

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Maritime Union of New Zealand and Rail & Maritime Transport Union (Applicants)

AND The Owens Cargo Company Limited (Respondent)

REPRESENTATIVES Bill Nabney, counsel for applicants
Michael Sharp, counsel for respondent

MEMBER OF AUTHORITY Alastair Dumbleton

SUBMISSIONS RECEIVED 13 December 2005 and 13 January 2006

CONSIDERATION OF PAPERS 27 February 2006
27 February 2006

DATE OF DETERMINATION

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant unions are in dispute with the respondent employer over the correct interpretation of a provision of the Owens Cargo Company Tauranga Collective Agreement they are all party to. The subject provision is found in a section of the agreement which deals with permanent employees engaged in log marshalling. The contentious part of the provision reads as follows;

8.1 Hours of Work

The Employee has a minimum requirement of 84 hours of work per fortnight.

The Employee will be paid for 42 hrs in the 1st week (including when less than 42 hrs are worked) and paid for 42 hrs, plus any additional hours, in the 2nd week.

[2] The applicant unions contend that the provision means;

..... when an employee works less than 42 hours in the first week, the worker will be paid for 42 hours. In the second week of the cycle, that the worker will be paid for 42 hours and if in the second week more than 42 hours are worked, then the worker will be paid for those extra hours in addition to the 42 hours already provided for.

[3] The applicants disagree with the respondent employer's interpretation which, at paragraph

2(c) of the statement of problem, the applicants describe as being the following;

.....where a worker works less than 42 hours in the first week, then in the second week, where a worker works more than 42 hours, then those extra hours worked are first credited to the deficit in the first week and only then, if there is a surplus of 42 hours in the second week is the worker paid for the additional hours.

[4] In the statement in reply the respondent itself contends that the provision means;

In the context of clause 8.1 the correct interpretation of “additional hours” are that those are in excess of the minimum requirement of 84 hours work over the entire fortnight.

[5] It is accepted by the respondent that the provision guarantees a minimum of 84 hours paid work per fortnight to employees covered by clause 8.1 of the collective agreement.

Determination

[6] I find myself in agreement with the respondent employer that the period for taking account of any additional hours is the “entire fortnight” and not just the “2nd week” of it. This meaning is made clear I find by the positioning of a comma at the beginning and at the end of the phrase “plus any additional hours.” That punctuation has the effect of making the phrase referable to both the 1st and 2nd weeks, rather than to the 2nd week alone. (I note that counsel for both the applicants and the respondent in their typed submissions have inadvertently left out a comma around the phrase “plus any additional hours,” the applicants omitting the comma at the end of the phrase, and the respondent omitting it from the beginning. If the provision was punctuated as counsel have mistakenly typed it, a different meaning to the one I uphold could be taken.)

[7] It follows naturally from this meaning of the provision that any deficit of hours in the 1st week arising because less than 42 hours have been worked, may be set off against any surplus in the 2nd week, to arrive at the “additional hours” over and above 42 which are to be paid in the 2nd week. It is the ‘unders’ as well as the ‘overs’ that are to be counted, according to what I find to be the plain meaning of the provision.

[8] The respondent employers’ interpretation of the provision is correct, I hold. That being the Authority’s determination, an arrears of wages situation would not seem to have arisen and no orders as sought by the applicant unions are therefore required to provide a remedy on that account.