

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN PPCS Limited (Applicant)

AND Meat and Related Trades Workers Union of Aotearoa Inc
(Respondent)

REPRESENTATIVES Tony Waddel for the Applicant
Simon Mitchell for the Respondent

MEMBER OF AUTHORITY P R Stapp

SUBMISSIONS IN WRITING SOP 13 July 2005, SIR 17 August 2005, Written submissions 26
September 2005, 16 and 22 November 2005

DATE OF DETERMINATION 30 November 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] There is a dispute between the parties on the overtime provisions as set out in clause 11 of the Richmond Pacific Collective agreement.

The background and facts

[2] PPCS Limited (the employer) and the Meat and Related Trades Union of Aotearoa Inc (the union) are parties to the Richmond Pacific Collective agreement. The term of the agreement is 1 December 2003 until 30 November 2005. The agreement will remain in force for one year under section 53 (2) of the Act.

[3] The employer employs members of the union as meat processing workers at its Pacific plant in Hastings.

[4] The employer notified its slaughtering employees of the availability of work for the weekend of 7 May 2005. They were notified under clause 11 (c) of the collective agreement. The collective agreement reads as follows:

11. Overtime

(a) *Except where otherwise specified, all overtime outside or in excess of the ordinary hours laid down in clause 10 shall be classified as overtime and shall be paid for at rate and a half for the first three hours and double rate thereafter which will apply to the base hourly rates specified in clause 15. Unless otherwise specified in the agreement the production hourly rate portion of overtime payment shall be increased by the extra rate of 0.15, ie multiplied by 1.15.*

(b) *Work done on Saturday shall be paid for at rate and a half for the first three hours and double rate thereafter. Work done on Sundays shall also be paid for at double rate.*

(c) *All employees required to work overtime during weekends shall be informed not later than 3.00pm on the Thursday before and those volunteering shall be bound by that commitment.*

(d) *After completing eleven consecutive hours of work, employees shall have a minimum break of not less than nine hours before recommencing work. Where employees are requested to stand down from finishing work on the first day or from commencing work the following day, they shall be paid at full make up at ordinary rate for the time not worked.*

(e) *It is acknowledged that employees may be required to work reasonable overtime when required to do so by the employer, including half an hour of processing per day Monday to Friday (slaughtering and boning and support departments). Such overtime shall be worked before their ordinary hours of work in the case of day employees, and at the end of their shift in the case of night shift employees. Attendance for overtime processing arranged in addition to this half hour Monday to Friday shall be voluntary.*

(f) *Employees who have been notified on or before the previous day of the intention to work overtime shall receive a minimum of one hours pay at overtime rates over and above their earnings in ordinary time.*

(g) *When day and night shifts are operating overtime processing on Saturdays and Public Holidays shall be shared equally between shifts.*

[5] On Friday 6 May 2005 the union notified the employer that its members supported a resolution put forward by officials of the union not to work on 7 May unless all of the operations were offered work, (slaughtering, boning and support departments). No operations took place on Saturday 7 May 2005 because the members of the union refused to work overtime where it was not offered to all of the operations.

The Applicant's argument

[6] The applicant says that the employees were in breach of the collective agreement by refusing to work. The applicant says that it has the right under clause 11 to request any employees to work on Saturday and that it does not have to employ all categories, but is able to request slaughtering, boning or support departments, to work separately.

[7] It argues that Saturday overtime is distinguishable from other overtime Monday to Friday. It interprets clause 11 to mean the employer's choice exists in the separate categories applying to Saturday work under clause 11 (a) and (b), and that 11 (c) provides for "*all employees required to work overtime*" to mean that the employer can determine which employees if any will be required to work on the Saturday.

The Respondent's argument

[8] It accepts that the applicant attempted to offer Saturday work to slaughter employees. It says that when Saturday work is offered the collective agreement requires that it is offered to all employees and cannot be offered separately to departments.

[9] The respondent relies upon clause 11 (e) meaning that if overtime is offered, including work on a Saturday, that it must be offered to *slaughtering, boning and support departments* and this is supported by the reference to "*all employees required to work overtime during weekends*" under clause 11 (c).

[10] Processing is not the operation of one department only.

Comment

[11] Although the applicant has requested that the employment relationship problem should be resolved with a decision that the respondent is in breach of the collective employment agreement, the factual scenario presented by the parties falls well short of meeting the threshold required for such a decision. Clearly both parties have a dispute over the interpretation of the collective employment agreement. It is more appropriate that the employment relationship problem be resolved as a dispute.

[12] I have read the submissions and I am inclined to agree with the applicant's position on offering overtime to separate departments on a Saturday for the following reasons.

[13] On the plain meaning of the words clause 11 is a broad overtime provision. As such it would not be inconsistent or render them meaningless if the interpretation of each sub clause is applied separately and or interchangeably. Clauses 11 (a) (b) and (d) are about hours and pay.

[14] Under clause 11 (c) the reference to *all employees* is to ensure that those employees being offered overtime are given the appropriate notice for weekend overtime. It is a notification clause for all employees to who overtime applies without any category specified.

[15] Clause 11 (e) relates to a general principle for employees to be required to work reasonable overtime when required to do so. Also the provision highlights including Monday to Friday overtime as it applies to processing in the *slaughtering, boning and support departments*. Overtime Monday to Friday can be required so long as it is reasonable outside the half hour as prescribed but is voluntary. There is no reference to Saturdays although it is open to conclude it applies voluntarily also. Therefore it is consistent to read the clauses separately as they apply to the different overtime situations applying without exclusive arrangements applying to Saturdays.

[16] The word *processing* encompasses employees engaged in beef slaughtering, boning, by product recovery and ancillary operations (see coverage). It is a generic term. The words, on their plain meaning, qualify the Monday to Friday overtime in clause (e) and do not compel the employer to offer overtime to *all employees* as referred to under clause 11 (c) on Saturdays, remembering that clause 11 (c) relates to notification, and where the employer can offer overtime on Saturdays under clauses 11 (b) and (g).

[17] In conclusion I have treated the problem as a dispute and not pursued any argument about a breach. If that remains a concern then it will require further investigation as to what the facts were. In any event there is a dispute over the interpretation of the collective employment agreement. I find in favour of the applicant's right to offer Saturday overtime to employees by department without an obligation to offer it to all employees as claimed by the union.

[18] Any issue on costs is reserved, but I would note, as both representatives will know where there is a genuine dispute for interpretation, costs would normally lie where they fall. I am inclined to support that in this matter.