

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 276
3115152

BETWEEN MOORE MARKHAMS
 WELLINGTON AUDIT
 LIMITED
 Applicant

AND ADRIENNE DEMPSEY
 Respondent

Member of Authority: Michael Loftus

Representatives: Paul McBride and Emma Rose Luxton, counsel for the
 Applicant
 Jills Angus-Burney, counsel for the Respondent

Investigation Meeting: 24 and 25 February 2021 at Masterton

Submissions Received: 29 March and 3 May 2021 from the Applicant
 18 April 2021 from the Respondent

Date of Determination: 29 May 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Moore Markhams Wellington Audit Limited (Moore Markhams) claims Ms Dempsey has:

- (a) Contrary to her employment agreement:
 - (i) Failed to give the required notice of resignation;

- (ii) Breached an obligation to use her best endeavours to promote, develop and extend Moore Markhams business and not do anything to its detriment;
 - (iii) Breached an obligation to declare an interest in a business which might potentially be in conflict or competition with Moore Markhams;
 - (iv) Breached an obligation not to obtain an interest in or establish a business that may be in competition with Moore Markhams without its written permission;
 - (v) Breached an obligation to meet the needs of Moore Markhams' business;
- (b) Breached the duty of good faith; and
 - (c) Breached post employment obligations regarding non-solicitation of clients and customers of the respondent.

[2] Ms Dempsey denies the claims and asserts she has not breached any of her obligations to Moore Markhams. While she accepts her new enterprise does work for some clients who were previously with Moore Markhams, she asserts this was the result of their approaches and decisions as opposed to her seeking their patronage.

This Determination

[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.

[4] This determination has not been issued within the three month period required by s 174C(3) of the Employment Relations Act (the Act). As permitted by s 174C(4) the Chief of the Authority decided exceptional circumstances existed to allow a written determination of findings at a later date.

Background

[5] Ms Dempsey was employed by a predecessor to Moore Markhams, Moore Stephens, as an Audit Manager in Masterton. In this capacity she was the firm's sole employee in the

Wairarapa with a key task of promoting and growing the Wairarapa practice. It would be fair to say her employment agreement contained various provisions designed to reflect her role as the firms only representative in the Wairarapa and the arrangement continued with Moore Markhams.

[6] Also contained in the employment agreement were a number of requirements and restraints pertinent to this claim. Under the heading “Employee Obligations” the agreement requires the following:

- (a) During working hours Employees shall devote the whole of their time, attention and abilities in carrying out their duties.
- (b) Employees shall carry out their duties well, faithfully and diligently providing the Employer the full benefit of the Employee’s experience and knowledge.
- (c) Employees shall use best endeavours to promote, develop and extend the Employer’s business interests and reputation and not do anything to its detriment.
- (d) Employees must not engage in any paid or unpaid employment, which might adversely affect the performance of the duties of their position with the Employer, without the written permission of the Employer.
- (e) Employees must declare any conflicts of interest in any business of any kind in which the Employee may potentially be in conflict or in competition with the business of the Employer. Further, Employees may not, whilst in the employ of the Employer, invest personal monies, obtain an interest in or establish any other business that may be deemed to be in competition with the Employer or its principals, without the written permission of the Employer.
- (f) The Employee acknowledges that the circumstances of his position with the Employer will be unique, in that the Employee is the Employer’s sole representative in the Wairarapa, and that certain requirements of the Employer to ensure the smooth running of the Employer’s business may be more than that which is normally required of an Employee. The Employee therefore undertakes in good faith to meet all the needs of the Employer’s business that would be considered reasonable in the circumstances, and the Employer

undertakes in good faith to provide every assistance to the Employee in meeting that expectation.

[7] The agreement also contains a prohibition on the performance of private work either on or off the employer's premises or using the employer's equipment without the employer's written permission.

[8] The agreement prohibits the disclosure of any information or material regarding personal information about other employees obtained during the course of the employment and the use, copying or removal of any client / customer information. These restrictions are stated to apply "... both during the term of this agreement and after the expiry of the agreement."

[9] In 2019 Moore Markhams was approached by Audit NZ and offered the opportunity to join a panel of firms approved to supplement Audit NZ's staff resource. The offer was accepted with the relationship being managed, from Moore Markhams' perspective, by one of its partners, Michael Rania.

[10] On 24 June 2020 Ms Dempsey notified her resignation. Despite a contractual obligation she give three months notice she advised her last day would be 22 July. Mr Rania says that what usually happens is that once staff advise their resignation Moore Markhams will liaise with its clients in order to make arrangements under which it will continue do the work which will be reassigned to another employee. That was one of the reasons for the three month notice period.

[11] Mr Rania's initial response was to acknowledge the resignation and wish Ms Dempsey well in her future endeavours before going on to ask:

Also, I would kindly ask whether you could remain in our employment for at least 5 more working days until Friday 31 July if this is possible, in order that we would be able to as a firm make good in completing the planned secondment with Audit NZ ending 31 July.

[12] In her response of 30 June Ms Dempsey advised she could not help as she had "... another commitment after 23 July." To that Mr Rania replied that the IEA required three months notice and asked if Ms Dempsey agreed. Ms Dempsey replied she did not as her advisor had told her the clause was in effect a "bonding" which was not legally enforceable.

[13] The reply to that stated it wished to draw two points to Ms Dempsey's attention. The first was a full citation of the notice period. The second reminded Ms Dempsey of the non-solicitation provisions of her IEA given she had by then advised him that she had "... arranged an alternate contract employment directly with our existing client initially through to the end of October, including on the public sector clients that we have already formally contracted with Audit New Zealand."

[14] That arrangement, confirmed in an email between Audit NZ and Ms Dempsey on 10 July, was not dissimilar to that which Moore Markhams had with Audit NZ in that while Audit NZ characterised the arrangement as employment Ms Dempsey was engaged on casual as required basis and there was no obligation Audit NZ offer work or that she accept. The offer had been made on 6 July though the email of 10 July shows Ms Dempsey had advised she would not be available before 23 July. The email goes on to record "We (audit NZ) will be in contact with you in due course closer to this date".

[15] On the same day Audit NZ confirmed its new arrangement with Ms Dempsey other pertinent events occurred. Mr Rania was in contact with Audit NZ about a secondment Ms Dempsey had been due to commence, as an employee of Moore Markhams, on 13 July and which is that referred to in Mr Rania's initial response to the resignation. The conversation led to a text to Ms Dempsey reading "Hi Adrienne, can you please explain why you have appeared to have cancelled the secondment with Audit NZ from this Monday without consulting us".

[16] Ms Dempsey replied stating she had done nothing of the sort which led to Mr Rania texting:

Hi Adrienne, when I enquired about next week onward Audit NZ have advised that you would a direct contractor with them from 6 July 2020. And by virtue of that have removed you/moore Markhams for the July to Sept contract. Can you confirm this is the case. We have not been consulted on this matter.

[17] Ms Dempsey again stated that was not the case. She said she had evidence but would have to go home to get it and would be about 90 minutes. Two hours later and having heard nothing Mr Rania sent an email accepting Mr Dempsey resignation with effect 24 July 2020 (two days after Ms Dempsey stated she would leave). The email went on to record:

As a result of interactions with Audit NZ on your part, we have been informed by our client Audit NZ that the secondment which our firm had organised with them from Monday 13 July no longer exists. As a consequence of that planned secondment we have shifted the current scheduled Wairarapa client audit work records to the Wellington office for them to be carried out. Accordingly there is no longer any work currently planned for the Wairarapa office. We therefore kindly request that you take annual leave for Monday 13 June (sic) to 24 July inclusive.

[18] In his evidence Mr Rania put this decision down to:

We had no difficulty with Adrienne leaving us and making her own way in practice, business or anything else. The provisos to that were that she did that in accordance with what we saw as clear legal and ethical restrictions on her. Those included not taking steps while employed by us, and not spring-boarding or acting inappropriately to take our clientele from us.

[19] Around this time and given they were now looking, two other events had come to Moore Markhams attention. One was an internal memo to members of the Board of the Greytown Trust Lands Board which was posted on the internet. It is dated 18 June 2020 and reads "I have had an off the record discussion with Adrienne who has advised me she is no longer responsible for the management of our audit... what I feel I am able to say is going forward trustees may need to consider a change of auditor...". It appears the conversation in question occurred on 9 June 2020.

[20] The other was that Ms Dempsey had incorporated a company, Audit Plus Accounting Services Limited, on 22 June 2020.

[21] Ms Dempsey did leave as she had sought in late July but in the intervening period further issues arose with The Trust Tararua emailing on 22 July to advise it made a decision the previous evening to "...follow [Ms Dempsey] to her new employment". This led to Moore Markhams instructing its solicitors write to Ms Dempsey which they did on 24 July. The letter raised Moore Markhams concern that Ms Dempsey had resigned with inadequate notice and that she had been actively competing with it in the lead up to her resignation. It "invites your realistic proposal to addressing these matters before it takes further steps". There was no response.

[22] Proceedings were then initiated in August and Moore Markhams continued to investigate Ms Dempsey's activities during which time it also became apparent she had registered a domain name, auditplus.nz, as early as 21 May 2020. Business cards had also been printed and a linkedin page established.

Analysis

[23] The claim is Ms Dempsey breached various obligations and, in particular, a number of duties she had to Moore Markhams both before and after the cessation of employment. In particular it is alleged she:

- (a) Failed to give the required notice of resignation;
- (b) Breached the obligation to use her best endeavours to promote, develop and extend Moore Markhams business and not do anything to its detriment;
- (c) Breached the obligation to declare an interest in a business which might potentially be in conflict or competition with Moore Markham;
- (d) Breached the obligation not to obtain an interest in or establish a business that may be in competition with Moore Markham without its written permission;
- (e) Breached the obligation to meet the needs of Moore Markhams' business;
- (f) Breached the duty of good faith; and
- (g) Breached various post-employment obligations and covenants.

[24] That Ms Dempsey did not give the notice required in her employment agreement is, on the face of it, clear given a requirement either party give no less than three months notice. Ms Dempsey gave about one month which is somewhat less but that raises a question as to whether or not the requirement was waived or the agreement amended.

[25] Mr Rania's initial response, namely that Ms Dempsey only remain some five weeks, indicates a willingness to vary but, that said, Ms Dempsey did not accept.

[26] What did, however, occur was that Mr Rania, albeit reluctantly and in his view under pressure, advised "In relation to your offer of resignation, we hereby formally accept your notice of termination with effect from 24 July 2020". In such circumstances I have to conclude the agreement has been varied and there is no breach.

[27] Turning to the claim Ms Dempsey breached the obligations regarding the establishment of another business which might be in conflict, or competition with, Moore Markhams - namely that she neither obtain an interest in, or establish such a business, without permission or that she declare such an interest. It is obvious these requirements were

breached and that moves were afoot to establish Auditplus prior to either the tendering of her resignation or Moore Markhams gaining knowledge of her actions.

[28] The Auditplus domain name was registered on 21 May 2020 and while she tries to distance herself from this by saying her husband did it, I reject that given Ms Dempsey's acceptance it was on her instruction. She then registered the company on 22 June 2020 having signed both the director and shareholder consents on 17 June. At these times she remained an employee of Moore Markhams and Ms Dempsey accepts she neither advised them of her actions, nor sought their consent. That Auditplus would act in competition is also obvious given it operated in the same industry and, as events transpired, took various clients/contracts from Moore Markhams and it is those I consider the important events. As the Court said in *Caffe Coffee* the duty of fidelity does not prevent an employee from preparing for participation in their own business following cessation of their current employment – it is the manner of that preparation.¹

[29] The next group of claims relate to alleged breaches of the provisions which came under the head of employee obligations. They are that Ms Dempsey breached various obligations regarding working in the best interests of Moore Markham and not do anything to its detriment. Their similarity is such I shall consider these holistically.

[30] Starting with the arrangement which triggered this dispute – namely Audit NZ and Ms Dempsey's decision to enter into an arrangement with them absent Moore Markhams. The evidence suggests she received the offer on 25 June which was after she tendered her resignation but Ms Dempsey vacillated as to whether or not she knew the offer was coming. Her evidence leads to a conclusion she did with an acknowledgment, when discussing the issue, that there was a “good grapevine” and, in any event, she could “do as she pleased”.

[31] Ms Dempsey denies the arrangement was the result of solicitation as it came about when she was working at Audit NZ and one of its managers suggested she apply for a role. She attributes this to the fact she had made it known she was unhappy and “looking around”. That said, and while the arrangement was the same as that Moore Markhams had in that there was no guarantee of work, there can be no doubt she accepted tasks to be performed in her own right that were originally to be performed by her as employee of Moore Markhams.

¹ *Caffe Coffee (NZ) Ltd v Farrimond* [2016] NZEmpC 65 at [35] and [36]

[32] To act in such a way must, I conclude, be contrary to the various duties she had to act in Moore Markhams best interests and not do anything to damage its interests.

[33] It is clear Audit NZ was not the only example. Not only did Ms Dempsey establish her own audit company it was effectively cultivating a clientele from within Moore Markhams clientele while she remained employed. The following examples were discussed in evidence though not all transferred responsibility for their audits to her.

[34] One that did not transfer was the Greytown Lands Trust Board. Ms Dempsey accepts she emailed this organisation on 9 June which was prior to her resignation and this is confirmed in a letter she procured from the Board's General Manager. She says her email advised she would no longer be involved in the audit for which preparation had commenced and to thank them for their work. The evidence is there was a subsequent telephone conversation and a further email from Ms Dempsey on 24 June in which she confirmed she was establishing her own audit practice.

[35] Ms Dempsey subsequently had a call from the Trust's General Manager asking if she would allow her name to be suggested as the Boards Auditor. Ms Dempsey declined and Moore Markham retained the brief.

[36] Others, however, had a different result with Trust Tararua being one. Again Ms Dempsey accepts she called the Trust while still employed by Moore Markhams and advised they not be surprised if they got assigned a new auditor as she had resigned. She attributes her approach to the fact she and the Trust's personnel knew each other well, having had a lot of interaction over some six years. On 22 July the Trust advised Moore Markhams that it had, the previous evening, decided to follow Ms Dempsey to her new employment, noting it had initially engaged Moore Markhams because of Ms Dempsey's "role with you". According to the Trust it approached Ms Dempsey with a request she be the Auditor the same day, 22 July. She accepted that evening and forwarded a client engagement letter with the acceptance.

[37] Another that followed Ms Dempsey was Te Hauora Runanga O Wairarapa with the decision again being made in July. Again the evidence is it was aware Ms Dempsey was leaving Moore Markhams no later than 21 July when it's accountant advised Ms Dempsey was leaving Moore Markham, setting up her own practice, and the accountant felt "... for the sake of continuity that it would be in the interests of Te Hauora to seek Adrienne to undertake

the audit work.” Following in-house discussions management decided to seek Board approval for a transfer of the Audit function and this was granted on 27 July.

[38] With respect to these breaches Ms Dempsey denies seeking to purloin any work or engagement from Moore Markhams saying that aside from the job with AuditNZ she had two further clients who were not with Moore Markhams. As to the rest, she says she was willing to bid her time until early 2021 before building her client base but could not help it if the clients sought her out instead.

[39] The fact is Ms Dempsey was letting it be known. It was in response to the information she imparted prior to departure that clients reacted as they did. She could have acted as she did with the Greytown Lands Trust Board and declined the approach but she didn't.

[40] Following Ms Dempsey's departure there were further cessations with one being Changeability Counselling & Family Violence Services. On 7 July this client entered into an arrangement under which it would use Moore Markhams for its audit. On 30 July it advised it was cancelling the arrangement as it “would like to support local businesses where possible”. Enquiries as to who the new auditor might be failed to ascertain a response but it subsequently transpired it was Ms Dempsey. It is also now clear she had telephoned the Service during the week of 13 July and advised her imminent departure. She then followed up with acceptance of the Services clientele shortly thereafter.

[41] It is here I return to *Caffe Coffee*.² In that decision the Court said the duty of fidelity does not prevent an employee from preparing for participation in their own business following cessation of their current employment but this must not be done in a manner which undermines the duty of trust and confidence. To accept approaches from potential clients and enter into arrangements to take their clientele from Moore Markhams while still employed must constitute a severe breach of the duty of trust and confidence. Similarly, I consider that to do so in secrecy when there exists a contractual obligation to declare such an interest is a breach of trust and confidence and the duty of fidelity. Ms Dempsey's actions also constituted a breach of various express contractual obligations.

² Above n 1

[42] In September 2020 the Schizophrenia Fellowship advised it was ceasing to use Moore Markham as it “had been made aware it no longer had a local representative.” Auditplus also took over this audit though Ms Dempsey states this arrangement was entered into after her departure and as a result of her sharing office facilities with the Fellowship’s accountant. Moore Markhams can offer no contrary evidence, not that it needs to as there are no claims with respect to this ex-client.

[43] Moore Markhams states further clients have continued to leave though Mr Rania, in his brief, says “that is simply part of professional practice.” That said he takes issue with two ancillary issues. The first is Ms Dempsey did not seek “professional clearance” from Moore Markhams as the predecessor audit firm which, he claims, she was compelled to do by reason of her “mandatory professional ethical standards.” The second is a belief Ms Dempsey failed to do this as she took confidential information pertaining to those clients she subsequently gained from having worked for Moore Markhams.

[44] Ms Dempsey denies these assertions stating professional clearance was not required and this has been confirmed by Chartered Accountants New Zealand. To that she adds there was no information she needed and Moore Markhams could tell her nothing as everything she needed could be found “on XERO or their relevant online accounting packages.

[45] On this, and given an absence of contrary evidence, I accept Ms Dempsey’s assertions. Indeed there was little, if any, discussion about the circumstances of these clients which included, for example, the Colombo Trust, Ko Te Aroha Trust and the South Wairarapa Workingmen’s Club. I add there are no specific claims for remedies in respect to these clients so no further consideration is necessary.

[46] For these reasons I take the alleged breaches, which occurred after departure, no further. I cannot, given the evidence tendered, be satisfied the obligations that survived the employment, namely removing, disclosing or using Moore Markhams information have been breached with Mr Rania’s evidence in this regard being somewhat speculative.

[47] Finally there is the claim the duty of good faith has been breached. The alleged breaches mirror those alleged with respect to those of express terms which have been established and for which remedies will accrue. This claim therefore constitutes a double jeopardy and should not proceed as a stand along.

[48] For the above reasons I conclude Ms Dempsey has breached both express terms in the employment agreement to protect Moore Markhams interests and the duty of fidelity in respect to those clients she entered into an arrangement to service while she remained employed by Moore Markhams. There are four such clients; Audit NZ, The Trust Tararua, Te Hauora Runanga O Wairarapa and Changeability Counselling & Family Violence Services.

[49] With respect to remedies Moore Markhams seeks damages and a range of penalties.

[50] The damages sought are:

- (a) 45 days of foregone earnings from Audit NZ being the period from 13 July to 2 October 2020 which was the previously agreed period of Ms Dempsey's secondment and which was cancelled. The amount sought is \$34,200 being the hourly rate charged for the period of the engagement minus Ms Dempsey's salary.
- (b) The audit fee foregone for the loss of the Trust Tararua for a period of five years being "the expected length of the client engagement based on industry standards". A similar claim is made in respect of Te Hauora Runanga O Wairarapa, Changeability Counselling & Family Violence Services and Supporting Families Wairarapa.

[51] There was inadequate evidence tendered with respect to Supporting Families Wairarapa to support the claim but, as already said, it is clear there were breaches with respect to the other ex-clients named above.

[52] Turning first to the claim concerning Audit NZ. The evidence shows total culpability and the amount sought, \$34,200, is payable. This amount would have flowed to Moore Markhams and they were only deprived of it by reason of Ms Dempsey's actions which breached various obligations she had to the firm.

[53] I do not, however, accept the claims as stated for the Trust, Te Hauora or Changeability. To expect five years recompense is, I conclude, excessive given Mr Rania's own evidence clients do change auditors. There is nothing to confirm or establish they would have remained that long, though I accept that at least in the year Ms Dempsey left there is a clear loss with each of those clients having been enticed away while she remained an

employee of Moore Markhams. Had she remained the evidence leads to a conclusion those clients would have done likewise, so I consider reimbursement for a year appropriate.

[54] The recoverable annual loss specified for the three remaining clients is:

- (a) Trust Tararua - \$1,160;
- (b) Te Hauora Runanga O Wairarapa - \$2,570; and
- (c) Changeability - \$2,160

[55] These amounts are payable.

[56] The penalty claims are numerous and totalled 13. Some I need consider no further as the alleged breach was not made out (failure to give adequate notice or using confidential information) or I declined to consider (breach of good faith). Remaining are claims for a maximum penalty of \$10,000 in respect to each of the following:

- (a) A penalty for the solicitation of each of the four clients for whom damages have been awarded;
- (b) A further penalty for failing to declare a conflict (or deemed conflict) with respect to the Trust Tararua;
- (c) Ms Dempsey's failure to declare her interest in a competing business contrary to a contractual requirement she do so;
- (d) Ms Dempsey's failure to gain Moore Markhams permission to establish a competing business contrary to a contractual requirement;
- (e) Ms Dempsey's failure to devote the whole of her working time, attention and abilities to carrying out her duties; and
- (f) A failure to comply with the contractual requirement Ms Dempsey use her best endeavours to promote, develop and extend Moore Markhams business interests.

[57] The law in respect to quantification of penalties is well established given the content of s 133A of the Act and multiple employment court cases.

[58] Section 133A requires I have regard to the object of the Act, the nature and extent of the breach(s), whether they were intentional or not, the nature and extent of any loss or

damage, steps to mitigate effects of the breach, circumstances of the breach and any vulnerability and finally previous conduct.

[59] The requirement of intention is not necessarily about whether the party was aware they were breaching the law. Instead, it is about whether they acted intentionally, in the sense of intending to do the act in question³, or failed to take reasonable steps to fulfil their legal obligations.⁴ There can be no doubt Ms Dempsey's establishment of Auditplus was deliberate as was her decision to advise clients of her imminent departure. Equally deliberate must have been the decision to enter into a commercial arrangement with those clients.

[60] That said I do not consider this a case where the 9 remaining claims can be considered separately and there must be some globalisation. For example the solicitation of clients is solicitation and I consider the four breaches I have found should, for the purposes of a penalty, be considered as one.

[61] Similarly the breaches for failing to act in Moore Markhams best interests are, despite there being two claims (56e and 56f above), essentially the one failure. The same applies to the failure to either declare an interest in of gain permission to establish Auditplus.

[62] I therefore conclude these claims can be globalised into what are essentially three breaches warranting a possible penalty – they are the solicitation; failure to comply with the contractual provisions Ms Dempsey act in Moore Markhams best interest and failure to comply with the provisions surrounding her obligations when setting up a competitive business.

[63] A quick perusal of various cases would indicate an appropriate starting point for breaches such as these is 50%.⁵

[64] The loss is monetary and its extent is reflected in the orders made regarding damages though that provides a significant degree of recompense. There has been no attempt to remedy or mitigate the breaches and I conclude from the way Ms Dempsey gave her evidence little awareness of wrongdoing. Finally there is no evidence of similar previous conduct by Ms Dempsey.

³ *Parton v Fifita*, TT 1815/00 DC Auckland, quoted in *MBIE v Sumich*, Auckland TT 4088383

⁴ *El-Agez v Comprede Limited*, TT 4121553, at para 18

⁵ Above n1 for example.

[65] Having weighed these factors I conclude that while some of the above points, such as the failure to remedy acknowledged breaches, would suggest an increase on the 50% starting point there are none that favour a reduction. That said, additional factors that must be considered such as consistency and proportionality suggest that would lead to an improperly high figure. Having weighed these factors I conclude Ms Dempsey should be required to pay a penalty of \$5,000 in respect to each of the three globalised breaches.

[66] Finally I note Mr McBride's comment that a portion may be payable to the Applicant. That is correct and here it is justifiable as Moore Markham have not only suffered loss but had to bear responsibility for pursuing its claims. Again I turn to Caffe Coffee for guidance if only because of a number of similarities with the present case and conclude 50 % appropriate.

Conclusion and Orders

[67] For the above reasons I conclude the Ms Dempsey has breached various obligations she owed Moore Markhams and, as a result, she is ordered to pay:

- (a) \$40,090 (forty thousand and ninety dollars) to Moore Markhams being the damages incurred as result of Ms Dempsey's solicitation of various clients with payment to be made no later than 4.00pm Thursday 29 June 2023; and
- (b) Penalties totalling \$15,000.00 (fifteen thousand dollars) with half payable to Moore Markhams and half to the Crown via the Authority, with payment to again be made no later than 4.00pm Thursday 29 June 2023.

[68] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves but if they are not able to do so and an Authority determination on costs is needed Moore Markhams may, as the successful party, lodge a memorandum on costs within 21 days of the date of issue of this determination. From that date Ms Dempsey will then have 14 days to lodge any reply memorandum.⁶

Michael Loftus
Member of the Employment Relations Authority

⁶ www.era.govt.nz/assets/Uploads/practice-note-2.pdf