



[3] In order to address a large overtime bill, Tenix has been consulting with its field workers in the Eastern region (specifically in Tauranga) about a proposal to introduce two new work patterns on a trial basis.

[4] Tenix says that through the collective employment agreement it is able to introduce new work patterns provided the work patterns comply with the hours of work provisions as set out in the collective agreement. The EPMU disagrees with Tenix and says that the proposed new work patterns represent a variation in ordinary hours and that the agreement of the EPMU is required before the new work patterns are introduced.

[5] The parties are now in dispute as to the interpretation of clause 5.6 of the collective agreement. At issue is whether Tenix is within its rights to disestablish its current work pattern and implement the two proposed work patterns.

### **Clause 5.6**

[6] The principles regarding the interpretation of a contract are well established. Where the words used in the agreement are clear and unambiguous then that should generally determine the matter.<sup>1</sup>

[7] Clause 5.6 of the collective agreement states:

#### **Ordinary Hours**

The ordinary hours of work shall not exceed eight (8) hours in any one day or forty (40) hours in any normal working week, commencing on Monday and ending on Friday between the hours of 0630 and 1830. Ordinary hours of work and the ordinary week may be varied by agreement within teams providing the proposed hours of work are acceptable to Management and suit operational requirements.

[8] I find the words of clause 5.6 are both clear and unambiguous. The first sentence defines the number of ordinary hours that can be worked in either one day or one week. That is, 8 ordinary hours each day, or 40 ordinary hours each week. This interpretation is consistent with the wording in clause 5.7 which provides for overtime rates to apply for all time worked in excess of the ordinary hours of work. That means overtime is payable either after 8 hours worked in any one day, or 40 hours has been worked in any one week.

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<sup>1</sup> *NZ Tramways & Public Transport Employees Union v Transportation Auckland Corporation Ltd* [2006] 1 ERNZ 1005; *Air NZ v Barker* [2002] 2 ERNZ 719.

[9] Clause 5.6 also requires that the normal working week commence on a Monday and ends on a Friday. Further, the ordinary hours, that is the 8 or 40, must be worked within a span of hours starting not earlier than 0630 and finishing not later than 1830, each day, Monday to Friday.

[10] Clause 5.10 requires employees to be available to be on standby outside their “normal” hours of work. In this case the normal hours of work are from 7.30am to 4.00pm each day Monday to Friday. I have concluded that the parties, in negotiating and agreeing on the wording of this provision have used the word “normal” instead of “ordinary” intentionally to distinguish between the two.

[11] I agree with the submissions of the applicant that clause 5.6 does not limit ordinary hours of work to be 7.30am to 4.00pm each day. This interpretation is too narrow an interpretation and overlooks the words in the clause which allow the ordinary hours to be worked between 6.30am and 6.30pm.

[12] I find that the ordinary hours are any hours commencing on Monday and ending on Friday that fall between the hours of 0630 and 1830. It follows therefore, that subject to the normal obligations of good faith the hours of work for employees may be subject to change without agreement.

### **Costs**

[13] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, Tenix may file and serve a memorandum as to costs within 28 days of the date of this determination with any submissions in reply being lodged within 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority