

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 76/08
5113572

BETWEEN NEW ZEALAND MEAT
 WORKERS AND RELATED
 TRADES UNION
 INCORPORATED-HAWERA
 SUB BRANCH
 Applicant

AND PPCS LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Megan Gunderson for Applicant
 Tim Cleary for Respondent

Investigation Meeting: 13 May 2008 at New Plymouth

Determination: 29 May 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an employment relationship problem on the interpretation of a collective employment agreement in regard to a question of any entitlement for an extra's week's leave.

Issues

[2] The employment relationship problem is about an issue of interpretation. Is there an entitlement in the collective employment agreement for an extra week's annual leave?

The Facts

[3] The parties' representatives have an agreed statement of fact. It reads as follows:

1. *The applicant is a sub-branch of the NZ Meatworkers Union, a registered union under the Employment Relations Act 2000.*

2. *The respondent employs approximately 300 members of the applicant at its Hawera meat processing plant, increasing during peak season.*
3. *The applicant organises its PPCS Hawera members through a sub-branch called the Hawera Meat workers Union.*
4. *Between 200 and 250 applicant member employees have been employed by the respondent for at, or in excess of, 6 consecutive seasons.*
5. *The dispute before the Authority concerns the interpretation of sub-clause 10.4 of the Richmond Limited Hawera Collective Employment Agreement 20 December 2004 - 20 December 2007.*
6. *The applicant says pursuant to sub-clause 10.4 qualifying employees are entitled to an extra week of annual holidays over and above the four weeks annual holidays mandated by the Holidays Act 2003 since 1 April 2007.*
7. *The respondent says qualifying employees are entitled to four weeks annual leave which coincides with the four weeks annual holiday mandated by the Holidays Act 2003 since 1 April 2007.*
8. *A likely pre-cursor to sub-clause 10.4 was the New Zealand (except Westland) Meat Processors', Packers', Preservers', Freezing Works Employees and the New Zealand Freezing Companies' Industrial Union of Employers Award dated 26 March 1970 ,which continued in force until 30 September 1971[Agreed Bundle of Documents-"ABD"- 'A'].*
9. *The subsequent national award dated 1 January 1987 to 31 December 1987 amended the additional week provision and continued until the enactment of the Employment Contracts Act (ECA) in 1991 [ABD 'B'].*
10. *A collective employment contract was negotiated between the applicant and the plant's then owner Lowe Walker Hawera Limited with the initial term later being extended to 31 March 1998 [ABD-'C'].*
11. *In March 1998 Lowe Walker Hawera Limited was sold to Richmond Limited and a collective employment contract expiring on 1 March 2002 was negotiated [ABD-'D'].*
12. *At or about September 2001 and in accordance with its usual practice the applicant tabled its claims for a renewal of the collective agreement [ABD -'E'].*
13. *Richmond Limited and the applicant entered into a new collective employment agreement dated 24 December 2001 which continued until 24 December 2004-[ABD 'F'].*
14. *In September 2004 negotiations commenced to renew the collective employment agreement. The applicant tabled its claims [ABD-G'].The parties' negotiating representatives were for the applicant John Woodhead, (Hawera Branch President), Doug Alderton (Hawera Branch Secretary), Paddy Luke, (Hawera Branch Vice President), and for the respondent Graeme Green, (Hawera Plant Manager), and Gordon Harrison, Operations Manager (Beef) for North Island Beef Production.*
15. *A new collective agreement was agreed effective 20 December 2004 for a period of 3 years and one day [ABD -'H']. During negotiations there was no discussion of the effect of the Holidays Act 2003 on the amount of annual holidays either current or in the future.*
16. *In 2005 the respondent purchased Richmond Limited and assumed its contractual obligations.*
17. *The expired collective agreement remains under negotiation.*

[4] The provision in the collective employment agreement for annual leave reads as follows:

10.0 Annual Holidays

- 10.1 *Except as specified in this clause, annual holidays should be allowed in accordance with the Holidays Act 2003.*
- 10.2 *At the end of each year of employment with the company, an employee should be entitled to three weeks annual holiday.*
- 10.3 *Annual holidays should be paid in accordance with the Holidays Act 2003.*
- 10.4 *An employee covered by this clause shall, upon completion of six years current continuous service with the company, be entitled for the sixth and subsequent years to an additional week of annual holiday. The fourth week's holiday may be taken in*

conjunction with or separately from the first three weeks holiday as agreed between the Plant Manager and the employee, provided that the employee may elect to be paid in lieu if taking the fourth weeks holiday. (my emphasis)

[5] The relevant provisions of the **Holidays Act 2003** are as follows:

Holidays Act 2003

3. Purpose

The purpose of this Act is to promote balance between work and other aspects of employees' lives and, to that end, to provide employees with minimum entitlements to –

- (a) *annual holidays to provide the opportunity for rest and recreation:*
- (b) *public holidays for the observance of national, religious or cultural significance:*
- (c) *sick leave to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on the employee for care is sick or injured:*
- (d) *bereavement leave to assist employees who are unable to attend work because they have suffered a bereavement.*

(5) Interpretation

- (1) *In this Act, unless the context otherwise requires, - **annual holiday** means an annual holiday provided under sub-part 1 of part 2 ...*

(6) Relationship between Act and employment agreements

- (1) *Each entitlement provided to an employee by this Act is a minimum entitlement;*
- (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.*
- (3) *However, an employment agreement that excludes, restricts, or reduces an employee's entitlement under this Act –*
 - (a) *has no effect to the extent that it does so; but*
 - (b) *is not an illegal contract under the Illegal Contracts Act 1970.*

Part 2 Holiday and leave entitlements

(15) Purpose of this sub-part –

The purpose of this sub-part is to –

- (a) *provide all employees with a minimum of three weeks' annual holidays to be paid at the time the holidays are taken; and*
- (b) *require employers to pay employees at the end of their employment for annual holiday not taken; and*
- (c) *enable employers to manage their business, taking into account the annual holiday entitlements of their employees.*
- (d) *to ensure that on and from 1 April 2007 when an employee next becomes entitled to annual holidays the*

employee's minimum entitlement is increased from three weeks' annual holidays to four weeks' annual holidays.

[Sections 41 and 42 and Schedule 1 substitutes four for three from 1 April 2007]

(16) Entitlement to annual holidays -

(1) After the end of each completed twelve months of continuous employment, an employee is entitled to not less than three weeks' paid annual holidays...

[Sections 41 and 42 and Schedule 1 substitutes four for three from 1 April 2007]

The Parties' Positions

[6] The union has argued that the following considerations need to be made:

- The setting needs to be taken into account including when the provision was first negotiated in 1966 and that it was a reward for length of service and involved the ability to get paid in lieu. There has been a length of time when the extra week has been a provision.
- The clause 10 included references to the "Holidays Act 2003".
- The Holidays Act 2003 and in particular having regard to s 6 of the Act that makes provision not to reduce and restrict any entitlement.
- The present case only deals with annual holidays.
- The case analysis supports the applicant having regard to the setting and interpretation of the Holidays Act 2003.
- Consideration is given to the "enhanced" and "additional" entitlement for the 5th week.

[7] PPCS has argued:

- The Authority needs only to interpret the plain meaning of the words of the clause contained in the collective employment agreement.
- The case law provides guidance on what the Authority should do to provide a consistent approach in the matter.
- The words of the collective employment agreement are clear and unambiguous.

Determination

[8] The leading authority relevant to the determination of this matter is a decision of the full court of the Employment Court in *New Zealand Tramways etc Union Inc & Anor v Transportation Auckland Limited and Cityline (New Zealand) Limited* 27 November 2006 AC 61A/06. The decision is presently on appeal in the Court of Appeal where leave has been granted to appeal. Apparently the Court of Appeal has heard the appeal, but has not decided the matter yet. The parties have requested me to proceed with my determination pending the Court of Appeal decision.

[9] In the *Tramways* case s 6 of the Holidays Act 2003 was identified as a pivotal provision by the Employment Court. Of particular significance s 6 (2) reads:

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

[10] The court went on to say that the word “*enhanced*” means enhancement of one or all of the four minimum entitlements under the Act. The increase of the statutory minimum of three weeks’ annual holiday at the time to say, four weeks, could be considered an enhancement. It acted on something already present. An “*additional*” entitlement was considered as something extra or supplementary such as special holidays for long service, which are often non-cumulative entitlements involving a stated number of weeks and to be taken in a defined period after the completion of a qualifying period. An “*additional*” entitlement was considered by the court as an entitlement other than one of the four entitlements under s 3 of the Holidays Act 2003 (annual holidays, public holidays, sick leave and bereavement leave). S 6 (1) stated that each entitlement provided by the Act is a minimum. S 6 (2) permits an employer to provide enhanced or additional entitlements to those provided under the Act. S 6 (3) makes provision for an employment agreement that excludes, restricts or reduces an employee’s entitlement under the Act will have no effect.

[11] Applying the court’s approach the clause means the fourth week was intended as an enhancement of the minimum entitlement of three weeks holiday at the time. However, also applying the court’s approach that clause now meets the minimum requirement under the Act for four weeks holiday with the reference to the Act put in by the parties. There was no express provision for providing an additional entitlement beyond the minimum entitlement of the “*fourth*

week". Thus the agreement complies with the 2003 Act. I find there is no reason to conclude that employees covered by the clause are entitled to a fifth week's holiday from 1 April 2007.

[12] Furthermore, the plain meaning of the clause provides for an entitlement to annual holidays at four weeks under the Act. Indeed the clause caps the entitlement at four weeks with the words: "*fourth week*". Therefore, do employees with 6 or more years' service get an entitlement included for the purposes of satisfying the statutory minimum entitlement to paid annual holidays of an extra week? Clause 10.4 applying "Annual Holidays" is qualified with the words "*an additional*" as it applies to "*An employee covered by this clause...*". It is consistent to regard this as an enhancement to the previous minimum statutory entitlement to annual holidays and was not covered by the parties' settlement. A different meaning than the one given by the court, and found in *Lyttelton Engineering Limited v New Zealand Engineering, Printing and Manufacturing Union Inc and Manufacturing and Construction Workers Union* (unreported) Philip Cheyne CA 116/07 26 September 2007, does not apply in this case because the entitlement counted towards meeting the statutory minimum entitlement for three weeks annual holiday, I find.

[13] The final matter of relevance arising from clause 10.4 is that there was provision that allowed the enhanced entitlement to be cashed up. The applicant says this distinguishes the entitlement from the *Tramways and New Zealand Dairy Workers Union v Fonterra Brands (Tip top) Limited* (unreported) R A Monaghan AA 185/07 20 June 2007 cases and makes the provision an additional provision where it was created to provide a reward for length of service. This is clearly a provision on how the parties provided the enhancement under that clause; particularly where the reference to the Holidays Act 2003 could only have been included by the parties to reflect the commencement of the Act; and there is no evidence of any other consideration of the affect of the Act on the clause. Also, the reason advanced for the "fourth week" applies equally if the provision was an enhancement or additional provision. The Act now renders the provision for cashing up the enhanced week ineffective on and after 1 April 2007.

Orders of the Authority

[14] The applicant's claim is dismissed.

[15] Costs are reserved.

P R Stapp
Member of the Employment Relations Authority