IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 79/09
5121911

	BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION INCORPORATED Applicant
	AND	ASURE QUALITY LIMITED Respondent

Member of Authority:	Paul Montgomery
Representatives:	Peter Cranney and Fleur Fitzsimons, Counsel for Applicant Paul White, Counsel for Respondent
Investigation Meeting:	29 October 2008
Submissions presented:	On the day
Determination:	11 June 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This matter is a dispute regarding the interpretation and application of a clause in the Hours of Work Agreement (HOW) at the Alliance meat processing plant in Nelson. The HOW is site specific however, the Collective Agreement is not, and the interpretation, it is submitted, may have implications beyond the Nelson plant. The dispute relates solely to the night shift.

[2] As the parties have been unable to agree, the applicant union has approached the Authority to resolve the matter.

The factual background

[3] The applicant and the respondent are parties to a Collective Agreement (CA). The clause germane to this dispute is clause (i) of Appendix 1 to the HOW;

> *The employees acknowledge and agree under clause 8.5(h) of the CA, that the shifts may require them to work more than five continuous hours without a meal break. In addition to the ordinary base hourly rate, ASURE will pay an allowance equivalent to 50% of the ordinary hourly rate for the period from when five hours is reached until a meal break is taken. Calculating the allowance due, extra time worked over five hours is rounded up to the nearest 15 minute interval daily.*

[4] Essentially, the dispute involves what constitutes a *meal break* on which hinges the correct rate of pay to employees if they work continuously for five hours without a meal break.

The investigation meeting

[5] The investigation proceeded by way of evidence from Mr Muscroft-Taylor, Operations Manager for the respondent and from Mr Douglas South, a senior meat inspector. Submissions from counsel for each party with the history of the dispute outlined by both from each of their client's perspective were then presented.

Analysis and discussion

[6] It is common ground that the HOW prevails over the CA in the event of an inconsistency between the two documents. The first question is: which HOW is the applicable agreement? The 2003 HOW was duly signed by both parties and the 2006 HOW has been in force since October of that year despite it being signed. Clause 3.1 of the later document states:

> *This HOW agreement is made under clause 8.2 of the PSA 2006 CA ratified on 16 March 2006.*

[7] It follows that, if tied to the ratified 2006 CA, the latter HOW document is the relevant document at issue in these proceedings.

[8] The wording of Appendix 1 clause 1 is significant. It reads:

> *The employees acknowledge and agree under clause 8.5(h) of the CA that the shifts **may** require them to work more than five continuous hours without a meal break.*

[9] It is only on occasions when this occurs that the additional allowance is payable. The use of *may* clearly denotes a variation from the usual shift pattern and is intended to provide for the allowance to apply only on those occasions when the five hours continuous work is exceeded before a meal break can be taken.

[10] A key element in the dispute is a failure of the documents to define a *meal break*. The position is compounded by the table set out in clause 4.1 of the HOW which calls the 7.37pm to 8.07pm break on the night shift a *smoko*. The New Zealand Oxford Dictionary defines *smoko* as:

> *(1) A stoppage of work for a rest (originally timed to have a cigarette etc); (2) a tea break.*

[11] The current practice, says the respondent, is based on the 1996 MAF Collective Employment Contract and the Human Resource Administration Guidelines issued alongside that contract. The latter document contains a clause:

> *Employees shall not normally be required to work for more than five hours continuously without being relieved from duty for a meal break for a period of not less than half an hour nor more than one hour.*

[12] This clause, in the respondent's submission, defines a meal break as a break or a stoppage of not less than half an hour nor more than one hour.

[13] Further, the respondent submits, this forms the basis of the current practice which provides two half hour breaks for meals in the course of the shift, although it concedes staff do not always take one of the two 10 minute rest breaks set out in the current CA.

[14] The current CA, at clause 8.7, states that employees are allowed two 10 minute rest breaks each period of duty (rest breaks are not meal breaks). The respondent says that as the night shift usually exceeds eight hours, all breaks on that shift are normally paid under Schedule 5 clause 4 of the current CA.

[15] The use of the term *smoko* in the table referred to above is misleading and I have turned to the factual matrix and previous practice to determine the dispute.

[16] The 1996 CE guidelines set out above and the length of the 7.37pm-8.07pm break, that is half an hour, lead to the conclusion that this break is a meal break not a stoppage for a rest.

Determination

[17] I find:

- That 30 minutes is sufficient time to constitute a meal break; the 7.37 pm to 8.07 pm break is 30 minutes long and constitutes a meal break.

- That employees bound by the current Collective Agreement are not usually required to work more than five hours continuously; and

- That on those occasions when the five hour threshold is exceeded, employees are entitled to the allowance set out in Appendix 1 of the HOW Agreement 2006.

[18] Having made the above findings, there is no need to consider the alternative submissions of the respondent that the applicant unreasonably withheld agreement under clause 8.2 of the CA.

Costs

[19] Costs are reserved. The parties are to attempt to resolve this issue between themselves. Should this not be achieved, Mr White is to lodge and serve his memorandum 30 days from the date of issue of this determination. Mr Cranney and Ms Fitzsimons are to lodge and serve their memorandum 14 days thereafter.

Paul Montgomery
Member of the Employment Relations Authority