IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2023] NZERA 758
3146663

	BETWEEN	JOHN WELTEN Applicant
	AND	MCKAY LIMITED First Respondent
	AND	OJI FIBRE SOLUTIONS (NZ) LIMITED Second respondent
Member of Authority:	Marija Urlich	
Representatives:	Lou Yukich, advocate for the Applicant Anthony Drake and Rosie Judd, counsel for the First Respondent David France, counsel for the Second Respondent	
Investigation Meeting:	1 – 3 August 2023 in Rotorua	
Submissions and further information received:	18, 30 August and 15 September 2023, from the Applicant 24, 30, 31 August, 5 and 15 September 2023, from the First Respondent 24 August 2023, from the Second Respondent	
Determination:	18 December 2023	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Welten was employed by McKay as an instrument technician providing back fill cover at Oji Fibre Solutions (NZ) Limited's (OjiFS) Kinleith Mill site from 4 March 2019 until his dismissal on 17 March 2022 with one month's notice.[1] From 11 September 2020 until his dismissal, he was stood down from duties on full pay.

[1] Mr Welten is a control systems engineer by trade. The Authority understands the role of instrument technician resulted from negotiation of his employment agreement.

[2] Mr Welten brings a claim to the Authority for unjustified dismissal, unjustified disadvantage and unpaid entitlements. Remedies sought include permanent reinstatement.

[3] McKay denies Mr Welten has been unjustifiably dismissed or unjustifiably disadvantaged in his employment or that arrears are owing. It opposes the remedies sought including permanent reinstatement.

[4] OjiFS denies it is a controlling third party or that its actions have caused or contributed to the situation that gave rise to Mr Welten's personal grievances.

The Authority's investigation

[5] This determination follows preliminary determinations in which Mr Welten's application for interim reinstatement was declined and his application to join OjiFS as a controlling third party was granted.[2]

[6] In determining this employment relationship problem the Authority heard evidence from:

Mr Welten;

Wendy Welten, Mr Welten's wife;

Desmond Beckett, a former co-worker of Mr Welten's at Kinleith;

Mark Mahutonga, McKay's acting supervisor at Kinleith;

Ross Rowe, McKay's Bay of Plenty and Waikato regional manager;

Stuart McDonald, McKay's general manager – people and culture;

Jonathon Norman, OjiFS maintenance manager; and

Micheal Jones, OjiFS area maintenance manager.

[7] The Authority has considered all information and submissions filed in respect of this employment relationship problem. As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law,

---

[2] *Welten v McKay Limited & Oji Fibre Solutions (NZ) Limited* [2022] NZERA 203; *Welten v McKay Limited & Oji Fibre Solutions (NZ) Limited* [2023] NZERA 60.

expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

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

i. Was Mr Welten unjustifiably disadvantaged in his employment by the actions of McKay?

ii. Did OjiFS cause or contribute to Mr Welten's personal grievance as a controlling third party?

iii. Was Mr Welten unjustifiably dismissed from his employment?

iv. If so, is Mr Welten entitled to a consideration of remedies sought including:

a. Reinstatement to his position at McKay Limited;

b. Reimbursement of lost wages including pay deduction;

c. Compensation under s 123(1)(c)(i) of the Act;

d. Remedies where controlling third party is found to have caused or contributed to the personal grievance.

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

vi. Is either party entitled to an award of costs?

Relevant law

The test for justification

[9] Section 103A of the Act sets out the test for assessing whether an action including dismissal was justifiable. It requires an objective assessment of whether the employer's actions and how it acted were what a fair and reasonable employer could do in all the circumstances at the time the action and/or dismissal occurred. The Authority may take into account other factors it thinks appropriate and must not determine an action to be unjustified solely because of defects in the process if they

were minor and did not result in Mr Welten being treated unfairly.[3] The Authority's task is to examine objectively the decision-making process and determine whether what McKay did and how it was done were steps open to a fair and reasonable employer. In this case the actions of OjiFS, as a controlling third party are similarly considered.

Background

[10] The determination granting Mr Welten's application to join OjiFS as a controlling third party sets out relevant background up to his removal from the site and which is repeated for ease of reference:[4]

> [6] McKay and OjiFS are party to a services agreement which includes at clause 5:
>
> > OjiFS reserves the right to request that Workers provided by the Contractor be replaced if the Worker is performing poorly, as follows:
> >
> > (a) OjiFS must inform the Contractor in writing of the basis for its assessment that a Worker is performing badly.
> >
> > (b) the Contractor has 15 business days to address the deficiency and to demonstrate improvement to a level reasonably acceptable to OjiFS.
> >
> > (c) if no acceptable improvement is reasonably demonstrated, then the Contractor will, at OjiFS's request, replace the Worker with another suitable Worker as soon as practicable.
> >
> > OjiFS reserves the right to request that if a Worker provided by the contractor breaches a significant safety rule/standard/instruction or policy and/or is involved in a significant and/or notifiable safety incident that the Worker is removed immediately and is replaced.
>
> [7] On 7 August 2020 McKay raised with Mr Welten concerns OjiFS had raised with it about his performance. By email dated 11 August he asked for the details of "the incompetence accusations". Mr Welten continued to work at the site.
>
> [8] On 12 August Mr Norman wrote to Todd Rex, McKay's Kinleith site manager invoking clause 5:
>
> > I have been approached by two of the Area Maintenance Managers, regarding the competence of a McKay employee (particularly instrument work). The gentleman's name is John Welten.
> >
> > I would suggest that this employee is not suitable to back fill in areas at Kinleith site.

[3] Section 103A Employment Relations Act 2000.
[4] *Welten v McKay Limited & Oji Fibre Solutions (NZ) Limited* [2023] NZERA 60, [6] – [14].

[9] On 19 August Mr Rex wrote to five OjiFS managers asking their view on essential knowledge and experience for "a back fill/variable labour". The final email is understood to refer to Mr Welten's situation:

> We are currently performance managing a situation and your help would be greatly appreciated in assisting us to ensure we are providing the correct person and also to enable us to assist in the training required to get a person up to the task so they are an acceptable back fill in each of your areas.

[10] On 20 August one of the managers provided a response with a list of expectations.

[11] Next in the timeline, on 8 September Mr Norman wrote to Mr Rex regarding Mr Welten:

> As a follow up to the previous email I have spoken to the Area Managers and their in (sic) no intention having John Welten cover in their areas, as such and as per Appendix 1 point 5b of the contract I suggest that his last at the Kinleith site is Friday 11th September.
>
> There will be no approval for signing his timesheets beyond Friday.

[12] On 9 September Mr Rex wrote to Mr Norman:

> We agree with your email, we do need to do this properly as John will go straight to the union and we need to avoid a PG coming.
>
> Can we please get specific items from your Area Managers of the issues he is causing ie, Attitude, speed, competency, so that we can inform John exactly of the issues at hand. At this stage we have been told competency but can we please have more information around this as we need to specifically tell him the items around his competency that isn't up to spec.

[13] Mr Norman replied that day providing a document to Mr Rex which provided more detail of the concerns. The covering email provides:

> Attached detail that was previously sent from Marc and Mike. This was raised on 12th of August and Friday will be the 11th September, that is 23 days working days from notification to release from site. The contract details 15 days.
>
> Additionally I am being told that further comments regarding competency, are coming from the Trade people he is working with in these areas. Maybe you should be taking to your Supervisors.
>
> As I said previously, there will be no approval for signing his timesheets beyond Friday.
>
> If you need further information then talk to [two first names].

[14] In a letter dated 10 September McKay invited Mr Welten to a meeting the following day to discuss OjiFS's concerns because "…they no longer want you working on the Kinleith site due to level of performance and competency" and "…you are very slow to carry out work and that your quality of work does not meet expectations". The letter went on to explain to Mr Welten that he

> would be given a full opportunity to comment on these matters and provide an explanation before any decision was made which could include a proposal to disestablish his position given the seriousness of OjiFS's "instruction" that he would not be accepted on site. Mr Welten attended the meeting on 11 September. He did not attend work at the Kinleith site after that date.

[11] Following Mr Welten's removal from the OjiFS site and between 11 and 15 September there were various exchanges of correspondence between the parties seeking further information about OjiFS's concerns, providing some response and attempting to schedule a meeting.

[12] On 15 September Mr Welten, through his union raised a personal grievance for unjustified disadvantage "by way of unlawful lockout" with McKay and OjiFS as a controlling third party.

[13] On 13 October McKay wrote to Mr Welten's union:

> Mr Welten had been removed from the Kinleith site because "…he has been deemed not [competent] to be an Instrument technician…[having] been assessed by McKay supervisors and peers to have limited practical ability;
>
> he has not been at work for two weeks on full pay and is not to come on site unless instructed to;
>
> there are other issues with Mr Welten including inappropriate behaviour which are not the subject of this inquiry;
>
> proposing assessment by an independent external party "…can assess his abilities as a competent instrument technician as per his employment agreement and letter of original offer."

[14] The specific details of the expanded concern of "inappropriate behaviour" were sought by his union by email dated 14 October. The email also requested the parties attend mediation regarding the personal grievance "…with a view to reaching an agreement on an exit package…".

[15] On 15 October Mr Mahutonga wrote to McKay in his capacity as OjiFS facility supervisor advising he hoped to be able to include Mr Welten in the staff roster for the scheduled November plant maintenance shut down. In his letter he is unequivocal in his confidence in Mr Welten's skills and provides a cogent explanation for why he might be perceived as slow including:

> …
>
> I know there are all sorts of stories going around about his circumstances at present.

> Just to make it clear from my perspective, I would have John in Central at any time and, in fact want him full time!!!
>
> He has the skills required for the Electronics/Process control role for which I utilise him and readily adapts, as we all do, to other roles, given the limited resources available.
>
> Given that he is utilised by McKay in the "Backfill" role for Kinleith (Sitewide) and hasn't been a "Domestic" on site for over 25 years, I can understand why (sic) be taking a little time to reorient to the current plant & systems.
>
> Anyway, that's my 5c worth.

[16] On 28 October McKay wrote to Mr Welten inviting him to attend a formal disciplinary meeting to discuss further matters including failure to follow a lawful and reasonable instruction, falsifying time sheets and damaging McKay's reputation in a health and safety committee meeting with OjiFS. The letter included the outcome of the disciplinary investigation could be disciplinary action including dismissal. This disciplinary action was taken no further by McKay.

[17] During August and September 2021 Mr Welten and McKay engaged in extensive efforts to resolve the employment relationship problem including trying to agree a skills assessment programme for Mr Welten, attending mediation and consideration of other alternative dispute resolution processes.

[18] Mr Welten's distress and concern about the situation was made clear to McKay.

[19] On 12 November McKay wrote to Mr Welten proposing to terminate his employment. The parties met later in November to discuss the situation and Mr Welten was provided an opportunity to comment on the proposal. McKay unsuccessfully went back to OjiFS to request Mr Welten return to site to work.

[20] On 4 March McKay, following OjiFS's decline of the request that Mr Welten return to work, wrote to him with a proposal to end his employment and requesting a meeting to discuss. On 17 March the parties met to hear Mr Welten's response to the 4 March proposal. Following that meeting McKay wrote to Mr Welten that it had decided to dismiss him and proposed one month's wages in lieu of notice which was processed in the next payroll. Mr Welten's employment with OjiFS formally ended on 17 April 2022.

Discussion

Was Mr Welten employed on an individual employment agreement or covered the relevant collective employment agreement?

[21] When Mr Welten's employment with McKay commenced he signed an individual employment agreement (IEA). He says this agreement was superseded by the collective employment agreement (CEA) signed by his union and McKay on 20 August 2020.[5] He is specially named in appendix 2 of the CEA as having saved individual conditions.

[22] McKay submits Mr Welten was always employed pursuant to the IEA and is not covered by the collective employment agreement because:

(i) he was not employed "pursuant to a letter of offer of employment at Oji Fibre Solutions…", as required by the coverage clause.[6] He was employed as backfill and deployable to a wide range of worksites, not just OjiFS's; and

(ii) Mr Welten's conduct in not raising site allowance deductions until lodging a claim in the Authority in July 2021 demonstrates he did not believe he was eligible for the site allowance.

[23] Mr Welten was covered by the CEA. His letter of offer meets the CEA coverage clause because it is not a condition of the clause that work is exclusive to the Kinleith site and the parties understood some or all of the work would be at that site.

[24] It follows then Mr Welten was entitled to the site allowance and the deductions were in breach of his entitlement under the CEA.

Was Mr Welten unjustifiably removed from the OjiFS site?

[25] McKay and OjiFS have a mechanism in the services agreement for the removal from site of a poorly performing worker.[7] The mechanism was triggered by OjiFS on 12 August 2020 when Mr Norman wrote to Mr Rex. On 8 September Mr Norman wrote

---

[5] Collective Employment Agreement McKay Limited and Independent Electrical Workers Union 1995 Inc and Eastern Bay Independent Industrial Workers Union Inc 1 April 2020 – 31 March 2023.
[6] Ibid, clause 2.1.2.
[7] OjiFS and McKay services agreement, clause 5.

to Mr Rex that Mr Welten's last day on site was to be 11 September. What then happened between 12 August and 8 September to meet the obligations under clause 5 of the service agreement?

[26] On the evidence before the Authority insufficient steps were taken to meet these obligations:

(i) clause 5(a): OjiFS gave McKay no clear basis that an assessment had been undertaken of Mr Welten's alleged poor performance, giving assessment its usual meaning of the act of judging. For example, no concerns were in writing and there was no contemporaneous review of specific work examples with Mr Welten having an opportunity for comment;
(ii) clause 5(b): McKay was therefore unable to address the deficiency or demonstrate an improvement; and
(iii) clause 5(c): there was no opportunity to demonstrate reasonable improvement within the 15-business day timeframe.

[27] Compliance with the clause 5 mechanism is important to the consideration of this employment relationship problem because the application of the mechanism is the basis for Mr Welten's removal from the OjiFS site. OjiFS has not been able to demonstrate it has complied with clause 5 and it follows its reliance on that to insist Mr Welten be removed from the site is unjustifiable.

[28] For completeness, OjiFS and McKay do not say the concerns about Mr Welten's performance are in the clause 5 category of a breach of a significant safety rule or involvement in a safety incident – the consequence of which is immediate removal. The concerns falls within the first part of clause 5 which provides a mechanism for an identified worker to demonstrate improvement.

[29] McKay made a decision not to challenge OjiFS on its approach to clause 5. It was clear in evidence to the Authority that McKay did not challenge OjiFS's approach because it agreed with it – it says OjiFS's approach was deficient. In failing to insist on Mr Welten having a reasonable opportunity to demonstrate improvement, that is insist

OjiFS meet the bare requirements of clause 5, it has failed Mr Welten. Mr Welten's removal from the site was unjustified.

Did OjiFS contribute to Mr Welten's unjustifiable removal from its site?

[30] Yes. This is because it has failed to meet its obligations under clause 5 of the services agreement as set out above. OjiFS says it is not the controlling third party and/or did not contribute to the circumstances of Mr Welten's personal grievance. It says it has simply passed on concerns about Mr Welten's performance to McKay which it received and which in its view were serious enough to satisfy the requirements of clause 5. The difficulty it faces with this is it has contracted with McKay to provide an assessment of its employees and then consider whether acceptable improvement has been demonstrated. This will inevitably require a detailed engagement with the employee and how they discharge their duties. The evidence before the Authority is clear that the day-to-day work of McKay staff is overseen by and intertwined with the OjiFS Kinleith site operation. The clause 5 mechanism arises from and reflects those day-today circumstances. OjiFS was a controlling third party and its actions have contributed to Mr Welten's personal grievance for unjustified action relating to his removal from its site.

Was Mr Welten unjustifiably dismissed?

[31] As found above, there was no justifiable basis for Mr Welten's removal from the OjiFS site and McKay has been unable to get purchase with OjiFS to better understand its concerns either at the time of Mr Welten's removal from the site or subsequently.

[32] McKay's attempts to engage with Mr Welten to undertake an assessment so it would be better able to plead his case with OjiFS were inevitably unsuccessful because Mr Welten, reasonably in my view, sought first to better understand why he had been removed from the site and understand what skill deficient any assessment might seek to identify. That the reason for his removal from the OjiFS site remained, and still remains in most part unclear, other than an apparently minor issue involving brush replacement, has tainted to a significant degree the interactions between Mr Welten and McKay because it is at the heart of employment relationship problem. Further, it is not

clear even if Mr Welten had adopted a more biddable approach to the McKay assessment, that it would have cleared the path to his return to the OjiFS site.

[33] Despite McKay's attempts to resolve the very difficult situation it faced, Mr Welten's dismissal cannot meet the s 103A justifiability test because it is tainted irrevocably by the unjustifiable circumstances of Mr Welten's removal from the OjiFS site.

Remedies

[34] Mr Welten has established a personal grievance for unjustified disadvantage and unjustified dismissal. He is entitled to a consideration of the remedies sought.

Reinstatement

[35] Reinstatement is the primary remedy in proceedings for unjustified dismissal.[8] The remedy of reinstatement is to the employee's former position or one no less advantageous.[9] It must be awarded wherever practicable or reasonable to do so.[10]

[36] The availability of a vacancy is not a requirement of reinstatement.[11] The considerations are practicability and reasonableness. Though McKay is a substantial operation at date of the investigation meeting there were no vacancies which would be suitable reinstatement options for Mr Welten. Mr Welten cannot be reinstated to the OjiFS site and McKay has no other work for him in the Bay of Plenty region. Reinstatement would not be practicable.

[37] The circumstances of Mr Welten's removal from the OjiFS site remain unclear and this is a situation which he has found difficult. The extended period of time he has been out of a McKay workplace and the impact this no doubt has had on Mr Welten's confidence in his former employer means I cannot be satisfied the employment relationship can be successfully re-established. These factors make it unreasonable to order reinstatement.

---

[8] Section 123(1) Employment Relations Act 2000.
[9] Section 123(1)(a).
[10] Section 125(2) Employment Relations Act 2000.
[11] *Walker v Firth Industries a division of Fletcher Concrete & Infrastructure Limited* [2014] NZEmpC 60 at [83].

[38] Mr Welten's claim for reinstatement is unsuccessful.

Reimbursement

[39] Mr Welten seeks compensation under s 123(1)(c)(ii) and s 128 of the Act of $283,309.49 made up of:

(i) lost wages for the period of one year and three months from the effective date of dismissal;

(ii) salary differential for this period for the position of DCS technician;

(iii) lost overtime opportunities in relation to Kinleith shutdowns and at DCS technician rate;

(iv) Kiwisaver employer and employee contributions and investment returns; and

(v) $100,000 being the price difference between a section he wished to purchase in April 2021 and at date of the investigation meeting.

[40] After reviewing the evidence of loss and Mr Welten's attempts to secure employment, the Authority is satisfied he is entitled to an award of 12 weeks' pay calculated at the agreed rate of pay and hours of work.

[41] I am not persuaded to exercise my discretion further because by the time of Mr Welten's dismissal in March 2022 the employment relationship was exhausted. Mr Welten had been on McKay's payroll without working since 10 September 2020, the parties had engaged in repeated efforts to find a resolution of the employment relationship problem including mediations and McKay made a further request to OjiFS in November/December 2021 for Mr Welten to return to work at the site to which OjiFS did not agree. In September 2021 McKay informed Mr Welten through his representative that it was considering it may need to end the employment relationship and there were meetings on 26 November and 17 March 2022 to hear from Mr Welten on that possibility.

[42] The DCS Technician role was, on the evidence before the Authority a mere possibility and not a certainty. There is no basis in law to make the orders sought in

respect of the pay rate differential because Mr Welten never held this position. Likewise, with the shutdown overtime - while I accept it was possible Mr Welten would be offered the overtime it was not guaranteed under the terms of the employment agreement. These claims do not succeed.

[43] The claim for the section price differential is declined. The disappointment felt by Mr and Mrs Welten at not being able to make the purchase at the time is accepted however, even if I had the jurisdiction to make the award sought, they have not bought the section and loss has not crystallised.

[44] Mr Welten also seeks reimbursement of allowances and associated Kiwisaver sums for period March to August 2020:

(i) March to May 2020 covid lockdown deductions;

(ii) allowance of $8.57 for attendance at a health and safety representative meeting on 5 August 2020;

(iii) Kiwisaver employer and employee contributions; and

(iv) Kiwisaver investment returns.

[45] Reimbursement is also sought for the period 11 September 2020 and 14 April 2022 for:

(i) site allowance;

(ii) Kiwisaver employer and employee contributions; and

(iii) Kiwisaver investment returns.

[46] The covid deduction claim is not established. The evidence is the parties agreed the pay rate during this period.

[47] The $8.57 health and safety representative meeting allowance for 5 August 2020 is not opposed and is ordered.

[48] The site allowance is a contractual entitlement under the CEA. Mr Welten has been found to be covered by that document and the entitlement to him flows from that

coverage. It is not accepted a contractual allowance is limited by the personal grievance timeframe. The parties are to seek to agree the reimbursement sum. If they cannot they have leave to return to the Authority for determination of this issue.

[49] Mr Welten is entitled to calculation of the employer Kiwisaver contribution based on his total income including the allowances awarded above. He has in effect been awarded the employee contribution by way of the allowance award. The investment loss claim is not accepted. There is insufficient information to quantify any loss including reference to the relevant investment scheme.

Compensation for humiliation, loss of dignity and injury to feelings

(i) Unjustified disadvantage

[50] The circumstances of Mr Welten's personal grievance for unjustified disadvantage arising from his removal from the OjiFS site has had a profound and negative impact. He gave compelling evidence of its negative and ongoing impact, including that he has suffered anxiety, insomnia and depression for which he has sought and received medical care.

[51] The Authority is satisfied Mr Welten has experienced harm under each of the headings in section 123(1)(c)(i) and has quantified the harm suffered having regard to the spectrum of harm and quantum of compensation particularly with regard to other awards of compensation. He was escorted from the OjiFS site by a security guard and found this humiliating. Having regard to the particular circumstances of this case, an award of $20,000 under section 123(1)(c)(i) is appropriate.

[52] OjiFS is to pay Mr Welten $15,000 and McKay is to pay him $5,000. OjiFS's failure to meet the obligations under clause 5 of the service agreement have had a devastating impact on Mr Welten. McKay must bare a degree of responsibility – it put its employee, Mr Welten in a situation where the detail of how any performance concerns OjiFS may have were not sufficiently defined and it is Mr Welten who has borne the consequence of this failure.

(ii) Unjustified dismissal

[53] There are a number of events subsequent to Mr Welten's removal from the OjiFS site and which culminated in Mr Welten's dismissal and its aftermath which he

has sought to tease out as individual issues. My view is these are best dealt with globally under this heading.

[54] Mr Welten has given clear evidence of the distress and stress he suffered in this time span. It has negatively impacted on his family life, his confidence in his professional and technical skill built up over 30 years and his hopes for the future. Having regard to the particular circumstances of this case, an award of $20,000 under section 123(1)(c)(i) is appropriate.

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

[55] No deduction from the remedies awarded is to be made under s 124 of the Act. The specific details of the concerns held by OjiFS which triggered the clause 5 service agreement process have never been provided and Mr Welten has never had a fair opportunity to address those concerns. That the parties were unable to agree an assessment process which met Mr Welten's concerns is most unfortunate but not contributed to in a blameworthy manner by Mr Welten - he had no contractual obligation to undertake such an assessment and he no assurance the outcome of the assessment would enable his return to the OjiFS site. The situation may have been different if OjiFS had made clear why Mr Welten had been removed from the site. McKay and Mr Welten may then have been able to meaningfully engage in the design of a process to address any deficiency and demonstrate improvement.

Summary

[56] McKay Limited must pay John Welten the following amount within 28 days of the date of determination:

(i) 12 weeks usual pay under s 123(1)(b);
(ii) $25,000 under s 123(1)(c)(i); and
(iii) $8.57 health and safety representative meeting allowance; and
(iv) Kiwsaver and site allowance to be calculated and paid per [48] and [49] above.

[57] Oji Fibre Solutions (NZ) Limited must pay John Welten the following amount within 28 days of the date of determination:

(i) $15,000 under 123(1)(c)(i).

Costs

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

[59] If they are not able to do so and an Authority determination on costs is needed Mr Welten may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum McKay Limited and Oji Fibre Solutions (NZ) Limited 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.

[60] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence. 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.[12]

Marija Urlich
Member of the Employment Relations Authority

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