IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 255/10
5301273

	BETWEEN	NEW ZEALAND MEAT WORKERS & RELATED TRADES UNION INC Applicant
	AND	AFFCO NEW ZEALAND LIMITED Respondent

Member of Authority:	Vicki Campbell
Representatives:	Simon Mitchell for Applicant Graeme Malone for Respondent
Investigation Meeting:	24 May 2010 at Hamilton
Determination:	27 May 2010

DETERMINATION OF THE AUTHORITY

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[1] This employment relationship problem is a dispute over the operation of a clause from the AFFCO New Zealand Core Employment Agreement. This is a collective employment agreement between the parties which expired on 31 December 2009 but remains in effect statutorily because there are current collective negotiations for its replacement.

[2] In particular the parties are in dispute over the operation/application of clause 11 a and 11c which states:

> 11a
> The ordinary daily hours of work shall not exceed eight (including smokos) on five days of the week, or 10 hours per day on four consecutive days and may be worked between Monday to Friday inclusive and between 6.00am and 6.00pm each day.
>
> 11c
> Before each season starts agreement shall be reached in each department regarding the work schedule and start and finish times, within the span of hours above, for that season. The starting and finishing times will be posted for each department on the notice board.

> Agreement between the site management and the department(s) affected shall be reached within each work department before the changes to set start and finish times provided above, are introduced during the season.
>
> The company shall give 60 hours notice of change from a 5 day to a 4-day schedule or vice-versa, to the workers affected.

[3] The season commences on 1 October. It was common ground that Rangiuru operated agreed start and finish times which allowed for 8, 9 and 10 hour days. Prior to the commencement of the 2009/2010 season the members of the union employed at the Rangiuru plant had changed their normal ordinary eight hour, five day working week to work four ten hour days as ordinary hours. This arrangement was not the usual working arrangement for those employees and at the time the change was made the Union questioned AFFCO's ability to make such a change. However, it was common ground at the investigation meeting that nobody actually disagreed with working the new ordinary ten hour days.

[4] Shortly after the start of the season the four ten hour days reverted to the usual ordinary hours of five eight hour days. These ordinary hours continued to be worked until 25 March 2010 when employees were advised that they would be working four days per week for ten hour days for the weeks commencing Monday 29 March and Monday 5 and 12 April (two of these weeks were the weeks either side of Easter weekend).

[5] Ms Hirini, Human Resources Co-ordinator for AFFCO at Rangiuru, acknowledged at the investigation meeting that the decision to change the ordinary hours of work was a business decision which allowed the company to kill all the stock during the statutory short weeks without the need to pay overtime.

[6] The dispute is about whether AFFCO is entitled to make the change pursuant to clause 11 of the Collective Agreement between the parties by providing notice but without the agreement of the employees or the Union.

Determination

[7] The principles regarding the interpretation of a contract are well established. Where the words used in the agreement are clear and unambiguous then that should

generally determine the matter.[1] The Authority must also undertake a cross checking exercise. That is the Authority must consider the surrounding circumstances to make sure the first impression of the meaning is correct and nothing in the circumstances requires modification of the interpretation[2].

[8] Clause 11 is part of Section 3 of the collective agreement which deals with hours of work generally. Clause 11a requires the ordinary hours of work to not exceed eight hours per day on five days of the week or 10 hours per day on four consecutive days. Ordinary hours of work must be worked between Monday to Friday inclusive and between 6.00am and 6.00pm each day.

[9] It was common ground that start and finish times for 8, 9 and 10 hour shifts at Rangiuru have been agreed between the Union and AFFCO. However, Mr Michael Nahu, President of the Union, gave uncontested evidence that when shifts of more than 8 hours in a day are worked, overtime payments apply to those hours worked in excess of 8 in a day and employees continue to work over five days of the week.

[10] The issue is whether the employer is entitled to unilaterally alter the number of days on which work is to be undertaken. That is, can the employer, on the giving of 60 hours notice, require employees to work 10 hours each day on four days of the week and avoid the payment of overtime.

[11] I answer that question in the negative. Reading the clause as a whole, I find that having agreed to work a specified number of ordinary hours each day before the payment of overtime becomes obligatory, the respondent is required by the terms of the agreement at clause 11c to seek the agreement of the union and/or its employees to alter the ordinary hours. Where this agreed alteration affects the number of days of the week on which the work is undertaken, that is from five days to four days, the respondent is required to provide 60 hours notice of the change.

Costs

[12] Costs are reserved. I am inclined to let costs lie where they fall, however, in the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the Union may file

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[1] *NZ Tramways & Public Transport Employees Union v Transportation Auckland Corporation Ltd* [2006] 1 ERNZ 1005; *Air NZ v Barker* [2002] 2 ERNZ 719.
[2] *Association of Staff in Tertiary Education v Hampton* [2002] 1ERNZ 491.

and serve a memorandum as to costs within 28 days of the date of this determination with any submissions in reply being lodged within 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority