IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

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

[2025] NZERA 820
3247519

BETWEEN	E TŪ INCORPORATED First Applicant
AND	GAGANDEEP SINGH Second Applicant
AND	TAMMY MOWAT Third Applicant
AND	ALICA COSSGROVE-WAUGH Fourth Applicant
AND	COMPASS GROUP NEW ZEALAND LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Peter Craney, counsel for the Applicants Paul McBride, counsel for the Respondent
Investigation Meeting:	On the Papers
Submissions received:	Up to 16 December 2025
Determination:	17 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The second, third, and fourth applicants were employed by the respondent Compass Group New Zealand Limited (Compass). They are represented in this matter by their union the first applicant, E Tū Incorporated (E Tū).

[2] E Tū negotiated and concluded a new collective employment agreement with Compass, which was ratified and came into force on 18 November 2022 (the 18 November collective). It provided that certain pay increases would be backdated starting from 29 March 2021.

[3] The second, third, and fourth applicants left their employment with Compass prior to 18 November 2022. They say that, as they were employed "within the period in which it was agreed that the new rates would be back paid", they are therefore "entitled to be paid for the period they worked within the term of the agreement at the rates contained in the new collective agreement".

[4] Compass disagrees. It states that as the second, third, and fourth applicants were not employed at the date the 18 November collective agreement came into force, they are not entitled to the pay increases in that agreement or the backdating of those. It further says that Compass and E Tū did not agree, and there is nothing in the terms of the 18 November collective to require, that the backdated pay increases would apply to employees who had left Compass's employment prior to that agreement coming into force.

The Authority's investigation

[5] For the Authority's investigation, a case management conference was convened. The parties agreed that this was a matter that could be determined "on the papers". I originally directed that an agreed statement of facts be filed followed by a further case management conference. In the end, the parties by consent determined that neither of these steps were necessary, and each filed written submissions. The matter has been determined on that basis.

[6] 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

[7] The issues requiring investigation and determination were:

(a) Are the second, third, and fourth applicants entitled to wage increases and backpay in circumstances where their employment ended before the 18 November collective was ratified and came into force?

(b) Should either party contribute to the costs of representation of the other party?

Facts

[8] I set out the relevant facts below, noting that there is no disagreement as to facts. The second, third, and fourth applicants were members of E tū, and employees of Compass.

[9] The fourth applicant, Ms Cossgrove-Waugh, ceased employment with Compass on 28 April 2022. The third applicant, Ms Mowat, ceased employment with Compass on 4 November 2022. The second applicant, Mr Singh, ceased employment with Compass on 16 November 2022.

[10] E Tū and Compass entered into a new collective agreement on 18 November 2022. The 18 November collective was both ratified by the parties and came into force on 18 November 2022, that is, the ratification and commencement dates are the same.

[11] As will be apparent, the second, third, and fourth applicants were no longer employees of Compass when the 18 November collective came into force.

[12] There is no dispute that the second, third, and fourth applicants were paid according to the prior collective agreement that continued in force during their employment. They were paid correctly at the time payment was made to them.

[13] The 18 November 2022 collective provides relevantly:

a. Clause 3.1: This Agreement shall come into force on 18th November 2022 and shall expire on 31 May 2024.

b. Clause 2.2 sets out the coverage of the agreement, by reference to work done at a list of sites, and that the collective "applies to those employees appointed by the employer to positions coming within the classifications provided for in the Agreement".

c. Clause 10 is headed “Remuneration”, and provides four tables setting out wage rates applying to certain positions. Clause 10.1(a) states: The following hourly rates of pay shall apply to the respective positions below”. Tables of wage rates follow, with four different hourly rates specified by date range, being “29 March 21”, “1 September 21”, “1 September 22”, and “1 September 23”. Although not explicitly stated in the collective, it may be inferred that for wage rates applying prior to 18 November 2022, backpay will be required.

The Applicants’ Position

[14] E Tū and the second, third, and fourth applicants argue that the second, third, and fourth applicants were entitled to be paid at the higher wage rates for parts of 2021 and 2022 agreed to in the 18 November collective up to the time their employment ceased, even though they were no longer employed by Compass at the time those rates came into force.

[15] Specifically, it is submitted that the “non-monetary provisions came into effect from the date of ratification. All others came into effect as set out in the collective agreement itself….Where backdating was contemplated (as here) that obligation must be complied with.”

The Respondent’s Position

[16] Compass states that the 18 November collective applies only to current employees, “as well as extending to those to be employed in future”. It did not apply to past employees.

[17] Compass states that the second, third, and fourth applicants performed work which “would have come” within the coverage clause of the 18 November collective, but only if they were employed at the date it came into force. It refers to s 56 of the Act, which states that “a collective agreement that is in force binds and is enforceable by the union and the employer that are the parties to the agreement; and employees who are employed…”, stating that at the time the second, third, and fourth applicants ended their employment with Compass, the 18 November collective had not yet been signed, was not in force, and was not enforceable by the applicants.

[18] Once the 18 November collective came into force, the second, third, and fourth applicants were no longer employees. Therefore they had no entitlements under that agreement, and there was nothing in the wording of the 18 November collective itself, or in the agreement reached between Compass and E Tū, which might have required back-pay to former employees.

Analysis

[19] The starting point is to consider when the 18 November collective was in force. As will be reasonably apparent from the above, I do not consider it seriously arguable that the applicable date when that agreement came into force was anything other than 18 November 2022. This is stated explicitly at clause 3.1 of the 18 November collective itself. As this is also the date of ratification, there is no argument that both possible requirements of s 52(1) of the Act are satisfied.

[20] Prior to this date, the 18 November collective was not binding on or enforceable by Compass, E Tu, or the second, third, or fourth respondents. This is as set out at s 56 of the Act.

[21] The next question is who was covered by the 18 November collective, or who did it apply to? I find that the coverage clause of the 18 November agreement refers to current employees. The present tense is consistently used. This is reinforced by the wording of s 56(1)(b) of the Act which also refers to current employees, eg those that "are" employed by an employer party to the agreement. There is no wording in the 18 November collective which states that it, in whole or in part, applies to past employees, or that the coverage includes past employees, and I have not been pointed to any such wording in the submissions of either party.

[22] I turn now to the submission on behalf of the applicants that the 18 November collective provided for different provisions to come into effect on different dates, and that it was only "non-monetary" provisions which came into effect as of 18 November, with other (undefined) provisions coming into effect "as set out in the collective itself".

[23] The applicants have not referred in their submissions to any particular clause of the collective which they say came into effect on a certain stated date prior to 18 November 2022. I have considered the remuneration clause, which is the clause that

the applicants say has been breached. There is no wording in that clause which states that it, or parts of it, will come into effect on a certain date.

[24] What the remuneration clause does do is set out applicable hourly rates over certain time periods. It is reasonably clear from the existence of these tables with dates at the top of each that the parties agreed to update the various hourly rates from 29 March 2021 onwards. Both parties describe this as backdating, given that the agreement did not come into force until some 18 months later. The applicants submit that "where backdating is contemplated…that obligation must be complied with".

[25] While this is unobjectionable as a general principle, it does not speak to the dispute at hand, which is whether those pay rates ever applied to the second, third, and fourth applicants at all.

[26] I find that those rates never applied to the second, third, and fourth applicants. At the time of the ending of each of their employments, they were employed under, and paid according to, the previous collective agreement. There was no other collective agreement in force which applied to them. The pay they received was compliant with that agreement at the time it was paid to them. They had no contractual right or claim to be paid at a higher rate at any time during their employment with Compass.

[27] The requirement to pay at the higher hourly rates set out in clause 10 of the 18 November collective did not come into force until 18 November 2022. Up until that point, there was no concluded or enforceable agreement for the second, third, and fourth applicants to claim against.

[28] There is no indication in the wording of the 18 November collective that it, or parts of it, were to come into force at a different earlier date. Absent such wording, I find that the remuneration clause came into effect on the same date as the rest of the collective agreement came into force.

[29] At that point, none of the second, third, and fourth applicants were employees of Compass and the 18 November collective did not apply to them.

Does Backpay change the date the collective came into force?

[30] The setting of higher rates of remuneration commencing on past dates creates an obligation on the employer to calculate and pay backpay, which is accepted by

Compass. As submitted by the applicants, I have considered whether the requirement for backpay automatically creates a situation where the remuneration clause comes into force as of the earlier date set for the change of pay rate. I conclude that, absent specific wording, this cannot be so. This would run contrary to s 52 of the Act, which provides two ways for a collective agreement to come into force, either by a specified date (which occurred here) or if no date is specified, the date on which the last party to the agreement, or its duly authorised representative, signed the agreement (noting again that both these dates are the same). It would also run counter to the singular date provided at clause 3 of the collective itself.

[31] Subsection 52(2) provides that "a collective agreement may provide that 1 or more of its provisions have effect from 1 or more dates before or after the date on which the agreement comes into force." This is what the remuneration provision in effect does. However, this does not answer the more fundamental question of when the agreement came into force, and whether it applied to the second, third, and fourth applicants which I have already considered above.

[32] Put simply, the wording of the 18 November collective agreement does not state that the remuneration clause comes into force on a date earlier than the rest of the collective as set out in clause 3, and does not state that it applies to past employees.

The Application of Assa Abloy

[33] It is submitted for the applicants that a similar situation has previously been decided in the applicants' favour, in the matter of *NZ Amalgamated Engineering Printing & Manufacturing Union & George Marks v Assa Abloy New Zealand Limited*.[1] The applicants submit that the same reasoning followed in this case applies here.

[34] In that case, the parties had engaged in collective bargaining, and agreement was reached between them on 4 February 2005. The collective agreement contained a provision at clause 4 which stated "This agreement shall come into force on the 1st July 2004…". The collective agreement also provided for a 3.75% wage increase. Mr Marks was employed by the respondent on, before, and after 1 July 2004, but was made redundant on 31 October 2004, before the collective agreement was concluded, but after it came into force.

[1] WA 178/05, 21 November 2005.

[35] The Authority found that the plain words of the collective agreement were that the new collective agreement would come into force on 1 July 2004 and that wages and allowances were to be increased by 3.75% from that date.[2] It further found that, "given that the collective agreement was in force from 1 July 2004, it would be inconsistent with s 56 [of the Act] for workers in Mr Mark's position not to be able to enforce the new wages provisions, even though they have since left Assa Abloy's employment".[3]

[36] There is a significant distinction between the facts in that matter, and the facts in the current matter. In *Assa Abloy*, the parties had agreed on a specific date on which all terms were to come into force, being 1 July 2004. The increase to wages came into effect on and from that date. Mr Marks was employed on and after that date. Therefore, in accordance with s 56 of the Act, the new wage rates were enforceable by him, as he was employed at the time those terms came into force.

[37] This contrasts with the present matter, where the second, third, and fourth applicants were not employed by Compass at the time the 18 November collective came into force, and I find that neither the terms of the collective itself nor the provisions of s 56 gives them any right to enforce it.

[38] I am supported in my view by the comments of the court in *Pacific Flight Catering Ltd v Fitzpatrick*,[4] which referred to when the collective agreement had "operative force", *Butler v Carter Holt Harvey*[5], which focused on an agreed performance recognition scheme where the parties explicitly provided the scheme was to operate from an agreed prior date. I was also referred to a case decided under prior legislation on a similar basis, namely *Inspector of Factories v Amourguard Securities Limited*[6], where an employee who had resigned prior to the conclusion of a settlement agreement which provided for a lump-sum payment in respect of concerns over payment for prior work was not entitled to that payment.

[39] In short, it is submitted on behalf of Compass that the question of whether backpay might properly be owing to employees who resign before any such agreement is both concluded and comes into force has previously been considered, and the

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[2] See paragraph [14].
[3] See paragraph [15].
[4] [2003] 1 ERNZ 192 at [109]
[5] EMC Auckland AC57/05 at [30] and [31].
[6] [1989] 1 NZILR 890.

authorities suggest that such agreements do not apply prior to their commencement date absent specific provisions to the contrary. I accept this view, and find that the cases referred to, including *Assa Abloy*, support my conclusions reached above.

Conclusion

[40] The claims on behalf of the applicants are not made out. No orders are made.

Costs

[41] Costs are reserved as requested by the respondent, although I note the Authority's practice direction on costs would suggest that this is a matter where costs lie where they fall.

[42] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent 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 applicant 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.

[43] 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.[7]

Claire English
Member of the Employment Relations Authority

[7] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1