

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Meat and Related Trades Workers Union of Aotearoa Inc (Applicant)
AND Bernard Matthews NZ Limited (Respondent)
REPRESENTATIVES Simon Mitchell for the Applicant
Tony Waddel for the Respondent
MEMBER OF AUTHORITY P R Stapp
WRITTEN SUBMISSIONS SOP 10 June 2005 and amended 26 August 2005, SIR 30 June 2005,
Written Submissions 27 October 2005, 10 & 14 November 2005
DATE OF DETERMINATION 29 November 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. There is a dispute between the parties in regard to leave provisions under a collective agreement.

The Background and Facts

2. The applicant union has members employed by the respondent as meat processing employees at the respondent's Waipukurau plant.
3. The parties have a collective agreement with a term November 2003 until November 2005.
4. The applicable clause is as follows:

13.0 Annual Holidays

13.1 *The provisions of the Holidays Act 1981 apply.*

13.2 *For the purposes of this clause, "continuous service" shall include service by any seasonal employee who has worked the entire season i. e. started when required by the employer and worked the full season until laid off by the employer.*

13.3 *Upon completion of one year's continuous service with the company, an employee shall be entitled to three weeks annual holiday. Employees who work shifts for their full employment year shall, upon the completion of 1 year's continuous service with the company, be entitled to four weeks annual holiday or pro rata thereof.*

13.4 *Upon completion of 5 years continuous service with the company, all employees, including employees who work shifts for their full employment year, shall be entitled, in their sixth and subsequent years, to an additional one week's annual holiday or pro rata thereof. The fourth and fifth week's holiday may be taken in conjunction with, or separately from, the first three weeks holiday, as agreed between the Company and the employee.*

13.5 *Annual holidays shall be paid in accordance with the Holidays Act 1981 i. e. based on the employee's average gross taxable earnings or ordinary pay, whichever is the greater, at the time of taking leave.*

In the case of employees with less than one years continuous service with the Company (e.g. seasonal employees), they shall be paid an amount equal to 6% of their gross taxable earnings.

Seasonal employees, entitled to 4 or 5 weeks annual leave, and who do not work a full calendar year, shall be paid an amount equal to 8% or 10% respectively.¹

The Union's argument

5. Clause 13.3 entitles an employee to four weeks holiday after 1 year's service, including seasonal employees working shifts. The union understands that the respondent contends that the fourth week only begins to accrue after one year, and becomes an entitlement after a second year's continuous service. Thus, the union says at the end of 12 months, if an employee has only worked shift, they are entitled to an 8% leave accrual when holidays are taken. The respondent says the 8% accrues in an employee's second year.

6. The union relies upon section 16 (1) of the Holidays Act 2003 that reads:

After the end of each completed twelve months of continuous employment, an employee is entitled to not less than three weeks' paid annual holidays.

7. There is no different provision in the collective agreement applying to shift workers.

8. For completeness I will repeat the applicant's submission in reply: *Employees who work on shift for their full year's work are entitled at the conclusion of their first year of work to four weeks leave. If they are seasonal and do not work a full year, yet have worked shifts, they are paid 8% at the time of becoming entitled to leave.*

The employer's argument

9. The Act makes provision for an entitlement to holidays when an employee has completed a full year of employment.

10. Entitlements for shift workers exist over and above the provisions of the Holidays Act.

11. The respondent accepts that permanent employees who work shifts are entitled to four weeks holiday if they work 1 year's continuous service (clause 13.3) and what they are paid if they

¹ The words of this provision were provided in the Respondent's Statement in Reply and clause 13.3 confirmed in an amended statement of problem. The words were not challenged by the union. No collective employment agreement was provided in the documents submitted by the parties. I have proceeded, although I express my concern that for completeness, the collective agreement was not provided.

become entitled to 3 or 4 weeks holiday is set out in clause 13.5, which is in accordance with the Holidays Act 2003.

12. Seasonal employees are different and dealt with under clause 13.5 to be paid in accordance with the Holidays Act a percentage for employees with less than one year's service, and by providing for an extra percentage for seasonal employees, who work shifts if they qualify under the terms of the collective. They are only entitled when they have completed 1 year's continuous service.

The Authority's comment and decision

13. I agree with the union's submission that the entitlement flows from the completion of one year's continuous service.

14. This is supported by the words of clause 13.2: *any seasonal employee who has worked the entire season i. e. started when required by the employer and worked the full season until laid off by the employer.*

15. Also, clause 13.5 provides for *Seasonal employees, entitled to 4 or 5 weeks annual leave, and who do not work a full calendar year, shall be paid an amount equal to 8% or 10% respectively.*

16. Therefore, a shift worker is entitled to four weeks annual leave after their first full season of work and payment is at 8% for seasonal employees who have not worked a full year at the time they have become entitled. There is no further 12 months period for qualifying after 2 years as the respondent would have it. Thus seasonal workers employed to work as shift workers are treated the same as employees who work shifts. I find in favour of the union's argument.

17. Costs are reserved but I note that since this is a dispute costs should lie where they fall and I am inclined to support this approach in this matter.

P R Stapp
Member of the Authority