

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 408/10  
5293726

BETWEEN	ROSALIND BISHOP First Applicant
AND	THE POSTAL WORKERS UNION OF AOTEAROA INC Second Applicant
AND	NEW ZEALAND POST LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Paul Blair for Applicant  
Naomi Jones for Respondent

Investigation Meeting: 16 June 2010

Submissions Received: 5 July 2010

Determination: 10 September 2010

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**DETERMINATION OF THE AUTHORITY**

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[1] The first applicant is an employee of the Respondent. The Second Applicant is one of two unions with membership across the employees of the Respondent and is a party to a Collective Employment Agreement with the Respondent.

[2] Ms Rosalind Bishop has been employed by New Zealand Post Limited (“NZ Post”) as a Delivery Officer for more than 30 years. She is currently based in Hamilton. While it is not expressed as concisely in the statement of problem, the applicants claim Ms Bishop has been subjected to an unjustified disadvantage as a result of a written warning she received on 14 October 2009. Ms Bishop seeks a declaration from the Authority that the warning was issued in breach of the collective employment agreement and without NZ Post establishing that Ms Bishop was performing poorly.

[3] NZ Post denies the claims and says the written warning was issued in accordance with the collective agreement and was only issued after NZ Post had established Ms Bishop's failure to meet performance expectations over a six month period.

[4] It is well known that a warning may constitute a disadvantage grievance. The issue for this determination is whether the warning, as a disadvantage, was justified. The standard for unjustifiable disadvantage is the same standard as required for an unjustifiable dismissal.

[5] Section 103A requires the Authority to have regard to all the circumstances at the time of the dismissal, including the contractual obligations between the parties and the resources available to the employer<sup>1</sup>.

[6] Although the Authority does not have unbridled licence to substitute its decision for that of the employer<sup>2</sup> it may reach a different conclusion, provided that conclusion is reached objectively, and with regard to all the circumstances at the time the dismissal occurred<sup>3</sup>.

### **Relevant terms of employment**

[7] Ms Bishop is a member of the Postal Workers Union of Aotearoa ("PWUA") and was therefore covered by the 2008-2011 Collective Employment Agreement.

[8] Section I of the agreement sets out the conduct and performance expectations for NZ Post employees covered by the agreement. That section includes statements that NZ Post expects employees to maintain the highest standards of behaviour and to undertake their duties in accordance with NZ Post policy.

[9] The collective agreement at Section I also sets out the procedures to be followed in the event of poor performance. This requires an initial assessment of the situation which requires NZ Post to:

- Give the employee a clear explanation of the area or areas where the employee is not performing in a competent manner;
- Advise the employee of the action required to bring the employee's performance up to the standard required by the company;

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<sup>1</sup> *Toll New Zealand Consolidated Ltd v Rowe*, unreported, 19 December 2007, Shaw, J, Auckland Employment Court AC 39A/07.

<sup>2</sup> *X v Auckland District Health Board* [2007] 1 ERNZ 66.

<sup>3</sup> *Air New Zealand v Hudson* [2006] 1 ERNZ 415.

- Give the employee an opportunity to explain or deny the allegation and consider that explanation before deciding whether to give the employee an oral warning;
- Consider whether further training or direction will enable the employee to perform their job in a competent manner.

[10] Clause 17 of section I gives NZ Post the discretion to issue a written warning, in the event that an employee continues not performing to the required standard.

[11] Section N of the collective agreement sets out information with regard to delivery expectations. In particular clause 8 and 9 sets out the round sizing and states:

Postal delivery round sizing will be determined using the Postal Delivery Work Measurement System. Round sizing will be based on BS75 and using 85% of average volumes.

Round sizes will be reviewed as required or at the request of the affected employee. The review will be transparent and will be conducted without undue delay.

[12] The BS75 stands for British Standard 75. The standard is set at a level that requires employees to work at a consistent rate throughout their work hours. Employees who work at this rate will generally not exceed their ordinary hours of work and therefore not incur overtime payments.

[13] Mr Michael Hunter, the Secretary of the PWUA and a postal delivery worker for NZ Post explained that the time values currently used by NZ Post were derived from observing posties on 78 different rounds in Wellington, Auckland and Christchurch in 2006.

[14] The results of those rounds have been analysed and are used to measure the size of each round throughout New Zealand. This system provides an estimate as to how long it should take a postie to sort and deliver the mail on each round.

[15] There are two other components to round sizing. These are the round measurement, and the data recording. Round measurement is the actual measurement of the profile of the round and includes the number of letters, large flats (magazine size), parcels, registered letters and circulars being processed each day. The data recording refers to any other task on which the Postie spends time such as meetings, answering questions from customers, dealing with equipment failures etc.

**Performance improvement plan**

[16] When an employer places an employee on a performance improvement plan, the plan and the goals must be reasonable, fair and must relate to matters that the employee can control.<sup>4</sup>

[17] There is no dispute that Ms Bishop was not meeting the performance standards expected by NZ Post. In 2006 Ms Bishop was advised of concerns held by NZ Post of the amount of overtime she was working. Mrs Bishop's overtime was one of the highest in the Hamilton branch at that time. Ms Bishop was also advised that her productivity had fallen below the required standard of 91%.

[18] In April 2009 Ms Bishop entered into a performance improvement program as a result of continued concerns about her performance. The issues with Ms Bishop's performance included an excessive amount of overtime being worked, inaccurate recording on time sheets, and a failure to perform at 92%.

[19] Ms Bishop's Team Leader, Ms Marina Te Ripo, engaged with her over a number of months regarding her performance and discussed with her the standards expected by NZ Post.

[20] It was only after the informal intervention failed to see any improvement in Ms Bishop's performance that Ms Te Ripo implemented the formal Performance Improvement Plan ("PIP").

[21] The PIP set out in a formal manner, the performance expectations required from Ms Bishop. During a period of five months Ms Bishop and Ms Te Ripo met to discuss Ms Bishop's performance against the set standards. Ms Te Ripo provided feedback to Ms Bishop on how she could improve her performance including better use of the data recording system to identify time spent on other activities such as stopping and talking with customers during her round.

[22] NZ Post was concerned that Ms Bishop's poor work rate was directly linked to the high level of overtime she was claiming. This was confirmed by undertaking an assessment of Ms Bishop's work methods.

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<sup>4</sup> *Nimon & Sons Ltd v Buckley*, unreported, Wellington Employment Court, 5 October 2007, Couch J, WC26/07.

[23] I find the PIP process embarked on by NZ Post to assist Ms Bishop to improve her performance was fair and reasonable in all the circumstances. During the time of the PIP was in place Ms Bishop received additional training, coaching, support and advice.

### **Written warning**

[24] On 27 August 2009 Ms Bishop was advised by Ms Te Ripo, in writing, that her failure to consistently meet NZ Post's performance standards was unacceptable. At that time Ms Bishop's performance improvement plan identified a number of specific actions required of her. In her letter Ms Te Ripo recognised that some improvement had been made by Ms Bishop but identified that BS ratings varied significantly from one day to the next. Ms Bishop was asked to lift her performance and was referred to the collective agreement where it sets out the conduct and performance expectations.

[25] By 6 October concerns were still held with regard to Ms Bishop's performance and the fact that she was still not meeting expected BS rates. Ms Bishop was invited to attend a meeting, was advised that a warning may be a consequence and was invited to bring a support person or representative of her choice to the meeting.

[26] On 14 October 2009 Ms Bishop was issued with her first written warning. The warning is stated to last for 12 months.

[27] The Collective Agreement does not specify actual performance standards but simply states that employees must give a fair days work. It became apparent during the investigation meeting that the standard of 92%, which reflecting NZ Post Policy, has not been articulated in any Policy statement. However, I am satisfied Ms Bishop was, at all times, fully aware of what was expected of her.

[28] Ms Bishop's performance did improve, particularly after the letter of 27 August and before the disciplinary meeting was held on 6 October. The evidence from NZ Post shows that this improvement was taken into account, but was not considered to be consistent enough to prevent the issuing of a warning.

[29] I find that the written warning issued to Ms Bishop in respect of her performance looked at objectively, was an action a fair and reasonable employer, in the circumstances of this case, would have taken.

[30] The Applicant's claims are dismissed and I can be of no further assistance to them.

### **Costs**

[31] 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, New Zealand Post Limited may lodge and serve a memorandum as to costs within 28 days of the date of this determination with any reply submissions being lodged within 14 days of receipt. I will not consider any application outside that timeframe without prior leave being granted.

Vicki Campbell  
Member of Employment Relations Authority