

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 203/09  
5140099

BETWEEN                      POSTAL WORKERS UNION  
   OF AOTEAROA  
   Applicant

AND                              NEW ZEALAND POST  
   LIMITED  
   Respondent

Member of Authority:      Vicki Campbell

Representatives:            Simon Mitchell for Applicant  
   Naomi Jones for Respondent

Investigation Meeting:      7 May 2009

Determination:              24 June 2009

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**DETERMINATION OF THE AUTHORITY**

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[1]      A dispute has arisen as to whether members of the Postal Workers Union of Aotearoa are entitled to be paid for the day on 15 December 2007. New Zealand Post Limited (“NZ Post”) denies the employees are entitled to be paid for the day.

[2]      On 14 December Ms Keri Tangaroa, the Branch Manager of the New Lynn Postal Depot telephoned Ms Teri Williams, the Union Delegate and advised that the toilets would not be working the following day.

[3]      Ms Williams was advised that members would be paid to leave the branch and use alternative toilets. This was considered acceptable.

[4]      On arrival at work on Saturday 15 December 2007 the situation was different to that described the previous evening. Not only were there no toilets, but Ms Williams was advised there was no running water. This advice later turned out to be incorrect.

[5] On arrival at work employees were asked to attend a team brief at about 6.30am. Employees were told that there were no toilets available for use at the branch, they were not to use any running water, porta-loo's could not be arranged at short notice and that employees would be paid to go off site to use toilet facilities elsewhere.

[6] Following the team brief, the members of the union met and determined that the issue was a health and safety issue and employees should not be required to remain at work. This message was passed onto Ms Tangaroa at about 6.55am.

[7] Ms Tangaroa immediately spoke to Ms Williams and advised her that cold running water was available but no toilets. Ms Williams repeated her earlier advice that employees were going to leave due to a health and safety issue. Ms Tangaroa advised Ms Williams that if employees did leave their workplace, they would not be paid. Ms Williams had already advised her members that they would be paid for the day due to the issue being a health and safety one.

[8] Arrangements were made for port a loo's to be delivered at 9.00am. Those employees still at work were advised of the arrangements for the port a loo's, however, some union members still chose to leave.

[9] The employees who left the depot were only paid for the hours they had worked.

[10] The issue for determination is whether those employees who left the depot and did not return should have received payment for the day.

### **Health and Safety obligations**

[11] The Health and Safety Regulations at section 4 requires:

- (1) Every employer shall take all practicable steps to ensure—
  - (a) That facilities of the kinds described in subclause (2) of this regulation are provided at every place of work under the control of that employer; and

- (b) That any such facilities are suitable for the purpose for which they are to be used; and
  - (c) That any such facilities are provided in sufficient numbers; and
  - (d) That any such facilities are maintained in good order and condition; and
  - (e) That all employees have access to any such facilities in a way that is convenient to them.
- (2) The facilities referred to in subclause (1) of this regulation are—
- (a) Toilets:
  - (b) Hand-washing facilities:
  - (c) Means of leaving the place of work in an emergency:

[12] The Union submitted that the failure by NZ Post to provide only limited facilities was a failure to adhere to its obligations under the Health and Safety in Employment regulations. That it was this failure that led to employees leaving the workplace.

[13] The obligation under the regulations is for the employer to take all practical steps to ensure facilities were provided. Alternative arrangements for toilet facilities had been agreed to on the evening of 14 December. There were also facilities for hand washing available at the branch. I am satisfied NZ Post took reasonable steps to rectify the issues it faced on 15 December and that these steps were taken within a reasonable timeframe.

[14] By 7.20am Team Leaders and Union Delegates were aware of the steps taken by NZ Post to provide toilets and running water (albeit not hot water) was available for hand washing. A number of the employees who left that morning, did so after they were advised that the situation had been resolved.

[15] Further from 7.40am Ms Tangaroa began contacting all those members who had left the workplace and advised them they could return to work as the situation had been completely resolved. The majority chose not to return to work.

[16] The employees who left the workplace did so with undue haste. Further, Ms Williams advice that members who left the workplace would be paid for the day was misconceived and without authority. Given the good faith obligations on parties to an employment relationship to be communicative and responsive one would have

expected Ms Williams to discuss with Ms Tangaroa what the situation would be if members chose to leave the worksite, before communicating with her members.

[17] Ms Williams in her written evidence referred the Authority to a situation which occurred approximately eight weeks later when a similar problem occurred where no water or toilets were available. In that situation the staff were sent home and all staff were paid for the day.

[18] That situation can be distinguished from the immediate matter on its facts. In January 2008 there was no running water and it was NZ Posts decision to send staff home. On those facts it would seem the employees were available for work but could not be offered any as a result of the instruction from NZ Post to go home. In those circumstances it was quite appropriate for staff to be paid for the day.

[19] In this case, I find there is no basis for a finding that members of the Postal Workers' Union of Aotearoa should be paid for the day of 15 December 2007.

### **Costs**

[20] Costs are reserved. I am of a mind to let costs lie where they fall. However, I encourage the parties to resolve the matter of costs between them. If the parties fail to reach agreement on the matter of costs, NZ Post may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority