IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE

[2025] NZERA 735
3110212

	BETWEEN	NEW ZEALAND TRAMWAYS AND PUBLIC PASSENGER TRANSPORT EMPLOYEES' UNION WELLINGTON BRANCH INC Applicant
	AND	WELLINGTON CITY TRANSPORT LIMITED First Respondent
	AND	CITYLINE (NZ) LIMITED Second Respondent
Member of Authority:	Geoff O'Sullivan	
Representatives:	Tanya Kennedy, counsel for the Applicant Andrew Caisley, counsel for the Respondents	
Investigation Meeting:	7 – 9 April 2021 5 – 7 July 2021 1 June 2022	
Submissions Received:	Submissions and other information received up to and including 4 June 2025.	
Determination:	14 November 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The issues listed below have been raised by New Zealand Tramways and Public Passenger Transport Employees' Union Wellington Branch (The Tramways Union) against Wellington City Transport Limited (WCTL) and Cityline (NZ) Limited (CLNZ). Both WCTL and CLNZ are part of the NZ Bus group of companies. There are separate Collective Agreements.

[2] This case was heard over a considerable period of time and involved a series of evolving claims, a number of which eventually were not required to be dealt with. As of 4 June 2025 the issues between the parties had been narrowed down to the following:

Issue 1 – failure by Wellington City Transport Limited to pay driver/operator trainers correctly/weekend work

Issue 2 – failure by Cityline to correctly pay an operator correctly when the operator was asked to work during the break, in what was a broken shift

Issue 3 – breach of mediated settlement agreement and 19 July 2020 re-roster

Issue 4 – travel time - failure to pay for correct travel time when a driver is being required to commence or finish work at a depot other than their home depot

Issue 5 – forcing employees to take annual leave in breach of the Holidays Act and the applicable collective agreements

Issue 6 - general claim for breach of good faith and penalties

[3] Originally, there were some 12 issues identified numbered 1 to 12. In this determination the issues have been renumbered to take into account those issue which have settled or otherwise been dealt with.

The Authority's investigation

[4] The Union evidence was given on each issue by Mr Kevin O'Sullivan and for each issue a number of union members directly affected gave evidence in respect of the claims. Some nine witnesses appeared for the Union. I have not found it necessary to list their names in this determination, however I do record they provided evidence in respect of each particular issue insofar as it affected them. For the respondents, evidence was given by Mr Jay Zmijewksi and Erica Stander. All witnesses gave evidence on oath or affirmation.

This determination

[5] 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 in submissions received.

[6] This determination has not been issued within the three month period required by s 174C(3) of the Act. As permitted by s 174C(4), the Chief of the Authority has decided that exceptional circumstances exist that allow a written determination of findings at a later date.

The issues

Issue 1 – failure by Wellington City Transport Limited to pay driver/operator trainers correctly/weekend work

[7] WCTL says that the applicable Collective Agreement required that operators relieved of their normal duties to undertake training of new operators were to be paid at the prescribed rate of pay for an operator/trainer.

[8] Kevin O'Sullivan is the Union Secretary of the applicant. His evidence was that for over 20 years there had been a dedicated driver training function which included a driver training school for Wellington and Hutt Valley drivers. He stated after three to four weeks in the driver training school, a driver then moved on to route training, part of the driver training provided by an "I" endorsed driver trainer.

[9] If the new driver passed the training and relevant unit standards, then they would have a period of time, usually a week, going out with a tutor driver on that tutor driver's particular normal shift. Whenever the respondents employed a new driver, the driver needed to go through driver training. Mr O'Sullivan emphasised that the person teaching driving must be "I" endorsed and also for the particular class of vehicle they were teaching the person to drive.

[10] Mr O'Sullivan made it clear that the issue related only to the first respondent. He gave evidence that there had always been a difference between the rate of pay for driver training and the rate of pay for a tutor driver. In March 2023, the first respondent decreased the number of fulltime driver training roles in Wellington.

[11] Mr O'Sullivan gave evidence that operator trainers were defined in the WCTL Collective Agreement as "operators relieved of their normal duties to undertake the training of new operators as required from time to time".

[12] Mr O'Sullivan says that the Union's position is that WCTL needs to pay the correct rate of pay for this work when it is undertaken. He says that issues started arising in March and April 2020 over attempts to pay incorrect rates of pay for driver

training work with the first respondent wishing to disestablish the driver trainer roles and the driver trainers' school which had three fulltime driver trainer roles. WCTL disestablished the three fulltime training roles and established one service delivery trainer role.

[13] Mr Jay Zmijewski was at the time employed as the Chief Operating Officer for the NZ Bus group of companies. This included the first respondent. Mr Zmijewski's evidence did not seem to dispute that there may have been some underpayment. He said these details, however, had not been provided but gave evidence generally about training at WCTL.

[14] He felt that there had been no change to driver training in the sense that the company was still providing the same training and covering the same material as before. He said that the company was simply doing it at a greater pace and that there was nothing in the Collective Agreement specifying how much training would be provided or over what time period it would be provided. He said he was not sure why it had previously taken the company three or four times longer to deliver training and that when the company took over the Wellington business, there were numerous inefficiencies which needed to be corrected, including the time it took to complete driver training.

[15] Mr O'Sullivan took issue with Mr Zmijewski's description. Specifically, Mr O'Sullivan's evidence was that operator trainer work included route training which therefore should have been paid at the operator trainer rate of pay. He said that the first respondent had either breached the applicable Collective Agreement by paying the tutor driver rate of pay for route training/operator training work or, in the alternative, had changed accepted practice but had not consulted over the change it had made.

[16] Mr O'Sullivan, who has had over 30 years of knowledge on how driver training had worked in the past and what type of work had been considered and how it had been paid for in terms of the Collective Agreement, had given evidence which had not been refuted that there had been a decision that on-road operator training (requiring an "I" endorsed person) was done by an operator trainer who would undertake route training with a new driver and that this included taking the new driver over every route. It was only after the new driver had learned to drive the bus, knew all of the bus routes and was ready to be released for operations, that the new driver was then placed with a tutor driver. The driver training checklist was referred to in Document 7 of the bundle.

[17] Mr Zmijewski had accepted evidence that route training had previously always been the work of the operator trainer and was paid at the operator trainer rate of pay.

[18] For the first respondent, it was argued that the WCTL Collective Agreement provided for a pay scale for operator trainers (clause 10) and an allowance for operator tutors (clause 12). Clause 8 defined operator trainer as:

> … operators who are relieved of their normal duties to undertake the training of new operators as required from time to time.

[19] Operator tutors were defined as:

> … operators who are required to permit new operators to familiarise themselves with "on the job training" on the tutor's shift.

[20] WCTL agrees that it needs to pay the correct rate of pay but says that it has done so. However, it also accepts that it has changed the new driver training. It says it was entitled to accelerate its training programme and was not required to consult or obtain agreement It further says that the change does not breach the Collective Agreement. It reiterates it had no duty to consult because there was no proposal that might affect the continuity of employment of one or more employees. New driver training does not trigger the contractual obligation to consult.

[21] WCTL accepts there was no consultation with the Union. Section 4 of the Employment Relations Act 2000 (the Act) requires parties to deal with each other in good faith. It requires parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, amongst other things, responsive and communicative. WCTL changed the way driver training had been done in the past and this had an effect on the hourly rate paid to those people undertaking training in the past. WCTL had a duty to consult and in the absence of doing that, could not unilaterally alter the rate of payment by saying that work previously undertaken by operator trainers was work better defined as work undertaken by operator tutors. The Tramways Union succeeds in this claim.

Issue 2 – failure by Cityline to correctly pay an operator correctly when the operator was asked to work during the break, in what was a broken shift

[22] This claim was clarified over the course of the investigation to be phrased as "failure by Cityline to correctly pay for driver instructor work in respect of Caroline Kinnaird".

[23] The Union claims that Ms Kinnaird, when she was working as an operator trainer, must be paid the same as the rate of pay for an operator employed by Wellington City Transport undertaking operator training work. It is submitted this is because there had previously been consultation and agreement that the rate of pay for an operator employed by Cityline undertaking operator trainer work is to be paid at the same rate of pay as an operator employed by Wellington City Transport undertaking operator trainer work.

[24] The background to Ms Kinnaird's claim, however, creates an issue for her. This is because of a broken period of employment. Ms Kinnaird may have been employed by WCTL, however, her employment there ended when she became employed pursuant to a letter of appointment dated 19 March 2019 and the Cityline's Collective Agreement. Nothing in the letter of appointment gave Ms Kinnaird an entitlement to rates of pay contained in the WCTL Collective Agreement.

[25] Further, there is nothing in the Cityline's Collective Agreement giving Ms Kinnaird entitlement to rates of pay specified in the WCTL Collective Agreement. Accordingly, I accept the evidence that at all material times, CLNZ paid Ms Kinnaird in accordance with her contractual entitlement. The fact that she had been previously employed by WCTL did not give her additional rights when her employment changed to CLNZ.

[26] The evidence presented during the investigation meetings show that Ms Kinnaird was made redundant from WCTL in 2018. She obtained employment with CLNZ in November 2018. In other words, her employment relationship with WCTL ended and a new employment arrangement with CLNZ commenced. It may well be there was confusion with the change of employer, bearing in mind that both WCTL and CLNZ were both subsidiaries of NZ Buses.

[27] It seemed that the Union was not fully aware that at the material time, Ms Kinnaird was employed by CLNZ, not WCTL. Accordingly, it could be said that the Union's claim in this regard was based on a misunderstanding as to which Collective Agreement applied to Ms Kinnaird. If Ms Kinnaird had been employed under the WCTL Collective Agreement, then she would have been entitled to a higher rate. However, the evidence is irrefutable. Ms Kinnaird finished her employment with WCTL and commenced employment with CLNZ and accordingly, her contractual position changed.

[28] It follows therefore that Ms Kinnaird was paid correctly in accordance with her contractual terms. The evidence presented at the investigation meeting shows she changed to another employer at a specific contractual rate. The claim fails.

Issue 3 – breach of mediated settlement agreement and 19 July 2020 re-roster

[29] This issue was originally issue 4 but the original issue 3 relating to hours of work has been resolved between the parties.

[30] This issue is about alleged failures to equitably distribute weekend work. It relates to both respondents making changes to the roster which took effect on 19 July 2020. The Union states that the roster change:

(a) Breached a 29 May 2019 Settlement Agreement;

(b) Breached clause 9.1(1) and 9.1(q) in the WCTL Collective Agreement;

(c) Breached clause 10.5 in CLNZ's Collective Agreement; and

(d) Both respondents breached good faith in making the change and failing to engage with the Union when it raised its concerns.

[31] The applicant's concern is that the 19 July 2020 re-roster failed to equitably distribute weekend work.

[32] Both WCTL and CLNZ deny any failure to equitably distribute weekend work. In any event, they say there was no obligation, either in the 21 May Settlement Agreement or in the Collective Agreements.

[33] Both parties seem to agree that the primary allegation is that the respondents have breached Schedule 14 of the May 2019 Settlement Agreement. This is set out in the bundle of documents at page 24. Schedule 14 provides:

1. Although not formally raised as a matter for mediation, the parties have discussed concerns raised by the Union about:
   (a) Allocation of overtime work; and
   (b) Allocation of weekend work.
2. The parties are agreed that clause 9.1(q) of the WCTL Collective Agreement says: "The Roster Committee will look at the development of a process of an equitable allocation of overtime for bus operators".
3. In the first instance, the Union's concerns will be addressed through the Roster Committee process. Thereafter each party retains their full rights to manage this issue in whatever way they choose going forward.

[34] I accept the submission from CLNZ that although it was a party to the Settlement Agreement, Schedule 14 seems more directed at WCTL. Accordingly, I find that to the extent it imposed an obligation, Schedule 14 does not apply to CLNZ.

[35] It seems the Union's claim is based on an interpretation of the applicable clauses in respect of the Collective Agreements. The WCTL Collective Agreement, at clause 9.1, amongst other things, provides:

> No operator shall be required to work more than five days in any one week, Sunday to Saturday inclusive. Two periods of 24 consecutive hours off duty shall be allowed to each employee in each week. Days off shall be equitably distributed by the roster and where practicable shall be consecutive for a minimum of 50% of the rostered days off.

[36] Amongst other things, clause 9.1(q) of the Wellington City Transport Collective Agreement provides further:

> (a) The company shall establish a Roster Committee consisting of:
>
> a. Two representatives of the Union;
>
> b. Three operators elected by Union members;
>
> c. Other internal or external stakeholders as may be required.
>
> (b) The Roster Committee shall meet at least quarterly to review the rosters and shifts in operation and to raise any concerns of shifts which the staff or company have with these rosters or shifts. The Roster Committee will look at the development of a process for the equitable distribution of overtime for bus operators. …..

[37] The clause ends with the Committee having an obligation to put forward its consensus and divergent views for a decision. The General Manager will advise the rationale behind decisions.

[38] The Cityline (NZ) Limited Collective Agreement has similar provisions.

[39] Against this background, it is clear it is the Union's position that the applicable clauses in the respective collectives provided a way for the parties to move towards progressing the equitable distribution of overtime.

[40] I understood from Mr O'Sullivan's evidence that the issue which had arisen prior to the 2019 Agreement, was that the Union believed the respondents were not following the previous consultation process regarding allocation of overtime work and allocation of weekend work.

[41] The complaint is that the respondents have failed to work through the Union's concerns. That, however, is certainly not a breach of the mediated Settlement Agreement nor on a plain wording of the provisions outlined above contained in the respective Collective Agreements is there an obvious breach of those clauses.

[42] In its submissions, the Union refers to *New Zealand Tramways and Public Passenger Transport Employees Union (Inc) Wellington Branch v Cityline (NZ) Limited* [2014] NZERA Wellington 119 at paragraph 40. That determination of the Authority found that at that time the second respondent had not properly established the Roster Committee. However, the amended statement of problem under the heading "Issue 3" takes issue with the new roster proposed by the respondents. It says that this roster has created an inequitable distribution of weekend work and fulltime employees are not being provided with fulltime work at weekends.

[43] The Union says further that the 29 May 2019 mediated Settlement Agreement, Schedule 14, means that the first respondent committed to addressing the Union's concerns over allocation of overtime and allocation of weekend work through the Roster Committee process. That is not a complaint as to whether or not either respondent had properly established the Roster Committee.

[44] It follows, therefore, as the mediated Settlement Agreement, Schedule 14 provides, that any concerns regarding the matter should be addressed through the Roster Committee process. With respect to the Union's submissions, I do not see how the claims set out in the amended statement of problem constitute a breach by either respondent. Certainly, I cannot see how they could amount to a breach of the 29 May 2019 Settlement Agreement.

[45] Having said that, it is not correct for the respondents to state that if a Roster Committee failed to act, then that was not the fault of the respondents on the basis the Roster Committee was a Union Committee. As the applicant points out, the Collective Agreements in each case establish the Roster Committees and accordingly both sides will have a part to play. As the Authority has already noted, the obligation to establish the Roster Committees is an obligation on the respondents.

Issue 4 – travel time – failure to pay for correct travel time where driver is being required to commence or finish work at a depot other than their home depot

[46] This issue was originally listed as number 5 in the amended statement of problem (applicant's further and better particulars and application for urgency).

[47] For this claim, the applicant relies on clause 11(a) of the WCTL Collective Agreement.

[48] The words of the Agreement are clear enough, however, the issue revolves around broken shifts and how the issue had been approached in the past. The Union's perspective is that there was a clear understanding as to the correct approach and Mr O'Sullivan said that at least from the 1990s, the provision has been interpreted to mean that if an operator is signed on away from their home depot, then they are paid travel time.

[49] The evidence from WCTL was that that may be so, but this was an error so it was changed.

[50] Mr O'Sullivan's evidence was that there had been no discussion regarding the provision, the interpretation was simply changed from a practice that had been in place for at least 30 years. He said that the issue had never been flagged or raised.

[51] Mr Zmijewski accepted that there had been no discussion or consultation regarding the change prior to it occurring.

[52] Mr O'Sullivan's evidence was that the respondents suddenly ceased to comply with the travel arrangement based on how the applicable Collective Agreements had been interpreted in the past. Mr O'Sullivan said Wellington City Transport and Cityline (NZ) Limited had paid travel time where an operator had signed on away from their home depot on a broken shift in the past, until March 2020 when they stopped.

[53] Mr Zmijewski advised in his evidence that he disagrees with how the arrangement has operated in the past. He compared the Union's view that it considers four times travel times payments should be made when shift W3502 is driven by a non-Karori operator. He stated that an operator driving shift W3502 commences a shift, and commences their work for the day at 0624 hours. And the travel time payment is due when they commence. They do not "finish" the shift or "finish" work for the day at

0933 hours. They only finish the shift and finish work for the day at 1726 hours. And when they finish, a second travel time payment becomes payable.

[54] The Union submitted that since the '90s there had been a clause providing for the bus operator to be allocated to a particular depot or place (home depot). If the operator was required to work from a different place, they were paid travelling time according to an agreed formula. As noted earlier, since the 1990s travel time has been paid and travel time provisions in the Collective Agreements have been interpreted and operated as meaning that if an operator is signed on away from their home depot on a straight shift, which is one sign on and one sign off, they are paid travel time as follows:

(a) From their home depot to the other depot when they sign on; and

(b) From the other depot to their home depot when they sign off.

[55] In other words, they are paid two lots of travel time for a straight shift. The respondents' view is that it is not what the Collective Agreement strictly speaking provides for. In other words, the respondents are of the view that there is a different way to interpret the provision. I agree, however, the difficulty the respondent faces is that for some 30 years the clause has been given an interpretation by both parties. There has been ample opportunity to bargain on the issue and no doubt that would have happened if the respondent had indicated it had a different view at some earlier stage.

[56] It follows, therefore, that the applicant is entitled to rely on the interpretation and meaning the parties have given to the provision in the past, bearing in mind that the provision in the Collective Agreement has not changed.

[57] I also note that Mr O'Sullivan had been involved in the negotiations of the Collective Agreements and had knowledge of the background to the clause covering some 30 years. The respondents had no witnesses who had been involved in the negotiations, nor did they have anyone with knowledge of the background.

[58] It follows from the above that the applicant's claim in this regard succeeds. To say that the clause has been incorrectly interpreted and is simply a payroll error is not a sustainable position for the respondents to take, bearing in mind the clause was allowed to operate in a particular way for some 30 years. I accept that there is an attraction to the respondents' interpretation, however, it is not open for the respondents to now change their view of what the clause means when they have allowed it to operate a particular way for such a significant period of time. It may well be that the words of

the clause are as the respondents advocate says, "clear and unambiguous". However, the parties have chosen to apply a particular interpretation to those words for some 30 years and have accepted a certain meaning.

Issue 5 – forcing employees to take annual leave in breach of the Holidays Act and the applicable Collective Agreements

[59] This claim was originally issue 7, but again, as some matters have settled and are no longer at issue between the parties, issue 7 is now issue 5.

[60] The Union alleges that both respondents are requiring employees to take annual leave in breach of the Holidays Act 2003 and/or the terms of the applicable Collective Agreement. It seeks a determination from the Authority as to the requirements the respondents must comply with before they require employees to take any of their statutory four weeks' annual leave or any of their fifth week of annual leave.

[61] The Union says that the respondents' approach is that employees are told to take annual leave via a letter or the roster. It was then for the employee to challenge it if they do not want to take leave at that time. However, the respondents' evidence was that they spent a great deal of time dealing with annual leave issues with staff. They would talk to drivers about their annual leave and sometimes have text exchanges. On some occasions errors occurred.

[62] An example was given of one employee who had applied to take four days annual leave which was approved, but when the roster came out he was shown not to be on leave. Further, matters were complicated because staff would seek and get approval for annual leave but then wish to cancel that. Accordingly, there was no intention by either respondent to do anything other than follow the Holidays Act 2003 and the applicable Collective Agreement.

[63] The respondents did accept that there had been an occasion with one employee who had planned to take six weeks' annual leave which was then amended by agreement to two weeks' annual leave, with the respondent then directing him to take that leave by a specified date.

[64] Evidence referred to by the applicant, however, made it quite clear that on a number of occasions the Union had raised their concerns about members having to take forced annual leave.

[65] The Union also takes issue with the respondents' practice of treating the extra one week employees are entitled to the same way. The Union submits that the extra week's holiday is an enhancement to the annual leave in the Holidays Act and the parties have agreed that this extra week is taken by agreement. There is therefore no ability for the respondents to give employees notice requiring that week's annual leave to be taken.

[66] The Union points out that clause 13.C of the Collective Agreement does not apply and does not refer to the four weeks' annual leave or the extra week's annual leave. They say the clause relates to previous batch leave provisions in the Collective Agreement. They say this is reinforced by the fact that the Cityline Agreement, where there is no batch leave system, has no equivalent to clause 13.C of the WCTL Collective.

[67] Whilst the evidence clearly indicates the Union has consistently complained regarding the rostering of annual leave without notice, the evidence is a little more equivocal. However, in its amended statement of problem, the Union seeks compliance with the Collective Agreement, penalties for breaches and reinstatement of the annual leave to affected employees' leave balances, affected employees being those the respondent forced to take leave in breach of the Holidays Act and Collective Agreement. The respondents will be required to comply with the Holidays Act and the specific provisions in the Collective Agreements relating to annual leave. Where the Union seeks reinstatement of annual leave to affected employees, it will need to advise the respondents of which employees are affected and what it believes is owed.

Issue 6 - general claim for breach of good faith and penalties

[68] As indicated above, the Union claims were heard over a long period of time. In terms of the claim for penalties for breach of the Collective Agreement, there are now three claims for consideration in respect of penalties.

Trainers v tutors

[69] This claim is against WCTL. The breach was not intentional or negligent. It was deliberate, so to that extent could not be seen as inadvertent. WCTL considered it had no duty to consult over a change in practice when it did. However I do not consider a penalty appropriate.

Travel time

[70] The respondents cannot be said in this case to have deliberately breached the Agreement, although the breach was not inadvertent. The respondents took the view that the provision in the Agreement was being read incorrectly and changed how it operated in practice with no consultation. The way the respondents then chose to interpret the provision makes more sense bearing in mind the wording of the clause. However that is not the way the parties have interpreted it for some 30-odd years. Therein lies the difficulty for the respondents. They claim that they consider that they were simply overpaying employees by mistake. However, there have been successive bargaining opportunities to fix any misunderstanding if indeed that had been the case. Clause 17.2(a)(ii) has, in my view, the meaning the parties have ascribed to it over decades. I agree that the position the respondents have taken should not lead to the imposition of a penalty.

Annual leave

[71] Because of the findings I have made in respect of this issue I consider there is no basis to impose a penalty. Again, the reason for this is that there has been no enduring intentional breach by the respondents. Although the evidence was clear that the Union had raised concerns regarding the imposition of annual leave on a number of occasions and the respondents had seemingly not replied, there is insufficient evidence for me to find the Collective Agreements have been breached in that regard.

[72] The evidence before me, as I have said above, demonstrates that the respondents were not communicative and were not dealing with the Union's concerns. However, that does not mean that there was overwhelming evidence leading me to conclude that the respondents were knowingly and consistently breaching either the Holidays Act 2003 and/or the applicable Collective Agreements.

[73] It must be said that the level of communication between the parties leaves a lot to be desired. There is little doubt that a number of the complaints made by the Union could have been resolved if the respondents had engaged in a timely manner.

[74] It is worth noting that if I had been of a mind to award penalties in this case, I would have determined the penalties be paid to the Crown.

Summary of findings

Issue 1

[75] WCTL changed the way driver training had been done in the past. It failed in its duty to consult and unilaterally altered the rate of payment. The applicant succeeds in this claim

Issue 2

[76] Ms Kinnaird was paid in accordance with her contractual terms. Accordingly, there was no failure by Cityline to pay her correctly. The applicant's claim fails.

Issue 3

[77] The claims that were set out in the amended statement of problem cannot constitute a breach by either respondent and do not amount to a breach of the 29 May 2019 settlement agreement. The applicant's claim fails.

Issue 4

[78] This issue revolved around different interpretations of the applicable collective agreement. However, the clause in question had operated in a particular way for some 30 years and accordingly it was not open for the respondents to change their view of what the clause meant and the parties are bound by the particular interpretation they have given those words for some 30 years. The applicant's claim succeeds.

Issue 5

[79] Whilst the applicant has consistently complained regarding the rostering of annual leave without notice and seeks compliance with the collective agreement, there was no evidence that the respondents were unilaterally requiring employees to take leave without notice. The respondents, however, are required to comply with the Holidays Act 2003 and the specific provisions in the collective agreements relating to annual leave. If the applicant seeks reinstatement of annual leave to affected employees it will need to advise the respondents of those employees affected and what it believes is owed.

Issue 6

[80] Whilst the level of communication from the respondents' level of communication with the Tramways Union leaves a lot to be desired, I conclude that the

respondents were not knowingly and consistently breaching either the Holidays Act 2003 and/or the applicable collective agreements. No penalty is ordered.

Costs

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

[82] In respect of costs, my initial view is that both parties have had some success. I consider this may be a case where costs should lie where they fall. However, if the parties are unable to resolve costs, and an Authority determination on costs is needed, either party 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 the other party 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.

Geoff O'Sullivan
Member of the Employment Relations Authority