

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 153/10  
5294220

BETWEEN                      NEW ZEALAND  
   PROFESSIONAL  
   FIREFIGHTERS' UNION  
   Applicant

AND                              NEW ZEALAND FIRE  
   SERVICE COMMISSION  
   Respondent

Member of Authority:      G J Wood

Representatives:            Peter Cranney for the Applicant  
   Geoff Davenport for the Respondent

Investigation Meeting:     2 September 2010 at Wellington

Submissions Received:     By 21 September 2010

Determination:              28 September 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     In late 2009, the Firefighters' Union (the union) and the Fire Service Commission (the Commission) settled their collective employment agreement. The agreement provided for a number of different types of back pay. Despite being due in January 2010, the sums owing to the union's members were not paid until 10 March.

[2]     The issues for determination are whether there is an implied contractual term that the relevant payments would be paid within a reasonable time; if so, what that time was; and in the light of those determinations, has the Fire Service Commission breached the parties' employment agreement?

[3]     The Firefighters' Union seeks declarations accordingly and costs. It has withdrawn its claim for penalties against the Commission.

## **The Facts**

[4] The collective employment agreement was settled on 3 December 2009. It provided for two forms of backdating, plus a lump sum payment for all earnings in 2009.

[5] On 23 December, the Firefighters' Union informed the Commission that the collective employment agreement had been ratified by its members. Even before the agreement had been signed, the Commission was working on organising payment. It had informed the union that while the lump sum could be paid as early as 27 January 2010, the rest of the payments may not occur until 10 March. On signing the collective employment agreement on 19 January 2010, the union made it clear to the Commission that it felt this delay was unacceptable. On 22 January it demanded payment by 10 February.

[6] The Fire Service Commission was concerned about issues that had arisen in a previous settlement, leading to alleged overpayments, the subject of separate action in the Authority. Because of their duties to its Board and because it is a Crown entity, relevant staff had to be certain that the sums it would pay out were correct. The lump sum payment was made on 27 January 2010 as advised.

[7] Because 1,800 Firefighters' Union members were affected, and because of the complexity of payment arrangements involving shifts and other service-dependent payments, over 300,000 separate calculations were required in order to calculate the two sets of back pay. Mr Ed Jordan, an HR reporting analyst with the Commission, was charged with developing software to manage and calculate the payments owing.

[8] One of the problems that the Fire Service Commission faced was that its payroll system could only deal with back pay of this complexity and nature through analysing each individual employee and pay period by pay period, particularly as two different rates could have been required, based on overlapping back pay arrangements depending on when the money was earned. Mr Jordan therefore had to separate out all the elements of the employee's wages and allowances and apply the correct percentage increases to them. I accept that there are pay systems in existence elsewhere (i.e. external to the Commission) which would not require such analysis at the individual staff member level.

[9] Mr Jordan and Ms Janine Herne, the Fire Service Commission's director of human resources, were adamant that the payments were made as soon as they had been properly calculated and checked by the Commission, consistent with the Commission's fortnightly pay period.

[10] The Firefighters' Union remains convinced that the delay was not reasonable and therefore the Authority is required to make a determination.

### **Determination**

[11] Because of my determination on the facts that the Fire Service Commission did pay the union members their new payments within a reasonable time, I do not need to (and do not) decide the interesting question as to whether or not an implied contractual term as alleged exists.

[12] Assuming that such a term exists, it can not be said that the Fire Service Commission's actions were unreasonable. As the collective agreement did not specify a time within which the new payments had to be made (not that that is at all exceptional in itself), the Commission did not have to move to a set deadline, but rather to act reasonably. I conclude, in these circumstances, that the Commission would thus have to act promptly in order to pay its staff the moneys they are entitled to.

[13] While the collective agreement was settled on 3 December 2009 and the employer informed of ratification on 23 December 2009, the agreement was not binding on the Fire Service Commission in law until 19 January 2010, because that was when it was signed. The Commission, however, took preparatory steps to start organising for the new payments before Christmas 2009, a very reasonable response, as it could arguably have waited until 19 January 2010. It also made the lump sum payments that were capable of easy calculation within eight days of the signature of the collective agreement.

[14] The Fire Service Commission has statutory responsibilities to ensure that it pays only moneys properly owing. It would be unreasonable to expect the Commission to pay the sums outside its normal fortnightly pay run, for reasons of administrative efficiency. The work had to be undertaken during the normal period that ordinary office workers would be expected to take annual leave to which they were entitled.

[15] I accept that significant complexities were involved affecting almost all of the Firefighters' Union's 1,800 members. I accept that Mr Jordan did this work as quickly as possible and that he did not take his leave until he had done much of that work. Over \$6m was involved and over 300,000 calculations were required to be made and then checked for accuracy. In the context, therefore, of the degree of calculations required, the time of year, the amount of money involved and the need to carefully order payments so that the computer payroll system could properly process them, completion by 10 March 2010 was not simply reasonable, but showed a great deal of commitment by those Commission staff involved. These calculations had to be done properly in order, on the one hand, to ensure that the union's members were paid all they were entitled to and, on the other, that the Commission did not overpay any staff, which could lead to subsequent difficulties.

[16] While the Fire Service Commission was criticised because of the lack of flexibility in its payroll system, to have required it to have changed its payroll system would, in all likelihood, have meant that the firefighters would have to wait longer for their back pay.

[17] Finally, to have required the Fire Service Commission to engage more staff over that period would not necessarily have brought the date of payment forward, because trained payroll staff are not easily accessible at that time of year, particularly given the complexities of the parties' collective employment agreement.

[18] I therefore dismiss the Firefighters' Union's claims.

### **Costs**

[19] Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**