

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** The New Zealand Fire Service Commission (Applicant)  
**AND** The New Zealand Professional Fire Fighters Union (Respondent)  
**REPRESENTATIVES** Geoff Davenport for the Applicant  
Peter Cranney for the Respondent  
**MEMBER OF AUTHORITY** P R Stapp  
**TELEPHONE CONFERENCE** 20 December 2006  
**DATE OF DETERMINATION** 20 December 2006

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] This is an application for *urgency* and removal to the Employment Court. The Union supports the application.

[2] The employment relationship problem involves an important question of law that is likely to arise in the matter other than incidentally. Also, the parties say that it is of such a nature and of such urgency that it is in the public interest for it to be removed to the Court.

**Background**

[3] The collective employment agreement covering fire fighters employed by the Fire Service Commission includes a roster that covers a 24/7 operation of the Fire Service. This includes work on public holidays. The payment of this work is calculated under what is referred to as the Firefighters' Total Weekly Wage (TWW), which is set out in clause 2.6.2 of the agreement as follows:

<b>PART 2 – CLAUSE 6 – WAGES CRITERIA</b>
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2.6.1 *The following expressions contained in this part of this Agreement are defined as follows:*

2.6.1.1 *Double time means the worker's hourly rate multiplied by 2.*

2.6.1.2 *Hourly Rate means the rate of pay shown in Table 3 of Part 4 of this Agreement as applicable to the rank and qualification of the worker concerned.*

2.6.1.2.1 *Those workers in receipt of a personal allowance in accordance with Clause 1.3.16 of this Agreement shall have one fortieth (1/40) of that allowance added to the hourly rate shown in Table 3 of Part 4 prior to any hourly rate calculation.*

2.6.1.3 *Time and a half means the worker's hourly rate multiplied by 1.5.*

2.6.1.4 *Total Weekly Wage means the weekly wages specified in Table 2 of Part 4 of this Agreement as applicable.*

**TOTAL WEEKLY WAGE**

2.6.2 *The total weekly wage to be paid to Firefighters and Officers shall be as shown in Table 2 in Part 4 of this Agreement*

2.6.2.1 *The Total Weekly Wage includes recognition for the following:*

- *availability;*
- *2 hours in excess of 40 hours per week;*
- *driving – grades 1 or 2 as appropriate;*
- *routine work outside routine hours (standard payment of two hours for Officers);*
- *shift allowance;*
- *statutory holiday duty hours;*
- *statutory holiday travel;*
- *weekend work travel;*
- *weekend duty hours.*

2.6.2.2 *The recognition of statutory holiday duty hours includes:*

2.6.2.2.1 *An average payment which equates to T2 on top of normal pay rates for employees who work on statutory holidays;*

2.6.2.2.2 *An average payment giving an extra day's pay to employees who are rostered off duty on a statutory holiday.*

2.6.2.3 *The parties to this Agreement agree that the payment in 2.6.2.2.2 to employees rostered off duty is for the purposes of complying with the*

*provisions of the Holidays Act 1981, Section 7a. It ensures a paid day off is given for the statutory holiday concerned.*

2.6.2.4 *The parties further agree that this compliance has occurred prior to, and since, the passing of the Holidays Amendment Act 1991.*

[4] The Applicant and Respondent are agreed that the TWW includes a penal payment for working on a public holiday which is in excess of the requirement to pay time and a half under s 50 of the Holidays Act and is an enhanced entitlement within the meaning of s 6 (2) of that Act, which is as follows:

(2) *This Act does not prevent an employer from providing an employee with enhanced or additional entitlements (whether specified in an employment agreement or otherwise) on a basis agreed with the employee.*

[5] The Applicant and Respondent are agreed that there are a number of benefits and advantages to both parties using the mechanism of TWW to pay fire fighters working on public holidays. They want to maintain this arrangement. However, they say under the Holidays Act there is a question that arises as to whether or not this is permissible after 1 April 2007 when the transitional arrangements expire.

[6] If it is not in its current form the parties propose an alternative to separate from the TWW the additional penal payment for working on public holidays and paying the same via equal fortnightly superable payments over the course of the calendar year. The parties are requesting declarations on the lawfulness of TWW, and if it is not a lawful mechanism under the Holidays Act after 1 April 2007, does the alternative arrangement meet the legal requirements of the Act.

## **Decision**

[7] I have considered mediation as I must under s 159 of the Employment Relations Act. This is a matter that is of some urgency and involves experienced counsel who I am satisfied have had a number of meetings and discussions about how to address the issue. This application is an outcome of those meetings and discussions. In the circumstances mediation would not be constructive as an alternative to the matter proceeding to the Court given the issue, the urgency and the involvement of experienced counsel deciding on the current course. It is of course always open to the parties and their counsel to take any further initiative to go to mediation if they consider an outcome could be

achieved. Mediation will not deliver the type of declarations sought to resolve the employment relationship problem.

[8] Under s 178 of the Act I am satisfied that an important question of law is likely to arise in the matter other than incidentally (s 178 (2) (a)). The need for interpretation of ss 50, 53, 55 and 6 of the Holidays Act is likely.

[9] Urgency exists because of the 1 April 2007 date referred to under the Holidays Act and applying in the current circumstances ((s 178 (2) (b)). Not only will the problem potentially affect fire fighters but may have an impact on other 24/7 arrangements. Removal to the Court will also provide the parties with the earliest opportunity for clarity on the law without duplicated hearings and as a matter requiring judicial intervention (s 143 (e) of the Act)

[10] It is my decision to remove the employment relationship problem to the Employment Court in its entirety.

[11] There is no issue on costs in the Authority.

P R Stapp

Member of the Authority