

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

Determination Number:  
WA 16/08  
File Number:5078551

BETWEEN                      POSTAL WORKERS UNION  
    INC and 64 OTHERS (as set out  
    in Appendix 1)  
    Applicants

AND                                DATAMAIL LIMITED  
    Respondent

Member of Authority:        G J Wood

Representatives:            Peter Cranney for Applicants  
    Derek Broadmore for Respondent

Investigation Meeting:      24 January 2008 at Wellington

Final Submissions:         Received by 12 February 2008

Determination:                13 February 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The union and its members covered by the collective agreement between it and the respondent (Datamail) seek a declaration that union members are entitled to an annual performance review (usually in June) and that any wage increase be at the employer's discretion, which must be exercised fairly and in accordance with the collective employment agreement. Datamail considers that it has met all its obligations to the union and its members under the collective agreement.

## The Facts

[2] The collective agreement applies to two parts of Datamail's business, the mail business and the scanning business (known as IMS). The agreement details Datamail's obligations as an employer to its employees, which include:

- *acting as a "good employer" by ensuring that employees are treated fairly and properly in all aspects of their employment;*
- *committing ourselves to equality of employment and providing employees with every opportunity to enhance their ability by providing performance reviews and access to and/or support for training and development;*
- *providing a safe and healthy work environment and;*
- *consulting with employees on important issues.*

[3] The section on remuneration provides that Datamail is to reward its employees for their contribution to achievement of the business goals as individuals and as part of a team and that a key objective of this is to establish and maintain fair and competitive wages. Clause 5.4 is entitled "Performance and Remuneration Reviews". It provides for formal performance reviews that are to be conducted once a year. The clause states that they are generally conducted in June with any applicable changes being effective from 1 July.

[4] The collective agreement also provides for wage scales. Within each of the grades (A-G) there is a minimum, a mid point and a maximum. The wages are set from 1 July 2006, but provide for a 3.25% wage rise on 1 July 2007. The collective agreement also provides that movement between grades is not restricted to six monthly reviews. People start at their appropriate training level for the role and upon assessment as being fully competent will progress to the mid point of the appropriate grade.

[5] While the employment agreement sets only minimum, mid and maximum points, a number of employees are in fact paid within the set rates (and even beyond the maximum in some cases). No one assessed as fully competent is, however, paid below the mid point and a number of union members are paid between the mid point and the maximum point.

[6] Datamail also relies on its standard terms and conditions (which it considers apply to all staff) and its "Human Resource Policies and People Practices" document. The human resources policy is specifically incorporated into the collective employment agreement, but may be altered by Datamail following consultation with the union.

[7] The standard terms and conditions provide for remuneration reviews and states:

*Your remuneration will be formally reviewed once a year by taking into account the following:*

- *Your achievements as measured against the agreed goals and objectives of your position as described in your role profile or as otherwise specified in writing;*
- *Relevant skills and attributes displayed by you in the performance of your duties and responsibilities;*
- *Your contribution to the written aims/goals of your work unit/team;*
- *The ease or difficulty in recruiting and/or retaining specific skills and/or experience required for the position.*

[8] Datamail's "Human Resource Policies and People Practices" document is dated February 2002. Its remuneration philosophy is said to be to attract and retain high quality staff at all levels and motivate them towards exceptional performance by:

- *Providing staff with fair and competitive remuneration, through regular reference to remuneration surveys and market information;*
- *Ensuring that an individual's rate of remuneration reflects the nature of the position held within the company;*
- *Recognising the performance of staff in terms of their contribution towards achieving Datamail's objectives as individuals and/or as members of a team.*

[9] This philosophy is to be achieved by a number of practices, including an annual review of salary/wage levels. The policy provides for how remuneration is to be reviewed in practice. It states as follows:

*An employee's remuneration should be formally reviewed once a year by taking into account the following:*

- *the employee's achievements as measured against the agreed goals and objectives of the position and described in their Role Profile or as otherwise specified in writing;*
- *relevant skills and attributes displayed by the employee in the performance of their duties and responsibilities;*
- *the employee's contribution to the written aims/goals of their work unit/team;*
- *the ease or difficulty in recruiting and/or retaining the specific skills and/or experience required for the position.*

[10] Remuneration is reviewed differently in relation to staff covered by a collective agreement compared to staff on individual employment agreements. The latter's remuneration is normally reviewed once a year as at 30 June as part of the performance appraisal process. For staff covered by a collective agreement, remuneration is normally reviewed once a year, as at 30 June, through negotiations with the union.

[11] The parties have negotiated for several years over a mechanism for measuring performance and translating that into remuneration, but agreement has not been achieved. It therefore follows that the parties remain bound by the terms of the employment agreement, which are fairly unambiguous.

### **Determination**

[12] The collective agreement is clear in its requirements. Employees are categorised by their responsibilities/skills and are then accorded a grade. Employees must be paid between the minimum and the maximum of the scale according to their grade. Any fully competent staff will be paid at least at the mid point.

[13] In addition to this employees under the collective agreement are entitled to performance reviews once a year. It is clear from the statement *any applicable changes being effective from 1 July* that the performance reviews may lead to changes in remuneration, otherwise the words *applicable changes* within this clause, which is entitled 'Remuneration', would be of no effect.

[14] Once a performance review has been completed a union member is to have their remuneration reassessed in accordance with the collective agreement and any of Datamail's remuneration policies and practices that are not inconsistent with the collective. Within those constraints it is clear that Datamail has a discretion whether to increase wages for individual union members or not. The question is whether Datamail's policies are inconsistent with this by simply relying on negotiations with the union for reviewing remuneration each year.

[15] It is entirely acceptable for an employer reviewing individual employees' performance in a remuneration setting under a collective agreement to negotiate with that employee's union, as the policy states. Any particular union member has a right, however, to dispute his or her performance review and any resultant change (or lack of change) to her or his remuneration. What Datamail must do is act fairly in rewarding employees according to the collective agreement and its own policies. In particular, Datamail must be able to demonstrate that each union member has been fairly rewarded for her or his contribution to the achievement of the business goals as individuals and as part of a team, plus that it has established and maintained fair and competitive wages for

each union member. There is nothing to stop Datamail doing that for each employee in consultation with the union, however, as long as each employee's circumstances are taken into account.

[16] These findings are consistent with the declarations sought by the union and its affected members, i.e. that they are entitled to an annual performance review, usually in June, pursuant to the Remuneration section in the collective employment agreement and that any wage increase is at Datamail's discretion, which must be exercised fairly and in accordance with the collective agreement. I make those declarations accordingly.

[17] I note, however, that Datamail considers that it has met its obligations in this regard to date. The only potential issue here is that it would be difficult, if not impossible, for Datamail to simply rely on its existing policy of "generally" fixing union members' pay rates by one overall negotiation with the union, if that is what has taken place to date, as that would not take sufficient account of the results of individuals' performance assessments.

### **Costs**

[18] Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**

**APPENDIX 1**

N King	L Lia	S Jolliffe
M Moananu	S Sului	S Hazelwood
M Manu	A Smith	S Aiono
M Kanara	S Sua	C Ranjan
L Vaa	S Ranchhod	R Smith
L Risati	S Pereira	J Saolele
L Miller	S Muffett	J Macdonald
I Naran	A Cleworth	A Atkinson
G Iti	F Viki	R Chhika
A Morgan	D Dee	W Simpson
W Nukunuku	R Rudman	V Aramoana
R Patel	R Connor	R Clarke
R Awatere	P Roberts	T Paku
T Mason	T Karawana	T Hodge
P Parag	P Kaipuke	P Chhika
N Uppalapati	N Seleni	N Kokulu
F Time	A Apuwai	E Wetere
E Cormack	D Thompson	D Walters
C Webster	C Tangianau	C Scott
C Pirika	C Pan	B Kowalczyk
A Salisbury	A Reedy	A Rangiwhetu
A PeraTiaki		