

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 241/08
5112287

BETWEEN THE SERVICE AND FOOD
 WORKERS UNION NGA
 RINGA TOTA INC
 Applicant

AND ISS FACILITY SERVICES
 LTD
 Respondent

Member of Authority: Dzintra King

Representatives: Tim Oldfield, Counsel for Applicant
 Mike Mulholland, Advocate for Respondent

Submissions Received: 27 May 2008 from Applicant
 No submissions received from Respondent

Hearing: 23 May 2008

Determination: 8 July 2008

DETERMINATION OF THE AUTHORITY

[1] The parties have a dispute regarding the interpretation of the ISS Facility Services Ltd (Manchester) Health Waikato Collective Employment Agreement covering service workers in Waikato hospitals.

[2] The respondent employs orderlies (also known as attendants) at Taumaranui Hospital. The orderlies work three shifts:

- 0700 – 1500
- 1500 – 2300
- 2300 – 0700

[3] The respondent disputes that the orderlies are shift workers.

[4] There is disagreement over whether, if the orderlies are shift workers, they are entitled to additional leave.

Are the orderlies shift workers?

[5] Clause 19.3 provides:

“Shift work” is defined as the same work performed by two or more employees or two or more successive groups of employs working successive periods.

[6] Only one employee works on each shift. The respondent says that there must be two employees on each shift before the workers are shift workers. I do not accept that interpretation. The “two or more employees” clearly refers to the working of successive shifts, that is, there must be one employee working shift A followed by another employee working on shift B. The duality refers not just to individuals but also to groups. The reference is to the total number of employees working successive shifts not the total number of employees per shift/period.

[7] The respondent says the orderlies do not do the same work. The parties agree that the tasks carried out on each of the shifts are not necessarily identical. The applicant says the shifts are back-to-back and there is a handover of keys and the cell phone at the end of shift. If the orderlies were not performing the same work one would expect that the shifts would not be back-to-back; there would be no reason the work could not be performed contemporaneously. The orderlies can work across a variety of shifts (the actual shifts demonstrate this). I accept that while the tasks may not be identical the work performed is the same. The workers are classified as orderlies/attendants. The respondent says there is a job description but the workers have not seen it and have been contracted to provide generic orderly duties.

[8] The orderly duties constitute shift work

Do the workers qualify for shift leave under clause 19.3 (A) (a)? /or under 19.3 (B)?

[9] Clause 19.3 (A) (a) reads:

Any shift work performed during a period which is not overtime that meets any of the following criteria qualifies for additional leave:

(a) the shift work performed each day:

- (i) extends over at least 13 continuous hours, and*
- (ii) is performed by two or more workers working rostered shifts, and*
- (iii) the shift involves at least two hours of work performed outside the hours of 8.00am to 5.00pm.*

[10] The respondent accepts that if the orderlies are shift workers then clauses 19.3 (A) (a) (i) and (iii) apply. The applicant contends that clause 19.3 (A) (a) (ii) also applies.

[11] Only one worker need work on each shift.

[12] The respondent says that the three duties are permanent and not rostered.

[13] When I look at the agreement the terms “roster” and “rostered” mean set hours. Clause 4 is the hours of work clause. Clause 4.1 refers to the ordinary hours of work not exceeding certain limits. Clause 4.7 says:

Overtime is incurred when the rostered hours have exceeded those outlined in clause 4.1 (a) and (b) above...

[14] The “rostered hours” are the ordinary hours of work.

[15] Clause 4.8 states:

- (a) No employee working 8 hour shifts shall work more than 5 consecutive duties without payment of overtime in one rostered week.*
- (b) No employee working 10 hour shifts shall work more than 4 consecutive duties without payment of overtime in one rostered week.*

[16] The orderlies work according to a published roster. “Rostered” means the shift that the employee has been scheduled to work.

[17] The criteria in clause 19 (A) (a) (ii) are satisfied.

Do the workers qualify for shift leave under clause 19.3 (B)?

[18] Clause 19.3 (b) reads:

Shift workers who work alternating shifts may qualify for additional leave according to the number of shift changes occurring during the year providing that employees who alternate on shifts which fall wholly between the hours of 6 a.m. and 6 p.m. will not qualify for extra leave.

[19] This clause recognises that there are employees who work shifts that are not alternating. Alteration denotes a change between two contrasting situations. I have been supplied with rosters that show that orderlies do carry out work on alternating shifts. Ms Mills alternates between afternoon and day shifts and another worker alternates between night and day shifts.

[20] The respondent says that this clause does not apply because the orderly duties are fixed and do not alternate. The evidence is contrary to this.

[21] I accept the applicant’s submission that each time a worker changes from one shift to another this constitutes a “change” in terms of clauses 19.3 (B) (i) and (ii).

Interpretation of Clause 19.3 (C)

[22] The parties agree that there is no entitlement to additional leave for orderlies pursuant to this clause. The respondent says it is ambiguous and seeks an interpretation.

[23] In order to qualify for shift leave under this clause the duties must commence between 0300 and 0600 or finish between 1800 and 2100.

Costs

[24] Costs were reserved. If the parties are unable to agree on this matter, the applicant should file a memorandum within 28 days of the date of this determination. The respondent should file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King

Member of the Employment Relations Authority