

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA**

[2019] NZERA 403
3052594

BETWEEN NEW ZEALAND PUBLIC
SERVICE ASSOCIATION INC
Applicant

AND THE CHIEF EXECUTIVE OF
GREATER WELLINGTON
REGIONAL COUNCIL
Respondent

Member of Authority: Vicki Campbell

Representatives: Caroline Mayston for Applicant
Meg Cooksley for Respondent

Submissions Received: 3 May and 11 June 2019 from Applicant
7 June 2019 from Respondent

Investigation Meeting: On the papers before the Authority

Determination: 8 July 2019

DETERMINATION OF THE AUTHORITY

- A. The Chief Executive of Greater Wellington Regional Council is ordered to comply with the terms of the collective agreement when calculating redundancy payments under clause 15(k)(iii) of the collective agreement.**
- B. Costs are reserved.**

Employment relationship problem

[1] The parties are in dispute about the interpretation, application and operation of clause 15(k) of a collective agreement between The Greater Wellington Regional Council (the Council), New Zealand Public Service Association Inc (NZPSA) and the Central Amalgamated Workers Union Inc (CAWU) dated 2 June 2016.

[2] In accordance with s 129 of the Employment Relations Act 2000 (the Act) the NZPSA has notified CAWU of the existence of this dispute. CAWU has taken no part in these proceedings.

[3] Clause 15(k) deals with redundancy compensation payable to an employee whose employment ends by reason of redundancy.

[4] By the consent of the parties this matter has been dealt with on the papers before the Authority under s 174D of the Act.

Issues

[5] In order to resolve this application I must determine the following issues:

- a) How is redundancy compensation to be calculated under clause 15(k)?
- b) Should a compliance order be issued?

[6] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. It has not recorded all evidence and submissions received.

The disputed clause

[7] Clause 15 of the collective agreement deals with surplus staffing within the Greater Wellington Regional Council (the Council). Clause 15(k) sets out the rules applying to the calculation of redundancy compensation in the following terms:

- i) Where practicable, the notification of individual redundancies will take place immediately after the process of consultation with staff and the consideration of the options under sub-clause (e).
- ii) Where, during the notice period, a staff members employment is terminated in accordance with Clauses 14(a), 14(b), 14(c) or 14(e) of this Agreement no redundancy compensation, or payment in lieu of notice, will be paid.
- iii) Payments of redundancy compensation under this Schedule will be calculated as set out below:

Upon completion of 1 year's service	6 weeks base salary
Each subsequent year of service to a maximum of 19 years service	2 weeks base salary
Each completed month of service in addition to the above to a combined maximum of 20 years service	1 day's base salary (to a maximum of 9)

- iv) The above calculation (sub-clause (k)(iii)) will be based on base salary for the full twelve months immediately prior to the date of termination (the last day of duty).
- v) No redundancy compensation will be payable where a staff member's service is less than one year.

...

Interpretation of the collective agreement

[8] The starting point when interpreting a clause in a collective agreement is to consider the natural and ordinary meaning of the language used by the parties. Even if the words are plain and unambiguous, this does not preclude a consideration of the surrounding circumstances¹. This acts as a cross-check as to whether some other or modified meaning was intended.

Position of the parties

[9] The New Zealand Public Service Association Inc (NZPSA) says the words used in the third line of the table in clause 15(k)(iii) means that any completed months of service beyond either 1, 2, 3 and up to 19 years is to be recognised by providing an additional payment based on 1 day for each completed month of service up to a maximum payment of nine days.

¹ *Pyne Gould Guinness Ltd v Montgomery Watson (NZ) Ltd* [2001] NZAR 789; *Tertiary Education Union v Vice-Chancellor, University of Auckland* [2015] NZEmpC 169

[10] The Council says clause 15(k)(iii) is intended to be a cascading approach to calculating redundancy payment entitlement. It says the first and second lines of the table are cumulative and the third and final line is an additional benefit for people who have service of 19 years or more.

Conclusion

[11] For the reasons that follow I have found the interpretation of the clause favours the NZPSA and accordingly a compliance order has been made.

[12] The first line is the starting point. It sets the minimum eligibility for the calculation of redundancy compensation at 1 year of service. The payment is an amount equivalent to six weeks. This is confirmed in clause 15(k)(v) which states that no compensation will be payable for service of less than one year.

[13] The second line outlines the compensation payable for completed service after 1 year to a maximum of 19 years for which the payment is an amount equivalent to 2 weeks' pay for each year of service.

[14] The Council says the third line is specific to the period of service between the maximum of 19 years and 20 years' service. At that point the Council says the clause provides for an additional day's compensation for each complete month of service during the year between 19 and 20 years' service to a maximum of 9 days compensation.

[15] I do not agree with the Council's interpretation. The provision in the third line of the table does not limit the payment of the additional months of service to only those served after 19 years. The words say the payment of 1 day for each month relates to completed service in addition to the "...above...". I have concluded the word "above" must refer to all lines in the table. This is because first two lines in the table provide for accumulating entitlements. For example a person who has worked for the Council for a period of 3 years is entitled to a payment of 6 weeks for the first year of service plus 2 weeks for each of years 2 and 3. This equates to a calculation of $6 + 4 = 10$ weeks pay.

[16] The wording in line three does not limit the application of the additional payment to the second line or to only service after 19 years has been completed. Therefore someone who has completed 3 years and 4 months is entitled to a payment equivalent to 10 weeks and 4 days.

[17] On a plain meaning of the words used in clause 15(k)(iii) employees are eligible for monthly service recognition after completing 1,2 3, and up to 19 years. The only limits applying to the calculation for redundancy compensation is a cap of 20 years and a maximum of nine months additional service for part years of service.

Compliance order

[18] The Chief Executive of Greater Wellington Regional Council is ordered to comply with the terms of the collective agreement when calculating redundancy payments under clause 15(k)(iii) of the collective agreement.

Costs

[19] Costs are reserved. I am likely to determine that costs should lie where they fall. However, the parties are invited to resolve the matter between them. If they are unable to do so the NZPSA shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The Council shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Vicki Campbell
Member of the Employment Relations Authority