IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

WA147/08
5130044

	BETWEEN	NEW ZEALAND FIRE SERVICE Applicant
	AND	NEW ZEALAND PROFESSIONAL FIREFIGHTERS UNION Respondent

Member of Authority:	G J Wood
Representatives:	Steven Fraser for the Applicant Derek Best for the Respondent
Investigation Meeting:	30 September 2008
Submissions Received	By 29 October 2008
Determination:	6 November 2008

DETERMINATION OF THE AUTHORITY

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[1] This is a dispute between the New Zealand Fire Service and the Professional Firefighters Union (the PFU). The dispute is over whether or not firefighters are entitled to a minimum of three hours overtime for attending meetings when they would otherwise be off duty, or whether they are simply entitled to payment for the time spent actually at the meeting.

[2] The key issue for determination is whether attendance at such meetings is assessed as coming under the *Extended Shift* part of the overtime clause in the Collective Agreement, or the *Call-out* part.

[3] The parties have an extensive Collective Employment Agreement. There are two clauses which deal with overtime. They are as follows:

> *Extended shift*
>
> *2.6.10* *All time worked by shift workers outside the usual rostered shifts and Yellow and Black Watch workers outside of their daily hours shall be paid for at the rate of time and a half (T1.5) for the first three hours and double time (T2) thereafter. Provided that any overtime work on a Sunday, or a statutory holiday or after 1200 hours on a Saturday shall be paid for at double time (T2) rates. In computing overtime, payment shall be made for each one quarter hour or part thereof.*
>
> *Call Out*
>
> *2.6.11* *If at any time a worker is called out by the Chief Fire Officer after having ceased work for the day and left his/her place of employment, or before the normal time of starting work, such worker shall be paid a minimum of three hours at the appropriate overtime rate, provided that, for the purpose of this minimum, more than one call completed within three consecutive hours shall be deemed to be one call.*

[4] These provisions, albeit with slightly different wording, has been in existence for many years. On 29 June 1987 the Fire Service issued a circular concerning pre-arranged call-outs and pre-arranged overtime. The circular stated that a call-out would commence when an employee was called out by his chief fire officer to attend a fire or an emergency incident and that employee signifies their intention to respond to the call. The circular also provided that payment of three hours overtime at the appropriate overtime rate shall be made when pre-arranged overtime is cancelled at less than two hours notice.

[5] The PFU considered that approach unfair and questioned why firefighters should not receive a minimum of three hours pay when required to attend meetings, for instance. The same parties subsequently met as a Disputes Committee on 16 July 1991 under the chairmanship of Mr F M Maguire, statutory mediator, to decide this issue. Mr Best, amongst others, represented the Union that day, although I accept that he has no recollection of the Committee meeting.

[6] The question posed for the Committee was:

> *Is any worker who works overtime other than as a continuation of a shift, required to be paid a minimum payment of three hours pay at the appropriate overtime rate?*

[7] Mr Maguire's answer as the chairperson, given that the representatives were deadlocked, was *no.*

[8] If the words have not subsequently changed then such a decision would be binding on the parties (see for example *Northern Caretakers etc Union v. Bradbury Wilkinson & Co (NZ) Ltd* [1991] NZILR 660, where it was held that there is a presumption that if the parties used the same wording in subsequent documents to that used in a former document which has been the subject of a binding interpretation then they intended to apply it in the subsequent documents).

[9] In this case the parties' arguments do not differ significantly from those provided in 1991, with the issue focused principally on whether members who are called to a meeting must be paid three hours minimum.

[10] The union considers, then and now, that the decision was confused and contradictory. If so the time to have taken action was in 1991, when it could have exercised its right to appeal. The decision of the Disputes Committee is, however, now binding on the parties, given that it was not appealed. I therefore declare that pre-arranged officer meetings are not call-outs in terms of clause s.6.10.1 of the Collective Employment Agreement.

Costs

[11] Costs are reserved.

G J Wood
Member of the Employment Relations Authority