is unable to demonstrate it has stepped through the statutory requirements. The subsequent attempts to resolve matters between the parties cannot cure these flaws because the key decision to issue the notice of dismissal was not revoked. The unjustified action claim is folded into the unjustified dismissal.

Remedies

[45] Mr Harwood has established a personal grievance for unjustified dismissal. He is entitled to a consideration of the remedies sought.

Reimbursement

[46] Mr Harwood seeks reimbursement of earnings lost as a result of his dismissal pursuant to section 123(1)(b) and 128 of the Act. I am satisfied the appropriate period of claim runs for 8 weeks from his final date of employment being 31 December 2021 and is to be calculated at his salary rate applicable at that date.

[47] I decline to award more than two months lost earnings in Mr Harwood's favour. He was able to secure part time work before his employment with the Club ended. While I accept Mr Harwood experienced some difficulty finding alternative fulltime employment following his dismissal, notwithstanding the very likely impact on job prospects of the ongoing effects of the COVID-19 pandemic, he was readily able to find part time scaffolding work and golf coaching. I am not satisfied he has taken the further necessary steps to mitigate further loss.

Compensation for humiliation, loss of dignity and injury to feelings

[48] Mr Harwood said his dismissal had had an extremely emotional impact on himself and his family. He said he grew up in Whangamata and returned to his

hometown to take up the role with the Club and he has always worked for the good of golf, the Club and his community. He said he was humiliated by his dismissal and the effect on his relationships in the local and golf community had been destructive. He said as well as the emotional toll the stress of his dismissal has had a negative physical and financial impact on him and his family. He said he had been open and honest with the Club and actively sought resolution, including alternatives to dismissal, before his employment ended by way of dismissal.

[49] I accept the circumstances of his personal grievance has had a profound and negative impact on Mr Harwood. He is entitled to an award to compensate the humiliation, loss of dignity and injury to feelings consequent to such of $15,000.00.

If any remedy is awarded, should it be reduced (under s 124 of the Act) for blameworthy conduct by Mr Harwood that contributed to the situation giving rise to his grievance?

[50] No deduction from the remedies awarded is to be made under s 124 of the Act. The unjustifiably of Mr Harwood's dismissal has been established in the Club's failure to follow statutory requirements. These obligations were not Mr Harwood's and there is to be no deduction from the monetary remedies for reasons of contribution.

Penalty

[51] Mr Harwood has sought a penalty for breach of the duty of good faith. This is not a matter for which a finding of breach of good faith could be made or a penalty awarded. Mr Harwood has been compensated for losses arising from his personal grievance founded on errors the Club made in implementing a policy it has been found to have fairly developed. There can be no doubt the Club was faced with a difficult and unprecedented situation. Further, there can be no doubt it has sought to act in the best interests of its membership and employees. I have considered the unfortunate personal exchanges I heard evidence of and determine, given the unprecedented circumstances and the sincerity of the apology they are not of sufficiently seriousness to establish an actionable breach of any obligation.

Summary

[52] Whangamata Golf Club Inc must pay Benjamin Harwood the following amounts within 28 days of the date of determination:

(i) $15,000 under 123(1)(c)(i); and

(ii) two months wages under s 123(1)(b) less earnings received during the period 1 January to 28 February 2022.

Costs

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

[54] If parties are unable to resolve costs between them and an Authority determination on costs is needed Mr Harwood may lodge, and then should serve, a memorandum on costs within 21 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Whangamata Golf Club Inc 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.

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

[56] 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.[2]

Marija Urlich
Member of the Employment Relations Authority

[2] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.