

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 107/10
5124386

BETWEEN

NEW ZEALAND DAIRY
WORKERS UNION
INCORPORATED
Applicant

A N D

FONTERRA CO-OPERATIVE
GROUP LIMITED
Respondent

Member of Authority: Paul Montgomery

Representatives: Andrew McKenzie, Counsel for Applicant
Andrea Dunseath, Counsel for Respondent

Investigation Meeting: 10 February 2010 at Christchurch

Submissions Received: 3 March 2010 from Applicant
10 February 2010 from Respondent

Determination: 5 May 2010

DETERMINATION OF THE AUTHORITY

[1] The applicant brought this matter to the Authority seeking a determination as to the correctness or otherwise of the respondent's management of employee leave entitlements, and any such other determinations/recommendations that the Authority thinks reasonable.

[2] The respondent says the current leave management practice has operated effectively and as intended by the parties and there is no need for the Authority's intervention.

[3] The issues revolves around the way in which the respondent organises its payroll system and accounts for annual leave entitlements for its process employees. The issues have been well canvassed between the Union and the company and earnest attempts to resolve the issues have been made to iron out an apparent anomaly, but without success.

[4] That anomaly appears to arise from the *leave year* running from 1 July to 30 June the following year, while the *work year* runs from 1 June to 30 May the following year. This arrangement has been agreed between the parties to the collective employment agreement. In some cases employees of the respondent have been beginning the new leave year with negative balances when this is not caused by employees anticipating annual leave. The applicant says its members have expressed a concern that should they resign they would be required to repay leave which they have in fact not taken.

Discussion

[5] This matter is less a dispute over the operation of a collective agreement than the operation of a component of the respondent's administration systems.

[6] There is no individually supported allegation of breaches of the collective employment agreement by the respondent in respect to its recording of individual employees paid annual leave. Nor are there any specific allegations regarding the respondent's failing to meet the requirements of the Holidays Act 2003.

[7] Without traversing all the evidence before the Authority, it is clear each employee receives a fortnightly pay slip containing that worker's leave entitlement including accrued leave. This is consistent with clause 4.3 of the collective agreement. The evidence of the respondent is that in the event this information on the pay slip is incorrect, and an employee had not agreed to take leave as recorded on the slip, the employee would challenge the information at the time. Mr Pepperell's letter of 25 August 2008 stated:

Where any such miscalculations occur please present them to us and they will be reviewed. If there is a miscalculation, remedial action will be taken.

[8] Essentially the company is complying with the Holidays Act requirements by keeping individual employees appraised of their annual leave situation by way of these pay slips.

[9] As Mr Pepperell pointed out, there has been no evidence adduced which establishes that employees were required to take accrued or anticipated leave without their agreement. Nor has there been any evidence adduced or claim made which indicates that leave recorded as not been taken. In response to Mr McKenzie's

suggestion that leave balances should be “zeroed”, Mr Pepperell correctly indicates that the Authority does not have the jurisdiction to order such an action.

Determination

[10] The respondent is not in breach of the collective agreement nor of its obligations under s.29 Holidays Act 2003. No allegation of such breaches was put in front of the Authority. Further, the evidence before the Authority was that the process for monitoring annual leave is as set out in the collective employment agreement (clause 6.3.8) and the monitoring of the leave drawn down (clause 3.3.1 and 2) is to be done by *the Department Manager, Department Delegate and the Workers*.

[11] The Authority concurs with Ms Dunseath’s submission that these clauses support the view that the current practice of managing annualised hours and the use of annual leave under an annualised hours system is well known and effectively achieved. It involves the worker and the delegate at all stages.

[12] This matter appears much ado about very little. The Authority makes no determination on it, but endorses the submission of counsel for the respondent to the effect that if the Union is of the view that bringing the *leave year* into line with the *working year* will resolve the issue, it needs only to seek a variation to the collective employment agreement by formally approaching the respondent, who has indicated its readiness to discuss the matter.

Costs

[13] Given the nature of this matter, the Authority is minded to let costs lie where they fall. However, if the parties are unable to agree the issue of costs between themselves, leave to return to the Authority on this matter is reserved.

Paul Montgomery
Member of the Employment Relations Authority