

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 314  
3356363

BETWEEN                      MARITIME UNION OF NZ INC.  
Applicant

AND                              QUBE PORTS NZ LIMITED  
Respondent

Member of Authority:        Geoff O’Sullivan

Representatives:             Simon Mitchell KC and Angus Drumm, counsel for the  
Applicant  
Alastair Espie and John Gray-Smith, counsel for the  
Respondent

Investigation Meeting:      28 April 2025 in Tauranga

Submissions Received:      29 April 2025 from the Applicant  
29 April 2025 from the Respondent

Determination:                5 June 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Maritime Union of NZ Inc. (MUNZ) claims that Qube Ports NZ Limited (Qube) has breached its obligations of good faith in bargaining in the following ways, namely:

- (1) Qube breached its obligations of good faith by requiring MUNZ to accept safe work practices in order to settle a collective agreement.
- (2) Qube has breached its duties to members of MUNZ by offering unsafe work conditions to non-union members in breach of the provisions of the collective employment agreement (clause 28.1).
- (3) Qube has breached its obligations of good faith through its communication to non-union members on 21 March 2025.

[2] MUNZ seeks findings that:

- (a) Qube are in breach of the obligations of good faith;
- (b) Qube has undermined bargaining;
- (c) Qube has breached good faith by requiring MUNZ to conclude a collective agreement with unsafe work hours;
- (d) An order that Qube pay costs of and incidental to this application.

[3] Qube denies all of the allegations and says that accordingly there is no basis for the remedies sought by MUNZ. Qube seeks recovery of its costs and disbursements.

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

[4] The Authority heard from Graham McKean, union organiser, George Lyle, a stevedore, Russell Lawrence Mayn, a union official, and Naomi Rogers, a specialist fatigue consultant. Dean Carter, Qube's General Manager, and James Seawright, a specialist roster consultant, gave evidence on behalf of Qube.

### **Background**

[5] MUNZ is a union which represents stevedores at ports throughout New Zealand. Qube is a stevedoring contractor which specialises in the handling of break-bulk cargo with operations at a number of ports across New Zealand.

[6] The parties are currently engaged in bargaining for a collective agreement covering stevedores. The current collective employment agreement (CEA) provides for a mandatory standdown period of 36 hours if a stevedore has worked four consecutive shifts, regardless of the shift length (the four day rule). Qube wishes to change this provision and in early 2024 negotiated variations to the terms and conditions of employees on individual employment agreements. Qube wished to make the same variations to the 2022 CEA, however, to date have not reached agreement with MUNZ and the issue was raised in bargaining.

[7] To date, there have been three bargaining sessions but bargaining has also occurred through correspondence. On 4 December 2024 (document 3), Qube says it proposed replacement of the four day rule for a fortnightly maximum of 108 hours and a proposal for a remuneration increase of 2.75 percent per annum.

[8] On 10 January 2025 (document 7) Qube, in replying to earlier correspondence, stated amongst other things that it would be expecting MUNZ to respond directly to the 4 December 2024 proposal in the next bargaining session.

[9] On 24 January 2025, counsel for MUNZ wrote to Qube raising the undermining allegations.

### **This determination**

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has stated findings of fact and law and expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Evidence and analysis**

[11] Naomi Rogers, specialist fatigue consultant, gave evidence regarding her work advising unions and employers about the risks of fatigue, particularly in relation to shift work. She was asked by MUNZ to provide it with advice in respect of the hours of work proposed by Qube in the course of the current collective bargaining. Her evidence covered the way fatigue manifests itself and put forward her view that working more than four consecutive extended shifts, whether they be day or night shifts, resulted in increased accumulated fatigue levels which in turn resulted in an increased risk for fatigue related incidents and accidents both at work and on the road or away from work.

[12] She confirmed, however, that an employer could put in place the safeguards that would manage that risk and make it more acceptable. More importantly, as an expert in her field, Ms Rogers confirmed that in order to assess whether or not changes proposed by Qube as a result of increasing the number of consecutive extended shifts, she would need to know what was put in place, what was already in place and how would the number of shifts undertaken be audited and enforced. She explained that controls to limit fatigue were based on evidence. She noted one cannot decide whether a proposal to extend consecutive shifts would be safe, without seeing controls. She explained that she wasn't saying an employee in the current circumstance could not do more than four consecutive shifts, but the employer would need to put controls in place to minimise harm.

[13] James Seawright, a specialist roster consultant, gave evidence on behalf of Qube. He holds degrees in applied science, engineering (environmental) and business administration (technology management).

[14] Prior to the commencement of the investigation meeting, Mr Seawright and Ms Rogers met with the view to seeing where they may have agreed or disagreed with their respective approaches to fatigue management.

[15] As it transpired, there was little disagreement between these experts. It is fair to say they came from different angles and from different technical backgrounds. Mr Seawright immediately acknowledged that Ms Rogers was a specialist fatigue consultant and gave evidence of instances where more than four consecutive shifts would be worked with no ill effects. However, he was in absolute agreement with Ms Rogers that when a change was being considered, as in this present case, that a proper investigation of the effects on employees would be undertaken and proper controls put in place to ensure employees' safety.

*Graham McKean*

[16] Mr McKean is an organiser employed by MUNZ based in Tauranga. He discussed his role in respect of bargaining for collective agreements covering members of MUNZ. He was concerned that any increase in the number of consecutive shifts from the status quo could be unsafe. He noted that hours of work policies had been established that prevent normally more than four twelve hour shifts in a row without a decent break. He noted, however, that there were variations in the application of this practice across different companies.

[17] Mr McKean also said that each employer does their own risk assessment and indemnification. One company would say it's okay for six by twelve hours shifts and another company would say four by twelve hour shifts is a limit.

[18] He said that on 4 December 2024 the company wrote to him setting out terms required for a conclusion of the collective agreement. The bargaining stance also included removing the four day consecutive rule which also included a cap on fortnightly hours of 108 hours. Mr McKean said because the matter affected health and safety, he immediately called a halt to bargaining, so that he could clarify with the union's advisors, including counsel and Ms Rogers, as to the safety or otherwise of

Qube's position regarding Qube's proposal of increasing the number of shifts undertaken in a row.

[19] It was clear that Mr McKean's concern was that he did not see it necessarily as appropriate for MUNZ to bargain on a matter relating to health and safety because he saw this as technical area, not a bargaining one. In other words, he felt any decision that the parties made regarding changes in this area would need to be informed by legal and expert advice.

[20] Mr McKean was also concerned that Qube would be allowing non-union employees, those on individual employment agreements, to work the extra shifts without sufficient fatigue protections. This would put members at risk because everyone was working in a hazardous environment and if those workers on IEAs were tired, then they would risk those working around them.

*George Lye*

[21] Mr Lye has worked for Qube for some 16 years as a stevedore. He is a member of the union and gave evidence of his view that working with non-union members who may have been working for 72 hours in a row would be dangerous. He felt that if the number of consecutive shifts is increased, and he was working alongside people who were working six days straight, those people would be "absolutely knackered" by the time they get to their second week of their roster.

[22] Mr Lye put forward the view that he felt Qube believed it had ceded too much power in the last collective agreement and are now wanting to take some of that control back, even though that control made the workplace safer.

[23] Russell Mayn gave evidence that until October 2023 he was the Secretary/Treasurer of the Auckland branch of MUNZ. He had been part of the bargaining team for the previous round of bargaining and gave evidence that at the last round, MUNZ wanted to address the issue of fatigue management from an evidence-based approach, which was why Ms Rogers was engaged and in essence assisted both parties with what was needed to manage fatigue. He says that Ms Rogers' advice was the basis finally of settlement of the collective agreement.

*Dean Carter*

[24] Mr Carter is General Manager, Industrial Relations for Qube. He gave evidence regarding Qube's view as to the claims made by Qube in its statement of problem. Qube currently has some 479 staff employed on individual employment agreements. He noted that the staff on individual employment agreements represented over half of Qube's workforce. Qube had reached agreement with those employees and intended to move forward with pay offers. However, after the initial case management conference call with the Authority, Qube put offers on hold until matters had been dispensed with. He noted that on 1 April 2025 the Authority issued a consent determination formalising interim orders that the parties had agreed to. However, staff on IEAs were still raising questions regarding the pay review process and it was for this reason Qube wrote to its IEA staff on 24 February 2025. The part of the letter MUNZ complained about and says was designed to undermine bargaining was the statement contained in the 21 March 2025 letter (DC25) and provided:

The business had intended to present a package of changes to your terms and conditions, including a 3% increase in remuneration, to take [effect] on 3 March 2025 and backdated to 1 November 2024.

Those plans were blocked by the Maritime Union of New Zealand [MUNZ].

You may recall from earlier correspondence that this occurred after MUNZ filed urgent proceedings in the Employment Relations Authority (ERA) that [effectively] blocked the business from [offering] the proposed remuneration increases and changes to employees on IEAs.

[25] MUNZ says the statements were incorrect because the reason Qube was not proceeding with the increases at that stage was because of the consent orders it was part of and had agreed to.

[26] Mr Carter's view was that the 21 March letter simply followed on from the 24 February letter and there had been no intention to undermine bargaining. He said he believed that the communications sent out were factual and simply reflected what had happened.

## **Discussion**

*Has Qube breached its obligations of good faith by requiring MUNZ to accept unsafe work practices in order to settle a collective agreement?*

[27] MUNZ submits that the Authority is tasked with determining whether the proposal to remove the current consecutive hours cap is safe. It submits that in order

to do this, the Authority must determine whether Qube has provided enough information on the necessary controls for MUNZ to be in a position to bargain on the issue.

[28] I disagree. That is not what the Authority is tasked with determining. Rather, in order to determine whether or not Qube has breached its obligations of good faith on this occasion, the Authority has to decide whether MUNZ has made out its claim that Qube required it to accept unsafe work practices in order to settle a collective agreement.

[29] It is important to note that this claim arises out of bargaining. To date, no new collective agreement has been entered into between the parties. They remain in the bargaining stage. The evidence before the Authority indicates that the leader of MUNZ's bargaining team adjourned bargaining when Qube put forward its proposal that it wished to remove the contractual four day rule and replace it with new contractual maximums.

[30] The reasons for doing so were straightforward and undoubtedly appropriate. The evidence was that MUNZ wished to take legal and expert advice on whether or not the new proposal was safer. It did not want to bargain on the proposal until it understood the safety ramifications.

[31] From Qube's perspective, it wanted to bargain on the point, accepting that at all times it would have to act within the relevant health and safety legislation and its own policies. The evidence does not suggest that Qube put forward the proposal (amongst others) as a take it or leave it. The parties were in bargaining. It cannot be said that it was requiring MUNZ to accept unsafe work practices in order to settle a collective agreement.

[32] Whilst it is clear that MUNZ had significant doubts as to the safety of the proposed change, that is something to be discussed and worked through in bargaining which undoubtedly would have meant the seeking of legal and expert opinion. The status quo, as contained in the current collective agreement is that the four day rule applies. MUNZ do not have to accept a change. Certainly, it is obvious that it won't, until at least it is convinced that the change is safe, which as the evidence of Ms Rogers makes clear would require an analysis of the controls and safeguards put in place to ensure that it is.

[33] It is unlikely MUNZ would agree to the change until they are at least convinced that those controls and safeguards are in place, and that the change is not, therefore, inherently more dangerous. It is worth noting that even should it be satisfied as to those points, there is still no obligation on MUNZ to agree to the change at this stage. It is still in bargaining with Qube.

[34] MUNZ submits that the action of Qube in reaching agreement with non-union members on IEAs as to new contractual maximums on weekly and fortnightly hours (60 and 108 hours respectively) forces MUNZ into a situation where it has to conclude a collective agreement that has unsafe terms and conditions. It says this is because it has no control over Qube varying the conditions of non-union staff but these staff work with members of MUNZ and this inherently creates an unsafe environment.

[35] For that submission to have force, it would need to be shown:

- (a) The change is unsafe;
- (b) That Qube intends breaching its own policies and the health and safety legislation which binds it.

[36] No such evidence exists. At this stage, it must be assumed that Qube intends proceeding on changes to those staff on individual employment agreements along the lines as set out by Ms Rogers. By that I mean carefully analysing the effect of changes on fatigue and health and safety and putting in place controls and any other systems required.

[37] I find that Qube is entitled to bargain on the point with MUNZ. Whilst it may be argued that Qube would have a far greater chance of getting its position over the line in bargaining if it already had completed a thorough analysis of what controls and safeguards would need to be put in place before the change was implemented, however, in not doing so it cannot be said to have undermined bargaining and/or breached its obligations of good faith. It is not requiring MUNZ to conclude bargaining with unsafe working conditions. MUNZ retains the ability to reject the claim.

[38] Whilst the employer and employee parties hold different views, Qube is entitled to continue to bargain with MUNZ and for both sides, this can include a binding position seeking the removal of provisions in an applicable collective agreement that one party or the other may regard as unfavourable. This does not undermine bargaining, nor does it breach any obligation of good faith on its own.

*Has Qube undermined bargaining and breached its obligations of good faith by seeking to vary individual employment agreements to include unsafe working hours?*

[39] The basis of this claim appears to refer to clause 24.1 of the current collective employment agreement. The clause provides:

The parties shall take reasonably practicable steps to ensure the work place is healthy and safe, and shall comply with all relevant health and safety legislation.

[40] In his evidence, Mr Lye put forward the view that if non-union employees, namely those on individual employment agreements, were working more consecutive shifts, then they posed a danger not only to themselves, but to those people they were working with, namely members of MUNZ. The evidence from MUNZ was that this created a safety risk for its members.

[41] It seems to me there are at least two problems with that proposal. The first is that it presupposes moving away from the four day rule cannot mean there has been a breach of the health and safety requirements in this case. The expert evidence was that if there were to be extra shifts worked, then it would be expected further controls and safeguards would be put in place if required.

[42] This could only be decided after an analysis of the effect on employees as a result of increased shifts. Secondly, as Qube notes, it is within its rights to enter into negotiations with those staff on individual employee agreements to vary their hours of work provisions. Qube's view is that in respect of those staff on IEAs, the new arrangements are in fact safer than the current ones. Further, contractual provisions contained in the IEAs are separate and distinct from the fatigue management policy which Qube would be required to follow. Contractual changes do not diminish any duties of consultation that Qube would be required to undertake.

[43] At this stage, the Authority cannot assume that Qube would disregard any requirements imposed on it by policy and health and safety legislation. As is the case with the current collective agreement, staff on IEAs, likewise, do not have to accept any proposed changes. I agree with Qube's submission that in essence, MUNZ is asking the Authority to make a pre-emptive declaration in respect of an anticipated future breach.

*Has Qube breached clause 24.1 of the collective agreement in seeking to remove the limit of four consecutive 12 hours shifts?*

[44] For this claim to succeed, the Authority would need to be convinced at the very least that somehow Qube has acted in bad faith. There is simply no evidence of this. Qube must be entitled, in bargaining, to seek the removal of the limit of four consecutive 12 hour shifts. In doing so, if it wishes to have any chance of success of persuading MUNZ to its way of thinking, at the very least it will need to convince MUNZ that the change will not impact negatively on the health and safety of its members and will not disadvantage them. If it cannot do that through bargaining, and by providing whatever information MUNZ would request, then MUNZ are unlikely to agree to a change in the status quo.

*Has Qube breached its obligations of good faith through its communication to non-union members on 21 March 2025?*

[45] In simple terms, MUNZ says that the letter of 21 March 2025 misrepresents the position because Qube agreed to put the pay review process on hold. MUNZ takes exception with the statement contained in the 21 March letter:

The business had intended to present a package of changes to your terms and conditions, including a three percent increase in remuneration, to take effect on 3 March 2025 and backdated to 1 November 2024.

Those plans were blocked by the Maritime Union of New Zealand (MUNZ).

[46] The plain meaning of the last sentence, is a reference to a previous communication of 24 February 2025 which Qube sent to staff. Under the heading of **“Leading action blocking the business from making changes”**, Qube advised:

However, since our last communication to you, the Maritime Union of New Zealand (MUNZ) sought to block the business from offering the proposed increases to all employees in IEAs by filing urgent proceedings in the Employment Relations Authority (ERA).

[47] With all due respect to MUNZ, reading the two letters together, the statement contained in the second letter is accurate. The letter simply reflects Qube’s understanding of the situation. It is difficult to see how the letter could comprise a breach of Qube’s obligations of good faith.

[48] Mr McKean’s evidence was that MUNZ raised no concern with Qube in respect of the earlier 24 February 2025 letter. Mr McKean’s evidence was also that MUNZ’s concerns regarding the 21 March 2025 letter were not raised with Qube but rather were

raised directly with the Authority. This is perhaps understandable bearing in mind at this stage, a date for an investigation meeting had already been scheduled. Having said that, I accept Qube's submission that such an approach does not comply with the parties' Bargaining Process Agreement (which provides in clause 21):

If either party believes the other is not acting in good faith, they should inform the other party as soon as practicable to afford the opportunity for explanation or modification of the behaviour complained about.

[49] Although the word "should" appearing in the clause would indicate the provision is not mandatory, nonetheless it is clear the claim was made without the benefit of any explanation from Qube. The Authority now of course has heard the explanation and I find the 21 March 2025 communication does not constitute a breach of Qube's obligations of good faith.

### **Summary**

[50] Maritime Union of NZ Inc. has not made out its case that Qube Ports NZ Limited has breached its obligations of good faith in bargaining in the way set out in the amended statement of problem dated 4 April 2025.

### **Costs**

[51] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[52] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Qube Ports NZ Limited may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Maritime Union of NZ Inc. will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[53] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>1</sup>

Geoff O'Sullivan  
Member of the Employment Relations Authority

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<sup>1</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)