

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 395  
3291799

BETWEEN POSTAL WORKERS UNION  
OF AOTEAROA  
INCORPORATED  
Applicant

AND NEW ZEALAND POST  
LIMITED  
Respondent

Member of Authority: Alex Leulu

Representatives: Simon Mitchell and Angus Drumm, counsel for the  
Applicant  
Hamish Kynaston and Hanna Tavita, counsel for the  
Respondent

Investigation Meeting: On the papers

Submissions received: 12 February and 4 April 2025 from the Applicant  
19 March 2025 from the Respondent

Determination: 4 July 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] In 2023 New Zealand Post Limited (NZ Post) commenced a national consultation process with its staff in relation to the future of its postal operations. In relation to this process, the Postal Workers Union of Aotearoa (the Union) lodged claims against NZ Post claiming it had breached its obligations under both the Employment Relations Act 2000 (the Act) and the collective agreement between them.

[2] The Union has sought compliance orders from the Authority against NZ Post to comply with its obligations under both the Act and the collective agreement.

[3] NZ Post opposed the Union's claims saying it did not breach its obligations in respect of either the Act or the collective agreement.

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

[4] The parties agreed for this matter to be heard on the papers. For the Authority's investigation an affidavit was lodged from Union secretary, Michael Hunter. For NZ Post, affidavits were lodged from Chief Operating Officer, Brendon Main, Commercial Manager, David O'Grady and General Manager - People and Partnering, Emma Brown. The representatives also lodged written closing submissions.

[5] 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. It has not recorded all evidence and submissions received.

### **The issues**

[6] The issues requiring investigation and determination were:

- (a) Whether NZ Post breached its obligation of good faith to the members of the Union? The alleged breach being whether NZ Post failed to provide relevant information to the Union members during its change proposal.
- (b) In reaching its decision as a result of the change proposal, to determine whether NZ Post had breached its obligations under the collective agreement?
- (c) For any established breach of good faith and/or the collective agreement, to determine whether a compliance order is issued against NZ Post to comply with its good faith obligations and/or its obligations under the collective agreement?
- (d) Whether one party is to contribute to the costs of representation of the other party?

### **Context**

#### *NZ Post's operation*

[7] New Zealand Post is a State-Owned Enterprise and employs members of the Union. NZ Post and the Union have a long-standing employment relationship and were parties to a collective agreement with a term of 1 July 2022 to 30 June 2025 (the

collective agreement). NZ Post is also party to a separate collective agreement with one other registered union.

[8] Up until 2023 NZ Post operated two streams of work generally described as the mail network and the parcel network. The function of the mail network involved the delivery of mail and certain parcels within it. Work within the mail network was carried out by NZ Post employees (which include members of the Union). The parcel network involved the delivery of most parcels and certain types of mail. Work under the parcel network was carried out by independent contractors.

#### *The Tūpuna proposal*

[9] From 2020, the use of conventional mail had declined and was expected to decline further. As a result of this and other funding constraints, NZ Post took steps to address the decline through the introduction of the Tūpuna a Tukurau Aotearoa proposal in 2023 (the proposal).

[10] NZ Post described the proposal as an attempt to change its strategic direction by merging its two networks into one network. In practice this meant the mail network would be integrated into the parcel network.

[11] If a decision was made to accept the proposal, around 750 full time employees would likely lose their jobs within five years. Any assessment and decision as to who would be specifically affected by any such decision would not be known until NZ Post carried out later assessments of its various operations. These assessments were likely to occur up to five years after the proposal decision.

[12] Because the proposal was presented as a change to its overall strategic direction, NZ Post said the proposal had not engaged the change provisions of the collective agreement. For this reason, it believed it did not have to follow the requirements of the change provisions of the collective agreement.

[13] Many of the potentially affected NZ Post employees would be members of the Union. A significant amount of the affected members of the Union were employed as delivery agents or 'posties' who were responsible for the delivery of mail as part of the mail network.

### *Consultation process*

[14] On 10 October 2023 NZ Post communicated its proposal across its national services. Upon announcing the proposal NZ Post commenced its national consultation process which included providing its employees and the unions with a consultation pack (the consultation pack). The consultation pack was supported by a series of videos featuring senior leaders, posters and a “key questions” document. NZ Post sought feedback on the proposal by 14 November 2023.

[15] Prior to announcing the proposal, NZ Post met with union officials to discuss NZ Post’s consultation material before a planned national wide consultation. This gave NZ Post an opportunity to answer any preliminary questions from both unions.

[16] Throughout the various stages of the consultation process, NZ Post communicated and met with both unions to share information and provide updates on the proposal process. It also provided updates to all its employees about the progress of the consultation phase of the proposal.

### *The Union’s requests for information*

[17] Throughout several occasions during the consultation period, the Union sought further information and clarification from NZ Post about the proposal. Specifically on 19 October 2023 the Union expressed its concerns about the consultation documentation not providing sufficient information about why merging the mail network with the parcel network was the preferred approach.

[18] Leading up to making its decision on the proposal, NZ Post appeared to respond to much of the Union’s request and views. However even after NZ Post’s decision, the Union maintained its concerns from its 19 October 2023 communication.

### *Extension of the consultation period and counterproposal*

[19] On 9 November 2023 NZ Post also confirmed with its employees the timeframe for consultation on the proposal would be extended to a yet to be confirmed date.

[20] On 1 December 2023 NZ Post provided a supplementary information pack to address several questions asked by both employees and the unions. As a result, NZ Post extended the consultation period further into 2024.

[21] On 26 January 2024 NZ Post sent a letter to the Union confirming its intention to address its ongoing questions and concerns for further information behind the proposal (union consultation letter). Contrary to its previous position, NZ Post also confirmed its intention to provide the information consistent with the change provisions of the collective agreement.

[22] In the union consultation letter, NZ Post also confirmed it will provide the information at a meeting between it and both unions on 1 February 2024 but explained:

- (a) some of the information was commercially sensitive and confidential and would be subject to a non-disclosure agreement; and
- (b) in accordance with clause F of the collective agreement, the unions would also be given a further 28 days to consider and respond to the information.

[23] The meeting took place on 1 February 2024 and the parties agreed to a memorandum of understanding to restrict disclosure of confidential information. On 2 February 2024 the Union requested an extension of time for consultation period from 28 days to eight weeks. The request was declined by NZ Post on 13 February 2024.

[24] On 29 February 2024 the Union provided a submission in response to the proposal. This included a claim that NZ Post had not met its obligations to justify dismissal of all its delivery and associated employees, and a counterproposal.

#### *NZ Post's decision*

[25] On 25 March 2024 NZ Post met with the Union and confirmed its decision to continue to work towards use of one network. NZ Post confirmed its decision to its employees the next day. The decision confirming NZ Post's intention to progressively stream its mail service into the parcel network across the next five or more years.

[26] After making its decision, NZ Post engaged further with the Union about the decision and the Union's counterproposal. On 18 April 2024 the Union lodged its claims with the Authority.

## **Obligations under the Act and the collective agreement**

[27] Under the Act, parties to an employment agreement are under a general obligation to deal with each other in good faith.<sup>1</sup> The Union's claims against NZ Post relate specifically to an obligation to maintain a productive employment relationship and the requirement under the Act for:<sup>2</sup>

... an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected—

- 1) access to information, relevant to the continuation of the employees' employment, about the decision; and
- 2) an opportunity to comment on the information to their employer before the decision is made.

[28] The Union also claimed NZ Post breached section F of the collective agreement titled "Management of Change" which contained the following provisions:

### COMPANY APPROACH ...

2. In recognition of the impact that business changes have on affected employees, NZ Post seeks wherever possible to achieve an outcome that best balances the needs of affected employees and the needs of the Company. ...

### PROPOSALS FOR CONTRACTING OUT WORK

9. NZ Post will consult with the union if the Company intends to present a new proposal to contract out work normally performed by employees who are bound by this agreement. The Company must allow a 28-day period for consultation. The consultation will first consider the business case for the proposal and the parties will undertake an examination of other possible, practicable options including those that retain that work being performed by NZ Post employees. This clause will have no application to any changes to product streaming where these do not result in a surplus staffing situation. ...

### INTRODUCING NEW TECHNOLOGY AND/OR MODERNISING THE COMPANY'S SYSTEMS

12. When NZ Post plans to introduce technological change or significant work systems change which are likely to:

- call for substantial changes in the nature or degree of skills of the employees concerned; or
- substantially alter the hours of work; or
- reduce the number of people employed,

the Company will notify the employees concerned of the introduction of such change and will consult with the union and employees concerned on the manner and impact of the introduction of such change.

---

<sup>1</sup> Employment Relations Act 2000, s 4.

<sup>2</sup> Employment Relations Act 2000, s 4(1A)(c).

13. NZ Post must advise the union nationally or locally as appropriate, in writing that it considers a surplus staffing situation exists.

14. NZ Post and the union will then enter into consultation about the existence of a surplus staffing situation (i.e., the proposal).

15. Where a surplus staffing situation is confirmed by NZ Post following consultation:

- a specific package of measures and options will be constructed based on an assessment of the situation and will be negotiated on a case-by-case basis with the involvement of the employees and their representatives; or
- in the event such an agreement cannot be reached within a practical timeframe, NZ Post will decide how to proceed in accordance with the options and obligations outlined below.

16. The range of options for affected employees will include:

- Natural attrition (retirement, resignation, transfer or promotion) (see F18).
- Re-deployment (transferring the employee to a new job at the same location on the same or lower base pay rate) (see F25).
- Relocation (transferring the employee to a similar or new job at a different location on the same or lower base pay rate) (see F26 – F29).
- Reduction in the number of contracted hours by agreement (see F30 – F31). Voluntary/compulsory redundancy...

19. In selecting from the various options, the aim will be to minimise, as far as possible, the use of redundancy. Redundancy will only be used where the other options are clearly not practical or appropriate in the particular case. The option for redundancy will first be progressed on a voluntary basis provided that NZ Post:

- is not required to accept any application for voluntary redundancy; and
- will have regard to retaining necessary skills, knowledge and experience ...

### **The Unions arguments on the alleged breaches**

#### *Alleged breach of good faith by NZ Post*

[29] The Union claimed the proposal presented an adverse outcome affecting the continuation of its members' employment. In accordance with the good faith provisions of the Act, the Union said NZ Post was required to provide its members with relevant information and an opportunity to comment on the proposal.<sup>3</sup>

[30] Because NZ Post had presented its proposal as a "Strategic Direction", the Union claimed the information provided by NZ Post was limited to what it described as high-level strategic information. Given the potential adverse outcome of the

---

<sup>3</sup> Employment Relations Act 2000, s 4(1)(A).

proposal to its members, the Union submitted more specific information relating to the proposal for redundancies was required from NZ Post.

[31] The Union also said NZ Post's proposal decision was made based on further information becoming available in the future as part of its ongoing assessment of its operations over the preceding five years. It said this approach would not meet the requirements of the Act because NZ Post had already decided on redundancies.

*Alleged breach of the collective agreement*

[32] The Union claimed NZ Post's proposal had triggered the management of change obligations under section F of the collective agreement. As part of the consultation process, the Union claimed NZ Post breached its section F obligations by failing to provide all relevant information to the Union.

[33] By engaging clause F9 of the collective agreement, the Union said NZ Post was required to establish a business case and together with the Union, examine possible options which could take into account maintaining employment of its members. For these reasons the Union said it requested for further information from NZ Post for information:

- (a) explaining why the parcel network was favoured over the mail network;
- (b) relating to NZ Post's business case for its proposal; and
- (c) any financial analysis or costings showing the impacts and options considered by NZ Post in making its decision.

[34] The Union claimed NZ Post had not provided sufficient information or evidence to show it had developed a business case supporting the above aspects of the proposal. It also said there was no evidence of a cost analysis or any other similar evidence which explained why the merger into the parcel network was the preferred option.

[35] A document relied on by NZ Post was in the form of a "benefits summary" document was provided as part of the union consultation process in February 2024. The benefits summary document showed a range of business cost differences that would arise if NZ Post consolidated its two networks. The Union submitted the summary did not provide sufficient evidence to clarify why the parcel process is preferred and why contractors should be engaged instead of hiring employees.

[36] The Union also said NZ Post had failed to provide evidence showing it had provided or discussed viability of other options available to it. It said the other options could have included the possibility of a mixed model which would allow mail network employees to work within the courier network. It if had done so, the Union claimed NZ Post would have also met its collective agreement obligations to minimise the use of redundancy.

[37] As a state-owned enterprise (SOE), the Union said NZ Post was to be held to a higher standard than other employers.<sup>4</sup> Under the SOE regime, the Union said NZ Post was subject to the principal objective of being a successful business by being amongst other things, a good employer.<sup>5</sup> The Union submitted NZ Post had failed to meet this standard when it allegedly failed to properly consult during its proposal.

### **NZ Post's arguments on the alleged breaches**

#### *No breach of obligations of both good faith and as an SOE*

[38] NZ Post claimed it met its good faith obligations under the Act by providing to the Union and its members a considerable amount of information through:

- (a) proactive and reactive releases of documentary information in various forms including through its consultation information pack and a further supplementary information pack;
- (b) information provided during regular meetings with members and both unions both before and during the consultation process; and
- (c) the provision of confidential information which provided an in-depth assessment of its business case leading to its proposal and decision.

[39] NZ Post also said the information it had provided had properly explained its business case given the information explained several things including:

- (a) the mail network no longer being fit for purpose (due to the decline of the need of mail services);
- (b) the package network was functioning well and growing;

---

<sup>4</sup> Compared to the 'fair and reasonable employer' test under s 103A of the Act.

<sup>5</sup> State-Owned Enterprise Act 1986, s 4(b).

- (c) a single network leveraging off the benefits of the package networks use of automation and relationships with established delivery partners (for example, contracted courier drivers); and
- (d) the fiscal benefits when operating from a single network.

[40] NZ Post accepted it did not consider any comparative analysis as to the costs of engaging employees covered by a collective agreement against the cost of engaging contractors. It said the reason was because it was not relevant to its strategic direction.

[41] Although NZ Post acknowledged its good employer obligations as a SOE, it argued its SOE obligations did not have a material or measurable impact on the matters before the Authority. This was because the issue before the Authority was primarily about breaches of contractual and statutory obligations for disclosure of information.

*No breach of the collective agreement*

[42] NZ Post acknowledged the purpose of section F of the collective agreement was to help guide the parties to facilitate change while at the same time provide safeguards for NZ Post employee Union members. NZ Post also acknowledged the primary clauses of section F being clauses F9 (proposals for contracting out), F12 (introducing new technology) and F19 (minimising redundancy).

[43] NZ Post submitted the proposal had not yet triggered the primary clauses of section F. Since no proposal or decision had been made on which roles are to be disestablished or declared surplus, clause F9 had not been engaged. Any such proposals and decisions would not be made for some years.

[44] Although it said it did not need to comply with clause F9, NZ Post said it decided to engage with the F9 process to help both parties move forward as part of the consultation process of its proposal.

[45] For similar reasons NZ Post claimed clauses F12 and F19 had also not been engaged because any specific decisions about consulting on technological/modernising changes (F12) and redundancy (F19) had not yet been made.

[46] NZ Post explained its decision on the proposal was effectively a confirmation of a two-step approach. The approach being firstly a decision on its strategic approach

and secondly further processes, proposals and decisions regarding specific NZ Post sites across New Zealand. NZ Post said the implications of the Union's arguments against this approach would lead to adverse consequences for employers because:

- (a) employers would be incentivised to keep strategic proposals secret until it developed a change in full detail. This in turn would provide unions and employees less scope to influence the outcome of a strategic direction; and
- (b) such an approach would infringe on the principles of good faith given employers should be encouraged to consult early, at a strategic and conceptual level.

### **The Authority's assessment of the alleged breaches**

#### *Good faith obligations under the Act*

[47] A key aspect in addressing the dispute between the parties is to ascertain the nature of NZ Post's proposal as a strategic direction and whether its application triggers obligations under both the Act and the collective agreement.

[48] NZ Post was entitled to review its business operation and propose changes to its operation to ensure the ongoing viability and accountability to its stakeholders. The proposal was essentially a high-level change to NZ Post's day to day operation which presented what would be an adverse outcome to its employees. As a result, NZ Post had to ensure it met its good faith obligations which included being communicative and ensuring its employees had access to relevant information (and an opportunity to comment on the information).

[49] The evidence clearly showed NZ Post had taken many steps to make information available in many forms and over many different instances including, through regular updates, meetings and documentation packs. It also took appropriate steps to make commercially sensitive information available for consultation. I am satisfied NZ Post had provided reasonable access to as much information it was able to provide. For this reason, NZ Post had not breached its good faith obligations.

#### *Obligations under the collective agreement*

[50] Both parties clearly dispute whether the primary provisions of section F of the collective agreement have been engaged by the proposal. The starting point for

addressing a dispute of interpretation of an employment agreement is to take an objective approach.<sup>6</sup>

[51] Specifically, an objective approach requires ascertaining the meaning of the document 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 agreement.

[52] Similar to its obligations under the Act, NZ Post's obligations under clause F9 of the collective agreement were engaged because the outcome of the proposal confirmed the contracting out of work normally performed by employees who were members of the Union. To some degree, NZ Post accepted this because later in its consultation process, it provided information for consultation under clause F9.

[53] As submitted by the Union, the two key elements of clause F9 required NZ Post's consultation to first consider the business case for the proposal and secondly, the parties were to examine other possible, practicable options which included options which retained the work performed by NZ Post employees.

[54] Because NZ Post's proposal was proposing changes at a high level of its business structure, it is understandable why much of the information it relied upon and generated for the proposal was also at a relatively high level. For this reason, NZ Post relied on documents like its benefits summary document and other documents to show some of the fiscal and practical implications of the proposal. Again, this was at a relatively high level.

[55] However, the focus of clause F9 was on the implications of normal work of employees being contracted out. Aligned with the proposed potential loss of a significant amount of full-time employment positions, NZ Post's provision of information had to be sufficient to allow an appropriate examination of other options.

[56] There was insufficient evidence to show, NZ Post carried out a specific analysis as to alternative options limiting the need for work carried out by Union employees to be carried out by contractors. The Union's request to consider other options were reasonable options to examine for the purpose of retaining work for its members.

---

<sup>6</sup> *Firm PI 1 Limited v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60].

[57] It was also not outside the bounds of clause F9 for an examination to lead to the creation of further analysis and documentation to realise any potential alternative options. Although I accept NZ Post had provided a significant amount of information explaining their business case for the proposal, it was obliged to work with the Union on the efficacy of other options.

[58] Given the general outcome of the proposal being the certainty of the reduction of around 750 full time equivalent roles, there was an onus on NZ Post to take further steps to work with the Union to examine other options and alternatives. There is insufficient evidence before the Authority to show a sufficient assessment of other options had taken place (such as the mixed operational model as proposed by the Union).

[59] Any such assessment would not need to rely on detailed evidence for each specific NZ Post work site. It is clear such a detailed assessment was reserved for any second phase of NZ Post's overall change programme. However, clause F9 requires some specific discussions between the parties about alternatives to work being contracted out, even if it is at a moderately high level.

#### *The other provisions of section 7 and SOE obligations*

[60] For the sake of completion, the other provisions of section F of the collective agreement such as clause F19 (redundancy) were not engaged by the proposal because the clauses required some event to occur before the clause is triggered. As an example, clause F19 applied once there was surplus staffing situation (clause F14). A surplus staffing situation arose after NZ Post's proposal decision.

[61] In line with the arguments raised by NZ Post, any consideration by the Authority of NZ Post's good employer obligations as an SOE provided little assistance in assessing NZ Post's contractual obligations as part of consultation of its proposal. For this reason, any assessment of NZ Post's obligation in respect of previously stated failures under the collective agreement provided neutral value to my assessment of its actions.

#### **Compliance order**

[62] The Union claimed a compliance order is the only mechanism available to it to ensure NZ Post complies with its obligations. Accordingly, it said an order should be

made for NZ Post to re-do its process with the required disclosed information and evidence showing it had options focussed on maintaining the employment of its employees.

[63] In response, NZ Post said a compliance order can only be made requiring it to "do any specified thing or to cease any specified activity" for the purpose of preventing further non-compliance with those obligations.<sup>7</sup>

[64] Compliance orders are a discretionary remedy and for reasons already stated, NZ Post had not properly met its obligations under clause F9 of the collective agreement. In accordance with s 137(2) of the Act, NZ Post is required to comply with clause F9 of the collective agreement and engage further with the Union on its business case and examination of other possible, practicable options (including those which may retain work being performed by NZ Post employees).

### **Costs**

[65] Based on the claims before the Authority, I determine this matter as one concerning a dispute over the application, interpretation, or operation of terms of a collective agreement. The Authority generally applies a presumption that parties will bear their own costs.<sup>8</sup> There are no compelling reasons which would suggest this matter to be treated otherwise. Accordingly, the costs will fall where they lie.

Alex Leulu  
Member of the Employment Relations Authority

---

<sup>7</sup>*GF v Comptroller of the NZ Customs Service & Anor* [2023] NZEmpC 101.

<sup>8</sup> See "Costs in the Authority", Practice Direction of the Employment Relations Authority.