

[3] Ports of Auckland say that briefing time applies only to incoming employees and the cea enables it to direct workers to finish work at any point up to and including the finish time set out in the cea.

[4] The issue for the Authority to consider is whether briefing time applies to outgoing as well as incoming workers.

The relevant terms of the CEA

[5] Clause 5 of the cea provides for briefing time – a paid half hour before the start of an incoming shift. For the purposes of this determination the relevant provisions are:

5.1 Basic Working Week

5.1.1 *The basic working week for permanent employees covered by this schedule shall be **40 ordinary hours** and shall consist of any **five, eight hour shifts Monday to Sunday inclusive**.*

The ordinary hours of work shall be as follows at:

<u>Shift</u>	<u>Start</u>	<u>Finish</u>
Night	23:00	07:00 (8 hours ordinary time)
Day	07:00	15:00 (8 hours ordinary time)
Afternoon	15:00	23:00 (8 hours ordinary time)

5.2 Briefing time

5.2.1 *The normal start times shall be as follows for Stevedores and Leading Hands:*

Shift	Start
Night	2230
Day	0630
Afternoon	1430

5.2.2 *This start time is to allow for communication and briefing of the Employee Teams prior to commencing work and to allow for:*

- a) *seamless transfer with the employees starting work;*
- b) *taking breaks or finishing work e.g. in the Portainer cab, onboard the ship and at the straddle park.*

5.2.3 *The seamless transfers commence after the briefing has been completed and through out the shift are to ensure that the impact on the operation is minimised and that a normal service returns as soon as practicable.*

...

5.3 General

...

5.3.6 All employees shall report to the vessel, the job or work location assigned or advised by the company at the nominated start time. All travel, washing and change time shall be undertaken outside the normal start and finish times.

The factual context

[6] There is no dispute that until 24 August 2009 the outgoing shift stopped assigned duties before the end of their shift. This is a long standing practise which allowed workers to conclude their assigned duties and return to the mess room before the end of the shift.

[7] There is some dispute as to why this practice developed. Witnesses for MUNZ said briefing information might be exchanged in the mess room during this time, it ensured the completion of assigned duties did not run over the shift time and provided time for workers to be transported back to the mess room before the end of shift. Witnesses for Ports of Auckland said the provision of briefing information from outgoing workers to incoming workers was an informal practise and not part of the formal briefing for incoming workers at the start of their shift.

[8] On 10 August Jonathon Hulme, Ports' manager – stevedoring, issued a memo which provided:

Shift Times:

The current practice of operations ceasing is as follows:

- *Ferguson berths* - 06.30hrs, 14.30hrs and 2.30hrs and,
- *Bledisloe berths* - 06.20hrs, 14.20hrs and 22.20hrs

This differs to what is required in the CEA. The shift start and finish times as stated in the CEA are:

<u>Shift</u>	<u>Start</u>	<u>Finish</u>
<i>Night</i>	<i>23:00</i>	<i>07:00</i>
<i>Day</i>	<i>07:00</i>	<i>15:00</i>
<i>Afternoon</i>	<i>15:00</i>	<i>23:00</i>

Adherence to the above times will be a requirement from the 1st shift Monday the 24th August 2009. It is expected that Stevedores are required to work to the end of the shift being 07:00hrs, 15:00hrs, 23:00hrs respectively, as per the finish times agreed to in the CEA.

Briefing Time:

Briefing time is important and allows for the opportunity to have staff briefed of issues that they need to be aware of to conduct their work for the day in a safe and effective manner. Briefing time is for the incoming shift only and starts at the 06:00hrs, 14:30hrs and 22:30hrs. Below are the relevant parts of the CEA regarding to Briefing time requirements:

...

[clauses 5.2.2 and 5.2.3 CEA as set out in paragraph [5] above]

To facilitate an improvement in our seamless transfers, Stevedores who are at work are now required to continue working until the incoming shift employee is ready to change over at the point of work, (e.g. at the Portainer Cab, onboard the ship, on the berth, at the straddle park up area).

I expect that all Straddle Drivers will adhere to this requirement from Monday the 24th August 2009.

[9] On 17 August Mr Mitchell replied on behalf of MUNZ objecting to the notified change and setting out the MUNZ's position:

...

1. *Briefing time must be used for a period of briefing;*
2. *Briefing time may be used for stevedores to leave the mess room to attend the ship or machinery;*
3. *Briefing time is also used by those employees who are concluding a shift to return back to the mess room.*

Employees are entitled to be in the mess room, their work having concluded, at the time that their shift ends. Employees are not required to remain in the straddle, crane or on the ship until such time as the conclusion of the shift. In addition, for straddle drivers, the changeover must occur in the straddle park. Clause 5.2.3 of the Agreement [the cea] recognises that change over will lead to a reduction in normal services, and the briefing half hour may be used to minimise this.

[10] Adrian Tocker, Ports' human resources manager wrote to Mr Mitchell on 20 August setting out the company's position:

Briefing time relates to the start of a shift, not the conclusion and provides for seamless transfers to the portainer cab, onboard the ship and at the straddle park with the staff who are finishing work or taking breaks.

The start and finish times of shifts are set out in clause 5.1.1. It is clear that the shifts finish at 07:00hrs, 15:00hrs and 23:00hrs.

We appear to agree on this. In addition, clause 5.3.6 of the CEA clearly specifies that all travel, washing and change time shall be undertaken outside the normal start and finish times.

...

This briefing time does not, however, affect an employee at the end of their shift. Clause 5.3.6 makes it clear that they are to remain at their work location until the conclusion of their shift – whether 07:00hrs, 15:00hrs or 23:00hrs.

The union's view that these are matters that now require agreement is not accepted. In any event, agreement has clearly been reached in the CEA.

We do not view it as unreasonable that we expect people to work through to the end of their shift. Therefore we will be proceeding in relation to the above matters as previously stated from the commencement of the 1st shift on the 24th of August 2009.

[11] Subsequently, on 21 August MUNZ filed an application seeking urgent compliance orders in relation to this issue. The parties attended mediation through the week beginning 24 August and the investigation meeting proceeded on the Friday of that week.

MUNZ's position

[12] Mr Mitchell submits that to give effect to clause 5.2.2 the half hour briefing time must apply to outgoing workers as well as incoming because:

- (i) The ideal of the *seamless transfer* does not preclude work stoppage and in fact work stoppage is anticipated in clause 5.2.3 of the cea;
- (ii) the start time is used by both incoming and outgoing employees;
- (iii) cl 5.2.2(b) is a clear reference to outgoing workers – why would this be referred to in the clause if the half hour briefing time did not extend to outgoing workers; and
- (iv) clause 5.3.6 does not override clause 5.2.2 because the general provision overrides the specific, *travel* is a reference to what occurs off site and cannot mean travel within the site, an interpretation consistent with current practice (eg, travel made around the port at the start of work or during breaks is paid time).

Ports of Auckland's position

[13] Mr McIlraith submits:

- (i) the clear meaning of clause 5.2 is that briefing time is for workers on the incoming shift;
- (ii) clause 5.1.1 sets out the finish time for each shift;

- (iii) clause 5.2.3 provides that seamless transfers will occur after briefing has been completed;
- (iv) in relation to custom and practise – there is no consistent practice on site, the asserted practise is inconsistent with the clear words of the cea;
- (v) the cea expressly excludes all custom and practice¹ in force prior to the cea coming into force.

Discussion

[14] I accept counsels' submissions regarding the legal position as regards the interpretation of contracts: in the absence of ambiguity the plain words of the provision stand² and context is relevant³.

[15] The provisions of the cea are clear. There is no ambiguity. No other proposition was put to the Authority.

[16] The cea provides for a paid half hour prior to the start of a shift. The purpose of this paid half hour is set out in the cea:

- (i) to allow for communication and briefing to occur (first sentence of clause 5.2.2);
- (ii) to allow for a seamless transfer with incoming employees (clause 5.2.2 (a)); and
- (iii) to allow for taking breaks and finishing work (clause 5.2.2(b)) .

[17] The evidence is clear that outgoing workers do not take part in the formal pre-shift briefing process.

¹ 3rd paragraph, clause 1 Stevedoring Schedule of the cea

² *Sadler v Quotable Value New Zealand Ltd* [2004] 1 ERNZ 45, citing *Yoshimoto v Canterbury Golf International Ltd* [2004] 1 NZLR 1

³ *Assoc of Staff of Tertiary Education Inc v Hampton* [2002] 1 ERNZ 491

[18] At the conclusion of briefing time the incoming shift commences. The parties have agreed in their cea that they will aim for a seamless transfer of work at that point (clause 5.2.3). This will mean the outgoing shift will have to have finished work by at least the conclusion of the briefing because an overlap between shifts would offend against the seamless transfer. This necessity is expressly provided for at clause 5.2.2(b).

[19] I find the plain meaning of 5.2.2 is to provide a paid half hour to incoming workers to allow them to commence their duties at the conclusion of that half hour fully briefed without overlap with the outgoing shift. The half hour briefing does not extend to outgoing workers.

[20] The concern of outgoing workers that they will be directed to commence duties which cannot be completed prior the end of their shift is answered within the cea. Such shift overlap would breach the seamless transfer principle and offend the express finish times provided in the cea.

[21] I accept Mr Mitchell's submission that the reference to *travel* in clause 5.3.6 cannot inform clause 5.2.2 because it is not possible for all travel on site to be undertaken outside the normal start and finish times.

Conclusion

[22] The cea does not provide for work to stop half hour before the end of each shift.

Costs

[23] Costs are reserved. If the parties cannot resolve this issue themselves upon request the Authority will set a timetable.

Marija Urlich

Member of the Employment Relations Authority

