

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Stagecoach New Zealand Limited (Applicant)

**AND** The New Zealand Tramways Union (Auckland Branch) (First Respondent)  
**AND** The Akarana Public Transport Drivers Association (Second Respondent)  
**AND** The New Zealand Engineering Printing and Manufacturing Union (Third Respondent)  
**AND** National Distribution Union (Fourth Respondent)

**REPRESENTATIVES** Andrew Caisley, Counsel for Applicant  
Brian Spong, Advocate for Fourth Respondent  
Brian Spong, Advocate for First Respondent  
Keith Peterson, Advocate for Second Respondent  
Tony Wilton, Counsel for Third Respondent

**MEMBER OF AUTHORITY** Marija Urlich

**INVESTIGATION MEETING** 27 April 2006

**DATE OF DETERMINATION** 31 May 2006

DETERMINATION OF THE AUTHORITY

**Employment relationship problem**

[1] The parties seek a determination as to the meaning of clause 21 of the Bus Operators, Servicepersons/Operators & General Hands Combined Union Collective Employment Agreement 2005-2007. The applicant party says the effect of the 1 April 2007 amendments to the Holidays Act 2003 will not be to extend employees' annual leave entitlement from four to five weeks and seeks declarations to this effect.

[2] The respondent parties say the effect of the 1 April 2007 amendments to the Holidays Act 2003 will be to entitle all employees covered by the collective employment agreement to 5 weeks annual leave per annum – four weeks statutory annual leave plus a fifth week provided by the collective employment agreement. They seek a declaration to this effect

[3] At the investigation meeting I was advised that the applicant should be identified as Transportation Auckland Corporation Ltd and Cityline (New Zealand) Limited (“Stagecoach Auckland”). There was no objection from the respondent and the intituling is amended accordingly.

[4] The first and fourth respondents, New Zealand Tramways Union (Auckland Branch) and the National Distribution Union, filed a joint statement in reply, stating that the matter raised is a matter of law, the facts set out in the statement of problem are accepted, to the extent that they are relevant,

that the effect of the 1 April 2007 Holidays Act 2003 amendments will be to extend the annual leave entitlement of those employees covered by the CEA to a total of five weeks.

[5] In its statement in reply the third respondent, the NZ Amalgamated Engineering Printing and Manufacturing Union, states that it does not disagree with the facts as set out in the statement of problem, supports the position taken by the first respondent and does not wish to be heard separately.

[6] In its statement of reply the second respondent, the Akarana Public Transport Drivers' Association, states the issue between the parties raises a matter of law, that there is no dispute of fact, that it does not wish to be heard by the Authority and will abide by the Authority's determination.

[7] I record that the parties have attended mediation in an attempt to resolve this dispute.

[8] I wish to record my thanks to the parties for their careful preparation and presentation of their respective cases.

### **What will be the effect of the 1 April 2007 amendments on the CEA?**

[9] Clause 21 of the CEA provides:

#### **21 Annual Leave**

21.1 Three weeks annual leave shall be allowed each year in accordance with the provisions of the Holidays Act 1981 and its amendments.

21.2 In addition the holidays provided for in clause 21.1 employees shall be entitled to a further holiday of one week per annum in recognition of the nature of the work making a total of four weeks leave per year.

21.3 An employee's annual leave shall be taken at a time to be mutually agreed between the Company and the employee except that where agreement cannot be reached the Company shall determine when the holidays are to be taken provided that a minimum of six weeks notice of holidays will be given.

21.4 Holidays may be taken in advance of the date on which they fall due.

21.5 The payment of annual holidays shall be in accordance with the Holidays Act 2003. (Generally – this will be the average weekly wage for the 12 months prior to the holidays). Where a full time employee takes more or less than a week's leave at any given time, the Company will calculate the amount of holiday pay payable to the employee for each day of leave less than or in excess of a week, by dividing the greater of the employee's "ordinary weekly" or "average weekly" pay by 5 days. A similar but pro rata calculation will be made for part time employees."

[10] At the investigation meeting I received extensive evidence as to the historical background to the clauses in question. These clauses are clear on their face and, in line with principle, there is no need to refer to extrinsic evidence.

[11] At their last negotiation round the parties could not agree how the 2007 amendments would impact on the CEA and agreed to leave the clause as it was and seek a determination from the Authority. It is safe to say then that wording of clause 21 of the CEA was agreed between the parties prior to the passing of the 2007 amendments which will see all employees in New Zealand receive minimum annual leave entitlements of four weeks.

[12] The difficulty for the respondent unions' interpretation of the clause is that the parties have agreed that the total annual leave to be enjoyed by employees covered by the CEA will be four weeks (clause 21.2). Their stated intention is to provide all employees covered by the CEA with an

annual leave entitlement of four weeks. The 2007 amendments will render the parties' expressed desire for a week's leave in addition to the statutory minimum obsolete because the statutory minimum will meet their stated goal.

### **Determination**

[13] The applicant's interpretation of the effect of the 1 April 2007 amendments to the Holidays Act 2003 is correct, the CEA is already in compliance with those amendments to the legislation.

### **Costs**

[14] Given the nature of this application I take it that costs are not an issue. If I am wrong the parties have leave to file memoranda.

Marija Urlich  
Member of Employment Relations Authority