

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** NZ Amalgamated Engineering Printing & Manufacturing Union  
(Applicant)

**AND** Bridgestone New Zealand Limited (Respondent)

**REPRESENTATIVES** Tony Wilton Counsel for Applicant  
Glen Jones Counsel for Respondent

**MEMBER OF AUTHORITY** James Crichton

**INVESTIGATION MEETING** On the papers

**SUBMISSIONS** 17 February 2006 and 23 February 2006

**DATE OF DETERMINATION** 10 May 2006

DETERMINATION OF THE AUTHORITY

*Employment relationship problem*

[1] The applicant, the New Zealand Amalgamated Engineering Printing & Manufacturing Union (the Union) wishes the Authority to resolve a dispute over the interpretation and application of the relevant collective employment agreement. The particular issue on which there is dispute is a decision by the respondent employer (Bridgestone) to require certain named employees who are long-standing day workers to work 12 hour rotating shifts in circumstances where those workers do not agree to those changes.

[2] Bridgestone operates a manufacturing factory which operates 24 hours a day, 7 days a week.

[3] The factory operates a shift system and in respect of the Union's members, the shifts are respectively styled the day shift and the rotating shift. The applicable collective employment agreement (the agreement) explicitly provides for those two different shifts and sets out different hours of work in respect of each. There are special conditions provided in the agreement for the rotating shift and another sub clause sets out conditions applying to all shifts.

[4] The applicant's members are tradesmen servicing the production operations of the factory and a defined number are attached to each shift of each cycle. Obviously, the work of the employer is impeded if there are breakdowns in production on any shift.

[5] Bridgestone says that in the period from April to July 2005, three fitters and turners on the rotating shift and one on the day shift resigned and despite their best endeavours, Bridgestone was unable to recruit replacements for the rotating shift.

[6] It is for this reason that Bridgestone elected to reassign certain workers who were members of the Union from the day shift to the rotating shift.

[7] That action by Bridgestone in effect created the dispute.

### ***Issues***

[8] The fundamental issue for determination is whether it is available to Bridgestone to transfer members of the Union from the day shift to the rotating shift without their consent.

[9] It is helpful to consider the various matters advanced in the parties' submissions, the bulk of which concern the interpretation of the agreement. In addition, Bridgestone's submissions advance an argument about the right to manage. In the succeeding sections, I discuss each of the relevant clauses of the agreement and finally consider Bridgestone's right to manage.

### ***Clause 3***

[10] Clause 3 simply sets out that the agreement in which clause 3 sits supersedes previous agreements concerning the same parties to the employment relationship.

[11] It follows that the rights and duties of the parties are to be determined on the basis of this agreement and not by reference to previous documents between them.

[12] There is no issue taken on the meaning of this particular clause, as between the parties.

[13] However, it is the case that one of the supporting arguments advanced by Bridgestone in respect of two of the workers concerned (Mr Sage and Mr Groom) has relevance for clause 3.

[14] In its statement in reply, Bridgestone notes that Mr Sage and Mr Groom had previously signed letters acknowledging the days and hours of work may be subject to change to meet operational needs *not known at the time of writing this letter*.

[15] On the face of it, that letter purports to vary the clear terms of the collective agreement and does violence to the *completeness* clause from the collective agreement, just recited.

[16] The letters in question were dated August 1997 so, even if those letters could be said to have survived in full force or effect from that time to the present day, they plainly can have no force or effect since the commencement of the present collective employment agreement which commenced on 12 May 2005.

[17] In relation to these letters then, I find that they are indeed, as the Union contends, inconsistent with the terms of the collective agreement (clause 3) and thus are overridden by the provisions of the agreement.

## Clause 6

[18] Clause 6 is entitled *Our Principles and Commitments*. There are a series of bullet points set out in the clause, the first of which is relevant for present purposes. It is:

- *The success of our business requires teamwork with people working together in the spirit of partnership;*

[19] The Union contends that this provision is simply an aid to interpretation and cannot be relied on to vary an otherwise clearly stated substantive provision elsewhere in the agreement.

[20] The Union also contends that a direction to long standing employees to make sudden and fundamental changes to hours of work is inconsistent with a *spirit of partnership*.

[21] Bridgestone, conversely, says that the relevant provision is not just an aid to interpretation but rather imposes *a substantive obligation on the parties, which must be given effect to where appropriate ... The clause makes it clear that one of the aims of the agreement is to promote the success of the business.*

[22] I have reached the conclusion that the words in clause 6 just referred to cannot have the meaning ascribed to them by Bridgestone. The words of clause 6 are general in nature. The meaning Bridgestone seeks to adduce from those words is absolutely specific in its effects. In my view, if the parties had intended the consequence Bridgestone seeks, they would have made specific provision in the detailed provisions later in the agreement where the operation of the two shifts is carefully set out.

[23] I am also encouraged to reach this conclusion by accepting the Union's submission that a direction made by an employer to unwilling employees to fundamentally and dramatically change their hours of work cannot, on any interpretation of the language, be seen as being *in the spirit of partnership*.

## Clause 7

Clause 7 is headed *Your personal development*. Sub clause 7.2 is relevant. It provides as follows:

*We [Bridgestone] may vary the scope of your job because of new technology, changed customer requirements or other business reasons or appoint you to a different role, after discussion with you.*

[24] As Bridgestone readily concedes, this provision does not apply to the circumstances of the present case because the workers affected in the present circumstances have not had their jobs altered in scope nor have they been appointed to different roles.

[25] However, it is submitted by Bridgestone that the clause is evidence of the parties' intention to redeploy staff when required for appropriate business purposes.

[26] Bridgestone then goes on to argue that the possible actions contemplated by clause 7.2 are in fact more drastic in their potential effects on workers than the alleged deficits on the workers affected in the instant case.

[27] It is argued that it would *be an absurd result* for this allegedly more drastic set of consequences to be visited on workers pursuant to clause 7.2 than the allegedly less drastic consequences that the workers in the instant case have suffered.

[28] That argument to me seems to beg the question. The fact is that there is a specific provision in clause 7.2 covering circumstances where the scope of the workers job is changed or a worker is appointed to a different role as a consequence of new technology, changed customer requirements or other business reasons. As Bridgestone concedes, that clause does not apply in this situation because the factual matrix is different. The very argument in this case is about the apparent absence from the agreement of a specific provision relating to the particular circumstances these workers found themselves in.

[29] Accordingly, I am not persuaded by Bridgestone's submission of an *absurd result* when the real issue is that the clause they seek to draw comfort from plainly does not apply to the particular circumstances of the present case.

### **Clause 8**

[30] Clause 8 is entitled *Hours of work*. It sets out in clear terms the nature of the two shift patterns that the workplace operates. Workers are either employed on a rotating or a day shift and each of those is defined and described in clause 8.

[31] The essence of the Union's submission is that clause 8 provides for effectively two quite distinct working arrangements on two separate shift patterns, that workers work in one or the other shift pattern and that a change to these arrangements requires a variation in terms of clause 5 of the agreement.

[32] The reference to a variation is quite specifically referred to in clause 8. The second bullet point in sub clause 8.6 says:

*Notwithstanding anything contained in this agreement, the parties agree that any provision in this part of the agreement relating to hours of work may be varied by agreement between Bridgestone New Zealand Limited and the Union subject to the process detailed in clause 5 ...*

[33] Bridgestone says that this general interpretation of clause 8 is incorrect because it is inconsistent with clauses 6.1 and 7.2 and because it would mean that any transfer from one shift to the other would effectively need to go through the Union's ratification process pursuant to the variation provision in clause 5 and that would be an absurd result, particularly because Bridgestone could deal with the matter alternatively by the use of clause 7.2 which as I have already noted refers to changes in the scope of a job or appointment to a different role.

[34] Bridgestone then goes on to argue that the intention of clause 8.6 (second bullet point) is to provide for circumstances where there is some fundamental change in the defined shift patterns like, for example, the starting or finishing times of a shift.

[35] Before I turn to consider clause 8.7 which really is the lynchpin on which the whole argument hangs, I need to deal with the interpretation that the parties have placed on the general meaning of clause 8.

[36] I accept the meaning ascribed to clause 8 in a general sense by the submissions of the Union. I agree with the Union's view that clause 8 creates two different sets of working conditions for two different shifts and that workers work one shift or the other.

[37] I accept Bridgestone's submission that the purpose of the second bullet point in clause 8.6 (the reference to the need to obtain a variation in certain circumstances), properly refers to situations where the structure of the arrangements set out in clause 8 for these two working arrangements is to

be changed. I do not consider that it would be appropriate to use the second bullet point in clause 8.6 as a means for altering the shift pattern that a particular worker or workers might work.

[38] The exception to the general provisions just described is contained in clause 8.7.

[39] The first paragraph of clause 8.7 reads as follows:

*All employees undertake to work together to ensure that in the absence of any employees for any reason, other employees will cover for them to maintain full production without compromising quality, safety or legal requirements. This may require working additional hours including changes between shift, changes from day work to shift work and vice versa.*

[40] Bridgestone says that this provision allows it to require workers to change from day work to the rotating shift where resignations or promotions create unfilled vacancies.

[41] The Union accepts that this exception clause allows transfer of workers to fill temporary vacancies caused by other workers being sick but says that it does not entitle Bridgestone to effectively fill vacancies on the rotating shift to use the Union's words *either permanently or on an open ended basis*.

[42] Bridgestone, on the other hand, relies on the phrase *for any reason* as evidence for the view that any absence of other workers, whatever its cause, allows such transfers.

[43] The Union says that clause 8.7, properly construed, needs to be read in its entirety and the paragraph just referred to needs to be informed by the two succeeding paragraphs which contemplate particular circumstances where other workers are *absent*. The Union makes the point that Bridgestone's interpretation of clause 8.6 effectively entitles it to transfer workers not to replace other workers who are *absent* but to replace workers who have left and thus created unfilled vacancies. In effect, the Union says that it is not true to say that there is, as the clause requires, an *absence of any employees for any reason* but rather a situation where those employees actually do not exist because they have left the job.

[44] I also accept the Union's submission that if the parties had intended that Bridgestone could effectively transfer between shifts with impunity, as the logical consequence of Bridgestone's position, then the parties would have provided for that to happen in this clause or elsewhere in the agreement. Further, had that been the intention of the parties, the succeeding paragraphs in clause 8.7 after the first paragraph upon which Bridgestone relies, would have been superfluous because they make particular provisions in respect of special circumstances of transfer. If the first paragraph created a general right of transfer, then the Union argues (and I accept), those succeeding paragraphs would be otiose.

### ***The right to manage***

[45] Bridgestone refers to the well known principle at law that an employer has the right to manage its own business. Bridgestone also draws my attention to Judge Travis' observation in *Sanson v. Auckland Regional Council* [1999] 1 ERNZ 708 at 719 that an employee cannot expect that his or her duties will remain unchanged for the whole period of an employment relationship.

[46] I think the short point with the right to manage submission is that that legal precept cannot, in my judgment, be relied upon to add to provisions of a collective agreement where the agreement is silent on a particular point.

***Determination***

[47] Both parties seem to accept that the effect of clause 3 of the agreement is to create a complete code between the parties. I am not persuaded that an analysis of the provisions of the agreement allows the employer, Bridgestone, to transfer workers from one shift to another without their consent. There is, in my view, no clear provision in the agreement which contemplates that situation on an open ended or permanent basis where those workers are being required to replace other workers who have left the job.

[48] It seems to me the parties did not contemplate this particular factual matrix when the agreement was negotiated and the present dispute arises from Bridgestone's understandable efforts to try to manage its business appropriately with unfilled vacancies in the rotating shift.

[49] For the reasons advanced, I find that Bridgestone is not entitled to transfer day shift workers who do not agree to work on the rotating shift to replace workers who have previously been employed on a rotating shift but who have now left the job.

[50] It follows that my interpretation of clause 8.7 is that that clause is intended only to allow transfers from one shift to the other in circumstances where there is an absence of an existing worker for whatever reason rather than a replacement of a worker who has actually left the employment.

***Costs***

[51] Costs are reserved.

James Crichton  
Member of Employment Relations Authority