

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 17  
3259399

BETWEEN	NEW ZEALAND PUBLIC SERVICE ASSOCIATION Applicant
AND	MINISTRY FOR PRIMARY INDUSTRIES Respondent

Member of Authority:	Claire English
Representatives:	Catherine MacNamara, counsel for the Applicant Maria Austen and Liberty Soanes, counsel for the Respondent
Investigation Meeting:	21 and 22 August 2024 in Wellington
Submissions received:	19 September and 31 October 2024 from Applicant 17 October 2024 from Respondent
Determination:	16 January 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The parties are in dispute about the meaning and application of a clause in the collective agreement between them (collective) which provides for the payment of overtime. The applicant (union) says that the clause provides that certain employees (as defined in that clause) are entitled to payment at the rate of T2 for all overtime worked above 3 hours in a week.

[2] The respondent (MPI) says the clause requires either the daily or the weekly hours to have been exceeded, so that overtime is paid at T1.5 for the first three hours in any overtime event, and then at the rate of T2 thereafter.

[3] The union seeks a determination in its favour, as well as an order for compliance, arrears of wages, interest, and costs.

[4] MPI says that none of these remedies are properly available.

### **The Authority's investigation**

[5] For the Authority's investigation written witness statements were lodged on behalf of the union from Ms Katherine Todd (Chief Quarantine Officer); Mr Richard Holst (Biosecurity Compliance Office and formerly a Quarantine Officer); Mr Andrew Dugmore (Senior Quarantine Officer and PSA Delegate); and Mr Glenn Cooper (Union Organiser).

[6] Statements were lodged on behalf of MPI from Ms Erina Clayton (Director of Human Resources), Mr Greg Williams (Team Manager, Boarder Clearance Services, Auckland), Mr Greg Peploe (Manager, Strategic Employment Relations), Mr Michael Inglis (Commissioner North BioSecurity New Zealand), and Mr Allan Thompson (Manager Boarder Clearance Services Central & South).

[7] All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[8] As permitted by s 174E of the Employment Relations Act 2000 (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. It has not recorded all evidence and submissions received.

### **The issues**

[9] The issues requiring investigation and determination were:

- (a) Does clause 4.3.2 of the 2017 collective entitle certain employees to payment at the rate of T2 for all overtime hours worked above 3 hours in a week?
- (b) Should either party contribute to the costs of representation of the other party.

## **Background**

[10] This matter concerns employees of MPI who work as Quarantine Officers and the interpretation of clause 4.3.2 of the collective between the parties dated 3 April 2023 to 2 April 2025. The clause provides for rates of overtime for different types of workers, described as Category A, Category B, Category C, and Target Evaluators.

[11] The clause is headed “Overtime” and relevantly states:

Overtime is pre-approved additional hours above the full-time hours for a role (except for National Communications Centre employees (excluding the manager) for whom it is hours above 88). This includes additional hours worked in response.

...

Target Evaluators will receive the overtime provisions for Category B employees (bullet below) regardless of the salary cap until this CA is no longer in force, at which point they will revert to the Category A provisions unless otherwise agreed in future bargaining.

All Category B employees, for hours above the daily or weekly hours according to the applicable roster, will be paid overtime at time one and a half (T1.5 for the first three hours and double time (T2) thereafter, except that double time will be paid for all overtime worked:

Between 10pm and 6am;

Between 10pm Friday and 6am Monday.

[12] There is no dispute over the payment of overtime for Category A and Category C workers. The dispute relates to the payment of overtime for Category B workers and Target Evaluators. In addition, there is no dispute about the 2 sub-bullet points providing for the payment of double time for work done between 10pm and 6am and on Saturdays and Sundays.

[13] The point of dispute between the parties may be expressed relatively briefly. The union says that the particular wording requires the payment of time one and a half (T1.5) once the relevant workers have worked for more than 3 hours overtime in any day or week. The union says that this is what the plain meaning of the collective requires. It states that T1.5 is payable for hours above the daily OR weekly hours, meaning that when a Category B worker or Target Evaluator works more than 3 hours over their rostered hours for the day, or more than 3 hours over their rostered hours for the week, then T1.5 is payable. Essentially, these workers will work up to 3 hours in a

week or a shift (referred to as an “event”) as overtime at the rate of T1.5, and if MPI wishes these workers to work more than this, it must pay at the rate of T2.

[14] MPI says that the collective requires that T2 is only paid once the workers have worked more than 3 hours in any one event AND they have also worked in excess of their rostered hours for that week. MPI rejects the idea that overtime pay is triggered on a daily basis, and says that the worker’s weekly rostered hours must also be exceeded.

[15] It will be apparent that MPI’s interpretation of the collective would require workers to work more additional overtime in any given week at the rate of T1.5 before they became entitled to be paid at the rate of T2.

[16] In saying this, I note that this is not as stark a difference as might first be assumed in practice, as the collective provides for the payment of overtime at the rate of T2 for work done between 10pm to 6am, and on weekends, which overrides the payment of the lower T1.5 rate for work done during those times.

[17] MPI says that there has been a similar overtime provision in the previous collective agreements between the parties for many years, and it has always interpreted this clause as requiring both that the employees work for more than 3 hours in excess of their daily rostered hours in the given work period, and that they work for more than 3 hours in excess of their weekly hours to qualify for payment at the rate of T2.

[18] The union does not dispute this. But it says that the current version of the collective refers to daily or weekly hours, not daily “and” weekly hours, and that there have been changes in staffing and work patterns which have resulted in affected workers doing considerably more work after the end of their rostered shifts and before the 10pm change to T2, and that MPI should properly pay for this additional work.

[19] MPI says there was no intention to change the long-standing practice of only paying T2 once both the daily and weekly hours had been exceeded by more than 3 hours, and the change in wording should not be read as changing that practice without specific bargaining on such a change. In response to the union’s contention that the wording of the collective clearly refers to either “daily OR weekly hours” being exceeded, MPI says that if this was intended to create an obligation to pay T2 once a worker had worked more than 3 hours overtime in any one event, the reference to

“weekly hours” would be redundant, and the existing and continued inclusion of these words supports its interpretation.

[20] Instead, MPI says that the reference to both daily and weekly hours ensures that a worker receives an overtime payment both when they work more than their daily rostered hours (eg, work beyond their rostered start time or start earlier than their rostered start time) and to ensure that overtime rates also apply when they work on a day they were not rostered to work eg working on a rostered day off (RDO), or working an extra shift). For workers who work an extra shift or work on an RDO, they are immediately entitled to receive payment at T1.5, increasing to payment at T2 once they meet the relevant criteria.

### **Principles of interpretation**

[21] The starting point for interpretation is that the approach is an objective one, being to ascertain the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties at the time they entered into the contract<sup>1</sup>.

[22] The court has provided a helpful summary in the context of collective agreements<sup>2</sup>:

The starting point is an assessment of the natural and ordinary meaning of the words themselves.

The second stage of the interpretive exercise may result in the preliminary assessment of meaning being dislodged. Such a result will not readily arise....However, the Court will not ascribe to the parties an intention that a properly informed and reasonable person would not ascribe to them when aware of the circumstances in which the agreement was made.

[23] In addition:

An undeclared negotiation stance or position is not relevant, but that the Court should have regard to the background circumstances of a collective agreement if a given provision has a long history, adopted in successive collective agreements<sup>3</sup>.

[24] Looking at the specific wording in dispute, the clause provides that overtime will be paid at the set rates “for hours above the daily or weekly hours according to the

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<sup>1</sup> *Firm PI 1 Limited v Zurich Australian Insurance Ltd* [2014]NZSC 147.

<sup>2</sup> *Tertiary Education v V-C of Auckland University* [2015] ERNZ 979 at [6] to [8].

<sup>3</sup> *Vulcan Steel Ltd v Manufacturing & Construction Workers Union* [2022] ERNZ 304 at [28]-[30].

applicable roster”. The question is what the natural and ordinary meaning of these words requires.

### **The Wording**

[25] On an initial reading, the rationale behind the union’s position is clear. The clause refers to hours worked above the daily hours a worker was scheduled to work according to the relevant roster, or the weekly hours according to roster. If a worker exceeds either their daily or weekly set hours then overtime is payable. This is indicated by the use of the word “or” and the lack of any obvious restricting language that would suggest T2 is only payable once the weekly hours have also been exceeded. Essentially the union argues that if such an additional barrier to payment of T2 was intended, it needs to have been set out explicitly.

[26] However, this is not the end of the clause. MPI states that, if the union’s position were to be accepted, then the words “or weekly” would be unnecessary. Any hours worked in excess of 3 hours over the first day of work in any given week would then qualify for payment at the rate of T2, and there would be no need to refer to a weekly total at all. The inclusion of the words “or weekly” must have a meaning, or they would not be included.

[27] My view is that it is not enough to simply disregard the words “or weekly” because they do not fit the first possible interpretation. Instead, the words should be considered in the context of the rest of the clause and the scheme it sets out. The overarching scheme is that the employer is to pay differing rates of overtime, dependant on what work is being done, by whom, and when. This clause generally provides that:

- a. the longer an employee works overtime hours, the more the employer is obligated to pay (eg the uplift from T1.5 to T2); and
- b. there is to be immediate application of T2 for hours of work at times that are particularly likely to have an impact on the employee’s availability and well-being, eg overnight and weekend work.

[28] This is why the clause is structured in the way that it is. First, overtime is defined by reference to “preapproved” and “additional” hours. Once overtime has been established, the clause then progresses to set out different overtime provisions for different categories of workers.

[29] In the case of Category B workers, the clause provides that overtime will be paid at one of two rates, either T1.5 or T2.

[30] T1.5 is to be paid in circumstances where: either the daily or weekly hours have been exceeded, for the first three hours of overtime worked.

[31] T2 is to be paid in multiple circumstances. It will be paid where either the daily or weekly hours have been exceeded after three hours of overtime have already been worked. It will also be paid during certain hours (between 10pm and 6am, and from 10pm Friday to 6am Monday) regardless of how many hours were previously worked.

[32] The reference to daily or weekly hours is read concurrently with the condition that T1.5 only applies for the first three hours worked in excess of either of these points, and after this T2 applies. This ensures that T1.5 applies for the first three hours of overtime worked in any one day (or event) as well as for work done on a worker's rostered day/s off which continues to occur.

[33] Read in its entirety, the natural and ordinary meaning of the clause is that T1.5 will be paid for the first three hours of overtime worked on any given day (unless/until the requirements for payment of T2 are met). It does not support the interpretation that T1.5 is payable for the first three hours of overtime worked in any given week as contended for by the union.

[34] Having reached this conclusion, I must now consider if there are other factors which might result in the preliminary assessment being dislodged.

### **Past Practice and the negotiation of the collective**

[35] The parties have been bound by consecutive collective agreements between them since 2013 when the first collective between the union and MPI was negotiated. The evidence was that overtime provisions had consistently been applied by MPI in the same way as it is operated now, that is, on a "per event" or daily, basis. This was not disputed by the union.

### **Wording Changes**

[36] The union's submission is that the (disputed) wording of the 2017 collective differs significantly from the wording of the prior collective in 2013. MPI's position is that this is misleading as although the 2017 collective brought in changes to the

“categories of worker”, there was no significant difference between the wording of the agreements which refers to when overtime would be paid.

[37] MPI’s position is that the previous clause contained the same key phrases as follows, with emphasis in bold as per submissions:

Clause 4.3.2 of the 2013 Collective Agreement:

**Work outside** the defined ordinary hours, **rostered working hours** of the standard number of hours **of the day or week** will **be paid as overtime**, provided the work has been properly authorised and supervised and any other allowances or time off in lieu of such work of penal time are not also applicable...

Overtime Rates

Other than on Public Holidays overtime will be paid at the rate of time one and a half (T1 ½) for the first three hours and double time (T2) thereafter, except that double time will be paid for all overtime worked:

- Between 10pm and 6am
- Between midday Saturday and 6am Monday

[38] This compares with the wording of clause 4.3.2 of the 2017 Collective Agreement:

All Category B employees, **for hours above the daily or weekly hours according to the applicable roster**, will be paid overtime at time one and a half (T1.5 for the first three hours and double time (T2) thereafter, except that double time will be paid for all overtime worked:

Between 10pm and 6am;  
Between 10pm Friday and 6am Monday.

[39] It will be seen that the wording of the previous clause has been “collapsed” into a single paragraph, with the wording as to payment of T1.5 for the first three hours and T2 thereafter, with T2 payment for overnight and weekend work remaining almost the same, excepting that the 2017 collective provides for immediate payment of T2 between the hours of 6 am and midday Saturday, being an advance on the same bullet point in the 2013 collective.

[40] On comparison, the disputed phrase referring to standard or rostered hours “of the day or week” is highly similar. The reference in the 2013 collective to qualifying overtime needing to be properly authorised and supervised has been stated earlier in the 2017 clause, as it applies to all categories of worker. The reference to penal rates has also been placed earlier in the collective. The 2017 clause then continues on to refer to

the new categories of worker in turn (eg category A and National Communications Centre employees) before setting out provisions relating to category B workers.

[41] It is this reordering of the clause and the insertion of provisions for category A and National Communications Centre employees which has required the re-wording of the remainder of the 2013 clause.

[42] The key phrases are the reference to “rostered working hours” which becomes “the applicable roster”, reference to work done “outside” those hours which becomes work done “above” those hours, and reference to work “outside” the standard “hours of the day or week” which becomes work “above” “the daily or weekly hours”.

[43] I find that there is very little change in the key words used. The changes are clearly caused by the re-organisation of the clause, rather than by a change in the structure of the overtime payments themselves and when certain rates become payable. The key phrase referring to hours of the day OR week remains the same with a shift to more active language, becoming daily OR weekly hours. There is no change in the use of the word “or”.

[44] When considered carefully, I find that the change of wording from the 2013 requirement that overtime is paid for “work done outside” rostered hours to the 2017 requirement that overtime is paid for “work done above” rostered hours reinforces the view that the requirement is for overtime on a per event basis. It is not merely “outside” the roster, it must be “above” both daily and weekly hours.

#### **What did the parties bargain for?**

[45] The union refers to an email exchange between the parties about potential other wording for this clause, and to the fact that the clause as agreed on by the parties contained no reference to the words “by event” or “on a per event basis”, being the words that the union say would be needed to ensure that the payment of overtime at T1.5 was to be made on a daily basis only.

[46] There was considerable discussion and dispute at the investigation meeting about the change of wording in the 2017 collective, and how and why this came about.

[47] MPI’s position was that the union had never raised as a bargaining claim the idea that this overtime provision would change from a “per event” basis to a “per week”

basis. The union's position was that the current wording had been negotiated and agreed, and if MPI wished to continue paying overtime on a "per event" basis, it needed to ensure those specific words were incorporated into the wording of the collective itself, which they had not been. MPI pointed out that email correspondence at the time the wording of the clause was drafted contained a sentence where MPI expressed its opinion that overtime was and would continue to be paid on a "per event" basis, and then the clause was finalised in its current form.

[48] There was no dispute that during the process of bargaining for the 2017 collective, the union did not raise a formal bargaining claim to change the payment of overtime (as set out in the clause) from a "per event" basis to a "per week" basis.

[49] Even now, MPI and the union cannot agree on what the parties' intention was when altering the wording of this clause.

[50] Certainly, the email correspondence suggests that MPI's view was that there was to be no change from the "per event" payment scheme. Having said this, the email correspondence on this point is scant. It suggests that the parties did not consider this to be an important or pivotal point in the bargaining at that time.

[51] The union is obviously correct when it says there was a negotiated change in wording. However, it is not clear from the associated correspondence that at the time the union understood this to mean that it had succeeded in negotiating a change from payment on a "per event" basis to a "per week" basis. The union did not put this position explicitly to MPI before the wording change was agreed, the union did not communicate to its members that this was a position that it was advancing during bargaining, and significantly, the union did not advise its members following the conclusion of the collective that this was a positive change that had been achieved and members should now proceed to make overtime claims on a "per week" basis.

[52] Instead the evidence was that it was a union member who brought the potential impact of this wording change to the attention of the union some months later.

[53] At best, there is no evidence of any shared intention as to what the changed wording should mean.

[54] Having stood back and considered matters, I find it is more likely than not that the union did not actively consider they had achieved this change, until it was brought to their attention by a union member. If this had been the case, the union would have advised the member of this, rather than the other way around.

[55] While changes in long-established practice can occur, it is usual for such changes to be actively bargained for. While the evidence is that both parties agreed to the current wording of the relevant clause, both parties accept that a change in how the clause operated was not a topic that was the subject of a bargaining claim. There was no shared intention to change how the overtime provisions applied when the current wording of the clause was settled.

[56] All these factors are supportive of the proper interpretation of the 2017 collective being on a “per event” basis, not a “per week” basis.

[57] Given this, I find that the changes in wording of the current clause are not sufficient to displace the plain and ordinary meaning as I have already found it to be. In addition, the bargaining process, lack of shared intention, and past conduct of the parties also support rather than contradict the plain meaning of the clause.

## **Orders**

[58] The applicant’s case is not made out. No orders are made. I reserve any issues as to compliance orders at the request of the parties.

## **Costs**

[59] Costs are reserved at the request of the parties. The parties are encouraged to resolve any issue of costs between themselves, bearing in mind the Authority’s practice direction as to costs which indicates a presumption that disputes about the application, interpretation, or operation of a collective agreement are not subject to the daily tariff and parties bear their own costs.<sup>4</sup>

Claire English  
Member of the Employment Relations Authority

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<sup>4</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)