

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN The Postal Workers Assn Inc (Applicant)

AND New Zealand Post Limited (Respondent)

REPRESENTATIVES Mr S Mitchell for Applicant
Ms P Swarbrick for Respondent

MEMBER OF AUTHORITY Dzintra King

INVESTIGATION MEETING 19 September 2001

DATE OF DETERMINATION 5 October 2001

DETERMINATION OF THE AUTHORITY

The Postal Workers Association and NZ Post have a dispute about the interpretation and application of clause L49 of the Collective Employment Contract.

Clause L49 reads:

RELOCATION ASSISTANCE - ALL

L49 Actual and reasonable costs incurred in the relocation of employees will be reimbursed. These will include travel expenses, accommodation, removal costs, and legal and real estate agent's fees. In addition, reasonable leave with pay will be granted to allow travel time, time to view the accommodation and time to attend to sale and purchase of homes.

The Postal Workers Association contends that the clause is applicable in the event of staff being relocated from one depot within a city to another. NZ Post contends that it is applicable only where an employee moves from one town or city to another and is required to relocate his or her residence.

The principles of contract interpretation are well established: Lowe Walker (Paeroa) Limited v Bennett [1998] 2 ERNZ 558.

It is my view that the contractual intention is clear from the words and that I must therefore give effect to it.

Clause L49 deals with the relocation of employees. It is clear that it does not deal merely with a change of workplace but that it also deals with a change of living location for the employee. That this is so is exemplified by the use of words which refer to housing: accommodation, removal costs, real estate agent's fees, sale and purchase.

I have taken into account that the clause states that certain specified items are included and that must mean that other items could also be included. While that is correct, other items would have to be of the same nature and relate to the same purpose.

Because the payment is a reimbursing payment it must have been incurred prior to payment being made. It does not make sense, therefore, to argue, as the applicant does, that a set amount must now be negotiated and paid in anticipation of the future incurring of expenses.

The clause also presumes that the payments will be one off payments: they are to be incurred “in the relocation”.

Also against the interpretation contended for by the applicant is the fact that if a reimbursing payment were to be made for transfers within towns or cities there would be no temporal limit on the payments. If an employee who moves from one depot to another in 2001 were still employed in 2010 the employer would still be paying the actual and reasonable costs in 2010; and the actual and reasonable costs would have to be recalculated on an ongoing basis for the entirety of that period. An interpretation that leads to a result such as this is not sensible and cannot be accurate.

The applicant submitted that the respondent had previously paid allowances when staff were moved to different places of work and that those moves were called “relocations”. I accept that that is so but that in itself is not sufficient to bring such a transfer within the ambit of clause L49.

Moving to a new workplace can result in staff incurring additional expenses. NZ Post has been willing to look at compensation. What has been offered is not satisfactory from the point of view of the affected employees but the resolution of that does not lie in a determination from the Authority.

The interpretation of the respondent is the correct interpretation.

The matter of costs was reserved. If the parties are unable to resolve this matter themselves the respondent should file a memorandum within 28 days of the date of this determination; the applicant is to file a memorandum in reply within 14 days of receipt of the respondent’s memorandum.

Dzintra King
Member of Employment Relations Authority