Determination Number: CA 50/03
File Number: CEA 57/03

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE

BETWEEN	NZ Engineering Printing & Manufacturing Union (Applicant)
AND	Sheet Metalcraft Limited (Respondent)
REPRESENTATIVES	J A Wilton, Counsel for applicant N H Soper, Counsel for respondent
MEMBER OF AUTHORITY	Philip Cheyne
SUBMISSIONS RECEIVED	17 April 2003, from both the applicant and respondent 24 April 2003, from the applicant 28 April 2003, from the respondent
DATE OF DETERMINATION	9 May 2003

DETERMINATION OF THE AUTHORITY

The Problem

[1] The New Zealand Engineering, Printing & Manufacturing Union (EPMU) is a union with members who are employed by Sheet Metalcraft Limited (SML) based in Invercargill. There is a collective employment agreement (CEA) between EPMU and SML that came into force on 1 April 2002 and remains in force until 31 March 2004. There is a dispute between EPMU and SML over whether time spent travelling should be counted as part of the normal hours of work for the purpose of calculating when overtime payments should commence.

[2] Despite mediation assistance, the dispute remains.

[3] The parties agreed to me determining this dispute on the papers. I have been provided with a statement of problem, statement in reply and written submissions including a copy of the CEA.

Background

[4] There is no dispute about the facts. Employees are bound by the CEA. At the start of the day, the employees clock in at SHL's Invercargill workshop. If they are required to perform work at another location, they travel in an SHL vehicle to that location. At the conclusion of work at that other location, they travel in an SHL vehicle back to the Invercargill workshop. At the end of their day's work, they clock out. SHL pays them for the time spent travelling at their ordinary rate of pay. However, that time is not counted as part of the normal hours of work (8 per day or 40 per week) for the purpose of deciding when overtime rates are applicable. The only exception is the person who drives the vehicle. For that person, no distinction is made between the time spent travelling and time spent performing other work tasks.

[5] I have been referred to sections 13, 14, 15 and schedule 1 of the CEA in particular but I have looked at the whole of the CEA.

Analysis

[6] My task is to determine the meaning and effect of the CEA. I agree with counsel for SHL that concepts of equity and good conscience are not relevant: see section 157 (3) of the Employment Relations Act 2000. I accept that *Lowe Walker Paeroa Ltd v Bennett* [1998] 2 ERNZ 558 sets out applicable principles.

[7] I accept the general point made by counsel for the applicant that the hourly rate payments specified in the CEA accrue when employees make themselves available for work at the direction of the employer in accordance with the CEA. The employer may manage or direct that time efficiently or inefficiently, productively or unproductively but the obligation to pay for an employee's availability remains.

[8] Clause 15 is headed *Hours of work*. It provides for *Ordinary Hours of Work* (15.1), *Overtime* (15.2), *Call-outs* (15.3) and *Off Duty Periods* (15.4). The clause classifies and limits hours of attendance at work in various ways. For example, the normal hours of work must be worked between 7.30 am and 5 pm Monday to Friday. The clause overall is not directed at what the employee actually does during their normal hours, overtime hours or call-outs.

[9] The main classification is between the ordinary hours of work and overtime. The wage specified in *Schedule 1* is payable for the *first 40 hours per week*. Clause 15.1 also refers to *Ordinary Hours* and *normal hours*. Read in context, the three phrases are used synonymously. The sub-clause is not directed at what at employee does during the ordinary hours.

[10] Overtime is defined as *time worked in excess of 40 ordinary hours per week*. The case for SHL requires me to read the words *time worked* as time spent on production or time actually working not travelling between jobs or some similar qualification. Clause 15.2 is not directed at what the employee actually does. In context, its purpose is to classify the time and create an obligation to pay for certain periods of time at a higher rate. It provides no reason to distinguish between time spent travelling or being transported on the employer's business and time spent deploying ones skills or trade.

[11] Clause 15.2.2 provides that when calculating the *first 40 hours ordinary time before overtime becomes payable* authorised paid leave as provided in the agreement is to be included. That has the effect of including time an employee is not attending work as part of their ordinary hours for the purpose of determining when overtime is payable. It does not throw any light on the proper meaning of clause 15.2.1.

[12] Clause 13 is titled *Remuneration*. It sets out minimum wage rates for various classifications of employees and then provides various allowances. Following the list of allowances payable on a per hour basis it reads *The above allowances do not attract an overtime payment.* The opening paragraph provides that *In addition to the base hourly rate, allowances as specified on the attached schedules will also be paid.* That must be a reference to the list or table of allowances set out in clause 13 itself rather than to Part 10 of the CEA. The template set out in Part 10 on page 30 of the CEA headed *SCHEDULE 1 – REMUNERATION* does not refer to any allowances. Hence clause 13 and the line in *SCHEDULE 1 – REMUNERATION* referred to by counsel for SHL are not relevant in the way argued by counsel. In particular, time spent travelling is not paid as an allowance. There have been many industrial arguments over the years over whether hourly rate

allowances get included when working out an overtime rate. The words in clause 13 simply make it clear that those listed allowances are not included in the calculation under this CEA.

[13] Clause 14 provides 2 further allowances. One is a *Meal Allowance* and the other is an allowance for *Off site/ Project Work*. Clause 14.1 *Meal Allowance* says that *for the purposes of this clause, time spent travelling will be included in the calculation to establish an employees entitlement to a meal allowance*. It also provides that a meal allowance *will be paid after 10 hours worked* in limited circumstances and more generally that a meal allowance *will be paid when the employee works more than 11 hours*. However, qualification for a meal allowance is not linked to classification of the time as ordinary time or overtime. The stipulation about how to treat time spent travelling for meal allowance purposes does not dissuade me from the clear view I have reached about the meaning of clause 15.

Conclusion

[14] Travel time is *time worked*. When calculating when overtime is to be paid for all employees bound by the CEA, SHL must include travel time.

[15] That might entitle some employees to arrears of wages. I reserve leave on that point in case there is any disagreement not resolved between the parties themselves or with mediation assistance.

[16] The parties might think that costs should like where they fall given the genuine nature of this dispute and the ongoing relationship. However, just in case, costs are reserved.

Philip Cheyne
Member of Employment Relations Authority