

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number:
WA 39/08
File Number:5114209

BETWEEN SERVICE AND FOOD
 WORKERS UNION NGA
 RINGA TOTA
 INCORPORATED
 Applicant

AND HEINZ WATTIE'S LTD
 Respondent

Member of Authority: G J Wood

Representatives: Tim Oldfield for the applicant
 Raewyn Gibson for the respondent

Investigation Meeting: By consideration of submissions received by 27 March
 2008

Determination: 9 April 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This matter has helpfully been the subject of an agreed statement of facts as set out below. The parties wish the matter to be determined speedily, particularly as Heinz Wattie's has, to its credit, held off implementing its proposed changes to the affected workers' employment until the Authority determines if it requires its employees' agreement or not. I congratulate the parties on having pursued this matter by way of a statement of agreed facts to the Authority for determination, rather than Heinz Wattie's seeking to impose its wishes on the union and its members.

[2] Those clauses in the collective agreement referred to by the parties are included as an appendix.

Agreed Statement of Facts

[3] The following parts of the Statement of Problem are agreed:

- a. *The Applicant is a trade union registered under Part 4 ERA.*
- b. *The Respondent is a duly registered company.*
- c. *The Applicant and the Respondent are parties to the Heinz Wattie's Ltd Principal Collective Employment Agreement ('PCEA') dated 15 August 2006 – 17 August 2008.*
- d. *The National Distribution Union Inc. and the New Zealand Amalgamated Engineering, Printing and Manufacturing Union are also parties to the PCEA. Those unions were notified of this dispute in accordance with s129 (2) ERA on or about 9 January 2008.*
- e. *On 17 October 2007 the Respondent initiated consultation with the Applicant because it wanted to change the duties of three of the Applicant's members being Bernie Hokianga, Phil Parahi and Bill Skedgewell ("the members"), who were employed under the "Stockmover A" classification in the PCEA.*
- f. *The parties have reached agreement in respect of Bill Skedgewell.*
- g. *The Respondent wanted to change the members' duties so that they were performing Food Processor duties two out of every three weeks and Stockmover A duties one out of every three weeks.*
- h. *The Respondent advised the Applicant of its view that it could unilaterally direct the members to undertake the Food Processor duties after consultation.*
- i. *The Applicant objected to this course of action and advised the Respondent of its view that the Respondent could not direct the members to change their duties in the manner proposed by the Respondent, even after consultation.*
- j. *On 7 November 2007 the Respondent advised that it intended to proceed with the change of duties.*

[4] The following parts of the Statement in Reply are also agreed:

- 2.1 *Bernie Hokianga, Phil Parahi and Bill Skedgewell ("the employees") are permanent employees of the respondent and members of the applicant.*
- 2.2 *During the course of their employment the employees have been engaged under the classification of "Stock Mover A", as specified in clause 75 of the collective agreement, in the "Simple Recipe Department".*
- 2.3 *On 17 October 2007 the respondent met with the applicant and two of the employees to initiate a consultation process concerning its proposal to modify the stock movers work patterns, pursuant to clause 8.2 of the collective agreement.*
- 2.4 *The respondent met with the third employee on 22 October 2007 following his return from leave.*
- 2.5 *The respondent's proposal is to modify the stock mover role so that the stockmovers permanently rotate, typically on a weekly basis, into other roles within the Simple Recipe Department.*
- 2.6 *The impact of the respondent's proposal would result in the stock movers working in their current roles for one week out of three, with the remaining weeks in the three weekly cycle, comprising food processor roles.*

- 2.7 *The rationale for the respondent's proposal is to ensure:*
- 2.7.1 *that there is sufficient skill coverage to meet its operational requirements during periods when the current stock movers are absent from the workplace;*
- 2.7.2 *that the stock movers and food processors are skilled to carry out a variety of tasks within the Simple Recipe Department.*
- 2.8 *The respondent initially sought written feedback from the applicant and the employees by 29 October 2007 however this timeframe was extended at the request of the applicant until 1 November 2007.*
- 2.9 *The parties met on 5 November 2007 for the purpose of canvassing the applicant's feedback.*
- 2.10 *The verbal and written feedback received from the applicant was given due consideration by the respondent before proceeding to reach a final decision on 7 November 2007 that it would proceed with its proposal to modify the stock movers duties albeit on a revised basis accommodating some of the issues which had been raised by the applicant and the employees during the consultation process.*
- 2.11 *The parties and the employees met on 7 November 2007 during which the respondent advised that it had reached a final decision and provided written advice to the applicant outlining the final decision.*
- 2.12 *The applicant advised that it did not accept the decision and disputed the respondent's right to proceed to modify the stockmovers duties without the employee's agreement.*
- 2.13 *The respondent has agreed to delay the implementation of the modification of the stockmovers duties pending the determination of the Employment Relations Authority on the "dispute" over the interpretation of the collective agreement.*

[5] The applicant, however, does not agree that the proposed changes involve a change to "work patterns".

[6] Additional agreed facts are as follows:

The Current Operational Tasks for Stock Movers

3. *In accordance with clause 75 of the Collective Agreement, a Stock Mover A's duties include the movement of product into and out of stores or containers, keeping accurate records of stocks and movements, using automotive data capture, loading and unloading trucks and operating forklifts in a safe and efficient manner.*
4. *The current task of the Simple Recipe/Seasonal stock movers is to ensure there is a continuous supply of empty cans in the Simple Recipe depalletiser.*
5. *Pallets of empty tin cans are delivered daily by truck to the simple recipe depalletiser.*
6. *The stock movers are responsible for:*
- 6.1 *Unloading the delivery trucks and storing pallets of cans in the depalletiser room.*

- 6.2 *Removing plastic wrap and the top layer board for the pallet load of cans;*
- 6.3 *Loading up unwrapped pallets of cans onto the depalletiser infeed so that the depalletiser can operate continuously.*
- 7. *The stock movers also carry out other general forklift driving including:*
 - 7.1 *Collecting and delivering pallets of rubbish to the appropriate disposal area;*
 - 7.2 *Delivering dry bags of beans to the blancher during baked bean production runs;*
 - 7.3 *Delivering containers of tomato paste to the paste operating room;*
 - 7.4 *Delivering pallets of can lids and ingredients to production areas.*
- 8. *Due to a reduction in the total number of stock movers in recent years, stock movers are assisted in these tasks by food processors when the stock movers are too busy and working on two lines.*
- 9. *There are times during low periods of production when the stock movers have carried out food processing work but this has been on a without prejudice basis.*

Proposed Changes

- 10. *The proposal is to modify the stock movers' duties so that they will also perform food processor duties.*
- 11. *The proposal is to rotate the stock movers so that they will carry out their usual stock mover A role for one week out of every three.*
- 12. *The other two weeks will be spent carrying out food processor duties involving a combination of different tasks which could include any of the jobs carried out in the food processor classifications as defined in clause 66 of the Collective Agreement.*
- 13. *When the employees in question are carrying out food processor roles the stock movers tasks will be covered by food processors who are trained in forklift operation.*
- 14. *These food processors are agreeable to modifying their existing roles to include stock movers duties.*
- 15. *Under the proposal the food processors will be paid at stock mover A rates when performing stock mover A duties.*
- 16. *Under the proposal the stock movers will be paid at the rate of stock mover A for all roles which they carry out.*

History of Rotational Roles and Changing Jobs

- 17. *The respondent has a history of changing roles and diversification of skills in the workplace.*
- 18. *A number of food processors have been trained and currently work as forklift operators and other stock moving operations as part of their regular rotational work.*
- 19. *The respondent has at all times permanently changed the role of a food processor to that of an operator maintainer.*
- 20. *In this role the operator maintainer will be a regular food processor for the majority of their working day but will also required to attend to simple breakdowns and machine adjustments which can be done without the aid of a fitter.*

Combined Classifications

21. *The respondent has historically and continues to engage staff whose roles consist of work defined in different classifications provided for in the Collective Agreement including the examples set out at paragraph's 18 and 19. This has occurred when either a new employee is employed to fulfil a role which combines work from different classifications or where an existing employee has agreed to perform a role which combines work from different classifications provided for in the Collective Agreement.*

Individual Skills/Attributes

22. *The respondent had proposed a meeting with the two employees, who have not agreed to change their duties, to ascertain what they consider to be the impediment/s to carrying out the proposed modified duties.*
23. *The stock movers are concerned that they may not be physically and medically capable of performing food processor work however there are a significant number of different food processing roles and the respondent has indicated its intention in its letter of 7 November 2007 (attached to the Statement of Problem) to allocate work which is appropriate to each employee's abilities and skills.*

23.1.1.1

Phil Parahi, one of the affected employees, has no medical conditions that would preclude him from performing food processor work; and

23.1.1.2

Bernie Hokianga, the other affected employee, may have medical conditions that would preclude him from performing food processor work, but the respondent has given an assurance that it will not require or direct Mr Hokianga to perform food processor work that he is not physically capable of doing.

Determination

[7] Heinz Wattie's proposal is clearly intended to promote a multi-skilled workforce, as well as to ensure that there are no shortages of stockmovers on any occasion. The issue for determination is whether the way it intends to address those genuine issues is permissible under the collective agreement, in other words whether a worker can be required to undertake work under two different classifications under the collective agreement.

[8] The collective agreement is not well structured, presumably because it constitutes an amalgam, over time, of various types of collective agreement. The agreement must be interpreted to take into account its origins, that it has evolved over time and that it was not drafted by legally trained people. On the other hand, past practice, even if unchallenged, can not be relied on to override the intention of the parties as determined from the words they used when concluding the collective agreement, although it may provide some guidance as to intentions where there is ambiguity. In all other situations the parties' words must be given their natural and ordinary meaning.

[9] On the basis of the above I therefore accept that the amalgamation of a number of documents is the most likely explanation for several apparent inconsistencies in the collective agreement, such as the existence of two clauses related to down-grading. I therefore also accept that clause 67, Reclassification and Regrading, applies to all classifications under the agreement.

[10] Under the law an employer has the right to manage his or her business (see for example *Auckland Regional Council v. Sanson* [1999] 2ERNZ 597 (CA) where the Council was entitled to change parts of employee's jobs provided that the changes were not substantial and thus essentially constituted another job). Therefore an employer is entitled to reorganise or restructure its business in accordance with this right, and no employee can expect his or her duties to remain unchanged after the commencement of their employment. What must also be taken into account, however, are the provisions of the collective employment agreement and their impact on the "right to manage". Thus while an employer's right to manage is no doubt part of the matrix in which a collective agreement is entered into, the terms of the agreement must prevail where there are incompatibilities.

[11] The issue for determination is whether under the collective agreement any group of classified jobs can be only put into one job within a grade and classification as the union claims, or between any grades across any classifications, as Heinz Wattie's claims. If the union is correct then any job changes such as those proposed would of necessity have to be dealt with as a reorganisation or like requiring a reduction in the number of permanent employees, whether that reduction is handled by termination, relocation, transfer, early retirement and/or voluntary redundancy or a combination of these means (i.e. the redundancy provisions).

[12] If there is a re-organisation or like cause to part of the operation, requiring a reduction in the number of permanent employees, people may become surplus and therefore a redundancy situation arises. This could be argued here. In this case there are too many people in the stock mover A position and thus there is insufficient work for them, even if this is because other staff are taking up the work. The redundancy clause may therefore be triggered by Heinz Wattie's, unless the collective agreement provides for an alternative.

[13] I accept that Heinz Wattie's proposal is consistent with the objectives of the collective agreement, such as in clause 6.1. There are separate classifications of work (clause 4.4) however, and each classification has different grades and pay rates within it. Clause 4.4 provides that each classification is categorised as a different type of work and/or operation. Clearly the classifications are for different groups of jobs by qualification and/or by different Heinz Wattie's operations. Within each grade (where such are provided) are a number of positions ranging from one to the many dozen. These are all separate jobs or positions.

[14] There is a need therefore; given that there are separate classifications for the two types of job Heinz Wattie's want the workers to do, for there to be some clause in the collective agreement that entitles it to move people within or between the grades and classifications. I conclude that changes to workers' positions, classifications or gradings may only be made, without recourse to the redundancy provisions, pursuant to Clause 67 (which provides for re-classifications and re-gradings) and clause 69.1, which allows Heinz Wattie's to downgrade positions.

[15] I conclude that clause 8 is not a clause which allows Heinz Wattie's to change workers' jobs without agreement, on the basis of *McCain Foods (NZ) Ltd v. Service and Food Workers Union Inc* [2004] 2 ERNZ 252. The collective employment agreement's redundancy provisions here are almost identical to those assessed in *McCain*. This case is therefore binding authority that such a clause is merely a policy rather than an operational clause. In any event, I conclude that the classifications of jobs under clause 4 are not the sort of *work patterns* or *working practices* that are envisaged in the collective as being changed merely by consultation. As highlighted above, the classification system is fundamental to the agreement about what jobs employees are to be categorised into and consequently how they are to be paid and otherwise treated. Had it been envisaged that reclassification could take place by Heinz Wattie's merely following the consultation clause then I would expect there to be provisions to that effect.

[16] Heinz Wattie's relies on clause 25.8, but merely because it can change employees' shifts without agreement does not prove it can similarly change their jobs. In fact it could be argued that the fact that this clause so clearly sets out Heinz Wattie's powers in fact favours the union's position, which is that this could not have been intended over job changes because no similar provision to clause 25.8 exists.

[17] Heinz Wattie's also relies on clause 63, but this only applies to allowances for fork lift driving duties done by workers classified as food processers frozen. I do not accept the union's submission that if Heinz Wattie's were able to combine duties in the way it says it can there would be no point to such a provision in clause 63. That is principally because it relates to allowances only, not job classifications, which set out the fundamental types of work and/or operations at Heinz Wattie's.

[18] Clause 67, Reclassification and Regrading, is one clause that provides for such alternatives. Downgrading does not apply, I find, because it is implicit in clause 67.3 that this is to occur only within classifications. This is because of the words *where it is necessary for a staff member to move to a downgraded classification*. The clause also appears to imply that such downgrading must

take place within a classification and does not allow a downgrading across classifications because of the words *in any one classification*.

[19] I conclude that if the parties had intended this to apply across classifications they would have said so. There is not necessarily any similarity between some of the jobs across classifications, such as engineers and laboratory workers. Thus any downgrading under clause 67.3 must only occur within a classification, which are positions with some similarities to each other.

[20] Clauses 67.5 and 67.6 relate to new operations and therefore do not apply. This therefore leaves the issue of combined jobs under s.67.4. The key issue for interpretation is whether or not Heinz Wattie's right to combine a group of classified jobs into one job, where it suits its operations, can apply across classifications. Clearly each classification is a different category of job, as the meaning of classification is *the systemic placement in categories*. The dictionary definition is therefore consistent with the classifications system in the agreement, which provides for different categories of work whether by Heinz Wattie's operation or by occupation.

[21] I note that in many of the gradings within a classification there are a large number of jobs, although others have only one, such as a tool maker. I therefore conclude that the first sentence of clause 67.4 means merely that Heinz Wattie's is not required to employ a person in every different position within the grades and classifications. I also conclude that it is more consistent with the tenor of clause 67.4 that the second sentence provides Heinz Wattie's with the right to combine a group of classified jobs into one job within the same classification only, for three reasons:

- (i) It is consistent with the first sentence of clause 67.4. Taken together it means that an employer does not need to hire a different person for each of the 20 or so jobs that might exist within a grade;
- (ii) The meaning of the phrase "*combine a group of classified jobs into one job*" is more consistent with such a power being limited to jobs within a grade and/or classification because of the word *group*. A group is defined as *a number of persons or things considered as a collective unit*.
- (iii) If Heinz Wattie's submissions were correct then (to chose an extreme example) it would be able to direct a tool maker to undertake what is clearly less skilled food processing work such as a cob husker, or direct an occupational health nurse to work as a bulk bin attendant, were it of that mind.

[22] I thus conclude that while clause 67.4 gives Heinz Wattie's the right to combine a group of classified jobs into one job where it suits its operations; this applies only to jobs within a classification. I leave open the question of whether clause 67.4 allows for combining jobs with different grades within the same classification.

[23] This leaves clause 69.1. While also entitled downgrading (as is clause 67.3) I conclude that it is also of general application, as clause 69 is entitled Other Wage Provisions and the other sub-clauses are clearly of general application.

[24] The sub-clause provides for an employee to be moved to a downgraded classification as long as every effort is made to transfer the employee to work within the same grade or classification, no one is downgraded more than one grade and one week's notice is given.

[25] Meaning must be given to the word *or*, in *every effort shall be made to transfer the employee to work within the same grading or classification*. These words clearly imply that the parties must have intended to give Heinz Wattie's the power to downgrade employees even where work within their existing classification is unavailable. It would, however, be inconsistent with the classification and grading system as a whole for Heinz Wattie's to be able to unilaterally transfer any person between any two jobs in any two classifications, unless specifically provided for. The previous examples of a toolmaker or occupational nurse being required to do less skilled food processing work are again apposite.

[26] Under the collective agreement, the grading systems provide for different pay rates for workers. There is not, however, any one grading system (by letter or number) that applies to the whole of any one classification and there are even some classifications where there are no grades. This implies that if wholesale *downgrading* by Heinz Wattie's across classifications was permitted, then the proviso about no downgrading by *more than one grade* would be meaningless in many circumstances, including those here.

[27] I conclude therefore that clause 69.1 can only apply where there is a grading system that can translate from one classification to another, if there are any. In the case of Stockmovers, they can only be downgraded from A to B within the Storepersons and Drivers Classification, unless in the job more than 12 weeks, as there is no other *downgraded classification* that could apply to them, as there are only grades A and B for stockmovers. I thus conclude that Heinz Wattie's intentions are inconsistent with the terms of the collective agreement.

[28] I therefore determine and declare that Heinz Wattie's is unable to unilaterally direct the Service and Food Workers Union's members Bernie Hokianga and Phil Parahi to change their duties as it currently proposes.

Costs

[29] Costs are reserved.

G J Wood
Member of the Employment Relations Authority

APPENDIX

Principal Collective Employment Agreement

Clause 4.4

4.4 Classifications

Classifications for the below types of work are included in the remuneration sections of this Agreement. Where operations commence that have no classification the parties shall meet to develop a new classification.

<i>Food Processing</i>	<i>Stores & Warehousing</i>
<i>Clerical</i>	<i>Electrical</i>
<i>Transport & Driving</i>	<i>Factory Engineering</i>
<i>Cafeteria Services</i>	<i>Departmental Safety Coordinator (DSC)</i>
<i>Occupational Health</i>	<i>Departmental Training Coordinator (DTC)</i>

Clause 6.1

6 JOINT OBJECTIVES**6.1 Joint Objectives**

The joint objectives of the parties to this Agreement are:

- *To grow and maintain the prosperity of the Company and its employees, and to recognise that all employees at all levels have a valued contribution to make towards the success of the Company.*
- *To develop more effective communication between managers, Unions and employees, and to maintain harmonious industrial relations through mutual cooperation.*
- *To develop and grow co-operation, consultation, shared information, mutual respect and teamwork.*
- *To improve the quality of products, processes and people within the business.*
- *To create a clear focus on customer satisfaction both internally and externally.*
- *To develop the productivity of the Company by a process of continuous improvement.*
- *To develop a highly skilled work force who have access to relevant qualifications, career paths, appropriate remuneration and job security.*

Clause 6.6

6.6 Team Responsibilities

Some of the team responsibilities shall include:

- *Achieving operational standards, targets and efficiencies.*
- *Efficient and effective labour utilisation.*
- *Minimising downtime.*
- *Timely and effective machine utilisation.*
- *Effective use of resources.*
- *Monitoring productivity and performance of the team.*
- *Meeting customer expectations.*

Clause 8

8. CONSULTATION

8.1 No Surprises

The parties agree that their relationship should be founded on the basis of “no surprises” and to this end agree to consult over matters listed in clause 8.2 which may significantly impact on the Employee’s employment, to ensure the relationship meets this objective.

The parties agree that while teamwork is essentially consultative on some occasions a more formal or broader form of consultation is required.

8.2 Parties agree to Consult

In line with this the parties agree to consult over:

- *Changing skill requirements, work patterns and working practices.*
- *Other changes affecting the welfare and employment of staff.*
- *to improve the working environment, including job design, training and career paths, with the aim of enhancing job satisfaction, to the benefit of all Heinz Wattie’s Limited employees.*
- *To assist with the maintenance and growth of Heinz Wattie’s Limited.*

Or when the Company plans to introduce technological change which is likely to:

- *Call for substantial changes in the nature/degree of skills of the employees concerned; or*
- *Substantially alter the hours of work, or*
- *Reduce the number of people employed.*

The Company shall notify the employees concerned and the Union of the introduction of such change and shall consult with the employees concerned through their Union on the manner of introduction of such change.

Clause 23

23 PROCEDURES FOR CHANGES TO WORK PATTERNS OR INTRODUCTION OF NEW WORK PATTERNS

For this clause, a “work pattern” is defined as the established or current pattern of work for the employees affected. The pattern reflects:

- *Number of ordinary hours per day or shift.*
- *Number of ordinary days shifts worked per week over the pattern.*

For example a change in a work pattern may mean a change from a standard 5 x 8 hour pattern to a 4 on/4 off 12 hour pattern or a 4 on 3 off 10 hour pattern.

Any proposal for change under this clause will be developed by the parties and will take into account the following:

- *Alternating, rotating or fixed shift work and the number of shifts required.*
- *The commencement time for the ordinary hours of each shift.*
- *The normal hours of work for each shift.*
- *The staffing levels on each shift.*
- *Safety and health issues.*
- *Job security and pay stability.*
- *The provision of food and beverages.*
- *Effects on individual employees or any other matters raised by any party to this agreement.*
- *The scope of work required by each classification of employee.*

Any proposed change developed under this clause will be dealt with under clause 11 (Variations).

Guidelines for incorporation into any variations established will be:

- *A duration of less than 8 week is not appropriate for the 4 x 4 shift*
- *Rosters must be established in advance with the intention of equalising the quantity of weekend work.*

23.1 Work Pattern Rates of Pay

Rates of pay associated with particular work arrangements are as follows:

4 days on 4 days off

- *To be established to deliver an equivalent outcome based on Monday to Friday @ ordinary rate, and T1 .5 and T2 on Saturday, Sunday. Other Payments to be reflected weekly.*

3.5 days on 3.5 days off (3 x 12 hour + 1 x 6 hour on consecutive days):

- *To be established to deliver an equivalent outcome based on Monday to Friday @ ordinary rate, and T1 .5 and T2.0 on Saturday, Sunday. Other payments to be reflected weekly.*

Clause 25.8

25.8 Transfer between Shifts**25.8.1**

When employees start a working week on any one of their rostered starting times and are switched to another shift¹ overtime rates shall be paid for the first shift of eight hours.

Where operational requirements necessitate a transfer between shifts, the personal circumstances of individual employees will be taken into account

In any transfer between shifts, employees will be entitled to at least nine hours off duty between periods of work. If, in order to take the nine (9) hour break, the employee can not commence work at the normal start time (of the shift they have been transferred to), ordinary rates shall be paid from the normal start time.

All work performed without a nine hour break shall be paid at double time rates.

25.8.2

The provisions of 25.8.1 will not apply where either:

Employees are required to switch a weekly shift (provided notice is given before the end of the working week); or Where employees request a change of shift for their own purposes

25.8.3

Transfer between shifts under 25.8.1 and 25.8.2 will be consistent with good health and safety practices.

Note: The parties acknowledge that the amendments to this clause do not alter the company's ability to require a change of shift by employees.

NOTE: Nothing in this clause shall apply to Drivers where such actions would counter the legislation in the Road Transport Act 1962.

Clause 49

49 REDUNDANCY**49.1 Intent**

The Company recognises the serious consequences that the loss of permanent employment can have on the individual employee and on the workforce as a whole and further recognises that there has to be special arrangements entered into to meet the human and socioeconomic problems the employees and their families face as a result of the changes proposed. This provision is designed to encourage voluntary redundancy and early retirement, rather than compulsory redundancy, wherever possible.

Should the introduction of new technology create surplus staff levels in a department or work area, the Company undertakes to provide adequate retraining or re-skilling in preference to redundancy wherever practicable.

49.2 Definitions

Redundancy – is a condition in which the Company has people surplus to its requirements because of the closing down of the whole or part of the Company’s operation (including shifting materials and/or production), and/or the re-organisation or like cause requiring a reduction in the number of permanent employees, whether that reduction is handled by termination, relocation, transfer, early retirement, and/or voluntary redundancy or a combination of these means.

Voluntary redundancy shall be available consistent with the provisions of this clause. An employee who opts for voluntary redundancy shall be deemed to be redundant and shall be compensated in accordance with the provisions contained herein.

49.3 Notification

The Company undertakes to give as much notice as possible to affected employees, but with a minimum of eight weeks. Provided that the Company may elect to pay the appropriate wages in lieu of notice or by agreement, the employee may elect to take wages in lieu of notice. This may apply to all or part of the notice period.

Should the Company dismiss any employee (for reasons other than for proven serious misconduct) during the period of notice, the Company shall pay the balance of the notice period in lieu, plus the appropriate redundancy compensation. Redundancy calculations for permanent full—time and part—time staff shall be made in accordance with clause 49.12.

An employee who receives notice of redundancy and who finds an alternative position during the notice of termination period and can provide effective proof of this may, with the consent of the Company terminate his/her employment prior to the expiry of the notice period without forfeiting his/her entitlement to redundancy compensation. The Company’s consent in such circumstances shall not be unreasonably withheld.

49.4 Voluntary Redundancy

The parties agree that compulsory redundancy shall only be an option available to the Company where requirements in terms of redundancy cannot be met through early retirement, transfer, relocation and/or voluntary severance, and to this end, employees can volunteer to stand in for redundant employees and receive the appropriate notice and redundancy compensation as is set out in this clause calculated on the basis of the volunteers service with the Company; provided that a redundant employee accepts a volunteer’s position and is assessed by the Company to be suitable to fill it.

Where an employee opts for voluntary redundancy and the Company declines to accept this option on the basis that the employee is classed as “essential personnel”, the matter shall be resolved in consultation between the parties to this Agreement.

It is agreed by the parties that voluntary redundancy shall be offered so as to avoid compulsory redundancies. To this end, the transfer, relocation and/or retraining of redundant employees shall be used when the number of employees opting for voluntary redundancy is in excess of the number of employees deemed surplus to requirements and/or where voluntary redundancy is sought where current staff numbers are to be retained. When more applications for voluntary redundancy are made and accepted for the positions available, the principle of longest service first will apply

49.5 Criteria For Selection Of Redundant Employees

It is recognised that the Company's need to maintain an efficient workforce and an efficient operation, must be taken into consideration in the selection of employees to be made redundant.

The Company reserves the right to select essential personnel who must be retained. Provided that where an employee opts for voluntary severance and the employee's duties can be taken up by some other suitably qualified or experienced employee through relocation, transfer or retraining, that employee shall have the right to opt for voluntary severance.

In determining redundancy, the Company will recognise the last on, first off" principle, all things being equal excepting that the Company and the Union concerned will have the right to vary this by agreement in particular circumstances affecting an individual employee.

The parties agree that an employee who is declared redundant and who is either

- *on Parental Leave; or*
- *absent due to extended illness or on ACC*

shall be entitled to the redundancy compensation prescribed in this clause.

49.6 Rights of Redundant Employees

All redundant employees shall be given reasonable opportunity to attend interviews for employment without loss of pay, provided that they obtain the prior consent of the Company. Such consent will not be unreasonably withheld.

On request, the Company shall supply a written reference/certificate of service to all affected employees which shall include a statement that the employee's termination was as a result of redundancy.

All employees made redundant shall receive all other payments to which they are entitled under this agreement (e.g. holiday pay, unused long service entitlements, etc.). These entitlements will not be offset against any redundancy compensation.

In order to best ascertain and deal with the employee's problems associated with the loss of employment, the Company will make available voluntary and individual counseling sessions with each redundant employee. Employees will be granted total confidentiality. If requested by the employee, an official/delegate of the appropriate Union shall be present.

The redundancy payments set out in clause 49.12 will be paid in a lump sum on discharge, and taxed at the appropriate rate as detailed in Section 69 of the Income Tax Act 1976 and its subsequent amendments.

The company shall supply each employee and the Union with an itemised written copy of the termination/redundancy calculation. Copies of the calculations shall be forwarded to the Union on the same day on which they are supplied to the employee(s) concerned. This information will be supplied three days before the termination date.

Redundant employees who are members of a Company superannuation scheme will be further compensated in accordance with any redundancy termination provisions in the scheme.

An employee who has received an issue of protective clothing and/or safety footwear in accordance with this agreement shall retain all their issue where that employee is made redundant, or opts for voluntary redundancy. An employee shall not be required to refund the cost of any such issue.

Should the Company require additional staff within 12 months of termination taking effect, the Company shall offer these vacancies to employees who have been terminated through compulsory redundancy and who have the appropriate skills and/or experience.

The basis of re-employment shall be that the person re-employed shall take on a new position on a like for like basis. Provided that an employee may apply for a position and, where no other suitably qualified or experienced person who has been made redundant is available, that employee shall be retrained by the Company if, as a result of that training, the employee acquires the requisite skills.

To facilitate this re-employment, redundant employees will keep the Company informed of their current address. Employees who are re-employed shall retain their service-related wage rate.

49.7 Alternative Employment

The parties agree that the retention of employees within the Company is important and, therefore, In respect of individual employees, the Company shall consider the availability of suitable alternative employment by way of transfer to a similar position, acceptable to the employee concerned, including transfer arising from re-location to another Company site. The Company agrees that, as of the date of notification of redundancy to the Unions, any requirement to recruit staff within Heinz Wattle's Limited shall be met in the first instance by seeking applications from within existing staff.

The Company agrees that it will use its best endeavours to secure alternative employment for surplus staff from within industry located both within the regions affected and elsewhere within New Zealand.

Any offer of alternative employment and re-location within Heinz Wattle's Limited shall be made in terms of clauses 49.7 and 49.8. The employee shall have one (1) week in which to consider the offer(s) and consult with their family and Union. All such offers shall set out the location, department, position, and/or shift being offered, the hours of work, wages, allowances, bonuses, and other relevant conditions pertaining to the offered position.

If, after the fifth (5) week but prior to the twelfth (12) week the employee finds the new position, department, and/or shift unsuitable, the employee may terminate their employment(giving one week's notice) and receive their appropriate redundancy compensation as set out in this clause.

An employee offered alternative employment shall retain all service-related benefits with the Company, e.g. service allowances, holidays, sick leave etc.

The parties agree that the provisions of this Clause shall apply to an employee who transfers within his/her existing Branch site.

49.8 Relocation Payment

Recognising the intent and ability of Heinz Wattle's Limited to provide alternative employment, Heinz Wattle's Limited is prepared to offer a reimbursement payment where employees accept suitable alternative employment at another site which requires a meaningful change of location such reimbursement payment to compensate for any additional travelling expenses and disruption which may be incurred by the employees as a result of the change

The relocation payment, which will be made as a once-only payment, will only be made as a result of a redundancy situation where alternative employment at another Heinz Wattle's Limited site has been offered as an alternative to redundancy and will be paid on the second day at the new location. The provisions of this clause will only apply where alternative employment has been offered and no change in residential address is involved.

The payment will be calculated based on the additional travel required by an employee between that employee's place of residence and their new place of work. The formula used is based on the additional kilometres travelled each day for 261 days of the year at the current mileage allowance payable under this agreement.

<i>Kilometres travelled per day</i>	<i>Payment</i>
<i>0-4</i>	<i>\$ 752.58</i>
<i>4-8</i>	<i>\$1,505.16</i>
<i>8-16</i>	<i>\$3,010.32</i>
<i>Over 16 kilometres</i>	<i>\$3,762.90</i>

Provided that, where the Company provides the transport to the new place of work, an employee shall not be eligible for payment under this clause.

An employee who terminates their employment because the new location has proven to be unsuitable, provided that the decision to terminate is notified to the Company no later than 12 weeks after taking up the position, shall receive the redundancy compensation they would have received at the time of transfer, less any payment that has already been made pursuant to this clause.

49.9 Transfer

Any employee offered alternative employment by means of a relocation within the Company's operation shall be offered the compensation and conditions contained in this clause.

In lieu of redundancy compensation, the Company may arrange the relocation of an employee to a suitable position at another Heinz Wattle's Limited site, provided that such position is acceptable to the employee.

A suitable alternative position shall be a position at a rate of wages and under minimum conditions of employment not less favourable than those which applied immediately prior to the transfer, unless at the employee's choosing, after consultation with the Union.

Note: Relocation means an alternative position within Heinz Wattle's Limited in a location in another town or district where an employee has to move his/her family, home and effects.

The Company shall assist an employee who has agreed to relocate by reimbursing actual and reasonable direct expenses incurred in such relocation. Such reimbursements will be:

- a. *Legal and land agents fees associated with the sale of the employee's existing home.*
- b. *Actual and reasonable household removal and family travel expenses.*
- c. *Legal fees associated with the purchase of a new home, except where this is the first home owned by the employee.*
- d. *The cost of school uniforms and/or other expenditure related to the education of children where these costs result from the transfer of children from one school to another due to the relocation of a parent*
- e. *Consideration of any special circumstances applicable to the employee.*

Note: The intent of this clause being that no employee shall be financially disadvantaged as a result of their transfer or arrangements connected thereto.

49.10 Training/Retraining

All employees will be given the necessary training to enable them to competently perform any new position taken. The Company will endeavour to arrange relevant retraining programs for individual employees where this is practical. With this in mind a training/retraining needs analysis will be undertaken and the findings discussed with the Union officials concerned.

49.11 Voluntary Early Retirement

An employee aged 55 years or over may elect to take early retirement. In the event of such an employee taking early retirement, that employee shall be entitled to the severance package prescribed in this Agreement

An employee who elects to take early retirement shall, where that employee is a member of the Superannuation/Pension Plan, be compensated in accordance with the Trust Deed.

The Company shall notify the Trustees of the Superannuation/Pension Plan that an employee has elected to take early retirement

49.12 Redundancy Compensation

A Permanent full-time, part-time employee shall receive severance compensation in accordance with the following scale, based on earnings at termination calculated in accordance with clause 49.12.

<i>Years of Service</i>	<i>Core</i>	<i>Service</i>	<i>Special Service</i>	<i>Severance</i>	<i>Job Search</i>	<i>Weeks</i>
<i>0-1</i>	<i>8</i>			<i>2</i>	<i>2</i>	<i>12</i>
<i>1-2</i>	<i>8</i>	<i>2</i>		<i>2</i>	<i>2</i>	<i>14</i>
<i>2-3</i>	<i>8</i>	<i>4</i>		<i>2</i>	<i>2</i>	<i>16</i>
<i>3-4</i>	<i>8</i>	<i>6</i>		<i>2</i>	<i>2</i>	<i>18</i>
<i>4-5</i>	<i>8</i>	<i>8</i>		<i>2</i>	<i>2</i>	<i>20</i>
<i>5-6</i>	<i>8</i>	<i>10</i>		<i>2</i>		<i>22</i>
<i>6-7</i>	<i>8</i>	<i>12</i>		<i>2</i>	<i>2</i>	<i>24</i>
<i>7-8</i>	<i>8</i>	<i>14</i>		<i>2</i>	<i>2</i>	<i>26</i>
<i>8-9</i>	<i>8</i>	<i>16</i>		<i>2</i>	<i>2</i>	<i>28</i>
<i>9-10</i>	<i>8</i>	<i>18</i>		<i>2</i>	<i>2</i>	<i>30</i>
<i>10-11</i>	<i>8</i>	<i>20</i>		<i>2</i>	<i>2</i>	<i>32</i>
<i>11-12</i>	<i>8</i>	<i>22</i>		<i>2</i>	<i>2</i>	<i>34</i>
<i>12-13</i>	<i>8</i>	<i>24</i>		<i>2</i>	<i>2</i>	<i>36</i>
<i>13-14</i>	<i>8</i>	<i>26</i>		<i>2</i>	<i>2</i>	<i>38</i>
<i>14-15</i>	<i>8</i>	<i>28</i>		<i>2</i>	<i>2</i>	<i>40</i>

15-16	8	30		2	2	43
16-17	8	32	2	2	2	46
17-18	8	34	3	2	2	49
18-19	8	36	4	2	2	52
20	8	38	5	2	2	55
<i>maximum</i>						

For service in excess of 20 years an extra payment of \$500 for each year of service over 20 years is payable.

49.13 Accumulated Sick Pay

Permanent full-time and part-time employees shall be entitled to payment of up to six weeks (30 days) unused accumulated sick pay, at current face value. Any redundant employee who will, under the Agreement, be entitled to a service related holiday within six months of the redundancy, shall be paid out the equivalent amount as though the holiday had been taken.

Unless otherwise specified, all compensation payable under this clause shall be calculated on the basis of the employee(s) average weekly earnings for the number of weeks physically worked in the twelve (12) month period prior to termination, provided, however, that this amount shall be not less than the employees average weekly earnings as provided for in the Holidays Act, or the employees current normal ordinary weekly pay, whichever is the greater. The 12 months period will be taken as the 12 months preceding the date of an employees termination.

Time employed as an apprentice shall be included in the calculation of total service.

If an employee who would have otherwise qualified for redundancy compensation has died since the date of the redundancy announcement, that employee's redundancy payment will be made to the nominated beneficiary, or estate. Such nominations are to be made by each employee and held offsite by a person mutually agreeable to all parties to this Agreement

49.14 Consultation

Should a potential redundancy situation arise, the Company will meet with the individuals Union, to consult over the justification for the redundancy, and the process to be followed.

Union delegates may seek assistance from Union officials where this is considered necessary, and local management may seek assistance from other management areas where this is considered necessary.

Such consultation will

- *Observe the spirit and intent of this clause;*
- *Ensure accuracy of payment and selection where applicable.*

Clause 66

66 FOOD PROCESSORS, WAGES AND JOB CLASSIFICATIONS – KING STREET

Classification	<i>15-08 2006 to 26-11-2006</i>	<i>27-11-2006 to 12-08-2007</i>	<i>13-08-2007 to 17-08-2008</i>
Grade 1 Food Processor means an employee who works under one of the following classifications	\$15.00	\$15.82	\$16.50
<i>Apple Tomato Evaporator Operator, Aseptic Filler Operator, Cooks, Quality Controllers, Krones Shrinkwrap Room Operators, Lamicon Labelling Operator, Retort Operator, Spaghetti Extruder Operator, Steam Peeler Operator, Computer Scales Operator, Sugar Plant Operator, Effluent Plant Operator, Cooker Operator, Hydrostatic Cooker Operator, Blancher Operator, Dry Goods Personnel, Paste Room Operator, Liquiverter Operator, Liquiverter Operator Sterilisation QC, Cooker Retort QC, Seam-testing</i>			
<i>NB: For Bright Stack Operators currently employed as at 1/11/04 or previously employed as a temporary Britestack Operator shall remain as Grade 1 Food Processors.</i>			
Grade 2 Food Processor means an employee who works under one of the following classifications:	\$14.24	\$15.02	\$15.66
<i>A10 Langsden Kamp Operator, Apple Peeler Machine Operator, Apple/Pear/M/C Feeders, Apple Grader/Dumper, Bin/Case/Pallet Controller, Blender Operator – Dry Foods, Fat and Meat, Brightstack Operator, Bottle Closer Operator, Bottle Filler Operator, Bulk Bin Attendant (Com), Can Seamer Operator (Straight Line Feed), Capper Operator, Flow Controller, Fruit Supply Operator (Line 4 Salads), Hot Break Operator (Tomatoes), Tomato Closure Operator (Mechanical Canned Fruit), Labelling Machine Operator, Lye Peeler Operator Peaches and Nectarines (no allowance), Mechanical Can Filler Operator (Fruit and Vegetables), Open and Closed Pan Operator (including Convenience Foods), Syrup Maker, Cook Attendant, Produce Reception, Line Checker, Sanitation Employees (Plant sanitising full time work), Spaghetti Blancher Operator, Shrink Wrap Operator, Spice Blender, Stretch Wrapper Operator, Tumbler Filler Operator, Vacuum Vessel Operator (Apples), Wrap-round Carton Packer Operator</i>			
Grade 3 Food Processor means an employee who works under one of the following classifications	\$13.47	\$14.21	\$14.82
<i>Apple/Pear Machine Feeders, Palletising (Tomato Line), A10 Can, Adjust Weigher (On line not check weighing), Asparagus Feeder, Asparagus Packer, Asparagus Case Loading, Fruit/Vegetable Inspection, Blancher Attendant, Blancher Line Supply Operator, Case Gluer, Can Depalletiser Operator, Can Line Attendant (Can Chaser), Can Packer Operator, Can Seamer Operator, Carton Closer Operator, Carton Erector Operator, Carton Wrapper Operator, Cherry Filling, Check Weigher, Filler Operator, Flow Controller (Vegetable supplies), Hand Labelling, Hand Packing into Carton/Crates, Inspection Assistant (Cans and Cartons), Peach Halves Grader Attendant, Line</i>			

<i>Inspector, Truck Wash (Tomatoes), Line Attendant, Cob Huskers, Cob Operator, Cob Feeder, Drum Filler, Pear/Nectarine Machine Operator, Peach Machine Clutch Attendant</i>			
Grade 4 Food Processor: An employee who works under one of the following classifications; Fruit/Vegetable inspection/Reconditioning	\$12.71	\$13.41	\$13.98
Grade 4 pay rates are to be used for the following: a. Employees who have not been employed by Heinz Wattie's Limited during the previous season. b. Employees who only work on belt inspection c. Employees with less than three months current continuous service. d. Employees who have not been paid at Grade 1, Grade 2 or Grade 3 in the previous season. To obtain Grade 3 pay rates employees must have exercised skill to the satisfaction of the Company on a Grade 3 position and must be prepared to undertake job rotation as required by the Company. After three months current continuous service Grade 4 employees will automatically be upgraded to Grade 3 pay rates.			
Recipe Kettle Cook Operator: An employee employed to carry out the duties of a Kettle Cook Operator in Recipe only. (This does not include Simple Recipe).	\$15.97	\$16.85	\$17.56
Cooker Operators: An employee, employed to carry out the duties of Cooker Operators or Hydrostatic Cooker Operators in recognition of the skills acquired to undertake Greasing, In line Checks, Filter Changes, Shear Pin Changes and assisting the Engineers with changeovers.	\$15.97	\$16.85	\$17.56
Roux/Kettle Cooks: An employee designated and capable of carrying out the duties involved in cooking Roux. (Note: Operator numbers to be limited to core crew members as determined by the departmental training co-ordinator).	Not applicable	\$16.85	\$17.56
Operator Maintainer: An employee designated by the Company in a Grade 1 position, who's primary duties are operating machinery and additionally are assessed as being competent to perform such duties as Lubrication, Changeovers, Machine isolation, dismantling and inspection, in a safe and timely manner in accordance with departmental standards and procedures.	\$15.97	\$16.85 ¹	\$17.56
Laboratory & QA Grade 1: An employee employed in the Laboratory, Quality Assurance Department to carry out duties involving analytical and microbiological analysis which will include routine preparation, analysis, documentation, cleaning calibration and research, and who has achieved NZCS or equivalent	\$18.39	\$19.40	\$20.22
Laboratory & QA Grade 2: An employee employed in the Laboratory, Quality Assurance Department to carry out duties involving analytical and microbiological analysis which will include routine preparation, analysis, documentation, cleaning calibration and research, and who has achieved Stage IV NZCS or equivalent	\$16.80	\$17.73	\$18.48

Laboratory & QA Grade 3: <i>An employee employed in the Laboratory, Quality Assurance Department to carry out duties involving analytical and microbiological analysis which will include routine preparation, analysis, documentation, cleaning calibration and research, and who has achieved Stage 111 NZCS or equivalent</i>	\$15.06	\$15.89	\$16.56
Laboratory & QA Grade 4: <i>An employee employed in the Laboratory, Quality Assurance Department to carry out duties involving analytical and microbiological analysis which will include routine preparation, analysis, documentation, cleaning calibration and research, and who has achieved Stage 11 NZCS or equivalent</i>	\$14.57	\$15.37	\$16.03
Laboratory & QA Grade 5: <i>An employee employed in the Laboratory, Quality Assurance Department to carry out duties involving analytical and microbiological analysis which will include routine preparation, analysis, documentation, cleaning calibration and research, and who has achieved Stage 1 NZCS or equivalent</i>	\$13.71	\$14.47	\$15.08

Clause 67

67 RECLASSIFICATION AND REGRADING

67.1 Classification if re-employed

Employees who have completed not less than 12 months' continuous service with the Company and are laid off work by the Company owing to a reduction of work shall, if re-employed within 12 months by the same Company, be paid the "after one year" service allowance specified in the applicable Common Allowances in addition to the rate for the grade in which re-employed, provided that they are available within ten days when required for re-engagement.

67.2 Higher Grades

To obtain classification in grades 1, 2, or 3, the employee shall have exercised the skill or responsibility for the grade for a minimum of five days, within a month, whereupon the employee will be paid for the higher grade from the time of commencement in that grade.

67.3 Down-grading

Where it is necessary for a staff member to move to a down—graded classification a minimum of one week's notice shall be given him or her. The work will continue to be paid at the higher rate during the period of notice whether or not he or she is employed on duties commensurate with the higher rate during this time.

Because of the nature of the industry, which with its frequent short production runs of particular crops or other food, causes more than just seasonal and non—seasonal variations of the number of jobs in any one classification at any particular time, the Company may — in special circumstances — leave an employee in his present grade until such time as he is appointed to another job of equal value.

67.4 Combined Jobs

There is no obligation on the Company to engage employees to fulfill each job as listed in the classifications. The Company shall have the right to combine a group of classified jobs into one job where it suits his operations.

67.5 New operations

Where a new operation is commenced during the currency of the Employment Agreement the following procedure shall be applied:

An interim rate may be agreed between the employee organisation and the Company.

Where agreement cannot be reached the operation shall be classified Grade 3 until assessment. The operation will proceed as normal.

In the event of a higher Classification, all employees will be back paid to the first day the operation commences. The classification committee shall consist of:

- a. Two members of the employee organisation, one of whom will be a paid official or his authorised representative.*
- b. Two members of the Company, one of whom will be the Site Services Manager or his/her authorised representative.*

67.6 Disputes over reclassification or regrading

In the event of disagreements or the classification committee not reaching agreement both parties agree to invoke the procedure as provided for in clause 50 and to the final decision of a Labour Department Mediator of the Employment Relations Authority.

Clause 69**69 OTHER WAGES PROVISIONS****69.1 Downgrading of position**

In the event that work within such grades is unavailable, every effort shall be made to transfer the employee to work within the same grading or classification. Should no suitable alternative be available and it is necessary for an employee to move to a downgraded classification a minimum of one weeks notice in writing shall be given. The employee will continue to be paid at the higher grade during the period of notice whether or not they are employed on duties commensurate with the higher grade during this time but in any event no employee shall be downgraded more than one grade.

In determining to downgrade the Company shall consider.

- a. The length of time to which the appropriate work shall be unavailable.*
- b. The options for training in alternative positions.*

The above provisions may be varied where the Company and employee agree to alternative work or grading application by request of the employee.

69.2 Classification process

To obtain classification in Grades 1, 2 or 3 an employee shall have exercised the skill or responsibility for the grade for a minimum of five days in any one month,

whereupon the employee shall be paid for the higher grade from the time of commencement in that grade.

Clause 75

75 STOREPERSONS AND DRIVERS – ALL SITES

Classification	15-08 2006 to 26-11-2006	27-11-2006 to 12-08-2007	13-08-2007 to 17-08-2008
Stock Mover B: An employee who works as directed in a store, driving, loading containers. After no more than 12 weeks shall progress to Stock Mover A.	\$14.92	\$15.74	\$16.40
Stock Mover A: An employee whose duties will include, the movement of product into and out of stores or containers, keep accurate records of stocks and movements, able to use automatic data capture, load and unload trucks, the operation of a forklift in a safe and efficient manner	\$15.21	\$16.04	\$16.72
Stock Controller: An employee who in conjunction with others maintains stock integrity within the stores, including engineering stores, keeps accurate records of movements and stores layout, performs cyclic stock counts and uses appropriate Company systems. Operates a forklift in a safe and efficient manner as required.	\$16.50	\$17.41	\$18.15
Advanced Stock Controller: An employee who in addition to the duties of Stock Controller, is required to complete transactions in the company's ERP system (Sales Order Processing & Inventory) OR manage stock levels and Store layout within a store, in its entirety within the Frozen and Dehydration Business.	\$17.81	\$18.79	\$19.59
Dispatch Controller: An employee who in addition to the duties of an Advanced Stock Controller, and within a Distribution/Storage system (Export/Local Market), is required to receive and account for all stock, manage customer orders and/or shipping instructions, arrange appropriate freight, liaise with Sales and Marketing staff, and liaise with external agents as required.	\$19.27	\$20.33	\$21.19
Scanner/Driver (applicable Frederick St Frozen Packing Facility Only): An employee so designated by the Company to be in this position will be paid this rate.	\$15.60	16.45	17.16