IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 314A/07
5098512

	BETWEEN	SERVICE AND FOOD WORKERS' UNION NGA RINGA TOTA INC Applicant
	AND	AIR NEW ZEALAND LIMITED Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Simon Mitchell, Counsel for Applicant Andrew Caisley and Rachel Larmer, Counsel for Respondent
Investigation Meeting:	18 and 20 September 2007
Determination:	26 October 2007

DETERMINATION (No. 2) OF THE AUTHORITY

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[1] This determination concludes the investigation of an employment relationship problem that arose between the applicant Service and Food Workers' Union Nga Ringa Tota Inc (the SFWU) and the respondent Air New Zealand Limited (ANZ).

[2] SFWU had challenged the way ANZ was representing to new employees engaged by the company in ground handling services work, their rights and obligations in relation to becoming a member of the SFWU and thereby becoming employed under coverage of the collective agreement negotiated by the union with ANZ, such coverage being a benefit conferred by membership of the SFWU. The union had alleged that the actions of ANZ were carried out to undermine the SFWU, to sideline the ANZ-SFWU ground staff collective agreement and to dissuade new employees from obtaining coverage of their work from the collective agreement.

[3] Following an investigation meeting, on 9 October 2007 the Authority issued a determination under 5095812 in which, for the reasons given, it held at [64] and [65] as follows:

> *The grounds of the challenge made by the SFWU are upheld in respect of the misleading information supplied to new employees about the expiry of the CEA and access to membership of the union. In this regard I consider the actions of ANZ to be undermining of the SFWU and its members.*
>
> *I also find that the fundamental term has no effect in preventing new employees from joining the SFWU and having the terms and conditions of the CEA applied to their work in full.*

[4] No orders of compliance under s 137 and s 138 of the Employment Relations Act 2000, as had been sought by the SFWU against ANZ, were immediately made. Instead, the Authority adjourned the investigation for 7 days and directed ANZ to provide a report of the action, if any, the company proposed to take to correct the serious and damaging misstatement held to have been made in relation to the SFWU and the current force of its CEA. Also, ANZ was directed to report on any action it proposed taking to clarify the legal effect of the "fundamental term" expressed to be part of the employment agreement ANZ has been requiring new employees to enter into.

[5] Proposals in the above regards have duly been reported back by ANZ. They have been considered by the Authority, and I have had a telephone conference about them with counsel Mr Caisley and Mr Mitchell, and the Northern Regional Secretary of the SFWU, Ms Ovens.

[6] Although there are grounds on which compliance could be ordered, in view of the corrective action proposed by ANZ and the general consensus about the suitability of that action I find it is unnecessary to impose that remedy.

[7] To give effect to ANZ's proposals, correspondence is to be sent voluntarily by the company to those employees concerned in the matter determined by the Authority on 9 October 2007. This correspondence is to draw attention to the earlier incorrect advice given and is to state the correct information about the SFWU and the current force of the union's CEA. Also, the letter to be sent to new employees is to provide

more reasonably balanced information about the 3 unions whose collective agreements cover the ground handling services work; EPMU, AMEA and the SFWU.

[8] Further, existing employees are to be advised voluntarily by ANZ that the "fundamental term" has no effect in preventing an employee from joining the SFWU and, as a legal consequence, from having the terms and conditions of the union's CEA applied to their work. The Authority accepts the advice of ANZ that the fundamental term will not be expressed as part of the employment agreement sent in future by the company to new employees.

[9] The investigation is concluded accordingly.

[10] The question of costs shall remain reserved between the parties.

Alastair Dumbleton
Member of the Employment Relations Authority