

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

5083448
AA 216/07

BETWEEN NZ Steel Limited
 Applicant

AND New Zealand Amalgamated
 Engineering, Printing and
 Manufacturing Union Inc
 First Respondent

AND National Distribution Union
 Second Respondent

Member of Authority: Vicki Campbell

Representatives: Philip Skelton for Applicant
 Anne-Marie McNally for Respondent

Investigation Meeting: 27, 28 and 29 June at Auckland

Determination: 24 July 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, New Zealand Steel Ltd ("NZ Steel"), implemented a drug and alcohol policy on 1 April 2007. The policy applies to all staff employed by NZ Steel and includes a policy on random testing which comes into effect on 1 October 2007.

[2] NZ Steel asks the Authority for a declaration that it was lawfully entitled to implement and enforce its drug and alcohol policy on 1 April 2007 and its amended policy on 16 July 2007.

[3] The respondents' (the Unions) say NZ Steel has failed to consult about the purpose and content of the proposed drug and alcohol policy and has failed to comply with its contractual obligations by unilaterally imposing its policy without the unions agreement.

[4] As expressed to the parties at the investigation meeting, my investigation has been limited to the issues raised in the amended statement of problem filed in the Authority on 21 June 2007 relating to whether agreement

was required prior to the implementation of the policy and whether NZ Steel has met its obligations relating to consultation. I have not, in this determination, considered whether any specific aspects of the policy are lawful or otherwise. To assist the parties to resolve those issues a direction to mediation will be made.

Relevant terms from the collective employment agreement

[5] The relevant terms from the Collective Agreement are set out at clauses 7 – 9.

Clause 7 – SAFETY A JOINT RESPONSIBILITY

7.1 Joint responsibilities

Occupational Health and Safety is a collective responsibility requiring consistent efforts from everyone as required by the Health and Safety in Employment Act ...

Clause 8 – REPRESENTATION MATTERS

8.3.3 The objectives of the [combined union site] committee shall be:

- ...
- To initiate ideas and actions which increase the involvement of Union members in decisions which affect their employment.
 - To provide a regular forum for the exchange of views and information between the representatives of the Union and management.

8.5 SETTLEMENT OF DISPUTES

Where an employee (or any number of employees) have a dispute with management about the interpretation, application and operation of this Collective Agreement (or any of its supplementary documents) the matter will be dealt with in accordance with the provisions of the Code of Conduct.

Where either party interprets the agreement in a manner differing from existing custom and practice, and as a result wished to implement changes to existing custom and practice, no such changes may be implemented until either:

Agreement is reached on the changes; or
The matter is determined through the Employment Relations Authority".

9 CONSULTATION AND PARTICIPATION

9.1 DEFINITIONS

'Consultation' means to seek information or advice from; and to talk with and listen to each other's objectives, opinions and ideas. (It is accepted that negotiation may follow consultation).

'Participation' means to share in by common action and to provide employees with opportunities to participate in the decision-making process by providing access to information and opportunities for input.

9.2 INTENT

The parties to this CA are fully committed to continually improve employee relations. This will require an effective consultation and participation structure to be established and maintained prior to changes being made. It is recognised that employee security and welfare requires a joint cooperative approach ...

9.3 COMMITMENT

The parties commit themselves to a consultative approach taking into account each other's point of view, and the need to consult efficiently so that the business continues to respond to the pressures to make continuous improvement in a timely manner. Where consensus cannot be achieved in a timely manner, the parties will notify each other and reserve their respective rights. This will ensure that:

- employees have an opportunity to participate in decisions by contributing information and input;
- full use is made of employee's experience and ideas on the efficient running of New Zealand Steel;
- the parties have the opportunity to meet and understand each others' views and objectives.

[6] Consultation and participation are cornerstone concepts applying to the introduction of new work processes at NZ Steel. This is evidenced by the emphasis placed on consultation throughout the CEA and a memorandum of understanding signed by the parties in 2005 (see paragraph 8 below).

[7] The company has established a Strategic Co-ordinating Team (SCT) which consists of senior representatives from both the Unions and management pursuant to clause 8 of the CEA.

[8] The role of the SCT is to review site wide issues that can impact strategically onto the company's business. It is a senior management/union forum to share information and views on key strategic issues, with a view to ascertaining positive outcomes for both the business and its employees.

[9] As part of the negotiation discussions pertaining to the Collective Employment Agreement dated 1 June 2005 the parties put out a joint memorandum of understanding reiterating the consultative approach to changes in the workplace and which stated:

This memorandum of understanding between the parties is intended to clearly demonstrate the commitment that all the parties have towards achieving a forward thinking employment relationship that allows the trust factor in that relationship to be a principle that is constantly strived for by all. For example any draft policy changes discussed at the Manufacturing Council will be forwarded to the SCT for full consultation prior to any implementation.
[my emphasis]

[10] It was common ground at the investigation meeting that the memorandum was put together in the spirit of "no surprises". The unions were keen to ensure that during the term of the agreement, NZ Steel would not implement any new policies without full consultation with its employees.

Drug and Alcohol Policy

[11] In September 2005 an employee, Jason Palmer, voluntarily acknowledged to NZ Steel that he had a problem with alcohol. A process of rehabilitation and testing was put in place for Mr Palmer but in February 2006 he was dismissed following a positive test for alcohol. Mr Palmer raised a personal grievance for unjustified dismissal and sought reinstatement. The personal grievance claim was heard by the Employment Relations Authority in August 2006 and in September issued its determination, which found that Mr Palmer had been

unjustifiably dismissed. In its determination the Authority accepted the submissions of the union on behalf of Mr Palmer and commented:

This is a situation where the existence of a policy to deal with employees who have drug and alcohol problems would have been very helpful as there would have been clear and agreed guidelines about what was to happen in such situations.

[12] Following Mr Palmer's dismissal and during the investigation into his personal grievance NZ Steel took steps to research drug and alcohol policies with a view to implementing one.

[13] In March 2006 Mr McLeod, NZ Steel's employee relations manager, Dr Burley, NZ Steels company doctor, and Ms Pauling Hutter, the occupational health and safety manager, met and had discussions with Ms Sue Nolan from Environmental Science and Research Limited ("ESR"). Ms Nolan is the client development manager for ESR and is heavily involved in assisting New Zealand companies developing and implementing workplace drug and alcohol policies and programmes. Ms Nolan was one of the expert witnesses who gave evidence before the Full Court of the Employment Court in the *NZ Almalgamated Engineering Printing & Manufacturing Union Inc v Air New Zealand* case which is reported at [2004] 1 ERNZ 614.

[14] I am satisfied that the purpose of the meeting was exploratory. It was to seek information and to question Ms Nolan about her knowledge of drug and alcohol testing policies in the New Zealand workplace. I am also satisfied that no decisions as to whether a workplace testing policy would be implemented at NZ Steel had been made at that stage.

[15] In June 2006 Ms Nolan was invited and attended a meeting of the Senior Management team where she made a short presentation on the elements to be considered in a drug and alcohol policy including options for testing, together with information on an implementation strategy.

[16] In May 2006 Mr Matthew Beattie was also approached by NZ Steel to provide advice on the implementation of a drug and alcohol policy. Mr Beattie is the chief executive officer of Instep Limited. Instep Limited is a behavioural healthcare company and provides drug and alcohol rehabilitation services to New Zealand workplaces.

[17] Mr Beattie's involvement in the development of the policy was associated with the issues relating to rehabilitation. Rehabilitation was considered to be a

large part of the overall drug and alcohol process. Mr Beattie says he provided Mr McLeod with several different models of rehabilitation processes.

[18] In response to a request from Mr McLeod, Ms Nolan provided NZ Steel with a copy of a template drug and alcohol policy in August 2006. It was also at this time that the Authority was investigating Mr Palmer's personal grievance claim against NZ Steel during which the EPMU had been critical of NZ Steel for not having a drug and alcohol policy in place.

[19] Ms Hutter made some minor amendments to the template and passed it on to Mr McLeod. Ms Hutter says, and I accept, that draft document was only ever intended to be a discussion document for the purposes of consultation.

[20] The draft policy also included a section on rehabilitation which had been reworked from the documents provided by Mr Beattie. The draft drug and alcohol policy was tabled at the SCT meeting on 18 October 2006.

Has there been a breach of the CEA?

[21] The respondent maintains, NZ Steel was required to obtain their agreement before the drug and alcohol policy could be implemented. The respondents argued that the Employee Relations Reference Guide is a "supplementary document" pursuant to the CEA and therefore any changes to that document requires agreement. They point to clause 8.5 of the CEA and say that aspects of the drug and alcohol policy are contained within the Employee Relations Reference Guide and as there was no consensus or agreement on the drug and alcohol policy, NZ Steel is in breach of clause 8.5 of the CEA.

[22] NZ Steel recognises that proper consultation is required but maintains that agreement was not necessary before the policy was implemented. In its submissions NZ Steel relies on the judgment of the full court in *NZ Amalgamated Engineering Printing and Manufacturing Union Inc v Air New Zealand Ltd* [2004] 1 ERNZ 614 where the Court held that an employer could introduce a drug and alcohol policy without employee agreement, unless to do so would be to breach the collective employment agreement between the parties.

[23] Examples of supplementary documents were produced to the Authority for consideration. I am satisfied that the documents produced all relate to terms and conditions of employment which vary specific terms and conditions provided for in the CEA. The Foreword to the guide is informative as to its status which is

that the document is intended as a guide only. Also on page 2 of the document it states:

Purpose of this document

...It **does not** exist as a substitute or supplement to either the CEC or IECs covering employees within the organisation. Therefore, the purpose of this Reference Guide is to **explain aspects of the total employment relationship** for all BHP NZ Steel employees (CEC and IEC) – not to detract from or add to established provisions within our various employment contracts.

[24] I find there has been no breach of clause 8.5. For clause 8.5 to be applicable there needs to be a dispute about the interpretation, operation or application of the CEA or any of its supplementary documents or where the agreement has been interpreted in a manner differing from custom and practice which would result in changes being implemented. That is not the case here. NZ Steel have implemented a new policy, and have not attempted to change or interpret the CEA in a way which would result in changes to the CEA or supplementary documents being implemented.

Consultation

[25] What is required to meet the obligation of consultation depends on the context in which consultation is required (see *OCS Limited v Service and Food Workers Union Nga Ringa Tota Inc*, unreported, WC 15/06, 31 August 2006, Shaw J).

[26] The Employment Court in *Communication & Energy Workers Union Inc v Telecom NZ Ltd* [1993] 2 ERNZ 429 has stated the principles of consultation in a redundancy context as extracted from *Wellington International Airport Ltd v Air New Zealand Ltd* [1993] 1 ERNZ 671. In particular, the Court noted:

- (a) Consultation requires more than mere prior notification and must be allowed sufficient time. It is to be a reality, not a charade. Consultation is never to be treated perfunctorily or as a mere formality.
- (b) If consultation must precede change, a proposal must not be acted on until after consultation. Employees must know what is proposed before they can be expected to give their view.
- (c) Sufficiently precise information must be given to enable the employees to state a view, together with a reasonable opportunity to do so. This may include an opportunity to state views in writing or orally.
- (d) Genuine efforts must be made to accommodate the views of the employees. It follows from consultation that there should be a tendency to at least seek consensus. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done.
- (e) The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.

[27] Consultation requires parties to deal openly and fairly with each other, imparting and receiving information and argument with an open mind. The communication and consultation must be made at a time when the discussions

can still influence outcomes (see *Auckland City Council v NZ Public Service Association Inc* [2003] 2 ERNZ 386).

[28] At the SCT meeting on 18 October 2006 the union delegates were asked to nominate union representatives to form a joint consultative committee to work constructively together and if at all possible, to agree a drug and alcohol policy for NZ Steel. The period for consultation was to end in December 2006.

[29] On that same day (18 October 2006) the draft drug and alcohol policy was distributed via email to supervisors, team leaders, plant maintenance supervisors and engineers. The purpose of the wide distribution was to allow full discussion to be had with employees employed pursuant to individual employment agreements and to allow supervisors, team leaders, plant maintenance supervisors and engineers to answer any questions at the workplace, relating to the draft drug and alcohol policy.

[30] I note that until the drug and alcohol policy was implemented in April 2007 no further updated copies were made available to employees on individual employment agreements. Mr McLeod told me that because the draft document was a work in progress no changes were being released until a conclusion had been reached in the consultation committee, however, members of the joint consultation committee were fully entitled to talk about the discussions held at the consultation committee meetings with any staff members.

[31] Having said that, in December 2006 Tony Wright, vice president human resources, emailed all staff advising them that NZ Steel was planning to implement a comprehensive drug and alcohol policy at all sites and advised staff of the consultation process and email addresses to enable staff to provide their comments and individual input.

[32] Following the SCT meeting on 18 October 2006, the union's advised NZ Steel that it wished to seek legal advice before nominating representatives for the joint consultation committee. At the next meeting, on 1 November, the proposed drug and alcohol policy was raised again. Mr Peter Elsley, a full time site convenor based at NZ Steel, informed the meeting that the EPMU would not support any aspect of a drug and alcohol policy that provided for random testing.

[33] As events transpired, it wasn't until the next meeting of the SCT, on 17 November 2006, that the unions provided the list of nominated representatives

for the joint consultation committee. The first meeting of the joint consultation committee was held on 23 November 2006.

[34] Initially the joint committee were to meet weekly until the end of December for the purpose of consultation about the policy. However that timeframe was extended to the end of February 2007, due to the delays in nominating representatives for the committee and to take into account the Christmas/New Year period. The joint consultation committee met each Monday from 2.00pm to 4.00pm. The committee met on 11 separate occasions and visited Pacific Steel to see how the endorsed EPMU policy on drug and alcohol testing applied at that site.

[35] At the first meeting of the joint committee on 23 November 2006 it was stated, and seems to have been generally accepted, that the draft document was:

...a draft policy and is clearly a starting point. Important for all comments, suggestions, etc. to be considered throughout the consultation process.

[36] Further those present at the meeting agreed:

Stuart Smith be the facilitator for the sessions and that he would also record the key points from each meeting and send these out as soon as possible after the meeting to each member. These notes were then to be used as a briefing document to share with the general workforce as people seek information from the members. [my emphasis]

[37] In December 2006 two email addresses were set up to provide a forum for staff to provide their own feedback in to the consultation process. One email address for was those staff on individual employment agreements, the other for union members. Mr Elsley and Mr Mark Palmer (site delegate) were both provided with uncontrolled access to the email address set up for union members.

[38] On 19 December 2006 Ms Nolan was invited to attend a meeting of the joint consultation committee to answer questions and provide information. A similar invitation had been extended to the EPMU, however, Ms White was unable to attend the meeting.

[39] Ms Nolan says that the committee members and herself entered into a general discussion with a number of questions being asked about the robustness of the testing. Ms Nolan told me she felt the discussion was well rounded and all those present participated.

[40] It was common ground that the first amended draft of the policy document was made available after a request was made at the 15 January 2007 meeting of the joint consultation committee. The management representatives on the committee undertook to redraft the document to take into account the

changes and alterations discussed and agreed to by the joint committee. Prior to the amended document going back to the joint committee, Mr McLeod made the document available for the senior management team ("SMT") and sought approval for the changes.

[41] I am satisfied that the management representatives on the committee offered to make the changes to the draft document and that this offer was acceptable to those present at the meeting on 15 January 2007. The amended document then went to the SMT for approval prior to being tabled at the next joint consultation committee meeting on 22 January 2007.

[42] The union have argued that they did not have the opportunity to have input to the changes made at that time. I do not agree. It certainly would have been preferable to have a representative from the union assisting with the task of updated the draft document based on the discussions to date, but it was always open for any of those representatives on the joint consultation committee to have offered to assist. I am satisfied that the changes made to the document following the 15 January 2007 meeting reflected the changes discussed and agreed at the joint consultation committee meetings up to that date.

[43] At the meeting on 22 January 2007 the amended and marked up drug and alcohol policy was made available both via a power-point presentation and through hard copies of the document. The joint committee addressed the marked up version of the document and discussed the changes. By agreement, no minutes were recorded from this meeting and the marked up version of the policy was not made available to any other staff members.

[44] On 22 February 2007 the updated policy document was tabled at the SCT meeting and a presentation was made to the full committee about the policy. The minutes of that meeting state that the next steps would include training sessions to be run during March 2007. Mr Elsley is recorded in the minutes as commenting that he felt there had been a lack of information, and that the process did not feel like consultation.

[45] At the investigation meeting the respondent's witnesses told me the meetings of the joint consultation committee were not sessions during which its members were free to participate. I was told the union representatives were allowed to make comments only, but that there was no real discussion. NZ Steel's representatives on the joint consultation committee disagreed with that analysis of the meetings and told me the sessions were like brain storming

sessions. Everyone participated and had a full opportunity to have input into the draft policy.

[46] Having considered all of the evidence I am satisfied the meetings of the joint consultation committee provided an open opportunity for all those present to air their views fully regarding the drug and alcohol policy. This conclusion is supported by the evidence of Ms Nolan who was unequivocal in her evidence that during the meeting she attended on 19 December 2006 full discussion on a range of issues took place.

[47] Mr McLeod told me the management representatives were hopeful that the joint consultation committee would achieve a consensus on the policy however, from the outset, and subsequently, the Unions had made their views clear that the Union as a matter of principle could not, and would not, agree to any Drug and Alcohol Policy that included a provision for random testing. However, the consultation process continued as it was Mr McLeod's view that there were aspects of the draft drug and alcohol policy which could be agreed.

[48] Mr Mark Palmer, a union delegate and the current combined unions' site committee secretary, told me, the timeframe for consultation was insufficient to give genuine consideration to the large number of issues raised. He said while the period for consultation was extended from ending in December 2006, to early February 2007, union organisers, NDU representatives and other staff were off for extended periods over January and that this impacted on the ability of the union members on the consultation committee to consult with the membership.

[49] I find the timeframe for consultation over such an important policy was insufficient to allow proper consultation for union members outside the joint consultation committee given the time of year. However, I must balance that with what occurred post implementation of the policy on 1 April. As will be seen later on in this determination, the consultation process did not end in February 2007, but continued until shortly before the investigation meeting for this application.

The health and safety representative forum

[50] Another criticism about NZ Steel's consultation process was the alleged lack of consultation with the health and safety representatives.

[51] Consultation carried out in good faith with employees about a proposal which might impact on employees is guaranteed by the Employment Relations Act. To reinforce the importance of consultation in relation to areas of health and safety the Health and Safety in Employment Act 1992 places a positive obligation on all employers to ensure the participation of its employees in processes relating to health and safety (ss.19A and 19B).

[52] The Health and Safety in Employment Act amendment which came into force in May 2003 extended the definition of hazard to include a situation where a person's behaviour may be an actual or potential cause or source of harm to any person.

[53] The drug and alcohol policy has as its stated purpose:

New Zealand Steel has a goal of Zero Harm and is committed to achieving the highest standards of occupational health and safety. Consistent with this is an objective that employees at all levels of the organisation will be fit to undertake the duties of their role. This includes maintaining a drug and alcohol risk free workplace to support the continuous improvement in Health and Safety and business efficiency.

[54] Ms Hutter is the Occupational Health and Safety Manager and co-ordinates the Health and Safety forum which is made up of about 40 elected Health and Safety representatives. Managers and team leaders are invited to the forum meetings which are held monthly. This forum is an information forum only and is not a decision making forum.

[55] The respondents told me that in the October forum meeting, a well known former rugby player attended and advised those present that he had seen a copy of NZ Steel's drug and alcohol policy. Ms Hutter told me NZ Steel was attempting to be proactive in educating staff about the problems associated with the use of drugs and alcohol. As part of that education process the guest speaker had been invited to share his experiences with drugs and alcohol. Ms Hutter told me that it was also part and parcel of the development of the drug and alcohol policy but denies ever showing the guest speaker the draft policy.

[56] The respondents were critical of NZ Steel for not tabling the draft drug and alcohol policy in the health and safety forum until December 2006 and that this was a failure of the consultation process. It was common ground that at the December meeting there was a lot of discussion about the drug and alcohol policy, with ideas and submissions being made by those present. I am satisfied that there is nothing untoward about the fact that it was December that the draft drug and alcohol policy was tabled in this forum. The joint consultation committee did not meet for the first time until 23 November. As the health and safety forum

meets on a monthly basis it is more likely than not that December was the earliest possible opportunity for the draft paper to be presented to this group and discussed in any detail.

[57] In February 2007 the health and safety representatives asked whether they would receive a response to any of the issues they had raised. The respondents told me that, except for being told the material had been referred to the consultation committee, no further responses were made to the health and safety.

[58] Ms Hutter told me that following the meeting in December, follow up discussions also took place in February and/or March 2007 where feedback was provided and the final policy document was made available. Ms Hutter says that a further opportunity has been provided since then, in that Dr Burley and a company nurse attended a forum meeting to discuss testing procedures and rehabilitation.

[59] Ms Hutter told me that Mr Peter Duffy is the convenor of the health and safety representatives forum and that she had confirmed with Mr Duffy in February or March, that at subsequent forums it was appropriate to put the drug and alcohol policy on the Agenda. Ms Hutter does not recall it being required as an Agenda item following March.

[60] Also, it was common ground that while Mr Elsley and Mr Naysmith were not on the joint consultation committee as Health and Safety representatives, they did attend forum meetings and had a full opportunity at those meetings to discuss and update the forum members on the progress of the policy.

[61] I am satisfied that the health and safety forum members had a full opportunity to discuss and raise issues relating to the draft drug and alcohol policy and that this occurred in December 2006 and further opportunities were available on an ongoing basis.

Was the consultation a sham?

[62] The respondents claim that the consultation process was a sham because:

- NZ Steel had a fixed mind in relation to the contents of the drug and alcohol policy; and
- The proposal was fully documented before any consultation process was commenced.

[63] I am satisfied NZ Steel did not have a fixed mind in relation to the final content of the drug and alcohol policy. This conclusion is supported by the evidence and in particular the changes made to the original document following the 15 January 2007 meeting. Further, the summary of changes set out in the minutes from the final meeting of the joint consultation committee on 12 February 2007 show there were at least 10 key changes made from the original document.

[64] Indeed, when the evidence is considered from a distance, it could be argued (but wasn't) that the union representatives had a fixed mind in relation to Random testing. When Random testing was discussed at the final meeting on 12 February, the union representatives were firm that the union would not support random testing in any form. The minutes record the union members as stating that even if the NZ Steel joint consultation committee members approved the concept, union policy prevented them from supporting it.

[65] With regards the complaint that the proposal was fully documented before the consultation process commenced, I am satisfied that employers are entitled to have a working plan already in mind before consultation commences (see *Communication & Energy Workers Union Inc v Telecom NZ Ltd*). Further it is important that the parties to a consultation process know what is proposed before they can be expected to give their views on it (see *Toll NZ v Rail & Maritime Union* [2004] 1 ERNZ 392).

[66] I am satisfied that the document tabled at the SCT meeting on 18 October and which was then the subject of the discussions through the joint consultation committee was a draft document and was used as the basis for the discussions at the meetings. Further, the evidence has shown that the consultation process led to a number of changes to key provisions of the policy.

[67] It therefore follows that I find that consultation process was not a sham.

Consultation post 1 April 2007

[68] Following implementation of the policy on 1 April 2007 discussions have continued between the Unions and NZ Steel with further changes being made to the drug and alcohol policy.

[69] On 31 May 2007 Mr Elsey and Mr Palmer met with the Senior Management Team and an opportunity was provided for both men to air their

views about the policy. The meeting took approximately 2 ½ hours. Mr Elsley and Mr Palmer were advised that their views would be considered overnight. Mr Wright says the discussion was frank, constructive and amiable.

[70] On 1 June 2007, Mr Wright met with Mr Elsley and Mr Palmer as agreed. Three amendments to the policy were tabled and a discussion followed which lasted for between 30 and 45 minutes. Mr Elsley and Mr Palmer were invited to consider the changes and meet once again to enable further dialogue. Mr Wright says Mr Elsley told him they were only interested in removing random testing from the policy.

[71] Following those meetings and on 13 June 2007 Mr Elsely provided a comprehensive submission in writing to the SCT including footnoted rationale for further suggested changes to be made to the drug and alcohol policy including the complete deletion from the policy of a requirement for random testing. A number of the suggestions were accepted by NZ Steel and the relevant changes were made and were to be implemented on 16 July 2007.

Conclusion

[72] I find that agreement with the unions' was not required before the policy was implemented and that there has been no breach of clause 8.5 of the Collective Employment Agreement.

[73] I find that NZ Steel has met its obligations relating to consultation as required by the Collective Employment Agreement, the Employment Relations Act and the Memorandum of Understanding between the parties dated 1 June 2005.

[74] It therefore follows that NZ Steel were entitled to implement its policy on 1 April 2007 and its amended policy on 16 July 2007.

Costs

[75] Costs are reserved.

Vicki Campbell
Member of Employment Relations Authority