

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 365  
3390225

BETWEEN

KEENAN GONSALVES  
Applicant

AND

WATERCARE SERVICES  
LIMITED  
Respondent

Member of Authority: Simon Greening

Representatives: Jonathan Loh, counsel for the Applicant  
John Rooney and Ngahuia Muru, counsel for the  
Respondent

Investigation Meeting: 4 and 5 May 2026 in Auckland

Submissions received: 12 May 2026 from the Applicant  
19 May 2026 from the Respondent

Determination: 10 June 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Keenan Gonsalves was employed by Watercare Services Limited (Watercare) as a Water Supervisor.

[2] Mr Gonsalves was employed by Watercare for approximately 8 years.

[3] Following an investigation into a planned water maintenance job on Gavin Street in Ellerslie, Watercare concluded that Mr Gonsalves acted in a grossly negligent manner by making decisions that had the potential to cause harm to employees in his team.

[4] Following a disciplinary process, Mr Gonsalves was dismissed by Watercare on 20 December 2024.

[5] On 22 January 2025, Mr Gonsalves raised a personal grievance for unjustified dismissal with Watercare. Mr Gonsalves seeks compensation for hurt, humiliation and injury to feelings, and remuneration lost as a result of the dismissal.

### **The Authority's investigation**

[6] For the Authority's investigation written witness statements were lodged by Mr Gonsalves, Mr Patrick Croul, Ms Amber Kingston, Mr Samuel Shephard, and Ms Ancella Gonsalves. The witnesses answered questions from me under oath or affirmation and from the representatives.

[7] 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.

### **The issues**

[8] The issues requiring investigation and determination are:

- (a) Was Mr Gonsalves unjustifiably dismissed?
- (b) If Mr Gonsalves establishes his personal grievance, then is he entitled to compensation pursuant to s 123(1)(c)(i) of the Act and/or lost remuneration pursuant to s 128 of the Act?
- (c) If a remedy is awarded to Mr Gonsalves, then should this remedy be reduced pursuant to s 124 of the Act?
- (d) Is either party entitled to costs?

### **Was Mr Gonsalves unjustifiably dismissed?**

#### *Relevant facts – Gavin Street cable strike*

[9] On 21 November 2024, Watercare was undertaking a planned job to replace a faulty hydrant on Gavin Street in Penrose.

[10] On 22 November 2024, at approximately 2.30am, a crew member accidentally cut a Vector power cable. This kind of incident is referred to as a cable strike.

[11] The crew immediately stopped their work and kept clear of the trench they had been working in. Vector was notified.

[12] At 2.46am, a job coordinator employed by Watercare, emailed relevant Watercare staff advising of the cable strike and next steps. This email included the following relevant points:

POWER STRIKE ESCALATION – 37 Gavin Street, Penrose

Crew have accidentally snipped through a power cable. At this stage crew is unaware if the street has lost all power but will update if any residents contact. The field crew have stopped all works and have moved away to keep safe from area.

Have organised emergency attendance with Vector who will be onsite within the hour.

[13] Mr Rikus Janse van Rensburg (Field Supervisor) arrived at 37 Gavin Street (the site) at approximately 2.55am.

[14] At 3.57am, Mr Rensburg sent an email to update the team:

Morning team

We are still waiting for Vector to arrive onsite, as they can't provide an ETA yet.

Once Vector gives us the green light and confirms it's safe to work, the crew will continue with the repair.

[15] At 5.39am, Mr Rensburg sent another email to update the team:

Vector arrived on site. No eta for when their repair will be done, as they are waiting for a second man to assist.

[16] Mr Rensburg provided a handover to Mr Andrew Fraser, a serviceperson who was on site, and left the site at approximately 5.45am.

[17] Ms Letia BaiBai, another serviceperson, arrived on site as part of the relief crew at approximately 6.25am.

[18] Mr Gonsalves received all of these emails.

[19] Mr Gonsalves provided Watercare with a document entitled: Gavin St breakdown, which explains the situation from Mr Gonsalves perspective.

[20] In the opening paragraphs of this document (Gavin Street document), Mr Gonsalves writes:

**6am** – As I was heading to work/getting ready, I checked my emails as usual and noticed a significant number of escalation emails sent regarding Gavin Street. At this moment, I decided to head straight to the site.

**6.30am** – After reading the emails in detail, I also noticed that there is NO WATER ON as per the email. I thought that it was strange and perhaps missed an email.

**7am** – I arrive onsite to see Andrew and Letia.

[21] Mr Gonsalves arrived at the site at approximately 7am.

[22] Mr Gonsalves assessed the situation and then called Mr Avishesh Kumar, a Water Operations Controller, employed by Watercare.

[23] In the Gavin Street document, Mr Gonsalves writes:

I escalated to Avi. I advised of my findings and advised that we are currently OVER 8 HOURS. The repair has NOT BEEN DONE, and we are still waiting for Vector to arrive. There was someone in a cherry picker, sitting in the cab from Vector, but he couldn't fix the cable.

I discussed this with Avi and advised that to get WATER ON, we need to cap the main and delete the hydrant, as the leak is further towards the pole, and we cannot excavate further. Avi approved as per my request.

[24] Mr Kumar's recollection of this call is set out in an email he sent to Mr Croul on 29 November 2024:

I received a call from Keenan, requesting approval to endcap the watermain. It was agreed to cap the watermain 1m on one side and 2m on the other side of the trench.

The instructions were clear not to enter the excavation trench.

I did inform Keenan that power and water do not go together.

[25] At approximately 7.45am, Mr Gonsalves and the relief crew entered the excavation site and repaired the water pipe.

[26] At 8.27am, Mr Gonsalves emailed relevant employees at Watercare and advised:

Water is now on.

Avi approved an end cap, we managed to locate break and fix pipe. There is no cap. Hydrant at 35 has been removed.

Regards

Keenan

*Relevant facts – the investigation and disciplinary process that followed*

[27] Mr Croul is the Operations Manager for Water Delivery. Mr Shephard is an Operations Manager.

[28] After receiving this email from Mr Gonsalves, Mr Croul became concerned because of the speed in which the repair had been completed by Mr Gonsalves and his team.

[29] In his witness statement, Mr Croul writes:

At 8.27am, I received an email from Keenan confirming the job had been completed.

This was approximately 30-40 minutes after my phone-call with Keenan.

The timing concerned me.

Based on the plan I understood Keenan had agreed with Avi, I know that capping the watermain would take at least two hours.

It was apparent to me that the agreed process had not been followed as not enough time had passed.

The repair Keenan directed the relief crew to undertake required re-entry into the excavation site, in circumstances where Keenan did not know if the power cable had been isolated, putting the relief crew in a very dangerous position.

[30] Watercare completed a *Human Factors Incident Investigation* which involved receiving written statements from the relief crew on site, and Mr Gonsalves.

[31] Following the Human Factors Incident Investigation, Watercare initiated a disciplinary process.

[32] Watercare's key concern is that Mr Gonsalves had directed the relief crew to enter the excavation site, knowing Vector had not yet repaired and/or isolated the power cable following the cable strike.

[33] On 10 December 2024, Watercare invited Mr Gonsalves to a disciplinary meeting.

[34] The following allegations were put to Mr Gonsalves:

- Failed to follow safety requirements or comply with Watercare's health and safety policies.
- Made decisions which are reckless or grossly negligent.
- Made decisions which have the potential to cause harm.
- Breached company values, specifically Kounga & pono.

[35] Mr Croul attended this meeting on 12 December 2024. Ms Kingston also attended the meeting in her position as People & Capability Business Partner.

[36] However, due to pre-arranged annual leave, Mr Croul asked Mr Shephard to take responsibility for the disciplinary process.

[37] At the beginning of the meeting, Ms Kingston advised Mr Gonsalves that Mr Croul may have to delegate responsibility for the disciplinary process, and decision making, to somebody else employed by Watercare, due to pre-booked annual leave. Mr Gonsalves did not raise any concerns with Ms Kingston's comment.

[38] As part of the investigation process, Mr Croul says he discussed the Human Factors Incident Investigation and the allegations, with Mr Shephard, because they were both Operations Managers.

[39] Prior to Mr Croul going on annual leave, Ms Kingston says there was a detailed handover discussion involving Mr Croul, Mr Shephard and Ms Kingston.

[40] Mr Gonsalves was advised that Mr Shephard would be taking over the investigation and disciplinary process.

[41] On 16 December 2024, Mr Gonsalves received a letter from Watercare advising its preliminary view that termination of employment on the basis of summary dismissal was the most likely outcome.

[42] According to the letter, Watercare had formed the view that:

Mr Gonsalves' actions and decisions were grossly negligent because conscious decisions were made that had the potential to cause harm to our staff. That is particularly concerning given your employment in a safety sensitive role as a supervisor. These actions have caused Watercare to lose trust and confidence in you.

[43] On 17 December 2024, Mr Gonsalves provided a written response to Watercare.

[44] The relevant parts of this letter are set out below:

I understand the severity of my actions and the serious consequences they could have caused.

I made a critical error in judgment, a seriously bad decision.

Sending crew members to work near live power was not only a violation of safety protocols but I also failed to uphold my personal ethics and adhere to the leadership standards expected of me at Watercare. I deeply regret this and its potential consequences.

I have always upheld safety to the highest degree, and I will from here on in regardless of the outcome, have a rock-solid stance on service strikes and follow protocol no matter what the situation might be.

I deeply regret my error in judgement and the harm it could have caused. If given the opportunity to continue in my role, I will ensure that safety remains my unwavering priority.

...

I understand the serious implications of my misconduct and acknowledge that my rash decision has placed my position at risk.

...

I respectfully request consideration of a consequence less severe than termination, as losing my job would have profound impacts on my personal well-being.

[45] On 19 December 2024, Mr Shephard and Ms Kingston met with Mr Gonsalves and Mr Paul Greatbatch (union representative). This was the final outcome meeting.

[46] Earlier that morning, Mr Gonsalves had sent a text message to Mr Shephard asking if Watercare had received the Vector report in relation to the Gavin Street incident.

[47] At that point in time, Mr Shephard had not received a report from Vector.

[48] At the outset of the meeting, Mr Gonsalves advised Watercare that he must have known the power had been isolated and therefore he directed the relief crew to enter the excavation site.

[49] Mr Shephard says this was the first time Mr Gonsalves had said to Watercare that he must have known the power had been isolated.

[50] At the meeting Mr Gonsalves explained that, after reviewing all of the information Watercare had provided him, he had come across an internal email from a Watercare engineer advising the power had been isolated by Vector at approximately 6.30am on the morning of the incident.

[51] Therefore, Mr Gonsalves said, he must have known the power had been isolated before he directed the relief crew to undertake the work at approximately 7.45am.

[52] Mr Gonsalves could not recall who told him the power had been isolated.

[53] Mr Shephard adjourned the meeting. Mr Gonsalves said to Mr Shephard that Mr Fraser may have told him the power had been isolated. Mr Fraser was one of the relief crew on site. Mr Shephard spoke with Mr Fraser.

[54] Mr Fraser said to Mr Shephard that prior to entering the site, the relief crew did not know if the power had been isolated or not.

[55] Mr Shephard put Mr Fraser's comments to Mr Gonsalves. Mr Gonsalves said to Mr Shephard that it was a case of "*Andrew's word against mine*".

[56] Mr Shephard also considered Mr Fraser's Human Factors Investigation statement which recorded:

Cable strike took place.  
Waiting for Vector to repair.  
Discussed with supervisor (Mr Gonsalves) to proceed with work to restore service.  
Repair complete before the Vector day crew arrived.

[57] The meeting was reconvened.

[58] Mr Gonsalves was advised that his employment would be terminated on the basis of summary dismissal.

#### *Relevant legal principles*

[59] The legal test for determining whether a dismissal is justified, is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.<sup>1</sup>

[60] In applying this test, the Authority must consider:<sup>2</sup>

- (a) having regard to the resources available to the employer, whether the employer sufficiently investigated the allegations against the employee before dismissing the employee; and
- (b) whether the employer raised the concerns that the employer had with the employee before dismissing the employee; and
- (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing the employee; and
- (d) whether the employer genuinely considered the employee's explanation before dismissing the employee.

[61] I now consider these statutory tests with regard to the submissions made by the parties. I am grateful to legal counsel for their helpful submissions.

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<sup>1</sup> Employment Relations Act 2000, s 103A(2).

<sup>2</sup> Employment Relations Act 2000, s 103A(2).

*Did Watercare sufficiently investigate the allegation?*

[62] Mr Gonsalves' first submission is that Watercare did not sufficiently investigate whether the power had been isolated by Vector before Mr Gonsalves made the decision to continue with the repair job.

[63] Mr Gonsalves submits Watercare's investigation did not establish whether the power had been isolated or not.

[64] Mr Gonsalves further submits that Watercare should not have made allegations concerning gross negligence and a failure to follow health and safety procedures, without first determining whether the power in fact had been isolated.

[65] Based on an email sent by an engineer employed by Watercare, which was provided to Mr Gonsalves, Watercare was informed the power had been isolated at about 6.30am on the day in question.

[66] In the final outcome meeting, Mr Gonsalves told Watercare this email confirmed he must have known the power had been isolated by Vector before he made the decision to continue the repair job.

[67] Watercare was required to sufficiently investigate the allegation made against Mr Gonsalves.

[68] The allegation Watercare was investigating, was whether Mr Gonsalves knew the power had been isolated before the decision was made to send the relief crew into the excavation area.

[69] The question of whether the power had been isolated was not relevant to the question of what Mr Gonsalves knew at the time he made the decision.

[70] This is because the focus of Watercare's inquiry was on Mr Gonsalves' judgement and decision making, with particular regard to whether he knew the power had been isolated.

[71] Mr Gonsalves submits that during the disciplinary process, Watercare did not ask him whether he knew the power was isolated, and instead Mr Gonsalves was asked

to respond to allegations put to him on the assumption that he had directed work to proceed in a live power environment.

[72] Watercare provided Mr Gonsalves with a number of opportunities to explain, from his perspective, what occurred.

[73] The first opportunity was the Human Factors Investigation. Mr Gonsalves statement during this investigation, records:

Assessed site, power cable cut.  
Escalated to Avi, request to cap main.  
Water off for over eight hours.  
We need a plan to get water back on.

[74] The second opportunity was in the Gavn Street document. In this document, Mr Gonsalves records the following points:

I advised Avi the water is off.  
The repair has not been done; we are still waiting for Vector to arrive.  
There was someone in the cherry picker, from Vector, but he could not fix the cable.

[75] During a disciplinary meeting on 19 December 2024, the transcript records Mr Gonsalves' comments regarding the power and whether he knew it has been isolated.

[76] The relevant section of the transcript is set out below:

I am pretty certain that the power was isolated, and we were allowed to get into the site.  
We can enter the site, because the power was isolated.

[77] When Mr Gonsalves was asked who told him the power had been isolated, he responded as follows:

I believe what occurred is a conversation between Vector and Watercare, yes the power was off.

So, the guy (in the cherry picker from Vector) says I can't fix it (the power cable) I need somebody else to be on site with me.

(Mr Shephard asks: someone from Vector told you that?)

No, not me directly, no. Not, but a conversation occurred saying that the power was off.

...

I remember Andrew Fraser, at the site, telling me the power was off. But don't take my word for it, wait for the Vector report.

[78] In his first two opportunities to respond to Watercare's investigation, Mr Gonsalves does not mention whether he knew the power was isolated or not.

[79] However, prior to the final outcome meeting, after reading an internal email regarding the Gavin Street incident (noting the power had been isolated at 6.30am), Mr Gonsalves concluded he must have known the power was isolated.

[80] However, Mr Gonsalves was not clear on who told him the power had been isolated.

[81] Watercare spoke to Mr Fraser. Mr Fraser noted:

We were talking between us about how the cable was cut, that there was no water in the hole, we thought it looked safe, and it was decided with Keenan that I would jump in, make the repair and get the water back on while we were waiting for Vector.

We did not know the power to be isolated at that time as nobody had advised us.

The one Vector person on site said he could not fix this on his own, the power was not isolated, he was waiting for his supervisor to come.

I knew the power was not isolated.

[82] Vector did not provide Watercare with a report. Instead, Vector confirmed with Watercare the power had been isolated at about 6.30am.

[83] I find that Watercare sufficiently investigated the allegation regarding Mr Gonsalves' judgment and the decision he made, and reached the following conclusions based on the balance of probabilities:

(a) Mr Gonsalves surmised that he must have known the power had been isolated, based on an internal email he received as part of the disciplinary process, but he was not able to establish who told him the power had been isolated.

(b) In his written response submitted to Watercare on 17 December 2024, two days before the final outcome meeting, Mr Gonsalves accepted that he made a "*critical error in judgement*" and understood the "*severity of his actions*".

(c) Mr Gonsalves had read the escalation emails prior to arriving at the site and therefore knew there had been a power cable strike.

(d) Mr Gonsalves understood that no further work was to be undertaken at the excavation site until the power cable had been fixed.

- (e) There was no evidence to suggest Mr Gonsalves had taken steps to determine whether the power had been isolated.
- (f) Mr Fraser says Mr Gonsalves and the crew did not check whether the power had been isolated before continuing the work.
- (g) Watercare provided several opportunities for Mr Gonsalves to provide his recollection of events. Mr Gonsalves either, did not mention whether he knew the power had been isolated, or later in the investigation when Mr Gonsalves said he must have known the power was isolated he was not able to advise who told him this.
- (h) In addition, Watercare spoke to the crew who were onsite as part of the Human Factors Investigation, and analysed photographs from the site to understand what work Mr Gonsalves had directed the relief team to undertake.

*Were there other procedural defects with regard to Watercare's disciplinary process?*

[84] Mr Gonsalves submits the short timeframes imposed by Watercare during the disciplinary process prejudiced his ability to respond meaningfully to the allegations.

[85] Mr Gonsalves says he made admissions early on in the process regarding his "*critical error of judgement*", because he had not been given sufficient time to review the material, reflect on the allegations, and take advice.

[86] Watercare put its concerns to Mr Gonsalves in writing. Mr Gonsalves was provided with all relevant information, including the internal email he later relied on to suggest he must have known the power had been isolated. Mr Gonsalves was provided with an opportunity at each meeting to be represented.

[87] Mr Gonsalves was provided with a preliminary outcome letter, and further feedback was invited by Watercare.

[88] Mr Gonsalves was given sufficient time to prepare for each meeting, as part of the disciplinary process.

[89] At the final outcome meeting, when Mr Gonsalves raised the issue regarding the internal email and the power being isolated, Mr Shephard adjourned the meeting to seek further information from Mr Fraser and Vector.

[90] Mr Gonsalves also submits that Watercare did not comply with its own disciplinary policy, because the relevant departmental manager's approval was required before a decision could be made to dismiss an employee.

[91] Ms Kingston gave evidence that during a meeting with Mr Richie Rameka (Head of Maintenance Service) on 13 December 2024, there was a discussion about potentially terminating Mr Gonsalves' employment on the basis of serious misconduct.

[92] The particular part of Watercare's disciplinary policy that Mr Gonsalves points to, and which he says Watercare did not comply with, follows:

The Head of the department or Chief must be informed before any decisions are made.

[93] I am satisfied that on 13 December 2024, Mr Rameka was informed about the possibility of Watercare terminating Mr Gonsalves employment.

[94] In summary, I find there were no procedural defects with regard to Watercare's disciplinary process.

*Was Mr Gonsalves' conduct capable of amounting to serious misconduct?*

[95] It is not possible to define serious misconduct because it is always a matter of fact and degree.<sup>3</sup>

[96] When considering whether particular behaviour amounts to serious misconduct, what is needed is conduct that deeply impairs or is destructive of that basic confidence and trust that is essential to the employment relationship.<sup>4</sup>

[97] This means that even one-off acts of inadvertence, oversight or negligence can, depending on the overall circumstances, amount to serious misconduct justifying dismissal.<sup>5</sup>

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<sup>3</sup> *Baillie v The Chief Executive of Oranga Tamariki – Ministry for Children* [2022] NZEmpC 233 at [45].

<sup>4</sup> *Northern Distribution Union v BP Oil New Zealand Ltd* [1992] 3 ERNZ 483 (CA) at 487.

<sup>5</sup> *Hines v Eastland Port Limited* [2018] NZEmpC 79 at [78].

[98] What must be evaluated is the nature of the obligations imposed on the employee by the employment agreement, the nature of the breach that has occurred, and the circumstances of the breach.<sup>6</sup>

[99] Mr Gonsalves was a supervisor. He managed crew members on site and was responsible for making decisions. Watercare placed a significant amount of trust in Mr Gonsalves. Watercare was entitled to trust Mr Gonsalves' judgement and actions.<sup>7</sup>

[100] When considering the nature of the breach that occurred, and the circumstances of the breach, the key issue is that Mr Gonsalves knew there had been a cable strike, he was aware the matter had been escalated and Vector had been notified, however he did not take steps to determine whether the power was isolated before the decision was made to continue the repair job.

[101] In one of the written responses Mr Gonsalves provided to Watercare, he noted:

I understand the severity of my actions and the serious consequences they could have caused.

[102] Watercare's key concern was Mr Gonsalves' judgement and decision-making, especially given his role as a supervisor.

[103] Watercare was entitled to find that Mr Gonsalves decision to enter the excavation site, following a power cable strike, and not first making enquiries as to whether the power had been isolated, amounted to serious misconduct.

*Did Watercare consider alternatives to dismissal?*

[104] Ms Kingston gave evidence that Watercare considered alternatives to summary dismissal, including a demotion, a final written warning and/or a performance improvement process.

[105] In considering alternatives to dismissal, Ms Kingston noted that Watercare concluded that because the incident involved a serious safety-related breach by a supervisor which exposed work crew to the risk of significant harm, summary dismissal was the appropriate outcome.

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<sup>6</sup> Above n 5 at [78].

<sup>7</sup> Above n 5 at [154].

*Did Watercare provide Mr Gonsalves with a reasonable opportunity to respond to its concerns, and genuinely consider his response?*

[106] As noted already, Mr Gonsalves provided Watercare with three written responses explaining his version of events.

[107] Mr Gonsalves provided Watercare with a full explanation of events, from his perspective, at meetings on 12 December and 19 December. The Authority was provided with the written transcripts of these meetings.

[108] Watercare took a flexible and open-minded approach during the disciplinary process, which included an interview with Mr Fraser and contacting Vector at Mr Gonsalves request.

[109] Watercare provided Mr Gonsalves with a reasonable opportunity to respond to their concerns and genuinely considered Mr Gonsalves explanation, before it made the decision to terminate the employment agreement.

### **Summary and orders**

[110] Mr Gonsalves was justifiably dismissed by Watercare. This is because, Mr Gonsalves' conduct amounted to serious misconduct and Watercare acted as a fair and reasonable employer in the process of making its decision to terminate the employment agreement.

[111] In reaching this decision, Watercare complied with its statutory obligations.<sup>8</sup>

[112] Mr Gonsalves has not established a personal grievance. There is no requirement to consider remedies.

### **Costs**

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

[114] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Watercare 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

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<sup>8</sup> Employment Relations Act 2000, s 103A(3).

memorandum, Mr Gonsalves then has 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.

[115] 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.<sup>9</sup>

Simon Greening  
Member of the Employment Relations Authority

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<sup>9</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).