

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 406  
5410131

BETWEEN                      PAUL JACKSON  
   Applicant

A N D                              TRANSPORTATION  
   AUCKLAND CORPORATION  
   LIMITED  
   Respondent

Member of Authority:      Anna Fitzgibbon

Representatives:            Gary Froggatt, Advocate for Applicant  
   David Gould, National Human Resources Manager for  
   Respondent

Investigation Meeting:      20 August 2013

Submissions Received:      26 August 2013 from Applicant  
   2 September 2013 from Respondent

Date of Determination:      6 September 2013

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**DETERMINATION OF THE AUTHORITY**

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- A. Mr Jackson did not have one or more conditions of his employment affected to his disadvantage by some unjustifiable action by the respondent, Transportation Auckland Corporation Limited (TACL).**
- B. The applicant, Mr Paul Jackson, was not dismissed by TACL.**
- C. Costs are reserved.**

**Employment relationship problem**

[1] The respondent, Transportation Auckland Corporation Limited (TACL) operates public transport bus services throughout Auckland including Go West,

Waka Pacific, North Star and Metro Link. TACL employs approximately 1,000 bus drivers in Auckland and operates nearly 700 buses.

[2] TACL contracts its services to Auckland Transport, a Council controlled organisation of Auckland Council. Auckland Transport was established in 2010 to take responsibility for all of Auckland's transport functions and operations.

[3] Auckland Transport owns the bus network and determines routes, timetables and frequency of services required. TACL operates a bus service to meet Auckland Transport's requirements.

[4] Paul Jackson has worked as a bus driver for TACL and its predecessor companies for approximately 12 years. For almost his entire period of employment, Mr Jackson has been the bus driver on the "*hopper route*". The hopper route is a circular route and customers "*hop*" on and "*hop*" off the bus in and around Henderson. Mr Jackson was known as the bus driver on the hopper route and was well regarded by patrons using the service.

[5] In June 2012, TACL began working on a reschedule of its services. Meetings were held between TACL management and delegates from the NZ Tramways Union ("Tramways") and First Union Auckland Incorporated ("First Union") in June, November and December 2012 regarding a rescheduling of services.

[6] Feedback was sought from bus drivers and the Unions before finalising the new schedule of services. As a result of the reschedule, a number of duties for bus drivers were altered, including Mr Jackson's hopper route duty. On 24 December 2012 new duties for bus drivers were finalised and posted at the Swanson Rd Depot. Bus drivers were requested to apply for the new duties. Every bus driver except for Mr Jackson and one other applied for new duties. Mr Jackson refused to apply for a new duty and on 27 December raised an employment relationship problem claiming TACL's actions in rescheduling services without consultation had unjustifiably disadvantaged him. Mr Jackson also claimed his position had become redundant and sought redundancy compensation.

[7] The new schedule of duties was to commence on 10 February 2013. On 4 February Mr Jackson notified TACL that he would not be resuming duties until his personal grievance was resolved. Mr Jackson did not report to work after 8 February

and has never reported to work since. Attempts to resolve Mr Jackson's employment relationship problem by way of mediation were not successful.

[8] On 5 April 2013, a letter was sent to Mr Jackson by TACL recording that he had been absent from work for more than four days without approval which could be deemed as abandonment by him of his employment. Mr Jackson did not respond to the letter and on 12 April 2013 TACL sent a further letter to Mr Jackson notifying him that because he had failed to report to work without approval, TACL had no choice but to terminate his employment on the grounds of abandonment.

[9] Mr Jackson claims that TACL in altering his duty without proper consultation, unjustifiably affected his conditions of employment to his disadvantage. Mr Jackson seeks reinstatement to his former duty and seeks compensation for hurt and humiliation as a result of the alleged unjustified disadvantage. At the investigation meeting Mr Jackson also claimed he had been unjustifiably dismissed.

[10] TACL states that Mr Jackson's employment was not affected to his disadvantage. TACL says the rescheduling of Mr Jackson's duty along with the duties of other bus drivers following proper consultation with both Mr Jackson and Tramways was necessary for it to be efficient and competitive and was in accordance with the applicable collective employment agreement. TACL claims Mr Jackson was not unjustifiably disadvantaged.

[11] TACL also says when Mr Jackson left work on 08 February and did not return on 10 February when the new duties were to commence, TACL followed up with him, putting him on notice that his absence may be deemed abandonment by him of his employment. When TACL did not receive a reply, it confirmed to Mr Jackson his employment had been terminated on the grounds of abandonment. As it transpired the letters from TACL were sent to Mr Jackson's former address and he did not receive them.

[12] The Authority must determine the following issues:

- (a) Was Mr Jackson unjustifiably disadvantaged by the actions of TACL?
- (b) Was Mr Jackson dismissed by TACL?
- (c) If Mr Jackson was dismissed by TACL was the dismissal unjustified?

## First Issue

### Was Mr Jackson unjustifiably disadvantaged by the actions of TACL?

[13] TACL, Tramways and First Union are parties to a Collective Agreement (“Collective”) dated 2012-2014. The Collective was signed by Shane McMahon, Chief Operating Officer, TACL, by Gary Froggatt, President of Tramways and by Karl Andersen, Transport and Logistics Secretary, First Union.

[14] Clause 2 of the Collective states that it applies to any employee of TACL who is employed by TACL in the Auckland region as a bus operator, service person or leading operator and who is a member of one of the Unions party to the Collective. Mr Jackson was employed as a bus operator and was a member of Tramways.

[15] Bus drivers have a “badge” which is a number allocated to him or her identifying their work, namely duties they are to perform. A “duty” is a period of work allocated to a bus driver. TACL operates a database which constructs duties out of various bus routes serviced by TACL. The duties constructed are the most efficient and cost effective way in which the routes can be serviced. Mr Jackson’s duty for many years was A7509, the hopper route which operated in and around Henderson.

[16] Mr Duncan McGrory was originally employed by TACL as Operations Manager at the Swanson Depot. Following a restructure of TACL’s operations in April 2013, Mr McGrory was appointed to a newly created role, that of Regional Operations Manager – Central Region. Mr McGrory has responsibility for ensuring the service operating in his region is efficient, competitive and cost effective.

[17] In early 2012 a Reschedule Plan for the Onehunga, Roskill, Swanson regions was prepared. The Plan set out the purpose of rescheduling by TACL as follows:

*We propose re-scheduling the Onehunga & Roskill & Swanson depots in early 2013. The main objective in the re-schedule is to address insufficient running times. In addition to this Auckland Transport have requested some route, frequency & terminus changes be made on Mt Eden Rd, Dominion Rd, Sandringham Road & New North Road. New timetables will be rolled out for each of these corridors.*

[18] The Plan referred to other key objectives including improving reliability and competitiveness and set out a proposed timeframe as follows:

<i>with running time issues</i>	
<i>Initial driver consultation</i>	<i>Late October</i>
<i>Schedule Modelling</i>	<i>October/November</i>
<i>Driver consultation</i>	<i>Late November</i>
<i>Rosters</i>	<i>Mid/late December</i>
<i>New schedule 'go live'</i>	<i>Mid February</i>

[19] In June 2012, as part of a review of services being provided by TACL, a meeting was held with senior Union delegates and organisers together with network planners and TACL management. The meeting was to discuss issues and to obtain feedback regarding routes being operated, duties, bus running times, bus changeover times, times between bus trips, times it takes to do a particular trip, the length of duty start and finish times. The purpose of the meeting was to obtain information and feedback from Union delegates and organisers in order to improve services being provided by TACL.

[20] A further meeting was held on 9 November. Mr Haeata Paraone, senior delegate, Tramways, attended with Mr Henk Willemsen, assistant delegate Tramways, Mr Perry Davis, Vice President, Tramways, Mr Mark Anderton, First Union. Mr Duncan McGrory and Ms Christina Cullen, the senior duty supervisor attended on behalf of TACL and took minutes. At the meeting there were discussions about a new bus route schedule. The hopper route was also discussed as TACL was considering discontinuing it. Mr McGrory's evidence was that the primary focus of the meeting was to "*communicate to union delegates the timeline for implementing the intended reschedule of work across the Central region*".

[21] Mr Paraone did not provide feedback to TACL about the proposed rescheduling changes because he says historically feedback was usually ignored by it. Mr Paraone says because of this, a culture had developed whereby the union delegates and bus drivers did not respond to TACL on work issues. Therefore, he did not provide any feedback to TACL about the proposed changes. Mr Paraone also did not speak to Mr Jackson saying he was given insufficient information about the intended changes to be able to discuss them with him. This is unacceptable. Meetings were convened with representatives from Tramways and First Union about a proposed rescheduling of services by TACL. It was reasonable in my view for TACL to expect

the Union representatives to provide feedback and obtain input if necessary from bus driver members regarding the rescheduling. It is not acceptable for the Union delegate to fail to inform members and then claim TACL did not consult about proposed bus rescheduling.

[22] Mr Paraone, as Head Delegate, Tramways, attended a further meeting at which there were representatives from Tramways, First Union, TACL management and TACL planner Steve Barrack on 17 December 2012. Mr Paraone did not share with members information obtained at these meetings. Mr Paraone says there was no opportunity to do so because TACL did not provide any paid time off for bus drivers to attend such meetings. However, no request was made of TACL by Mr Paraone or either Union for a paid Union meeting for the purposes of discussing the proposed reschedule of services. Clause 8.4 of the Collective provides for employees to have up to 4 hours paid leave to attend Union meetings on certain conditions. There is no reason why a meeting could not have been organised by the Unions for the purposes of sharing information regarding proposed changes to the work of their members.

[23] Following the December meeting, Mr Paraone says he did have some discussions with Mr Jackson about the hopper route and informed Mr Jackson that there were going to be changes to the route and to his duty. However, Mr Paraone says he did not speak to Mr Jackson in detail about the proposed changes because he was afraid of the stress this would place on Mr Jackson whose partner was very ill. This is also unacceptable in my view. It was Mr Paraone's responsibility as Head delegate of Tramways to ensure Mr Jackson was kept informed of changes which may affect his position. In my view, that is one of the functions of a Union delegate.

[24] A copy of the first draft of proposed new duties for drivers was posted on the board at the Swanson Street Depot on 17 December. The new duties meant changes for the majority of drivers. Duty A7509, the hopper route was no longer operating in its original form, it had been split and a new duty A7518 included part of the route. All drivers, including Mr Jackson and the Unions had until 24 December to comment on the proposed new duties. Many drivers did provide feedback on the feedback forms provided but Mr Jackson did not.

[25] Once the duties were finalised on 24 December, drivers were requested to apply for their preferred duties. Mr Paraone was aware of the process for bus drivers to follow in applying for the new duties and he and all other bus drivers (excepting

Mr Jackson and one other) applied for the new duties. Mr Lindsey Barrett, another bus driver, encouraged Mr Jackson to apply for duty A7518 but Mr Jackson refused because he did not want to be seen as accepting the new duty.

[26] Clause 14.1 of the Collective provides as follows:

***Full-time Employees***

*The ordinary hours of work for a full time employee shall be not less than 40 hours per week, and not less than 8 hours per rostered day, excluding paid and unpaid meal breaks, to be worked on up to five days of the week Sunday to Saturday inclusive.*

[27] Clause 14.3 of the Collective provides;

***Significant Change to Hours of Work***

*Before any significant change is proposed to hours of work by either the Company or employees (for example 4x10 work days) the Company will consult with the Unions and affected employees.*

[28] Delegates from Mr Jackson's union, Tramways and delegates from First Union had 3 meetings with managers of TACL in June, November and December 2012 about the rescheduling of services out of the Swanson Depot. The meeting on 9 November was to inform union delegates of the timeline for implementing the proposed reschedule of work from the Depot. Following this meeting a document entitled the "Go West Re-Schedule" which contained the timeline was posted on the board at the Depot. The document made it clear that feedback could be made about the new duties up until 24 December. Feedback was received but not from Mr Jackson who had taken the view that he was going to challenge TACL's actions by bringing a personal grievance claim which he did by letter dated 27 December.

[29] Mr Jackson did not like the changes to services and duties proposed by TACL, Mr Jackson wished to remain working the same duty he had worked for a number of years. However, the terms of the Collective are clear, as long as consultation occurs TACL can make changes to hours of work. It is my finding that TACL consulted with both Mr Jackson and Tramways about proposed changes to duties and hours of work as required by clause 14.3 of the Collective. Mr Jackson was not unjustifiably disadvantaged.

## Second Issue

### Was Mr Jackson dismissed by TACL?

[30] The *Go West Re-Schedule* outlined the timeframe being followed by TACL for consulting with drivers and Unions about proposed rescheduling changes and implementation. Mr Jackson was aware that there were to be changes to the hopper route and to his duty. Mr Jackson was not happy about the proposed changes splitting his duty and requiring him to be available from Monday to Sunday, rather than Monday to Friday. Mr Jackson spoke to Mr McGrory in December about his concerns. Mr McGrory told Mr Jackson that TACL needed to make changes to duties and schedules and that under the Collective his hours of work were 40 hours, 5 days a week from Monday to Sunday.

[31] Following this discussion, Mr Jackson wrote to Mr McGrory raising a personal grievance on 27 December 2012. Mr Paraone assisted Mr Jackson with the preparation of the personal grievance letter. Mr Jackson claimed in the letter that he had been extremely disadvantaged by the company's failure to consult regarding the changes to his working conditions and that:

*I consider that my employment with the company has become superfluous to its needs and I cannot be offered a position with substantially the same conditions. I would like to have my situation resolved by:*

- *Restoration of my current working conditions;*
- *Redundancy in view of the fact that my role within the organisation has been terminated and similar conditions of work cannot be provided.*

[32] Mr McGrory responded in a letter of 10 January stating that the new rosters and duties fell within Mr Jackson's role under the collective agreement and declining his request for redundancy.

[33] Mr Jackson did not apply for any of the new duties. During the course of the investigation meeting, it became clear that Mr Jackson took the view from the end of December 2012 that he was not going to apply for any of the new duties as this may jeopardise his personal grievance claim against TACL. Mr Jackson provided no feedback regarding the proposed new schedule of routes or duties within the feedback timeframe nor did he apply for any of the new duties.

[34] The new bus routes were to operate from 10 February. Mr Jackson made a decision not to return to work on 10 February and did not do so. Mr Jackson did not resign, he refused to return to work. It is my finding that Mr Jackson terminated the employment relationship when he made the decision not to return to work on 10 February. The subsequent letters from TACL to Mr Jackson in April 2013 stated that TACL believed Mr Jackson, by not reporting to work without approval, had “*abandoned*” his employment. It is my view that Mr Jackson in refusing to return to work and in notifying TACL of his intention not to return to work unless certain conditions which were unacceptable to TACL were met, terminated his employment.

[35] Mr Jackson was not dismissed by TACL.

### **Costs**

[36] Costs are reserved. TACL has 14 days from the date of this determination to file a memorandum as to costs and Mr Jackson has 14 days from receipt of the memorandum to file his reply.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**