

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 240
3435324

BETWEEN E TŪ INCORPORATED
Applicant

AND NEW ZEALAND STEEL
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Emily Griffin, counsel for the Applicant
Philip Skelton KC and Carter Pearce, counsel for the
Respondent

Investigation Meeting: 26 and 27 February 2026

Submissions and
information received: At the investigation meeting

Determination: 21 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] E tū Incorporated (E tū) and New Zealand Steel Limited (NZ Steel) are party to a collective agreement (the CA).¹ Clause 3 of the CA deals with coverage. The parties are in dispute as to the meaning of this clause and whether it extends to a new position NZ Steel wishes to introduce - Electric Arc Furnace team leader (EAF team leader).

[2] E tū says the functions of the EAF team leader are within coverage of the CA. It says this is supported by the current situation whereby 1st operator designate

¹ New Zealand Steel Collective Agreement 1 July 2024 – 30 June 2027.

steelmakers undertake much of the duties ascribed to the EAF team leader. NZ Steel says the EAF team leader role is not within coverage of the CA because it substantially involves duties which the parties have agreed in the CA take it out of coverage.

The Authority's investigation

[3] The investigation of this employment relationship problem was granted urgency. The commissioning of an electric arc furnace, for which the EAF team leader role has been created by NZ Steel, to commence soon.

[4] Evidence was received from Lester Udy, the combined union site convenor, Trevor Pritchard, who is employed by NZ Steel as a steel maker 1st operator designate, Conrad Bezuidenhout, NZ Steel project director with responsibility for implementation of the electric arc furnace project, David Ronaldson, the NZ Steel steel plant technical superintendent and Sarah Massey, a senior technical consultant working in professional services specialising in remuneration and job analysis and sizing.

[5] 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. In determining this matter, the Authority has carefully considered all the material before it, including all information received from the parties and the submissions of their representatives.

Issues

[6] The issue for investigation and determination is whether the work of EAF team leader is covered by the CA.²

The collective agreement

[7] The following provisions of the CA are relevant to this determination.

[8] Clause 3 is the coverage clause and provides:

² As described in the position description dated September 2025.

- 3.1 All employees of the employer parties engage in the mining, concentration and slurry pumping of ironsands, the conversion of ironsand concentrate to iron, the making and casting of steel and all subsequent working of steel and steel by-products in all forms, the hot and cold rolling of slabs to coil and sheet, the processing of hot rolled coil pipemaking and galvanising, continuous galvanising of cold rolled coil and further coating, painting and shaping processes and all other work associated with these processes including despatch, mobile plant operation, engineering, vehicle maintenance, utility operations, weighbridge operations, laboratory/mechanical testing operations, gardeners, nurses, cafeteria staff and rail crews.
- 3.2 This excludes permanent, fixed term and part time employees whose duties are substantially supervisory, managerial, and specialists in financial accounting, marketing, process technologists, computer scientists, engineering, procurement, logistics and human resources.

[9] Clause 8 is titled “Consultation and Participation”. Those terms are defined and the intention of the clause described as follows:

- 8.2.1 The parties recognise the business is operating in the global marketplace and must continue to look at opportunities to improve our productivity to ensure a sustainable, strong future for our business and our employees.
- 8.2.2 In seeking to achieve a balanced and effective workplace relationship at [NZ Steel], the parties agree that management, the Union and Union Delegates need to act in a responsible, cooperative manner and at all times respectful of each other. In order to carry this out, both parties must be equipped with the necessary skills and have access to all relevant information and advice.

[10] Clause 70 provides that an identified job evaluation system will be used to determine job classes for “all jobs specified within this CA”.³

[11] The CA provides for responsibility payments.⁴ Clause 92.1.9.2 headed “Senior Operators - Process Control Iron & Slabmaking Plants” provides the responsibility payment rates paid to 1st operator designates:⁵

In recognition of the additional responsibility placed on senior operators involving the control and coordination of plant production processes and personnel through the use of computerised process-control technology and/or other means, the following allowances shall be paid to the positions designated.

³ CA, clause 70.

⁴ CA, part XIV, table 9.

⁵ CA, clause 92.1.9

[12] A payment matrix exists within the CA to standardise payments to employees within coverage who are team coordinators or have aspects of their roles which fall within the matrix job factor definitions.⁶

Relevant legal principles

[13] This employment relationship problem is a dispute about the interpretation, application or operation of an employment agreement.⁷ Central to resolution of this employment relationship problem is ascertaining the meaning of the CA coverage clause and in particular the exclusion clause. This is an objective assessment.

[14] The starting point is the words the parties have agreed in the CA which should be given their natural and ordinary meaning, in the context of the whole document, to discern the parties' intention.⁸ The relational context of employment agreements overrides a contractual focus.⁹

Background

[15] NZ Steel operates a steelmaking plant at Glenbrook. It is an organised site. NZ Steel has a longstanding relationship with the union, E tū which represents members covered by the CA. A number of those members are employed in operator roles as steel makers. Roles which are substantially supervisory, managerial and specialist are excluded from CA coverage and are, as the parties describe them, individual employment agreement roles (IEA roles).

[16] Steelmaking operator roles are complex and dynamic reflecting the nature of the work undertaken. Operator skill and experience is reflected in the CA by pay and allowances which seek to recognise expanded duties and responsibilities. The 1st operator designate is at the top of those scales.

[17] In May 2023 it was publicly announced that NZ Steel and the New Zealand government would jointly invest capital and transition costs of \$300 million to build an electric arc furnace at the Glenbrook site. The purpose of the project is to significantly reduce the carbon footprint of the site, and the intention is that the electric arc furnace will replace the existing oxygen steelmaking furnace (KOBM) and

⁶ CA, clause 97.

⁷ Employment Relations Act 2000, s 161(1)(a).

⁸ *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111 at [71].

⁹ *Le Gros v Fonterra Co-operative Group Ltd* [2023] NZEmpC 193 at [25].

two the four coal fuel kilns. An electric arc furnace involves advanced systems integration, the use of chemical and electrical energy (as opposed to the chemical energy in the KOBM process), continuous monitoring of dynamic inputs and real-time optimisation of power usage.

[18] E tū supports the initiative to introduce the electric arc furnace and supports steel making processes that contribute towards a decrease in emissions.

[19] Consultation with E tū concerning the implementation of the electric arc furnace commenced in August 2023.

[20] As the electric arc furnace project developed NZ Steel considered the necessary roles further and on 1 April 2025 proposed to E tū for feedback the EAF team leader role would be out of coverage of the CA. This was the first time the EAF team leader was proposed to be outside coverage of the CA. Over the succeeding months the parties engaged in detailed discussions regarding the nature of the proposed EAF team leader role and CA coverage.

[21] These discussions culminated on 18 December 2025 when NZ Steel wrote to E tū responding to its letter of 15 December providing formal feedback on the preliminary decision that the EAF team leader role would be out of CA coverage. The parties have exchanged detailed and developed views about the EAF team leader role. Those arguments are now before the Authority, E tū having invoked clause 59 of the CA which provides where the parties have reached impasse on a dispute it is referred to the Authority for determination.¹⁰

[22] At the time of the investigation meeting the EAF team leader roles, of which there are four, had been advertised internally and interviews conducted. The Authority understands no one is yet working in those roles.

EAF team leader – position description

[23] NZ Steel says it has developed the EAF team leader role to meet the new operating model to be introduced with the electric arc furnace by combining on-shift technical expertise, greater accountability and formal supervisory responsibilities. The position description for the role has been provided to the Authority.¹¹

¹⁰ CA, clause 59.2.

¹¹ Position description EAF team leader September 2025.

[24] The position description proposes four EAF team leader roles reporting to the steelmaking superintendent. The EAF team leader is described as having primary accountability for operational and technical leadership to steelmaking operators on shift.¹² It also provides the EAF team leader role with secondary accountability for commercially optimal EAF performance, technical process model modification and financial risk mitigation. The position is also described as contributing to critical analysis and advice to inform strategic decisions and contribute to the overall team and operational plan. The purpose of the EAF Team Leader is described as:

To ensure the safe, efficient, and commercially optimal operation of the Electric Arc Furnace (EAF) by applying process technology and strategic leadership. This is critical for mitigating significant process safety risks, financial risks (related to ETS penalties and energy volatility) and ensuring the best possible business return. This mandate is achieved by leading a team of operators and driving continuous improvement through data analysis, process model modification, and high-level leadership to maximise the EAF's return on investment and positively impact the overall profitability of New Zealand Steel.

1st operator designate

[25] A starting point to understand the 1st operator designate role is a job description for a KOMB operator dated October 1985. It describes the primary function of the role as:

responsible for maintaining the continuity of production of carbon alloy steel by the operation of a KOMB converter and ancillary equipment.

[26] There are 16 people who hold the designation currently and they roster through the role.

[27] Mr Pritchard has been employed by NZ Steel for 38 years. He became a 1st operator 15 years ago and appointed 1st operator designate 10 years ago. He is a skilled and experienced steel maker operating at the most senior level of his role within the CA. In his written evidence he describes the role of 1st operator as follows:¹³

As a first operator I control the process. The first operator role involves overseeing the oxygen blowing process that refines iron into steel.

First operators get the iron from the melters, receive the sample results that were taken at the Vanadium Recovery Unit (VRU) which includes data about

¹² There is no dispute those operators are within coverage of the CA. The claim before the Authority is not that those jobs are or will be restructured consequent to the EAF team leader role.

¹³ Witness statement Trevor Pritchard 12 February 2026.

heat and chemistry. We then put the results of the chemistry sampling into the computer, and the computer runs the model to understand what adjustments are required.

Part of my role is to interpret complex data and make real-time adjustments to the steel making process based on sample results and process data to ensure strict compliance to safety and operational procedures.

As part of my job, I monitor the temperature, chemical composition, slag formation and blow timing to ensure the correct element levels and specifications are achieved in the steel-making process.

I analyse recent heats and adjust the process model one at a time. I can also inform the process technologists if the model needs to be changed for subsequent makes or if it is continuously hot or cold over a period of time. If the temperature is too hot or too cold, I can adjust it to the correct temperature. I do this at my sole discretion. I do not have to check with a supervisor or a process technologist. Only if it becomes a continuous change would I contact the process technologist. I generally would not contact the process technologist at night because I can manage it one heat at a time.

I mainly keep track of the carbon, magnesium, oxygen, sulphur and phosphorous composition levels to ensure that they are all within specification for the grade of steel that I am making. If these compositions fall outside the correct parameters, I need to adjust them accordingly where possible.

The steel-making process is highly dynamic and requires constant attention and monitoring for temperature, levels of composition and timing.

Expert witness - comparison of the KOMB 1st operator role and the EAF team leader role

[28] Ms Massey is an expert in job evaluation. She has confirmed to the Authority under oath that she is independent of the parties in this matter, that she has read the code of conduct for expert witnesses in schedule 4 of the High Court rules and agreed to comply with that code in giving her evidence to the Authority.

[29] In her evidence Ms Massey described the instructions she received which were to provide an independent, expert comparison between the existing KOMB 1st operator role and the proposed new EAF team leader role at NZ Steel. She also described the process she undertook to prepare the reports including the methodology used and how it was applied to the subject information she received which she detailed.

[30] Ms Massey has prepared three reports which are before the Authority:

- (i) a job evaluation report for the KOMB 1st operator;
- (ii) a job evaluation report for the EAF team leader role; and

- (iii) an evaluation comparison report comparing the two role.

[31] Ms Massey's key conclusions from the reports, as set out in her witness statement are:

- (i) The KOMB 1st operator role was classified within the methodological framework used as an operational role at the "Trades II" level. She described roles of this type as typically skilled trades or technical roles, working under limited supervision and performing moderately complex and varied tasks requiring judgement within existing patterns, making independent decisions with help from precedents and solutions such as standard operating procedures.
- (ii) The EAF team leader role was classified within the methodological framework used as a leadership role at the "Team Leader" level. She described roles of this type as typically technical specialists with a team of assigned staff, performing planning, scheduling and monitoring work, along with training and performance management of staff, and requiring analytical input to modify existing methods, develop new approaches and/or deal with complex problems.
- (iii) Comparing the roles, Ms Massey identified some similarities between them and noted the key differences - the EAF team leader having formal supervisory/managerial responsibility for other staff and a greater level of specialist technical knowledge and skills required as well as responsibility for autonomous decision-making with a high financial impact and the KOMB 1st operator role as having no formal supervisory responsibility and undertaking technical actions on direction and/or within defined processes and procedures.

[32] Ms Massey's oral evidence to the Authority confirmed these conclusions.

The parties' positions

E tū

[33] The duties relevant to the dispute are those substantially supervisory or managerial or specialist process technologist. They must therefore involve a considerable amount of supervision, management and specialist process technology. E

tū submits the existing 1st operator designates carry out functions of this nature within the mechanisms in the CA:

- (i) through the allowance mechanism within the CA 1st operator designates can exercise higher responsibilities including controlling and coordinating processes and the personnel in the steel making plant while still within coverage of the CA;
- (ii) the higher responsibilities included under the CA for 1st operators are akin to the supervisory and managerial tasks for the proposed EAF team leader role;
- (iii) the necessary hierarchy required for a steel making plant is reflected in the 1st operator role because they carry out some supervisory and managerial functions for which they are recognised by way of the allowances examples of which are the 1st operator makes decisions, directs and conveys information upstream and downstream during including maintenance and transport;
- (iv) accountability for economic performance and specialist technical oversight is inherent in the 1st operator designates which receive the senior responsibility allowance because they are responsible for ensuring the plant runs properly;
- (v) given the EAF structure replicates the two senior levels of management above the EAF team leader it is likely matters of discipline and performance will be dealt as they are now by those more senior levels;
- (vi) NZ Steel's anticipated combination of people leadership and specialist control in the EAF team leader role is an existing function of the 1st operator designate;
- (vii) the core skill of steel making is transferable to the EAF and new ways of processing required for the new plant can be learnt through training and experience;
- (viii) managing leave requests is not exclusive to employees not covered by the CA;
- (ix) the managerial aspects of the EAF team leader role will be a small portion of the total role, within those managerial responsibilities managing leave, performance and conduct concerns will not be a

substantial part of the role which is, as with the 1st operator designate, making steel;

- (x) a career pathway from CA roles to management roles exists currently and is likely to continue with or without the EAF team leader role;
- (xi) the objectivity of the analysis and assessment of the job evaluation conducted by a third party is somewhat lacking because it is based on information provided by NZ Steel to the third party and E tū, its members and in particular the designate 1st operators were not asked to provide comment or a response or provide additional information or feedback;
- (xii) the cooperative wage study (CWS) job evaluation system referred to and used within the CA to determine job classes was not provided to the third party and the factor classification of the 1985 CWS job evaluation for the KOMB 1st operator role could have been party of the third party's evaluation of both jobs;
- (xiii) it is not clear how the disciplinary, performance and training functions of the proposed EAF team leader role can practically be carried out given the steel processing obligations of the role which will require the holder to be in the control seat. E tū submits given this it is likely those duties will continue with the shift manager and supervisor as they currently do with the KOBM;
- (xiv) the emphasis in the EAF team lead role of broad and all-encompassing responsibility for legal obligations and performance management of health and safety systems is high level and in line with a more senior role; and
- (xv) while the EAF is a new process for making steel its purpose, to make steel, remains the same as the KOBM. Given there is no change to the core business of steel making, there should be no change to the personnel undertaking that work.

NZ Steel

[34] NZ Steel submits it is entitled to organise its business as it sees fit subject to contractual and legal obligations and that this includes introducing new technology, re-organisation and creating new roles designed as it sees fit to meet its business needs. NZ Steel says it has met its consultation obligations to E tū regarding the

development of the EAF team leader role and that it is entitled to design a role to meet what it considers are the technical and operational demands of the EAF project. In general terms, it submits those employed in supervisory or specialist roles exercise higher levels of judgement, accountability, system oversight and technical expertise and given this it is appropriate that the new EAF team leader role is outside coverage.

[35] NZ Steel submits the business rationale for creating the EAF team leader role further supports this including:

- (i) the EAF is new and more complex technology, requiring highly trained personnel dedicated to the control room;
- (ii) there is a need for advanced decisions to be made in real time in response to fluid variables such as power pricing, in order to achieve the emissions reductions on which the government funding is contingent;
- (iii) to avoid the “skill dilution issue” that comes with having up to 16 different operators rotating through the control room;
- (iv) key supervisory functions, such as team briefing, safety planning and performance, should be located with the employee who will be in the control room monitoring production and running the process model; and
- (v) safety.

[36] NZ Steel submits for an employee’s duties to be substantially supervisory, managerial or specialist, those aspects of the employee’s role must be “real, considerable, significant, as against insignificant, unreal or trifling”.¹⁴ It says the evidence demonstrates this is the case with the EAF team leader role and relies on Mr Bezuidenhout’s evidence which includes:

- (i) The EAF introduces significant metallurgical variability, real-time optimisation requirements, and elevated process safety risks, requiring continuous real-time system monitoring and complex model adjustments across multiple inputs.
- (ii) The EAF team leader is intended to have greater control over model parameters, make more frequent and sophisticated adjustments, have

¹⁴ *Synlait Milk Ltd v New Zealand Industrial Park Ltd* [202] NZSC 157 at [104].

responsibilities for safety, and supervise and performance manage staff, including leave approval and disciplinary input.

- (iii) the EAF team leader role will be accountable for production outcomes and must provide heightened process safety oversight, so as to ensure
- (iv) NZ Steel says the EAF team leader role is designed to meet the technical and operational demands of the EAF project.

Analysis

Does the EAF team leader role fall within coverage of the CA?

[37] As outlined above the parties are in dispute as to whether the EAF team leader role falls within coverage of the CA.

[38] The EAF team leader role involves steel making. On its face the position falls within coverage of the CA. The exclusion clause 3.2 carves out roles from coverage which may have substantially duties involving management, supervision and specialist roles. It is the application of clause 3.2 to the intended EAF team leader role where the parties have reached an impasse.

[39] A role will fall within the exclusion clause if it includes duties in the following categories - supervisory, managerial or specialist in a range of described matters – and those duties are substantial elements of the roles performed by those employees. The categories are disjunctive.

(i) *What does substantial mean?*

[40] In interpreting clause 3.2, substantial should be given its ordinary meaning of “having substance, actually existing, of real importance or value, of considerable amount, solid, well-to-do, essential, practical.”¹⁵ I accept the applicant’s submission that substantial requires the EAF team leader role to have duties which involve a considerable amount of supervision, management and specialist process technology. This is a qualitative and quantitative assessment consistent with the span of the ordinary meaning of substantial.

(ii) *Substantial managerial and supervisory duties?*

¹⁵ OED

[41] The position description for the EAF team leader role requires managerial and supervisory duties. These are described above including in the summary of Ms Massey's evidence.

[42] E tū raises a concern as to how the managerial and supervisory duties described in the position description can in fact be carried out within the working hours of anyone in that position given the primary role is to oversee the steel making operation, the span of hours required for that function and accommodation of necessary breaks within the hours of work. It says the duties are akin to those currently carried out by 1st designate operators who oversee the steelmaking which includes directing the work of the team undertaking those tasks with, it is accepted the exception of leave approval and disciplinary matters.

[43] The position description requires management of performance and attendance of team members. The evidence to the Authority was the intended scope of these duties is to include tasks currently undertaken by the steelmaking supervisor such as disciplinary matters, approval and control of leave, feedback to team members and direction of team members and the team as a whole. These are substantive management and supervisory tasks which are not currently performed by the 1st operator designate and meet the requirements of the clause 3.2 carve out.

[44] The practical considerations raised by E tū as to how these tasks can be completed within the expected working hours is on the evidence of the NZ Steel witnesses to be addressed by the increased experience to be gained by those filling the four intended roles and the flexibility of approach that is expected. On the information before the Authority that is accepted.

(iii) Specialist process technologist?

[45] The CA does not define "specialist process technologist" though the parties have agreed those in such roles fall outside coverage of the CA. NZ Steel says the EAF team leader role is a specialist process technologist because they will be required to have a high-level metallurgical, chemical and process expertise and the exercise of this expertise will involve substantially greater judgement and discretion than the first operator designate.

[46] The EAF team leader role as described in the job description and as analysed by Ms Massey is significantly different from the 1st operator designate because the

evidence establishes the role will require identified process technologist tasks including control of and ability to make changes to the process model, system-wide accountability and responsibility for matters including economic performance and safety and working beyond standard operating procedures. These are substantial tasks both relative to the role as a whole and in significance. The evidence before the Authority supports a finding that these are specialist process technologist tasks and that it is the intention of NZ Steel that the EAF team leader will undertake these tasks in the day-to-day discharge of their job functions and responsibilities.

[47] Fundamental to the dispute is whether the EAF team leader role arises from and can be accommodated within the pay and allowance mechanisms of the parties CA. This has not been established on the evidence. NZ Steel intends to recruit EAF team leaders from its existing workforce of operators. In doing so the EAF team leader role will benefit from skills and experience developed by holders of CA roles. It does not follow though the role is developed from the CA or that there will be changes to the CA roles consequent. Indeed, it was confirmed in the evidence before the Authority that there will be no reduction in the number of 1st operate designates and the dispute does not extend to changes in that role.

[48] Having considered all the evidence, including that of an expert in job evaluation, I am satisfied the EAF team leader role as currently described in the position description dated September 2025 does not fall within coverage of clause 3 of the parties CA. This means the job evaluation process within the CA is not activated because it applies to jobs within the CA.¹⁶

[49] E tū has raised sincere concerns as to how the EAF team leader role may be practically implemented. These may be matters relevant to ongoing discussions between the parties including in collective bargaining.

Summary

[50] The Electric Arc Furnace team leader role falls within the exclusions described in clause 3.2 of the parties' collective agreement and is outside coverage of the collective agreement.

¹⁶ CA, clause 70.

Costs

[51] Given this is a dispute as to the interpretation, application and meaning of a collective agreement the Authority's usual approach is that costs will lie where they fall.

Marija Urlich
Member of the Employment Relations Authority