

**Note: this determination includes
an order prohibiting publication
of certain evidence.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 234
5587743

BETWEEN	NEW ZEALAND DAIRY WORKERS UNION INC., TE RUNANGA WAI U Applicant
AND	FONTERRA CO-OPERATIVE GROUP LIMITED Respondent

Member of Authority:	Andrew Dallas
Representatives:	Helen White, Counsel for the Applicant Phillipa Muir and Marie Hoolihan, Counsel for the Respondent
Investigation Meeting:	15, 16, 31 March and 1 & 5 April 2016 at Auckland
Submissions:	During the investigation meeting with further material received up to, and including, 8 April 2016.
Determination:	8 July 2016

DETERMINATION OF THE AUTHORITY

- A. The restructure of the Level 8 stores job breaches the
Fonterra Dairy Workers Collective Agreement.**

- B. Costs are reserved.**

Prohibition from publication

[1] Under clause 10(1) of the Second Schedule to the Employment Relations Act 2000 (the Act), I prohibit from publication the evidence lodged in these proceedings about, and including, the Fonterra Co-operative Group Limited's (Fonterra) Manager Guide: discipline and dismissal and the projected financial impact on Fonterra of the proposed restructuring of the Level 8 stores position except for the information contained in this determination.

Employment Relationship Problem

Relevant Background

[2] The New Zealand Dairy Workers Union Inc., Te Runanga Wai U (DWU) and Fonterra were bound by and to the Fonterra Dairy Workers Collective Agreement, 1 September 2013 – 31 August 2015. The parties subsequently reached agreement on terms for a new collective agreement, which was ratified by the workforce.

[3] The relevant terms of the Fonterra Dairy Workers Collective Agreement, 1 September 2013 – 31 August 2015 (collective agreement) and the Fonterra Dairy Workers Collective Agreement, 1 September 2015 – 31 October 2017 are not materially different. However, as the matter arose during the life of the first collective agreement, that is the reference agreement for this determination.

[4] This employment relationship problem arises out of a restructure in Fonterra's New Zealand distribution centres operation. Fonterra operates approximately 55 distribution centres (DC). Subject to seasonal variation, Fonterra employs approximately 600 employees within this DC network who are covered by, or eligible to be covered by, the collective agreement.

[5] The workplace structure of DCs varies according to their complexity, size and shift patterns. Distribution centre managers (DCM) usually manage a DC. However, DCMs may manage more than one site. Some sites may also have an assistant distribution centre manager (ADCM) who either assists the DCM or manages the DC in their own right. Under DCMs and/or ADCMs are Level 8, Level 6 and Level 4 employees, who perform a variety of tasks and work various shift patterns.

[6] The Level 8 job is the highest-level position in the DC network covered by the collective agreement. Level 8s, while classified as shift workers and paid as such, predominately work dayshift, Monday to Friday. Level 8s perform various functions and operational tasks.

[7] During 2011, Fonterra introduced the SAP Warehouse Management System (WMS), which provided standardised processes and governance around inventory and product movement. This created a reasonable amount of high-level administrative work for Level 8s (and some Level 6s).

[8] Also in 2011, Fonterra embarked on a project to examine how its DC network was adhering to various standard processes and systems. This review demonstrated that some issues existed with the DCs organisational structure.

Project Align

[9] A further project, “Project Align” was undertaken to investigate and develop solutions for the issues identified.

[10] The project team interviewed a number of Level 8s and Level 6s to better understand the work undertaken in DCs. Project Align was a management initiative and the DWU did not participate in it. However, Fonterra briefed the DWU about it in September 2014.

[11] Project Align identified three key problems within the DCs. First, there was a lack of role clarity around, in particular, the Level 8 job. Second, the administrative requirements of the WMS meant Level 8s (and some Level 6s) had become predominately office based and were, therefore not delivering the level of management required at the “grass roots level”. Third, there was no clear pathway for Level 8s or Level 6s to ADCM positions. Essentially, Project Align disclosed a “gap” between management and operation of DCs. Fonterra’s proposed solution to this “gap” goes to the heart of the problem between the parties.

[12] To the extent that it is significant, there appeared to be no third party verification of the Project Align findings.

The proposal

[13] In response to Project Align, a proposed new operational structure for DCs was developed whereby a new Shift Team Manager (STM) role would be created. Fonterra said this role would bring direct management onto the floor of DCs on a shift-by-shift basis (the proposal). In essence Fonterra's proposal was to create a STM role outside the scope of the collective agreement and disestablish the Level 8 job within it. Part of the reason was said to be because the STM role would have responsibility for employment and dismissal. Employees with such responsibility were excluded from the coverage of the collective agreement: clause 2.4.1. This is discussed further below.

[14] Fonterra said that the STM role would exert full control over, and accountability for, each shift including in relation to performance management, recruitment and dismissal. The STM role would have a position description and key performance indicators (KPIs) that reflected this control and accountability.

[15] As Fonterra had no performance issues with Level 8s or any doubts they could perform the STM role, affected employees would be offered automatic redeployment. This was subject to training requirements. However, the level of training did not appear particularly significant and there was some dispute in the evidence about whether some of the training had already been undertaken by Level 8s.

[16] In the short to medium term, at least, the creation of the STM role would not result in cost savings for Fonterra.

[17] The proposal included removing some or all of the WMS system functions from the disestablished Level 8 job and giving these to Level 6s. The proposal appeared to affect Level 6s in other ways but there was no common understanding about this.

[18] Fonterra senior managers approved the business case for the proposal in mid-June 2015.

Consultation with the DWU

[19] On 23 June 2015, Fonterra met with DWU to outline the proposal. The DWU asked for time to consider the proposal and respond to it.

[20] Both Fonterra senior managers and the DWU were taken through a powerpoint presentation about the proposal. There were significant, material differences between these presentations. This is discussed further below.

[21] On 8 July 2015, Fonterra met with the DWU to receive its response to the proposal. It was common ground that the DWU accepted the existence of the “gap” as disclosed by Project Align but opposed the creation of the STM role outside the scope of the collective agreement and employed under an individual employment agreement (IEA). The DWU saw Level 8 employees as highly experienced, opinion leaders within Fonterra.

[22] On 9 July 2015, DCs General Manager, Deena Clarkson advised DC employees in broad terms about the proposal. The DWU was consulted about the communication to employees. The communication did not disclose the DWU’s position.

[23] Also on 9 July 2015, Ms Clarkson sent DWU Assistant Secretary, Angus McConnell the proposed position description for the STM role.

[24] On 17 July 2015, Mr McConnell advised Ms Clarkson via email of the DWU position on the proposal. In summary, this was:

- a. acknowledgment that a “gap” existing at some DCs between management and operations but said this was caused by Fonterra’s own actions;
- b. opposition to the establishment of the STM role;
- c. the Level 8 position descriptors contained in the collective agreement, with the exception of responsibility for employment and dismissal, meant the STM role could come within coverage of the collective agreement;
- d. swapping Levels 8s to STMs would increase the headcount at each operation; and
- e. the Level 8 job could be better defined and some of the “noise and nuisance” work could be removed from the job.

[25] The DWU proposed the retention of the Level 8 job but with redefined objectives, the creation of some line managers where a bigger gap existed between operations and regional managers and the creation of a Level 7 job.

[26] On 21 July 2015, Ms Clarkson provided Fonterra's response to Mr McConnell via email. There was some contention between the parties about this email and what it did or did not say. Uncontroversially, Ms Clarkson's email acknowledged the different views of the parties about the ability of Fonterra to use the Level 8 descriptor to achieve its desired outcome and the recognition by the DWU of a gap at some sites and on some shifts. However, the email then went on to state:

We also believe it is important that this IEA role has full accountability of all performance aspects of the shift, from operational adherence to people management. The role requires full accountability of hiring team members, performance management of that team and individuals and ultimately discipline or dismissal if required.

Management have a keen interest in the performance of operational teams and the structure today simply does not allow this to occur. We are seeking more control of the operation through the Shift Team Managers (STM) position and believe a salaried role with the right capability will address this.

[27] On 21 July 2015, Fonterra briefed its DCMs and ADCMs about the proposal and those managers endorsed it.

[28] On 29 July 2015, a National Consultation Committee (NCC) was established between Fonterra and the DWU to discuss Project Align. Site consultative committees involving local Fonterra managers and DWU delegates followed this once the proposal was rolled out to DCs. The establishment of both committees was set out in the collective agreement.

[29] On 6 August 2015, Ms Clarkson emailed Mr McConnell and DWU National Secretary, Christopher Flatt, a "high level view" of the potential impacts of the proposal on each DC.

[30] Between 24 August 2015 and 2 September 2015, Fonterra conducted meetings with affected Level 8s. During these meeting, these employees were taken through a site-specific briefing document containing, in summary, the case for change, the proposal and the local effect.

[31] Employees were asked to provide feedback on the proposal. Feedback was mixed. The NCC and the Project Align working group considered the feedback. Fonterra made some adjustments to the implementation of the proposal at several sites based upon that feedback, but the core of the proposal remained.

[32] On 14 September 2015, after advising Mr McConnell of the same, Ms Clarkson formally confirmed her decision to implement the proposal.

[33] Confirmation meetings were then conducted at various sites. Following these eight Level 8s were given letters which advised them, among other things, their position would become redundant and as a result they could: (1) accept an offer of redundancy, (2) accept redeployment into the STM role or (3) be redeployed elsewhere within Fonterra (the collective agreement facilitated such an approach).

[34] The issuing of letters to all Level 8s was not completed by the time Fonterra suspended the process. This seemingly occurred in response to correspondence sent by Mr Flatt to Ms Clarkson on 14 September 2015 which alleged various breaches of the Act and collective agreement and also threatened legal action.

[35] At the time the process was suspended, the IEA and the KPIs for the STM role were both still in draft form.

[36] The Draft IEA was said to be in relative standard Fonterra terms. Remuneration for the STM position was a base salary inclusive of superannuation (paid subject to the rules of the chosen scheme), a shift pattern payment of \$5,000 and access to the Fonterra Co-operative Group Short Term Incentive (STI) Plan being 10% base salary.

[37] It was not entirely clear on the evidence whether the STM role would be paid more or less than a Level 8 job. There seem to be several variables at play. STMs would, however, lose access to the more generous NZ Dairy Industry Superannuation Scheme and, the DWU argued, the protection of the collective agreement particularly the re-deployment provisions set out in clause 10 of the collective agreement.

[38] On 29 September 2015, Mr Flatt sent Ms Clarkson an email containing an information request about the proposal. The request for information was extensive. Ms Clarkson provided a response to this request in a letter dated 13 October 2015. However due to an administrative error this was not received by the DWU until 21 December 2015.

Document A

[39] Included with the information supplied by Ms Clarkson to Mr Flatt was a document which became known as *Document A*. This document is the powerpoint presentation given to Fonterra senior managers referred to in paragraph [20]. Evidently, Document A was initially overlooked by the DWU at the time it was received.

[40] The powerpoint presented to the DWU during the consultation process was entitled *Briefing Document*, whereas Document A was entitled *Business Case*.

[41] In addition Document A contained the following additional information under relevant *problem statements*, including the entirety of problem statement four, which were not contained in the powerpoint shown to the DWU.

Problem Statement	Why is this a problem? (SO WHAT?)
1. we don't have clearly defined standard work for our Level 8 Supervisors and Level 6 Charge Hands	<ul style="list-style-type: none"> - We can't measure and compare L8 Supervisor and L6 Charge Hand Performance across distributions centres. - We can't clearly articulate and therefore recruit against standard L8 Supervisor and L6 Charge Hand capabilities.
2.
3. Current structures doesn't support a clear pathway from Level 6 Charge Hand to Level 8 Supervisor to (A)DCM	<ul style="list-style-type: none"> - Current L6 and L8 salaries discourage movement to (A)DCM roles when considering the additional responsibilities taken on.
4. We are constrained by the confines of the current DWU Collective Agreement.	<ul style="list-style-type: none"> - Unable to adapt quickly to changing customer, market, and industry requirements impacting on labour utilisation - Operating under a 'worker' vs. management focussed culture.

[42] Additionally Document A described the STM role as a “Shift Team Leader” (STL). The high-level responsibility for the STL was stated as “execution”. The “time focus” was stated as “day [to] week”.

[43] Ms Clarkson’s oral evidence was that Document A was drafted by the Project Align team, of which she was part, as a high-level briefing document. Mr Clarkson said, despite it being included, that she did not agree with the statement about the “worker vs. management” focus for the collective agreement. Employment Relations Manager, John Murdoch, who was not involved in the initial drafting, said in his oral evidence he knew the DWU would not be happy about the proposal. Mr Murdoch said he assisted with restructuring Document A in advance of the consultation with the DWU.

DWU legal proceedings

[44] The parties unsuccessfully engaged in various attempts to resolve the issues between them about the proposal. However, they did agree to let two Level 8s, who were issued letters by Fonterra in September 2015, take redundancy. The parties believe nothing turns on that agreement insofar as this determination is concerned and I have proceeded on that basis.

[45] At or about this time, Fonterra, via its solicitors, advised the DWU that Level 8s accepting the STM role would be able to negotiate a three month “trial” period into their IEAs and if they decided not to continue in the role, they could take redundancy.

[46] In proceedings filed in the Authority, the DWU initially sought injunctive relief, urgency and/or removal of the matter to the Employment Court. However, after Fonterra announced a halt to the entire restructuring process and following discussion, the parties advised they were content to have the matter investigated and determined by the Authority.

[47] The final basket of remedies sought by the DWU included compliance orders with the collective agreement and a penalty for breach of s 4(6) of the Act. Fonterra opposed both the substance of the DWU case put against it and the remedies sought.

Replacement collective agreement

[48] Running in parallel with the foregoing events, DWU initiated bargaining for a replacement collective agreement on 2 July 2015.

[49] During a bargaining meeting on 18 August 2015, the DWU put forward a claim to remove the exclusion in the coverage (cl 2.4.1) preventing the collective agreement covering managers with responsibility for employment and dismissal of workers. Fonterra rejected this claim.

[50] On 20 August 2015, the parties reached terms of settlement for the replacement collective agreement and it was ratified on 16 October 2015.

The Authority's Investigation

[51] The Authority dealt with a number of preliminary and procedural issues before the matter proceeded to an investigation meeting. The matter was initially set down for three days. However, for a variety of reasons, the investigation meeting took five days.

[52] During the investigation meeting, I heard evidence from a number of witnesses. DWU witnesses were union officials: Mr McConnell, Christopher Flatt, Gavin Warne, Brett Brown and Richard Everson; and current and former Level 8s, Greg Pomeroy and Bruce Newman. Another Level 8, Anthony Williams provided a witness statement but was unavailable to give evidence. Consequently his witness statement was set aside. The following provided witness statements for Fonterra: Ms Clarkson, Mr Murdoch and regional and site managers, Stephan Brown, Damian Sauni and Blair Culph.

[53] Outlines of submission dealing with factual and legal issues were provided in advance of the investigation meeting. I was also assisted by the preparation by the parties of an agreed chronology and common bundle of documents. The common bundle was supplemented by various documents received during the investigation meeting and afterwards.

[54] Counsel provided fulsome final submissions at the end of the investigation meeting about evidentiary matters, expanding upon their respective synopses and dealing with emergent legal issues.

[55] Having regard to s 174E of the Act, I do not refer in this determination to all the evidence received during my investigation of the employment relationship problem. While I have not explicitly referred to all the submissions of counsel in this determination, I have fully considered them.

The Issues

[56] The parties were unable to reach agreement on the issues for determination. Several attempts were made but without success. Ultimately, this fell to the Authority. At the conclusion of the investigation meeting after hearing the evidence and submissions of the parties, I formed the view that the best assistance the Authority could give the parties was to determine the following issues:

- (a) Was Fonterra required to follow the Job Classification System contained in Schedule 2 of the collective agreement in respect of the Level 8 job?;
- (b) Did Fonterra's proposal to disestablish the Level 8 job give rise to a redundancy situation under cl 10 of the collective agreement?;
- (c) If Fonterra has breached the collective agreement, what, if any, remedies should be awarded the DWU?; and
- (d) Should either party contribute to the costs of representation of the other party?

[57] As stated above, as part of its case the DWU contended that the restructuring of the Level 8 job by Fonterra breached s 4(6) of the Act. Fonterra denied this. There was a significant disjunction between, on one hand, the excellent working relationship between Fonterra and the DWU, which was demonstrated in the evidence and several times during the investigation meeting in respect of unrelated matters, and, on the other hand, the suggested motivations of Fonterra giving rise to a breach of s 4(6). Ultimately, given the findings of the Authority in respect of Fonterra's breach of the collective agreement and having regard to s 160(3) of the Act, I formed the view that it was not necessary to determine this issue.

The Collective Agreement

[58] As a general principle of law, Fonterra has a right to manage and restructure its business as it sees fit. However, this right is constrained by any contractual obligations Fonterra has imposed on itself and any obligations imposed by statute.¹ In redundancy situations an assessment as to whether dismissals are procedurally and substantively justified requires consideration of the contractual arrangements binding on the parties within the context of the overarching test for justification for dismissal set out in s 103A of the Act.²

[59] By any measure the collective agreement between Fonterra and the DWU is an impressive document. Mr Murdoch and Mr McConnell gave evidence, most of which they agreed upon, about the collective agreement's long history and various developmental phases. They were obviously very proud of the parties' achievements and they had every right to be.

[60] In addition, Mr McConnell described the collective agreement as a "living document" as it contained a number of provisions facilitating modifications, as the need arose, to matters covered by the collective agreement. Fonterra did not take issue with this assessment.

[61] The DWU contended that the proposal to create the STM role was inconsistent with the collective agreement. Specifically, it contended Fonterra's actions were inconsistent with the intent of the collective agreement (cl 1.2); it had bypassed the job classification committee (Schedule 2) and had not complied with the redundancy clause (cl 10).

[62] Fonterra strongly resisted these contentions. It further said that quite apart from the different characteristics of the STM role, which are discussed below, the role itself was precluded by the collective agreement's coverage clause because it would be responsible for the employment and dismissal of workers.

¹See, for example, *Fonterra Group v New Zealand Dairy Workers Union* [2005] NZEmpC 34 at [15], *Simpsons Farms Limited v Aberhart* [2006] ERNZ 825 at [32] and *Grace Team Accounting Limited v Brake* [2014] ERNZ 129 (CA)

²At [85]

Coverage clause

[63] The collective agreement's coverage clause stated in this regard:

Exclusions

This Collective Agreement shall not apply to the following types of work or groups of workers:

...

2.4.1 Managers who are responsible for the employment and dismissal of workers

[64] This type of exclusion from coverage of a collective agreement seems quaint in 2016. However, it was, on the evidence of Mr Murdoch, a longstanding provision in the collective agreement that could be traced back to the days of formal demarcation under the national award system.

[65] The parties had contrasting positions about what it meant to be "responsible" for employment and dismissal of workers. The DWU contended that responsible within this context meant ultimate responsibility - that is, the *decision* to employ and to dismiss. Conversely, Fonterra contended it meant being responsible for the processes of employment and dismissal, end-to-end.

[66] As stated above, during the 2015 bargaining round the DWU sought unsuccessfully to have cl 2.4.1 removed from the collective agreement. Mr Murdoch contended it was a "late" claim and no real effort was put into achieving it. In contrast, Mr McConnell in his oral evidence said that while it was a late claim, it went through the normal endorsement process within the DWU. He also said the claim was seriously advanced by the DWU but Fonterra would not agree to it.

[67] When I asked Mr McConnell about why the claim had been pursued, late or otherwise, he said the DWU believed the clause lacked relevance in light of the end of demarcation and changes to the DWU's eligibility rules. Mr McConnell also contended the clause could be "misused" by Fonterra to remove a layer of management from coverage of the collective agreement, as had occurred during a previous restructure - a restructure which he said had divided the DWU - and now with Project Align.

[68] When asked about the expansive nature of the work covered by the agreement in cl 2.3.1 and cl 2.3.2, Mr Murdoch accepted, the determining factor taking the STM role out of coverage was cl 2.4.1 not the nature of the work to be performed by STMs. Indeed, Mr Murdoch accepted in his oral evidence that the STM role could be incorporated into the collective agreement, if the exclusion from coverage was removed. However, he suggested that some restructuring of the collective agreement would be required to accommodate, for example, KPIs.

[69] The coverage clause also contained the following notation:

Note: If there is no clear classification and remuneration schedule for a worker eligible for coverage under the coverage clause above and who joins the Union then the parties will meet to develop appropriate schedules for such workers.

Intent clause

[70] The collective agreement's intent clause stated:

1.2 Intent

1.2.1 [Fonterra] undertakes to be a good employer, committed to providing equal opportunities and a safe and healthy environment to work in.

1.2.2 The parties recognise, acknowledge and agree that their respective interests do not always coincide and at times their interest may conflict. They also agree that it is in their mutual interests to deal with such conflict that may arise as independent partners. Accordingly it is agreed that workers shall collectively have a voice in the operation of [Fonterra] and in the determination of their working environment and terms and conditions of employment. Thus workplace structures, processes and culture shall be jointly developed to encourage this, including convening joint working parties where agreed.

1.2.3 The parties believe that such an approach will provide a solid basis for achieving an efficient and competitive business so as to provide a rising standard of living for workers and a safe and healthy environment to work in, a profitable and expanding business, and customer satisfaction and loyalty.

[71] The DWU contended that Fonterra's action in respect of the proposal were inconsistent with particularly, cl 1.2.2 and cl 1.2.3.

Job Classification System

[72] The collective agreement contained a comprehensive “Job Classification System” (JCS). The JCS was set out in schedule 2 of the collective agreement. The parties in cl 2.5.2 deemed that the schedules attached to the collective agreement formed part of the agreement.

[73] Relevant and interrelated provisions of the JCS were:

Schedule 2: Job Classification System

The parties agreed to a new Job Classification System to apply to all permanent workers by the collective agreement. The system comprises:

- Level Descriptors.
- Team Capabilities.
- Job Classification Committee.
- Training and Qualification options.
- Interpretation Guidelines.

...

Job Classification Committee

As the business develops, the Job Classification System may need to change too. The need for change may arise because:

- A new job is developed that doesn't fit clearing into existing levels, descriptors and/or job titles.
- Standard Operating Procedures have been amended.
- Skill requirement have changed.
- The business submits a case for change to the title or descriptor of a particular job.
- Issues arise with interpretation or application of the existing job classification system.

The Job Classification Committee has been established to maintain the system. The purpose of the Committee is to:

- Ensure the ongoing integrity of the Job Classification System.
- Initiate any changes to the job titles or level descriptors.
- Fit any new job into the system, including the descriptor, level and title.
- Approve or otherwise any changes to a level descriptor and/or job title.
- Advise sites as to the interpretation or operation of the system
- Identify any moderation needs and establish appropriate processes.
- Updating changes to training and qualification options.
- Consider and decide any disputes referred to it that may arise from time to time as a result of changes to the level of an individual worker or group of workers that cannot be agreed at the local level

....

The Committee comprises equal representation from [Fonterra] and the [DWU]. Each party has two permanent assigned members and one person from the work-stream. The Committee may access specialist advice with the prior approval of [Fonterra] for any necessary resources. The Committee will meet no less than quarterly.

Full details are set out in the Fonterra/DWU Booklet.

JCS User Guide

[74] This “booklet” was entitled the “JCS User Guide for Managers, Delegates and HR” (guide). The Authority was provided with: Version 2.4, March 2013. The guide was very comprehensive. It contained an overview of the JCS, details of the infrastructure supporting it including the establishment of the Job Classification Committee (JCC), guidance on how to use the JCS, guidance of dealing with disputes arising out of its use or application and the interpretation guidelines for the JCS.

[75] This guide also contained a summary of updates to the JCS since its implementation. These included the development of new descriptors for several positions including Level 5b Process Tester (Processing Stream), Level 7 Driver Performance Assessor (Transport Workstream) and Level 8 Team Leader – Support (Support Services). In addition, a review of the guide disclosed that a significant number of amendments to “Descriptors” for roles included in the JCS had been made.

[76] The guide also identified how to assign levels within the JCS:

2. How to Assign Levels

2.1 Level Descriptors and Team Capabilities

The level descriptors and the team capabilities are the **key** to classifying jobs for new and existing workers. Manager and delegates are expected to work together to apply the new system when creating new roles and developing existing workers’ career paths through progression and appointment on site

[77] The guide provided for a dispute resolution procedure in the following terms:

5. How to Deal with Disputes

In a fast changing and evolving workplace it is inevitable that there will be disputes from time to time between managers and delegates about the application of the [JCS]. For the first 12 months of implementation, the [JCC] will maintain a “Disputes Register” to assist sites resolves their difference. At the end of the 12 months, the Site based Level Committees will fulfil this function.

5.1 Dispute Referral Process

1. Discussion between manager and delegate occurs first a department level
2. If the issue is unresolved, it must be referred to Site Manager and Site Delegate for input.
3. An unresolved issue at that level may then be referred to the [JCC] through the use of the Disputes Form.

5.2 Registering Non Conforming Roles

Not all roles fit neatly into the [JCS]. Generally, where an existing non-conforming job becomes vacant it should not be replaced without the agreement of the [JCC]. No new non-conforming job should be established without the agreement of the [JCC]

5.3 Disputes Process for Workers

Members of the DWU who are unhappy with the application of the [JCS] in relation to their role, or roles, are in the first instance encouraged to talk to their manager or delegate.

If they are unhappy with the outcome of these discussions, they can refer their dispute formerly to the Site Delegate so that the dispute can be placed on the “disputes register” and be reviewed by the [JCC]. Alternatively they may wish to raise an employment relations problem as per Clause 11 of the DWU Collective.

[78] Under the heading “Job Classification Infrastructure”, the guide stated:

Process for initiating Changes to the Job Classification System

The Change Request Form is designed to initiate changes from sites to the [JCS]. It is the role of the [JCC] to research and review these proposals and make recommendations for change to the Collective Agreement negotiations they see fit.

[79] Also under that heading, the guide provided that the JCC was required to “report on the System and any changes made and/or proposed to the parties at the collective agreement negotiations”.

[80] The evidence of Brett Brown, a DWU representative on the JCC, was that no application was made by Fonterra to amend the Level 8 Descriptor. During the investigation meeting, I requested and was provided with the JCC report to the 2015 collective agreement negotiations. A review of that document disclosed that the JCC met three times in 2015. Interestingly, the JCC met in June, which was around the same time the STM role approved by senior management. The JCC recommended to the negotiating team that a new descriptor, “Level 5b - Truck Driver – Dairy Fert”, be

inserted in the collective agreement. A review of the replacement collective agreement discloses this recommendation was accepted and inserted in Schedule 2.

JCS Interpretation Guidelines

[81] The JCS Interpretation Guidelines (guidelines), which were reproduced in the guide and form part of the JCS, defined a series of key terms. The definition of three of the listed terms is particularly important: “Level descriptors” “supervise” and “manage”:

Key Term	Interpretation
Level descriptors	<p>Level Descriptors set clear boundaries between levels and highlight key distinctions between jobs. They:</p> <ul style="list-style-type: none"> - Express the core of what differentiates the level – they are not a job description - Describe what a person is able to do without direct supervision (i.e. something they can be left to be responsible for without someone standing alongside watching them and providing ongoing input. - Generally skills, knowledge and ability aren't described, but are implicit in that a worker requires a bundle of skills etc to be able to competently perform the descriptor. Increasing levels of knowledge, experience, training etc would be reflected in a worker being able to do more. <p>The Level Descriptors only identify what differentiates a particular level. For example, the requirements to <i>Complete documentation</i> is part of every role and therefore isn't included as a descriptor.</p>
Supervise:	<p>Oversee the work on a day-to-day basis of:</p> <ul style="list-style-type: none"> - An individual, team or process. - Day-to-day work allocation - Feedback to reinforce standards - Resolving straightforward work issues
Manage:	<p>Manage and take overall responsibility. The span of control:</p> <ul style="list-style-type: none"> - Longer term planning - Being responsible for the overall performance of - people, processes and the quality of product or service - Managing more complex processes (e.g. allocation of resources, rostering and training needs analysis) - Dealing with more complex team management issues (e.g team conflict).

[82] The guidelines also stated that:

Levels and Level Descriptors

Each work stream is made up of levels and level descriptors. The level descriptors are the 2-3 unique identifiers for each job. They do not include every aspect of a job. They highlight key distinctions between jobs and set clear boundaries between levels and also highlight key distinctions between different jobs at the same level.

Indicative examples are set out in some descriptors and are intended to provide scope and clarity. It is not expected that a worker will be doing all examples. However, it is expected that a worker will be doing one of the examples or an equivalent example for their job.

The level descriptors provide an objective framework for managers to classify their jobs and illustrate career paths for dairy workers.

Level 8 Descriptor

[83] The relevant descriptor for the Level 8 job was set out in Schedule 2 of the Collective Agreement. The introduction to the stores workstream descriptors in the schedule reinforced the statements set out in the guidelines including that descriptors contained examples and were not a job description.

[84] The Level 8 descriptor stated:

<p>Level 8 Supervisor – Stores</p> <ol style="list-style-type: none">1. Manage staff in a storage facility, including:<ul style="list-style-type: none">- allocating short and medium term work- mentoring and providing feedback on staff performance and development- participating in the recruitment process.2. Manage a storage facility to meet company and regulatory requirements, including:<ul style="list-style-type: none">- accounting for stock and movements- meeting shipping deadlines- maintaining the condition of stores, equipment and goods- pest control- maximizing utilisation of stores and shipping containers- maintaining stock levels in an economic way3. Manage stores operating and compliance systems, including:<ul style="list-style-type: none">- [Fonterra] management systems (for example health and safety systems)- HACCP- Product Safety Programme (PSP)
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[85] For comparative purposes, the Level 6 descriptor stated:

<p>Level 6 Charge Hand – Stores</p> <ol style="list-style-type: none">1. Supervise staff on a day-to-day basis, for example:<ul style="list-style-type: none">- implementing roster systems (work and holiday)- issuing work instructions- completing on-the-job training and competence assessment in stores systems2. Supervise the daily operation of a store or a section of a store for example:<ul style="list-style-type: none">- co-ordinating inwards and outwards movement of goods- maximising utilisation of storage space.3. Administer inventory and shipping systems for example<ul style="list-style-type: none">- implementing and co-ordinating orders.- selecting goods for orders- running reports and monitoring processes- closing out orders.
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[86] The “Team Capability” for the Level 8 (and Level 6) job was identified in Schedule 2 as “Team Leader”. The schedule provided a definition of Team Leader. Within this definition, under a heading “Decision making”, the schedule stated Team Leaders:

1. Make quality decisions in difficult situations i.e balances the need for: complete and accurate data, making timely decisions, taking considered risks.
2. Takes accountability for own decisions and those of the team.
3. Implements management initiatives irrespective of personal views, raising any concerns in appropriate way.

[87] Having set out the relevant parts of the collective agreement and the JSC infrastructure agreed upon by the parties, was Fonterra required to follow the Job Classification System in the present matter? This is considered and analysed in the next section.

Was Fonterra required to follow the Job Classification System contained in Schedule 2 of the collective agreement in respect of the Level 8 Stores job?

[88] Counsel for the DWU submitted that the collective agreement, through the JCS, provided the process for the evolution of roles and descriptors. Counsel said the JCS system was consistent with collective agreement's intent clause and was the method by which the parties agreed they would achieve an efficient and competitive business.

[89] Counsel further submitted that work described by Fonterra for the STM role, other than the responsibility for employing or dismissing workers, fitted within the current descriptor for the Level 8 job. Counsel submitted if that was not the case, the JCS provided the means for expanding the descriptor. The DWU also contended that the JCC should convene in circumstances of a substantial change to a role covered by the collective agreement, as Schedule 2 does not preclude this.

[90] Counsel submitted the DWU doubted whether, in practice, an STM would have unfettered responsibility to employ and dismiss. However, even if Fonterra was genuine in its desire for STM's to have this responsibility, it was a relatively small adjustment to the role because the current Level 8 descriptor already included "participating in the recruitment process". Counsel said the DWU had signalled it would support a variation to the collective agreement's coverage clause to remove cl 2.4.1 to facilitate this. Counsel also submitted that cl 10 was not an "alternative pathway" to bypass rest of collective agreement.

[91] Counsel for Fonterra submitted that the first time the DWU raised the issue of the JCC was in its reply evidence lodged with the Authority in February 2016. Counsel submitted it was not raised with Fonterra during consultation over the proposal or in its Statement of Problem or Amended Statement of Problem.

[92] Counsel submitted that the JCC only applied to current permanent employees, can only consider changes to levels, descriptor or job titles for *existing* roles, could not create *new* roles within, or outside, coverage of the collective agreement and could not change the core functions of the Level 8 job or include responsibility for employment and dismissal of workers.

[93] Counsel submitted, relying on the evidence of Mr Brown (which was the JCC could not cover an IEA role) and that of Mr Warne (which was that he did not think there was a any need to use the JCC, as the jobs were the same), that the DWU believed the STM role was outside the coverage of the collective agreement.

[94] Counsel further submitted, relying on the evidence of Mr Murdoch, that in situations involving substantial changes to a role, Fonterra would invoke a redundancy process rather than use the JCS.

[95] Fonterra also rejected the DWU's contention that the responsibility for employment and dismissal was only added to the STM role to take the role out of coverage and said there was no evidence to support this. Relying on the evidence of Ms Clarkson, counsel submitted that the STM role would have a direct connection and visibility with every shift within the workgroup and were, therefore, best placed to make important decisions about employment and dismissal of workers.

Conclusions

[96] While the DWU's argument about the use of the JCC did appear to be a late-piece alternative argument to its primary argument that STM role was the same as the Level 8 job, Fonterra did have the opportunity to adduce evidence, examine witnesses and make submission in relation to it.

Living document

[97] Having extensively reviewed the collective agreement, I accept the proposition that the collective agreement is a "living document". The words in the intent clause, which are reflective of the parties' relationship and how they will work together, must be taken to mean something and I accept that they do.

[98] The JCS is consistent with this intent clause. Having reviewed the JCS and the infrastructure supporting it, I find that the JCS was a process by which the parties established the level descriptors and job titles of the jobs performing the work described in cl 2.3.1 and cl 2.3.2 of the collective agreement.

[99] Fonterra's submission that the JCC only applied to current permanent employees, can only consider changes to levels, descriptor or job titles for *existing* roles and could not create *new* roles within coverage of the collective agreement is not supported by a plain reading of Schedule 2 of the collective agreement.

[100] Schedule 2 plainly identifies that the JCS applies to permanent employees covered by the agreement, not necessarily *current* permanent employee. The schedule also states that the role of the JCC is to ensure the ongoing integrity of the JCS, initiate any changes to the job titles or level descriptors and fit any *new* job into the JCS, including the descriptor, level and title. In addition, the parties have agreed that as not all jobs fit neatly into the JCS, a "non-conforming" job could be established by agreement of the JCC. This is also consistent with the notation in the collective agreement's coverage clause.

Substantially similar roles

[101] To the extent that Project Align found that a "gap" between the actual and desired state in DCs, the DWU agreed with this finding. However, the DWU was consulted about the proposed solution to the gap rather than the causes of it. The DWU argued that gap existed because Fonterra was not using Level 8s to their descriptor or, if they were and the gap still existed, the descriptor could be altered by the JCC to ensure Level 8s were meeting the needs of the business. The DWU did, however, accept that the Level 8 job could be better defined and some of what Mr McConnell described as the "noise and nuisance" work could be removed from the role. Certainly the WMS work had seen, as Mr Murdoch put it, Level 8s retreat to their offices but this work, as Mr McConnell observed, could be removed as was proposed for the STM role.

[102] The Level 8 descriptor required these employees to *manage* staff in a storage facility, including allocating short and medium term work, mentoring and providing feedback on staff performance and development and participating in the recruitment process.

[103] Much was made in Fonterra's written and oral evidence about the difference between "manage" and being "manager". It was eloquently characterised as being the difference between a *verb* and a *noun*. The significance of this evidence was that in Fonterra's view Level 8s were not "managers." Further, Fonterra contended while Level 8 descriptor stated "manage" this should be read down to mean "supervise". Dictionary definitions of "manager", "manage" and "supervise" were provided and reference was made to definitional findings from case law arising out of other restructures.

[104] Ultimately, this issue is resolved by reference to the parties own words. As observed above the JCS interpretation guidelines, which were called up by Schedule 2 of the collective agreement, contains definitions of "manage" and "supervise". I accept that these definitions are the parties' common intention.

[105] It is not appropriate in circumstances where the parties have defined "manage" and "supervise" within the context of the JCS to accept (or give) another meaning to these terms. I decline to do so. "Manage" and "supervise" are taken to have the meaning as defined by the parties in the guidelines. Applying these definitions to the level descriptors in the JCS, Level 8s are expected to "manage" and Level 6s are expected to "supervise".

[106] Both Level 8 and Level 6 jobs are categorised in Schedule 2 as being "Team Leaders". The schedule states that "Team Leaders", among other things, make quality decisions in difficult situations, takes accountability for own decisions and those of the team and implements management initiatives irrespective of personal views, raising any concerns in appropriate way. This definition of "Team Leader", as agreed by the parties, is also accepted.

[107] The position description for the STM role was prescriptive. In contrast the Level 8 descriptor contained in the JCS provided *examples* and ultimately, through the JCC, was elastic. Moreover, it was clear from the JCS, and elsewhere, that level descriptor for Level 8 was not a "job description". Consequently, a direct line-by-line comparison between the two, if possible, would be subjective, inaccurate or both.

[108] Both jobs had the same effective “span of control” and time focus - that is, day- to-week. More significantly, the STM role would incorporate the Level 8 job except the WMS work, which was to be transferred to Level 6s. There was nothing to prevent, as observed by Mr McConnell, the WMS work going to Level 6s while leaving the Level 8s in place. In essence, freeing up Levels 8s to manage, as defined by the guidelines, in accordance with their current descriptor.

[109] Neither the JCS nor anything else in the collective agreement prevented the Level 8 job being fully accountable for their individual and team actions. Indeed, the definition of “Team Leader” expected this to be the case. Further there is also nothing to prevent Level 8s having direct reports - there was a conflict in the evidence whether they currently did or not (Fonterra said they did not) - and having input into KPIs and capital expenditure (capex) as proposed for the STM role. The former example is a reporting line and latter examples are, in the first instance, issues of training.

[110] Fonterra said STMs (including Level 8s taking on the STM role) would receive training to enable them to fulfil the role. The training plan for STMs was set out in a discussion paper entitled: “Shift Team Manager: Onboarding & Capability Build Plan”. The plan for the first year consisted of modules in “discipline and dismissal”, “recruitment”, “performance development” and “performance, career, development conversations”. The proposed method of delivery included e-learning, facilitated discussions and face-to-face learning. The discussion paper identified that the duration of the training in the first year was less than ten hours. There was nothing in the JCS, or elsewhere in the collective agreement, preventing Level 8s undertaking this training. However, Level 8s would not be able to be responsible for employment (beyond involvement in recruitment) or dismissal of employees unless and until the parties had agreed upon a variation to the collective agreement.

[111] The key difference, I find, between the STM role and Level 8 job is having responsibility for employment and dismissal of employees. Whether Level 8s were involved in recruitment and in disciplinary and/or dismissal matters was subject to a lot of evidence during the investigation meeting. The Level 8 descriptor incorporated “participating in the recruitment process”. The extent to which this was occurring across sites appeared, on the evidence, haphazard. Participation in these processes did seem to be occurring much more readily than Level 8 involvement in disciplinary-type processes, although this did not form part of their current descriptor.

[112] Fonterra submitted that there was no direct evidence to support the DWU's contention that the responsibility for employment and dismissal of employees was only added to the STM role to take it out of coverage. Against this submission, an adverse inference could be drawn from the wording in Document A suggesting that Fonterra was "constrained by the confines of the current DWU Collective Agreement". However, it is not necessary in the present circumstances to do so.

[113] I find the work to be performed by the STM role, with the exception of being responsible (to the extent that is greater than being "involved" in recruitment) for employment and responsible for dismissal of workers, falls within the work described in cl 2.3.1 and cl 2.3.2 of the collective agreement. Mr Murdoch accepted this in his oral evidence. He also accepted that the STM role could be incorporated into the collective agreement, if the exclusion from coverage was removed. While Mr Murdoch suggested that some restructuring of the collective agreement would be required to accommodate, for example, KPIs, I find this would not be too onerous for the parties as both Mr Murdoch and Mr McConnell stated the collective agreement had previously contained collective KPIs relating to a bonus. Alternatively, the parties could avail themselves of s 61(1) of the Act.

[114] I further find that the work to be performed by the STM role, except for that responsibility, effectively falls within the current descriptor of Level 8 position. Even if it does not, the parties have authorised the JCC to expand the level descriptor so that it would be. This, in my view, would include circumstances including substantial change, as there is nothing in Schedule 2 to prevent this from occurring.

[115] In any event, even if I am wrong about these findings, the parties have agreed to include *new* jobs in the JCS and, beyond that, in circumstances where a job does not fit neatly into the JCS, the JCC can establish a *non-conforming job*. Indeed, both outcomes would be consistent with the notation in the coverage clause set out in paragraph [69].

[116] The JCC is embracing of the parties' bargain about the classification of work that is performed under the collective agreement. In essence, the JCS "covers the field" in terms of the classification of this work.

[117] The correct approach for Fonterra, and one consistent with the collective agreement, would have been for Ms Clarkson, as the responsible senior manager, to submit a case to the JCC to change the descriptor (and perhaps the title) of the Level 8 job. Alternatively, if Ms Clarkson did not believe the work fitted into the existing Level 8 descriptor, she could have submitted a case to the JCC for the development of an STM role within the collective agreement. Given all Level 8s were offered redeployment by Fonterra to the STM role, as Ms Clarkson had no concerns about their performance, then it is unlikely this course would have become an issue between the parties. Failing all of that, the JCC could have established the STM as a non-conforming job.

[118] Further, there was nothing in Schedule 2, or elsewhere in the JCS infrastructure, that would have prevented the JCC from recommending to the negotiating committee or the parties more generally (if the business case sought the inclusion of responsibility for the employment and dismissal of workers and the JCC supported this) that they agree to remove cl 2.4.1 of the collective agreement to facilitate this. Indeed, as stated above, the DWU were supportive of removing cl 2.4.1.

[119] The collective agreement, through the JCS, imposes particular obligations on Fonterra to work with the DWU to re-develop, if necessary, the Level 8 descriptor or create a STM new position within the collective agreement. The DWU demonstrated a willingness to remove cl 2.4.1 through bargaining or by variation to assist Fonterra. For whatever reason, Fonterra bypassed the JCC. It breached the collective agreement as a result. Ultimately, Fonterra must be held to the bargain that it has struck with the DWU and the ongoing integrity of the JCS must be maintained.

[120] The answer is “yes”, Fonterra was required to follow the Job Classification System contained in Schedule 2 of the collective agreement in respect of the Level 8 Stores job.

Did Fonterra's proposal to disestablish the Level 8 Stores job give rise to a redundancy situation under cl 10 of the collective agreement?

[121] In light of the findings above about the role of the JCC and about the substantial similarity between the Level 8 job and STM role, this question is effectively moot because Fonterra must use the JCC and does not, as a consequence, have direct access to cl 10.

[122] However, in the absence of either or both findings, could the proposal give rise to a redundancy situation arise under the collective agreement? Assuming direct access to cl 10 is permissible, the clause has to be construed, given the clause contains both a definition of redundancy and the bases upon which the clause is triggered, in such a way as to find favourable support for that proposition.

[123] Clause 10 relevantly provides:

10 Redeployment and Redundancy

10.1.1 The parties recognise the need for [Fonterra] to continually upgrade plant and machinery and employ the most efficient means and method of production in order to maximise competitiveness.

10.1.2 The parties also recognise that from time to time the consequence of such upgrading will affect the jobs and terms and conditions of employment of workers.

10.1.3 Therefore, whenever such changes occur that displace the jobs or substantially affect the terms and conditions of employment of any workers to the workers detriment, then every endeavour must be made to redeploy the workers to an alternative position in accordance with the redeployment clause set out below.

10.1.4 Furthermore, a Consultative Committee (consisting of two [Fonterra] representatives plus the [DWU's] Regional Organiser and site delegate or deputy) shall be formed to oversee the implementation of all redeployment, relocation and/or redundancy issues on any site where displacement of workers seems likely to occur. Meetings of the Consultative Committee can be instigated by either [Fonterra] or [DWU] representatives. The Consultative committee will:

10.1.4.1 ensure the spirit and intent of the Collective Agreement is observed, and

10.1.4.2 oversee any trial periods and oversee the deployment of workers to any other positions.

...

10.4 Redundancy

10.4.1 Definitions.

“Redundancy” means a situation where a worker’s employment is terminated by reason of the sale or closing down of the whole or part of [Fonterra] operations, or by the reorganisation of a factory or site complex where the worker cannot be placed in alternative employment by [Fonterra] under either the redeployment provisions or relocation provisions set out above. Alternatively, “redundancy” means a situation where a worker’s terms and conditions of employment are substantially changed to their detriment as a consequence of the need to continually upgrade plant and equipment.

[124] Counsel for the DWU submitted that increasing managerial authority and giving responsibility for recruitment and dismissal of workers to a job is not a change to “means or methods of production” or “upgrade to plant or equipment”.

[125] Ms Clarkson accepted in her evidence a change in hours of work alone would be insufficient to give rise to a redundancy situation, as Level 8s already did shift work or, at least, were paid to do shift work. In any event, a change in hours for Level 8s would also not be a change to the “means or methods of production” or an “upgrade to plant or equipment”.

[126] Counsel for Fonterra referred me to several determinations of the Authority including *Pegasus NZ Airlines Services Society v Air New Zealand Limited*,³ *McKinney v Transportation Auckland Corporation Limited*,⁴ *New Plymouth District Council Staff Association v Chief Executive New Plymouth District Council*.⁵ Counsel also referred to several decisions of the Court including *Sanson v Auckland Regional Council*,⁶ *Wesptac Banking Corporation v Stephen*,⁷ *NZPSA v Department of Conservation*⁸ and *Carter Holt Harvey Ltd v Wallis*.⁹

³ERA Auckland AA 438/05, 7 November 2005.

⁴[2011] NZERA Auckland 271

⁵[2015] NZERA Wellington 98

⁶[1999] 1 ERNZ 708. Confirmed on appeal in *Auckland Regional Council v Sanson* [1999] 2 ERNZ 597 (CA)

⁷[2000] ERNZ 566

⁸[1991] ERNZ 477

⁹[1998] 3 ERNZ 984

[127] Counsel for the DWU submitted that Fonterra’s approach to the disestablishment of the Level 8 job assumed a managerial prerogative to do so. Counsel said that this “universal and generic” approach saw Fonterra rely on case law, in particular *Pegasus*, which the DWU said was irrelevant. In *Pegasus*, counsel said the collective agreement in question did not contain a means of changing position descriptors and Air NZ did not accept the capability of incumbents, both unlike the present circumstances.

[128] Counsel further argued that the law had moved on since these determinations and decisions and submitted that after *Brake*, the decisions of the Court in *Wang v Hamilton Multicultural Services Trust*¹⁰ and *Jinkinson v Oceana Gold (NZ) Ltd*¹¹ were more reflective of the contemporary legal position.

Conclusions

[129] The submission of Counsel for the DWU about *Brake*, *Wang* and *Jinkinson* is, in my view, correct. These decisions do reflect the contemporary legal position in redundancy situations.

[130] The determinations referred to by Counsel for Fonterra (and, indeed, also a more recent Authority determination in *Corrections Association of New Zealand v Department of Corrections* [2016] NZERA Wellington 56, which is in the same vein) all, in my view, turn on their own facts as they relate, as they must, to the particular interpretation of the contractual arrangements binding those parties.

[131] Counsel for the DWU said Fonterra must comply with the whole collective agreement, not selected parts of it, particularly cl 10. I accept this submission and I do so within the context of having already found that Fonterra is required to use the JCS.

[132] Fonterra does not have direct access to cl 10, except in the circumstances set out in cl 10.1.1 exist. Such circumstances do not exist in the present case.

¹⁰[2010] NZEmpC 142

¹¹[2010] NZEmpC 102.

[133] For the foregoing reasons, the answer is “no”, Fonterra’s proposal to disestablish the Level 8 job did not give rise to a redundancy situation under cl 10 of the collective agreement.

Remedies

[134] In light of the findings above, what remedies, if any, should be granted to the DWU? Alternatively, are the findings of the Authority sufficient to assist the parties in the present circumstances?

[135] The DWU sought compliance orders both with the collective agreement and the Act. It also sought a penalty for breach of good faith arising out of an alleged breach of s 4(6) of the Act by Fonterra.

[136] As I have decided not to determine that issue, the jurisdiction to award a penalty for breach of good faith is not enlivened.

[137] Fonterra opposed any and all remedies sought by the DWU. In respect of compliance orders, Counsel for Fonterra submitted that in the event the restructuring was deemed unlawful by the Authority only a determination was necessary and the parties should be left to reach their own mutually agreeable outcome in light of it, without the need for compliance orders.

[138] I accept this submission. Consequently, I decline to make the compliance orders sought by the DWU.

Mediation

[139] The parties are directed to attend mediation to discuss the effect of this determination and to use their positive employment relationship and best endeavours to find a mutually agreeable outcome. An Authority Officer will make contact with the parties to ensure this occurs as soon as possible.

Costs

[140] Costs are reserved. However, I have formed the preliminary view, in all the circumstances of the case, that each party should bear its own costs. The DWU and Fonterra have benefited from a determination of the disputed matters between them. There was no default by either party in attempting to seek to resolve the matter before it came before the Authority including mediation. The evidence clearly establishes that the DWU and Fonterra are party to an on-going, robust and productive employment relationship.¹²

Andrew Dallas
Member of the Employment Relations Authority

¹²See, *New Zealand Tramways Union (Wellington Branch) v Wellington City Transport (t/a Stagecoach New Zealand)* [2002] 2 ERNZ 435 at [73]—[74].