

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 13
5430237

BETWEEN NEW ZEALAND PUBLIC
 SERVICE ASSOCIATION
 Applicant

A N D CHIEF EXECUTIVE OF
 AUCKLAND COUNCIL
 Respondent

Member of Authority: T G Tetitaha

Representatives: C McNamara, Counsel for Applicant
 A Lubbe, Advocate for Respondent

Investigation Meeting: On the papers

Submissions Received: 31 October and 26 November 2013 from Applicant
 18 November 2013 from Respondent

Date of Determination: 16 January 2014

DETERMINATION OF THE AUTHORITY

- A. Clause 22.13 of the Auckland Council Collective Agreement 13 April 2013 to 31 October 2015 entitles full time and part time employees whose work is covered by a roster and who do not work the regular Monday to Friday working week to a day in lieu where their normal day off falls on a public holiday (except Anzac Day or Waitangi Day).**
- B. Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.**

Employment relationship problem

[1] This is a dispute about the interpretation of clause 22.13 of the Auckland City Council collective agreement 19 April 2013 to 31 October 2015 (collective agreement).

[2] The New Zealand Public Service Association (NZPSA) submits clause 22.13 provides part time and full time employees who do not work the regular Monday to Friday working week to receive a day in lieu where their normal day off falls on a public holiday (except ANZAC and Waitangi day).

[3] The Auckland City Council disagrees. It submits part time employees do not have the same entitlements as full time employees. Their entitlements are prescribed in clauses 22.5 to 22.7. Clause 22.13 applies to full time employees only.

[4] At a teleconference on 26 September 2013 the parties agreed this matter can be dealt with on the papers without further evidence. Both parties contend the interpretation of the clause is unambiguous and there is no need to resort to extrinsic evidence to assist the Authority.

Issue

[5] There is a single issue for determination, namely whether clause 22.13 of the collective agreement applies to full time employees only or whether it applies to full time and part time employees.

Legal framework

[6] The necessary inquiry in disputes about the interpretation and application of a collective agreement is to ask what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean.¹

[7] Where the contractual intention is clear from the words used, the Authority must give effect to it.² The first and often the last port of call will be the language that the parties chose to adopt. Such language must be read and understood in the context

¹ *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5; [2010] 2 NZLR 444; (2010) 9 NZBLC 102,874 (SCNZ) at [19]

² *Lowe Walker Paeroa Ltd v Bennett* [1998] 2 ERNZ 558 (CA) at 566 -567

of the collective agreement as a whole.³ In interpreting clauses within employment agreements, the Authority should give effect to their evident purpose.⁴

Does clause 22.13 of the Auckland City Council collective agreement 19 April 2013 to 31 October 2015 apply to full time employees or to full time and part time employees?

[8] The disputed clause in the collective agreement is part of clause 22. The express purpose of clause 22 is to define the rights of employees generally to payment for public holidays.

[9] Clause 22 is divided into parts. Clauses 22.1 to 22.4 sets out the general entitlements of all employees to payment for public holidays. Employees are to be paid in accordance with the Holidays Act 2003 (clause 22.1) for the public holidays as set out in clause 22.2.

[10] Clause 22.3 provides an additional entitlement to payment where the public holiday falls on a weekend (excepting ANZAC and Waitangi Day). This is transferred to the following Monday and employees will be granted leave. This process is known as ‘Monday-isation’:

22.3 *Where any of these holidays fall on days that would otherwise be ordinary working days for the employee they will be paid at the relevant daily pay. For all public holidays – except Waitangi Day and Anzac Day – if they fall on a Saturday or Sunday that employee will be granted a day’s paid leave on the following Monday.*

[11] The collective agreement then specifically defines the application of clauses 22.1 to 22.3 to part time employees in clauses 22.5 to 22.8. Part time employees with fixed hours “*are entitled to receive payment for public holidays, as per the Holidays Act 2003, if the employee normally works on such a day*” (clause 22.5). Part time employees whose hours are not fixed “*are entitled to receive payment for a public holiday provided they worked on the day of the week that the public holiday falls on, for more than 40% of the time over the preceding three months*” (clause 22.6).

[12] The collective agreement then defines the application of clauses 22.1 to 22.3 to rostered employees. The disputed clause 22.13 is listed under this heading:

³ *Secretary for Education v New Zealand Educational Institute Te Riu Roa* [2002] 2 ERNZ 470 (EmpC) at [26]

⁴ *New Zealand Air Pilots Association Inc v Air New Zealand* [2012] NZEmpC 88 at [24]; *Silver Fern Farms v New Zealand Meat Workers and Related Trade Unions Incorporated* [2010] NZCA 317 at [42].

Rostered employees

22.12 *Where a full or part time employee's work is covered by a roster, and a public holiday (except for Anzac Day or Waitangi Day) falls on a day when the employee is rostered off, the employee is entitled to be paid for that day, or receive a paid alternative holiday.*

22.13 *Employees who do not work the regular Monday to Friday working week will be entitled to a day in lieu in the situation where a normal day off falls on a public holiday (this does not apply to Anzac Day or Waitangi Day).*

[13] The inclusion of clause 22.13 in this part infers its purpose was to specify the entitlements of rostered employees, not full and part time employees generally to payment for public holidays.

[14] Clause 22.12 refers to both full and part time employees whose work is covered by a roster. Clause 22.13 refers to “*employees*” only. It does not specifically exclude part time employees. Clause 22.12 includes part time employees. By implication, clause 22.13 must also include part time employees.

[15] Clause 22.12 contemplates payment for employees rostered off on the public holiday. It appears to apply to employees who are rostered to work on days between Monday to Friday.

[16] Clause 22.13 contemplates payment for employees whose work is covered by a roster and “*do not work the regular Monday to Friday working week*”. This appears intended to cover employees whom may be rostered to work Tuesday to Saturday and fail to benefit from public holidays falling on Monday's. Three public holidays fall on a Monday. This interpretation ensures rostered employees receive the benefits of clause 22.3 and are not disadvantaged by the specific entitlements of part time employees in clauses 22.5 and 22.6.

[17] Accordingly, the Authority makes the following determination:

Clause 22.13 of the Auckland Council Collective Agreement 13 April 2013 to 31 October 2015 entitles full time and part time employees whose work is covered by a roster and who do not work the regular Monday to Friday working week to a day in lieu where their normal day off falls on a public holiday (except Anzac Day or Waitangi Day).

[18] Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

T G Tetitaha
Member of the Employment Relations Authority