

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 497  
5403386

BETWEEN                      INDEPENDENT ELECTRICAL  
   WORKERS'  
   UNION INCORPORATED  
   Applicant

A N D                              ABB MAINTENANCE  
   SERVICES LIMITED  
   Respondent

Member of Authority:        K J Anderson

Representatives:              L Yukich, Advocate for Applicant  
   G Service, Counsel for Respondent

Investigation Meeting:        On consideration of the papers

Date of Determination:        4 November 2013

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**DETERMINATION OF THE AUTHORITY**

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**Introduction**

[1]     The applicant, the Independent Electrical Workers' Union Incorporated (the Union) alleges that the respondent, ABB Maintenance Services Limited (ABB), has failed to comply with s.130(1)(h) of the Employment Relations Act 2000 (the ERA). Pursuant to s.137 of the ERA, the Union seeks an order from the Authority that ABB comply with the provisions of the ERA. And, pursuant to s.134 of the ERA, the Union asks that the Authority impose a penalty on ABB for the alleged failure to comply with the relevant provisions of s.130.

**Background**

[2]     ABB employs 179 employees at the Kinleith Mill near Tokoroa. There is in force a collective employment agreement (CEA) between ABB and the Union: the *ABB*

*Maintenance Services Limited and Independent Electrical Workers' Union Inc  
Kinleith Mill Collective Agreement.*

[3] The CEA covers approximately 40 employees who are members of the Union. According to the statement in reply filed with the Authority, during the bargaining for the CEA in 2011/2012, an issue arose pertaining to the calculation of holiday pay and relevant daily pay for the Union's members. Subsequently, a claim was filed with the Authority regarding wage arrears allegedly due to some Union members.

[4] The parties attended mediation on 27 March 2012 and a record of settlement was agreed to. A term of the settlement was that:

7. The Hamilton office of the Dept of Labour will be invited by ABB and IEWU to appoint a Labour Inspector to review the ABB payroll practices for IEWU members employed at ABB Maintenance Services Limited on the CHH Kinleith site collective agreement, for compliance with the Holidays Act 2003, provisions for relevant daily pay and holiday pay. The Labour Inspector will be invited to meet with the parties jointly prior to commencing its investigation. ABB will release two IEWU members on pay for one day to meet with the Labour Inspector.

[5] A Labour Inspector subsequently became involved. He produced a comprehensive report on or about 7 November 2012 setting out a number of conclusions.

[6] Following the receipt of the Labour Inspector's report, on 13 November 2012, the Union made a verbal request for ABB to provide the wage, time and leave records for its members. While there was some delay (for various reasons), ABB has now provided the records sought by the Union.

[7] However, the Union says that the records provided by ABB do not comply with s.130(1)(h) of the ERA. Section 130(1) of the ERA provides that:

Every employer must at all times keep a record (called the wages and time record) showing, in the case of each employee employed by that employer –

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) ...
- (h) The wages paid to the employee each pay period and the method of calculation.
- (i) ...
- (j) ...

**The respective positions of the parties**

[8] The Union says that ABB has not complied with s.130(1)(h) of the ERA because the records provided do not show “the method of calculation” used to arrive at the appropriate wage entitlements for each employee. On the other hand, ABB says that it has provided a number of “formulae” (at Appendix C to the statement in reply) that it uses to calculate the various entitlements due to each category of worker.

[9] But the Union says that the existence and/or use of the respective formulae does not equate to “a method of calculation” as required by s.130(1)(h). The Union submits that the employees (the members of the Union) are unable to determine if they are being paid correctly without knowing the method of calculation<sup>1</sup>. Given the wage records that have been produced, the Authority accepts that this may correct. However, while the Union has provided some records relating to one employee (Hendrikus Rovers), they are of little assistance in regard to understanding how the company calculates the wages due to him each pay period. Nor are the records of much assistance in regard to proving, one way or the other, as to whether there has been compliance with s.130(1)(h) of the ERA.

[10] Nonetheless, notwithstanding that there appears to have been some changes to the ABB payroll system over a period of time, and this appears to be still a “work in progress”, it seems to me that it is not an unreasonable expectation on the part of the Union and its members to be able to easily understand how the wages for any given period are calculated.

[11] The Union seeks an order from the Authority that ABB produce to the Union a wage and time record for the specified employees showing the wages paid to the employee in each pay period and *the method of calculation*, for a period of six years.

[12] However, it appears that ABB has now provided a substantial amount of wages information, along with the formulae it uses to arrive at the employees’ entitlements. The Authority accepts the Union’s view that the formulae provided by ABB are less than satisfactory in regard to providing a transparent method of calculation, but that is, apparently, all that is currently available.

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<sup>1</sup> The Authority understands that ABB employs approximately 179 people at the Kinleith site and there is no evidence that the other employees (who are not members of the Union) have any issues in regard to how their pay is calculated.

[13] In other words, the use of the various formulae is “the method” that ABB uses to calculate the wages due to each employee in any given period.

[14] Therefore, apart from the fact that the Authority is not persuaded that there has been a breach of s.130(1)(h) of the ERA, even if it were otherwise and the Authority was to issue the order of compliance that the Union seeks, it is unlikely that this would be of any assistance in regard to the employees having a clearer understanding of the method of calculation used by ABB, to arrive at their respective entitlements.

[15] Rather, it appears to the Authority that what is required is that ABB should modify its payroll system and introduce a method of calculation that allows employees to clearly understand how the wages paid each pay period are calculated. This appears to have now been recognised, to some extent, by ABB; as the statement in reply informs that the company has been working with external payroll consultants, assisting the company to resolve any issues and identify whether there have been any disadvantages incurred by employees in regard to certain matters that were raised by the Labour Inspector’s report. However, the Authority notes that the substance of the Labour Inspector’s report relates to the application of the Holidays Act 2003, and the calculation of appropriate entitlements. But there is no reference at all to s.130(1)(h) of the ERA. However, perhaps it can reasonably be assumed that the reason that the Union has brought this matter to the Authority is that it believes that some of its members may have outstanding entitlements due to them under the Holidays Act.

### **Determination**

[16] The Authority declines to make the order of compliance sought by the Union. This is because the Authority accepts that there is not any lack of willingness on the part of ABB to provide the method of payment pursuant to s.130(1)(h) of the ERA. Rather, it seems that the formulae adopted by ABB are its “method” of calculating the wages to be paid to an employee for each pay period. Notwithstanding the foregoing, the Authority accepts the Union’s argument that the method adopted by ABB is far from satisfactory in regard to employees being able to clearly understand how their wages are calculated. Furthermore, there does not appear to be any obvious record of “year to date” earnings that would allow employees to understand how their annual holiday pay entitlements accrue. The Authority recommends that ABB takes meaningful action in regard to implementing an improved method of calculation, pursuant to s.130(1)(h) of the ERA,

which ensures that employees can clearly understand the method used to calculate their wages for any given period; and their accrued annual holiday pay entitlements.

[17] Given the above findings it follows that the Authority is not satisfied that there has been any breach of the provisions of s.130 of the ERA; hence the consideration of any penalties is not required.

### **Costs**

[18] Given the outcome of this matter, it is appropriate that costs should lie where they fall.

**K J Anderson**  
**Member of the Employment Relations Authority**