

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 403

3246679

BETWEEN	JOHN FAITALA First Applicant
AND	VAHANOA VEA Second Applicant
AND	THE PACIFIC ISLAND BUSINESS DEVELOPMENT TRUST Respondent

Member of Authority: Sarah Blick

Representatives: Paul Pa'u, advocate for the applicants
Caitlin Sargison, counsel for the respondent

Investigation meeting: 20 March 2024 in Auckland

Submissions and further information received: 26 March 2024, 3 and 5 April 2024 for the applicants
27 March 2024, 3 and 5 April 2024 for the respondent

Determination: 5 July 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] John Faitala and Vahanoa Vea's employment with the Pacific Island Business Development Trust (the Trust) ended by way of redundancy in June 2023. They (the applicants) claim they were unjustifiably dismissed and unjustifiably disadvantaged due to the Trust's actions in breach of the duty of good faith and the redundancy process in their employment agreements. The applicants seek compensation and lost wages and benefits, as well as penalties.

[2] The Trust says the applicants' employment ended after a genuine and fair restructuring process. It says they are not entitled to the personal grievance remedies sought, but if awarded, they should be reduced for contribution in relation to Mr Faitala's actions, and applying

principles of equity and good conscience, taking into account alleged subsequently discovered conduct by Ms Vea.

The Authority's process

[3] The Authority has issued two previous determinations regarding the provision of documents by the Trust to applicants.¹

[4] The Authority received witness statements from Mr Faitala and Stuart Hall, Ms Vea and her husband Nopele Semisi Vea, and former Trust employees Tumama Tu'u and Fatu Suisala. The Trust's chief executive officer Mary Los'e provided a witness statement. All witnesses gave evidence under oath or affirmation at the Authority investigation meeting, except Mr Vea who was offshore at the time. His witness statement was taken as read by agreement with the parties.

The issues

[5] The issues for investigation and determination are:

- (a) Do Mr Faitala and Ms Vea have personal grievances for unjustified dismissal or unjustified disadvantage?
- (b) If one or both have a grievance, what if any remedies should be awarded, subject to reduction(s)?
- (c) Has the Trust breached the duty of good faith and if so should a penalty or penalties be imposed on it?
- (d) Has the Trust breached its employment agreements with the applicants and if so should a penalty or penalties be imposed on it?

Background

Parties

[6] The Trust is a long-standing not-for-profit organisation which says it primarily looks to be a navigator in supporting Pasifika people to thrive in business and employment, grow innovation, talent, and leadership, and generally improve the capability and prosperity of Pasifika business. It was appointed as an Economic Development Agency (EDA) in 2021 but

¹ *Faitala & Anor v The Pacific Island Business Development Trust* [2024] NZERA 34 and *Faitala & Anor v The Pacific Island Business Development Trust* [2024] NZERA 153.

says it was not able to make the operational changes required to operate as an EDA during the Covid-19 pandemic.

[7] At the relevant times in 2023, Mr Faitala was General Manager Programme, Services and Clients (GM role) and Ms Vea was Corporate Service Manager (CSM role). Mr Faitala started in about 2020 and Ms Vea in 2018.

[8] Ms Los'e was appointed at the Trust's CEO in early 2023 to lead changes within the organisation. She was involved in a review of the Trust's business structure, operations, finances, funding and strategy. This review was ahead of a strategic expansion into as an EDA, which would result in offering an increased range of services. Before undertaking the reset, Ms Los'e says the Trust was facing a number of challenges and she was looking for ways it could respond to and overcome those. She says the ongoing nature of the issues gave reason to consider structural changes, as the Trust had not adapted to change so its roles, functions and structure were no longer "fit for purpose".

[9] The Trust says changes to the organisational structure had been signalled to staff well before the change itself was proposed. Examples given were at the time of Mr Faitala's promotion as GM in February 2021, his appointment letter referred to the possibility of the role being split up to meet the anticipated growth of the Trust; and Ms Vea's acknowledgement that staff were aware the new CEO would be a "change in direction" for the Trust.

[10] At the time the restructure was proposed to staff in May 2023, the Trust says around 80 per cent of them were reporting to Mr Faitala, justifying the proposal that this role be disestablished so that new roles could be established to take on the various aspects of the GM role. Ms Los'e says Mr Faitala's GM role had been created on the premise that at some stage in the future it would need to be split out again into separate duties. She further says Ms Vea's role had, over time, evolved to become an ad hoc collection of various duties including office management, asset management, accounts and payroll. Ms Los'e says these circumstances justified the proposal for the CSM role to be disestablished, so that new roles could be established to take on these various duties.

24 May 2023 staff meeting

[11] On 24 May 2023 Trust staff were called to attend an in-person presentation. The Trust delivered a proposal presentation to staff present about a "reset" or restructure.

[12] After the presentation Ms Los'e met with affected staff including the applicants. At these short meetings, both were handed a letter stating the Trust was considering a restructure due to "strategic expansion and transition" of the Trust to an EDA, and the acquisition of new business in 2024. The applicants were invited to a meeting on 1 June 2024 to discuss the potential restructure, a proposal document attached to the letter, and suggestions or feedback they may have. The letter advised they could bring a support person or representative to the meeting.

Proposal document

[13] The proposal document was two and half pages and bullet pointed challenges the Trust hoped to resolve by way of the proposed reorganisation, including:

- (a) The Trust had not been meeting delivery expectations to its key funder, which led to a hold on future funding;
- (b) Financial pressures due to the lack of confidence in delivery with the risk of losing a significant sum;
- (c) Non-compliance with targets, reporting and service delivery targets to stakeholders and funders;
- (d) Roles and functions were no longer fit for purpose for current and future needs;
- (e) Under-utility of in-house talent and capability, with an over-reliance on contractors.

[14] The proposal suggested five roles be disestablished, including Mr Faitala and Ms Vea's roles. It proposed nine roles be established, and there may be potential for affected staff to be redeployed into the new roles. It mentioned selection criteria for roles should the proposal go ahead, stating:

The Business will assess which employee(s), of those affected by the proposal, will be most suited for the newly created roles, based on the following:

- Experience
- Skills
- Qualifications (where relevant)
- Ratings in recent performance assessments

Each employee will receive a score out of 4, and the highest score will confirm the successful candidate(s).

[15] On 29 May 2023 Mr Faitala emailed Ms Los'e providing feedback including that the non-delivery challenges in the proposal document conflicted with Trust data and an external 2022 review of the Trust's programs. He asked a number of questions about what process

would be followed; what the new structure looked like and job descriptions; what the Trust's strategic plan to expand looked like; how his role and the four others were surplus to requirements and not others, with the Trust growing and expanding globally; about an external report and outcome of review completed in April/May 2023 by an external reviewer; what support was the Trust providing to affected staff. He concluded by saying he would like to have the information requested and reasonable time to give feedback.

[16] On 30 May 2023 Ms Vea emailed Ms Los'e asking for more information about the proposed structure, more time to respond, reasons why her role impacted the overall running of the business, and what opportunity there was for her current role to transfer to a new role. She said she was looking forward to change and improvement, and would "very much like to be part of the upcoming changes". Ms Los'e responded the next day attaching a proposed organisational chart with a one page email mentioning the potential for redeployment and further details would be "provided following the initial consultation meeting" on 1 June 2023.

1 June 2023 meetings

[17] Ms Los'e held separate meetings sessions with the applicants on 1 June 2023. There is no contemporaneous record of what was discussed at the meetings. After the meeting Ms Los'e emailed Mr Faitala stating if he had further feedback on the "proposed reset" to send it by 6 June 2023. It appears the same timeframe was given to Ms Vea.

6 June 2023 feedback

[18] On 6 June 2023 both applicants separately emailed Ms Los'e with feedback and questions.

[19] In his email Mr Faitala advised how stressful and challenging the process had been and how it felt like a "tick-box exercise". He said the incomplete information supplied did not give enough information to provide feedback on the proposal. He asked for more context including how difficult it was to reconcile the amount of effort and work in the Trust's BAU programs and services over the last 2-3 years and the non-delivery points in the business reasons for the restructure. He reiterated his previously emailed questions had not been fully answered.

[20] In Ms Vea's email, among her concerns were the timeframe of the process. She asked where human resources and administration management would be situated in the proposed structure.

[21] On 8 June 2023, Ms Los'e emailed Ms Vea with a list of the proposed new roles, asking her to express interest by 12 June 2023. Ms Vea requested the position descriptions for the roles, which Ms Los'e provided the same day.

[22] It appears the same timeframe to express interest was given to Mr Faitala.

[23] On 12 June 2023 Ms Los'e emailed Ms Vea asking if she wished to express interest in any roles, as the deadline for doing so that day had passed. Ms Vea responded a few minutes later saying she was interested in two proposed positions – one Strategic Relationships and the other Customer Experience.

16 June 2023 - Final meetings

[24] On 16 June 2023, the applicants then met with Ms Los'e individually. No paper trail has been provided showing what the applicants were told the meetings were about.

[25] Mr Faitala recorded his meeting with Ms Los'e on 16 June 2023 with Ms Los'e's permission. Ms Los'e has not provided any notes of the meeting. The transcript of the recording, which is not disputed by the Trust, is a reliable record. It shows Mr Faitala advised he had not expressed interest in one of the proposed roles because he did not receive information or answers to some of the questions he had asked. Ms Los'e responded that was a fair comment, that some of the questions were not relevant to Mr Faitala's specific role, and apologised saying the Trust should have come back to Mr Faitala. She stated the Trust had run a "capability matrix" and noted the third party report Mr Faitala had requested did not inform the proposal to change. Mr Faitala stated he understood the need for change but reiterated he wanted to understand the context. Ms Los'e stated there were two roles in the proposed structure Mr Faitala could consider. She stated it was not that the role was "superfluous or irrelevant", but that the GM role needed to change to fit future capability.

[26] Ms Los'e stated she was "happy to take the time today to consider" Mr Faitala's earlier feedback and "come back... in writing around that". She then reiterated four further times she would respond in writing that day. She stated "we're still in the feedback process" and it was "reasonable and fair" for her to respond to Mr Faitala's requests and provide more context. Mr

Faitala also asked “where to from here?” to which Ms Los’e indicated she would come back with her response. Mr Faitala then asked about support for staff members to which Ms Los’e responded she believed there was no EAP and she was inquiring into starting that.

[27] Ms Los’e acknowledges she undertook to respond to Mr Faitala’s feedback that day, but did not do so. Instead, a letter of termination was finalised and emailed to him via Ms Los’e’s personal assistant that day instead.

[28] In her meeting with Ms Los’e on 16 June 2023, Ms Vea says she was told she was not suitable for the two positions she expressed interest in. Ms Los’e acknowledges telling Ms Vea she did not have the requisite skills or qualifications for the two relevant roles. At the investigation meeting, Ms Vea says she did ask about a different proposed position, a Customer Service Manager (CSR role), which Ms Los’e agreed she could express interest. Having been questioned about this at the Authority’s investigation meeting, Ms Vea later produced a diary entry which records “No luck ... 2 roles – needed to send email / CSR role” and (Customer Service team) ideally work with”. Ms Los’e denies Ms Vea asked about the CSR role. She has not produced any of her own notes of the meeting.

[29] On the same date, Ms Vea also received a letter of termination by email, via Ms Los’e’s personal assistant.

Personal grievances

Justification

[30] To justify termination of employment and an employer’s actions including in a redundancy situation, the Trust must meet statutory requirements set out in s103A of the Act commonly referred to as the ‘justification test’. This test requires the Authority to undertake an objective assessment of whether its actions and how it acted, were what a fair and reasonable employer could do in all the circumstances at the time of the ending of the employment relationship. In applying this test, the Authority must consider several factors including: the resources available to the Trust, whether it gave the applicants an opportunity to comment on a proposal to end the employment relationship and whether that comment was genuinely considered.

[31] When considering redundancy, the law requires that the position must be superfluous to the needs of the business and this can arise where the employer is seeking to make the

business more efficient.² In assessing this, a solid foundation of evidence or paper trail can be an important indicator of whether the decision on redundancy was for genuine commercial reasons. Providing insufficient information about the rationale for a proposed redundancy decision has been found to fall below what is expected of a fair and reasonable employer.³

Good faith

[32] To ensure a redundancy is enacted in a procedurally fair manner, good faith obligations also apply as set out in s 4 of the Act - these include a positive disclosure obligation of an affected employee being provided with access to information supporting the reason for the redundancy and the detail of how it is proposed it will be implemented. Crucially, an employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised.⁴

Unjustified dismissal grievances

Genuine business reasons

[33] The Authority accepts the Trust has shown it had compelling reasons for its proposal to commence a restructure of the organisation generally. However, I am not satisfied there is a solid foundation of evidence or paper trail to indicate whether the decisions to select the applicants' roles for redundancy were for genuine commercial reasons.

Procedure

[34] The Trust says the dismissals were procedurally justified. It submits it undertook a full and fair restructuring process, consulting with the applicants throughout; provided information relevant to the restructuring process; the applicants had a reasonable opportunity to consider, and provide feedback on the proposal; it considered the applicants' feedback and discussed this with them before a decision was made on the proposal. The Trust also says all possible alternatives, including redeployment opportunities, were considered prior to the applicants being dismissed.

² *Grace Team Accounting Ltd v Brake* [2014] NZCA 541.

³ *Tan v Morningstar Institute of Education Limited* [2013] NZEmpC 82.

⁴ *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1990] 2 NZLR 1079 (CA) affirmed as still applicable law in *Grace Team Accounting v Brake* [2015] 2 NZLR 494.

[35] I note here the Trust was receiving ongoing employment relations advice from an external provider regarding its restructuring and redundancy process from March 2023. A significant tranche of communications show detailed documents and advice was provided to the Trust about its legal obligations and appropriate procedure. In light of this, the Authority considers the Trust can be held to a moderately high standard, given the resources available to it during the restructuring and redundancy process.

Provision of information

[36] The Trust has submitted the proposal document given to the applicants set out all key information to allow them to consider the rationale for redundancies, understand the proposed process, and to give feedback. Ms Los'e says all the information that was relevant to the proposed change was referred to, explained, and/or provided to the applicants in the course of the consultation process, and maintains that any documents not provided to the applicants were simply not relevant to the proposed changes.

[37] The Trust gave the example of a third-party report which Mr Faitala referred to, which the Trust says was a high-level document which set out a suggestion that the Trust re-assess its structure. The Trust says it did not provide any suggested structure or further detail which may have been relevant to the details of the change proposal. This report was not provided to Mr Faitala when requested, nor has it been provided to the Authority. In my view, the report requested ought reasonably have been provided to Mr Faitala, giving context to the stated challenges the Trust was facing and its reasons for proposing structural changes.

[38] I note Ms Los'e's reference in her witness statement to a review relating to the Trust's business structure, operations, finances, funding and strategy having been carried out. No evidence of that review was provided to the applicants during the consultation process.

[39] In its amended statement in reply lodged in October 2023, after the Trust engaged current counsel, a 19-page "Consultation Proposal" powerpoint document dated May 2024 was produced. The applicants say they had not seen this document until October 2023, which I accept. This document is clearly a draft as it is missing information, relevant dates and some of the information conflicts with the Trust's proposal document. It was not shown or presented to the applicants on 24 May 2024 or subsequently. Had it been completed and provided to the applicants, it may have aided the Trust to follow the process set out and the applicants' understanding of the issues and process.

[40] During her meeting with Mr Faitala on 16 June 2023, Ms Los'e stated mapping of a capability matrix had been carried out some weeks earlier. Details around this matrix were not provided to the applicants during the consultation process, nor has it been provided to the Authority. It, or at least information gleaned from that mapping, could have provided context to the proposed changes, being what Mr Faitala had repeatedly been seeking about his role.

[41] The Trust says it gave Mr Faitala ample opportunity to express interest and encouraged him to do so. The Trust says Mr Faitala's "refusal" to engage in the expression of interest process left it with no choice but to confirm the disestablishment of his role and to terminate his employment by way of redundancy. Although Mr Faitala did not express interest in any roles, I consider he was still attempting to engage in the redundancy process in good faith. As a senior manager, he sought to understand the rationale for the restructure. It was also entirely reasonable for him to question how and why his role had been selected for redundancy.

[42] More generally, in response to the applicants' questions and requests for information, the Authority is not satisfied the Trust met its obligation to be constructive and communicative during the process, by failing to respond to the applicants questions in any meaningful way in writing.

16 June 2023 meetings

[43] The transcript of Ms Los'e and Mr Faitala's meeting on 16 June 2023 shows that despite an undertaking to answer or respond to Mr Faitala's earlier feedback, none was provided, and instead, termination swiftly followed. A fair and reasonable employer could be expected to have responded as promised, and continue to engage in the process.

[44] Ms Los'e accepts that at the 16 June meeting with Ms Vea, she told her she was not suitable for the roles the latter had expressed interest in. There is no evidence that the Trust followed the selection process and criteria it stated it would in its 24 May 2023 letter, in reaching that conclusion.

[45] The Trust disputes Ms Vea's evidence that in the 16 June 2023 meeting she also expressed interest CSR role. The Trust says Ms Los'e had not made this claim in her statements of problem or in her witness statements, and it was raised for the first time in the investigation meeting. Ms Vea is the only person of the two that has been able to provide corroborative evidence of this point in the form of a brief diary entry, and there is no indication on its face

that it was created at a later date. I accept it is more than likely a reliable record. The Authority accepts Ms Vea's evidence that she asked about the CSR role during her meeting with Ms Los'e on 16 June 2023, and Ms Los'e indicated she could express interest. Having given that indication, a fair and reasonable employer could be expected to allow that expression of interest to be made. Instead, termination swiftly followed the same day. At the investigation meeting Ms Los'e said Ms Vea would have been suitable for the CSR role. As part of being a constructive and communicative employer, the possibility of redeployment in the role ought to have been raised and considered.

[46] The Trust submits it took all information into account before making a decision on the proposal, and Ms Los'e gave evidence that she was open to making any changes or reconsidering any aspects of the proposal up until the decision was made on the afternoon of 16 June 2023. However, rather than continuing engage that day or after, employment was terminated. It is not clear how this demonstrates an openness to making changes or a willingness to engage in good faith. The Trust's employment agreements with the applicants expressly obliged it to consider whether there were any alternatives to dismissal such as redeployment. There is no evidence it had sufficiently met this obligation at the time of dismissal.

[47] The evidence lacks sufficient clarity to satisfy the Authority consultation requirements have been met – for example there was no evidence the applicants' feedback was considered, and neither applicant was given an opportunity to receive further information or redeployment opportunities before their employment was terminated. These actions were within the Trust's control and its actions have left it vulnerable to criticism. The defects in the consultation process with the applicants is not, on an objective assessment, minor or inconsequential.

[48] Such an approach is not consistent with the obligations it owed the applicants under the terms of its employment agreements with them or under the Act. On the evidence before the Authority the applicants' dismissals for redundancy were unjustified.

Unjustified disadvantage grievances

[49] The Authority and the Trust understood from the applicants' representative at the investigation meeting that their personal grievances for unjustified disadvantage were pursued as an alternative to their dismissal grievances. That position appeared to change at the time of

provision of written submissions. Either way, the Authority finds the same facts and conduct is relied on in relation to both grievances - these were part and parcel of the redundancy process and the nature of the grievances can more accurately be found to be unjustified dismissals. The unjustified disadvantage grievances have not been established.

Remedies

[50] The applicants have established personal grievances for unjustified dismissal. They are entitled to a consideration of the remedies sought.

[51] The Trust gave evidence that Ms Vea had deleted a number of business documents from the Trust system in her last week of work between 18-20 June 2023. Ms Vea denied doing so intentionally, and Ms Los'e does not believe this was done so maliciously given Ms Vea's character. Evidence of this conduct was not identified until after Ms Vea's termination. If this did constitute misconduct, it was not reasonably connected to the reason for termination. I am not satisfied this subsequently discovered conduct should be taken into account in setting remedies for Ms Vea.

Reimbursement of lost income

[52] Both applicants seek reimbursement of 12 months earnings lost as a result of their dismissals pursuant to section 123(1)(b) and 128 of the Act, extending to future lost earnings. Both stated in evidence that their ability to secure employment had been hindered by their respective lack of recent references from the Trust, however there is no evidence they at any stage sought a reference from the Trust.

[53] Mr Faitala underwent surgery in July 2023 and said he was unable to work for a "couple of months" due to his recovery. Mr Faitala obtained alternative contract work from September 2023. Based on the above, the Authority is satisfied Mr Faitala is entitled to one months' salary from 20 June 2023. The evidence presented does not support a finding of loss beyond that.

[54] It is not disputed that the Trust made payment of four weeks' pay Ms Vea on her termination. This was not contractual entitlement but rather was paid in addition to her contractual four weeks' notice. The Trust submits any lost earnings award ought to be reduced accordingly, which I accept.

[55] Ms Vea says she received WINZ benefit payments a month after termination. The Trust says any lost earnings award should be less benefits paid by WINZ. The question of reimbursement of social security payments falls on the particular organisation and the individual concerned. I do not take the WINZ benefit into account here in setting an amount.

[56] Ms Vea has provided evidence that she began applying for new employment from September 2023, some three months after her last day of work. She says she still does not have a job but decided to study to upskill herself. After reviewing the evidence of loss and Ms Vea's attempts to mitigate that loss I am satisfied she is entitled to an award of lost wages for two months after her employment ended.

Compensation for lost benefits

[57] The applicants submit they should receive compensation for lost benefits under their employment agreements, including the loss of a mobile phone and plan and vehicle. They quantified this loss as \$5,000 each. Sufficient information as to how this amount was quantified has not been provided, but I am satisfied an amount of \$1,000 would sufficiently compensate the applicants for these lost benefits.

Compensation for humiliation, loss of dignity, and injury to feelings

[58] Both applicants claim compensation under s 123(1)(c)(1) of the Act for unjustified dismissal.

[59] Both applicants disclosed they found the redundancy process distressing. Mr Faitala says he found the whole process brutal and it took a heavy toll on his physical and mental health, and impacted his family and home life. He says in the first few months after leaving, he felt physically sick after discussing what had happened to him with the redundancy.

[60] Ms Vea referred to not receiving support from her employer, and felt anxiety, distress and embarrassment during and after the termination of employment. She says she experiences migraines because of the stress of what happened.

[61] Mr Hall and Mr Vea have also provided supporting evidence of the impacts the redundancy process had on the applicants at the time and impacts following the termination of employment.

[62] I consider that an appropriate amount of compensation is \$25,000 each, taking into account current awards and the impacts on the applicants, that can be properly attributed to the termination of their employment. Orders are made accordingly.

[63] I note at the investigation meeting that Ms Lo's expressed regret on behalf of the Trust for the hurt both Mr Faitala and Ms Vea experienced.

Contribution

[64] No adjustment to remedies is required in this case under s 124 of the Act. There is no reasonable basis for finding the applicants contributed to the procedural defects by the Trust that resulted in their personal grievance applications succeeding.

Penalties

[65] The applicants seek penalties for breaches of s 4 of the Act and of the Trust's employment agreements relating to its obligations to provide information during the restructuring/redundancy process. Although the defects in the process followed by the respondents were significant, this is not a situation where the high threshold for an award of penalties is met. No orders are made.

Outcome

[66] Mr Faitala and Ms Vea have established personal grievances for unjustified dismissal and are entitled to remedies.

[67] Within 21 days of the date of this determination, The Pacific Island Business Development Trust is to pay John Faitala the following:

- (a) One months' salary as reimbursement of lost wages;
- (b) \$1,000 as compensation for lost benefits;
- (c) \$25,000 in compensation for humiliation and the like.

[68] Within 21 of the date of this determination, The Pacific Island Business Development Trust is to pay Vahanoa Vea the following:

- (a) Two months' salary as reimbursement of lost wages;
- (b) \$1,000 as compensation for lost benefits;

(c) \$25,000 in compensation for humiliation and the like.

Costs

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

[70] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicants may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the Trust will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[71] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁵

[72] In its amended statement of problem the applicants sought special damages for breaches of the Authority’s direction(s) to provide information, costs of mediation and the costs of lodging their amended statement of problem. They have not addressed this claim with any clarity and the limited information provided does not support a claim for special damages. It is dismissed. The issue of any unnecessarily increased costs would need to be raised by the applicants and dealt with in the Authority’s costs assessment, if costs are not resolved between the parties.

Sarah Blick
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1