IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2025] NZEmpC 264
EMPC 359/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	CHANNEL INFRASTRUCTURE NZ LIMITED Plaintiff
AND	AARON HOLROYD AND OTHERS Defendants

Hearing:	17 June 2025 (Heard at Auckland)
Appearances:	TL Clarke, G Service and I Denholm, counsel for plaintiff P Cranney and G Liu, counsel for defendants
Judgment:	8 December 2025

JUDGMENT OF JUDGE KATHRYN BECK

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[1] These proceedings involve a non-de novo challenge to a determination of the Employment Relations Authority.[1]

[2] The plaintiff, Channel Infrastructure NZ Ltd (the company or Channel), operated New Zealand's only oil refinery at Marsden Point. It was previously named the New Zealand Refining Co Ltd (also known as Refining NZ) until April 2022 when it changed its name to Channel and transitioned into importing fuel. The defendants, Aaron Holroyd and 120 others,[2] were employees of the company until its change in operation resulted in the end of their employment due to redundancy.

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1 *Holroyd v Channel Infrastructure NZ Ltd* [2024] NZERA 503.
2 As named in the attached schedule.

[3] The issues in this case relate to the calculation of the redundancy compensation for each of the employees.

Background

[4] The factual background to this matter is largely undisputed.

[5] The employees were covered by a co-joint collective employment agreement, the parties to which were Channel (at the time, Refining NZ), E Tū Inc (E Tū) and Workers First Union Inc (First Union).

[6] In July 2021, Refining NZ issued formal notices to E Tū and First Union of commencement of consultation in relation to redundancy under the collective agreement.

[7] There were two stages of restructuring. The first was referred to as simplification. The second was referred to as conversion. Over the period July 2021 to August 2021, consultation took place in relation to converting the refinery to an import terminal.

[8] In October 2021, Refining NZ began issuing the employees with six months' notice of redundancy on a staggered basis.

[9] On 18 November 2021, a leave buyout offer was posted on Refining NZ's intranet, and on 19 November 2021, it was emailed to the employees. The company offered to buy all leave types for cash, except for "annual leave" where the employee could only cash out five days in line with legislation.[3] The offer contained a table setting out the various types of leave,[4] the payment rate for each type, and how much of that leave could be cashed up. It noted that:

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3 Holidays Act 2003, s 28A.

4 Annual leave, alternative holidays, fifth week/service leave, shift worker compensation leave, shift worker time off in lieu, time off in lieu of overtime on duty or working public holiday, management leave, compensation for being on duty roster and service leave.

- future redundancy calculations will not be impacted if leave is "cashed out" as part of this one-off offer
- if you choose not to accept this "one off" offer to cash out your leave, it will be paid out at the time of any redundancy.

[10] Employees were advised about the company's requirement to tax lump sums as required by the Inland Revenue Department, how to go about selling leave, who to email, the date by which the offer had to be accepted, how it would be processed and how it would appear on payslips.

[11] In December 2021, the company made payment to the employees who had accepted its offer to buy leave from them.[5]

[12] The employees' employment then ended due to redundancy on 31 May 2022. Their final pay was calculated via the payroll system and processed. Holiday pay and the balance of additional leave were paid out, and redundancy compensation was calculated manually and processed.

[13] The collective agreement provides for the entitlement to redundancy compensation under cl 18.3. It sets out that redundancy compensation is to be measured in weeks and calculated "based on average weekly earnings as defined in the Holidays Act 2003". The number of weeks for each employee is not in dispute; it is the value of the week that is at issue.

[14] The Holidays Act defines average weekly earnings as 1/52 of an employee's gross earnings.[6] "Gross earnings" means all payments that the employer is required to pay to the employee under the employee's employment agreement and excludes any payments that the employer is not bound to pay by the terms of the employment agreement.[7]

[15] The company says it calculated the redundancy compensation in accordance with the terms of the collective agreement. The employees say the calculation is

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5 The Court was advised that 44 employees took advantage of this offer.
6 Holidays Act 2003, s 5.
7 Section 14.

incorrect because it did not include the payment for additional leave as part of gross earnings when calculating average weekly earnings.

[16] It was the company's practice to pay out the balance of any additional leave on termination of employment and it made such payments to the employees in this instance. However, it says doing so was at its discretion, and the payments are therefore expressly excluded from gross earnings under s 14(b)(i) of the Holidays Act and so not included in the calculation of redundancy compensation.

[17] Two issues have arisen in relation to the calculation of the redundancy compensation. The first is whether the amount paid on termination for additional leave not taken should be included in each employee's gross earnings for the purposes of that calculation. The second is whether any payments made under the company's leave buyout scheme should be included in gross earnings for the purposes of the redundancy calculation.

[18] The Authority considered that both should be included.

[19] The company has challenged its findings.

Issues

[20] The central issue for determination in this proceeding is whether the company correctly assessed gross earnings when calculating the redundancy compensation of its employees.

[21] Given that this is a non-de novo challenge, the questions for the Court are whether the Authority erred in finding that:

(a) the entitlements to additional leave were required to be paid out to the defendants on termination;

(b) payment for unused additional leave entitlements was not a discretionary payment;

(c) the leave buyout offer became an enforceable term of the collective employment agreement; and

(d) each of the defendants who received leave buyout payments within 52 weeks of their last day of employment should have had such payments included as gross earnings when calculating redundancy compensation based on their average weekly earnings.

Were the entitlements to additional leave required to be paid out to the employees on termination under the collective agreement?

[22] The company says that the Authority erred in finding that:[8]

> "… the parties intended for the additional leave entitlements to be treated in the same manner as accrued annual holiday entitlements (that is, that they are entitlements under the CEA which Channel was required to pay out upon termination)."

[23] The collective agreement is silent on payment for the balance of additional leave owing on termination. However, as noted above, it is common ground that it was the company's practice to pay such amounts on termination, and it did so in this instance.

[24] While the collective agreement may not be the only source of the terms of the employees' employment agreement, it is necessary to consider its terms at the outset.

[25] Under the terms of the collective agreement, many of the employees were entitled to leave over and above that provided for in the Holidays Act. This leave entitlement is set out at cl 22 of the collective agreement, which states:

> **22.1** Paid leave of absence from work is governed by law, the provisions of which shall apply to all employees:
>
> Accident Compensation Act 2001
>
> The Holidays Act 2003
>
> The Employment Relations Act 2000
>
> The Parent Leave and Employment Protection Act 1987
>
> The Social Security Act 1964

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8 *Holroyd v Channel Infrastructure NZ Ltd*, above n 1, at [42].

and their subsequent Amendments,

which in total provide for eleven Public Holidays:

New Year's Day and the day following New Year's Day; Northland Anniversary Day; Waitangi Day; Good Friday; Easter Monday; Anzac Day; the Birthday of the Reigning Sovereign; Labour Day; Christmas Day; Boxing Day.

A minimum of four weeks Annual Leave after each year's service, monetary benefits in the event of sickness or accident and Parental Leave without pay which includes conditions for post parental leave re-employment

22.2 Based on these statutory provisions, the Company grants leave entitlements of:

a. 160 working hours ANNUAL LEAVE per year

b. 40 working hours SERVICE LEAVE per year commencing from the fourth anniversary*

c. 24 working hours DUTY ROSTER COMPENSATION per year

d. 40 working hours SHIFT WORKER COMPENSATION per year**

e. 126 working hours TIME OFF IN LIEU inclusive of a provision for alternative days off where up to 11 Public Holidays have been worked**

f. 104 working hours SHIFT ROSTER TIME-OFF-IN-LIEU per year to reduce hours worked to 40 per week**

g. 120 working hours LONG SERVICE LEAVE at the fifteenth and each subsequent five year service anniversary

*As service anniversaries will normally fall during a leave year, the amount of service leave granted on the first occasion will be pro-rated to the balance of the leave year remaining.

**Applicable only to 4 crew shiftworking.

[26] The company says that while cls 22.2(a) and 22.2(e) are statutory leave entitlements, the remaining entitlements under cl 22.2 are "additional leave" entitlements.

[27] Clause 23 of the collective agreement addresses how and when employees may take leave entitlements. The collective agreement encourages the taking of leave. Additional leave, along with annual leave, was meant to be taken and used in the leave year (that is, 12 months from the employee's service anniversary). Clause 23.3 specifies that if it is not taken in the leave year, the entitlement rolls over into the subsequent year, although it notes that this is not intended to detract from the requirements to take leave in each year.

Clause 23.5, titled Holiday Pay, states:

> a. The basis of leave entitlement is to ensure that statutory annual holidays are taken by employees as a break from work each year.
>
> b. Accrued Annual Leave and any unused Annual Leave not taken by terminating employees is paid as annual holiday pay in accordance with the provisions of the Holidays Act 2003, at the date of termination.

[28] This is consistent with cl 12(b) of the collective agreement which states that "All wages and holiday pay will be paid immediately on dismissal of an employee."

Legal principles

[29] The principles governing the interpretation of contracts, including collective agreements, are settled under New Zealand law.

[30] The Supreme Court in *Bathurst Resources Ltd v L & M Coal Holdings Ltd* affirmed that the key principles of contractual interpretation are those articulated by that Court in *Firm Pl 1 Ltd v Zurich Australian Insurance Ltd.*[9] Those key principles are as follows:[10]

> *the proper approach is an objective one, the aim being to ascertain "the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*" This objective meaning is taken to be that which the parties intended. While there is no conceptual limit on what can be regarded as "background", it has to be background that a reasonable person would regard as relevant. Accordingly, the context provided by the contract as a whole and any relevant background informs meaning.
>
> (emphasis added)

[31] This Court has also looked at this issue recently in *Television New Zealand Ltd v E Tū Inc* and held that in the context of employment law, and specifically in the interpretation of collective agreements:[11]

> The approach is objective. The aim is to ascertain the meaning which the agreement would convey to a reasonable person having all the background

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9 *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696; and *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432.

10 *Firm PI 1 Ltd v Zurich Australian Insurance Ltd*, above n 9, at [60]. (footnotes omitted).

11 *Television New Zealand Ltd v E Tū Inc* [2024] NZEmpC 93, [2024] ERNZ 356, at [11].

> knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the agreement. This objective meaning is taken to be that which the parties intended. While the meaning of a clause in an agreement may appear clear, meaning is informed by context. A provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole, and any relevant background.

Analysis

[32] The starting point is the meaning of the language in the collective agreement itself.

[33] The company submits that the Authority erred in its application of *Television New Zealand Ltd v E Tū Inc* when determining that the parties intended for additional leave to be paid out upon termination. In particular, it says the Authority failed to consider the plain and ordinary meaning of additional leave and the collective agreement as a whole. Further, it failed to account for the absence of proper evidence given there is no express provision requiring additional leave to be paid out on termination.

[34] Mr Cranney, for the employees, accepts that the collective agreement does not expressly provide for additional leave entitlements to be paid out upon termination. While not conceding that the collective agreement did not require the additional leave entitlements be paid out, his primary argument was that a contractual obligation to make these payments was formed once the company's buyout offer was made. He submitted that the focus should be on whether the employer was required to pay under the terms of the employment agreement, not when the payment was actually made and received.[12] I agree that this is the correct focus of any analysis. I will come to that later.

[35] There was no evidence before the Court of the background knowledge available to the parties at the time of the contract. Accordingly, it is necessary to ascertain the meaning solely from the document itself.

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[12] Referring to *Howell v MSG Investments Ltd (formerly known as Zee Tags Ltd)* [2014] NZEmpC 68, (2014) 11 NZELR 842.

[36] As already noted, the express terms of the collective agreement do not require the payout of additional leave. Can such a requirement be implied into the agreement?

[37] There is nothing in the collective agreement that is inconsistent with the practice of paying the employees out the balance of additional leave upon termination. However, this does not take the Court as far as finding that the collective agreement required such payment on termination. A practice in and of itself cannot elevate something into a contractually binding term.[13]

[38] The collective agreement is resoundingly silent on such a payment, whereas it specifies in two places (cl 12(b) and cl 23.5 (b)) that payment of annual leave and other entitlements under the Holidays Act would be paid out on termination. I accept that this simply restates a statutory requirement but, objectively, had the intention been to include other forms of leave, it is not unreasonable to assume it would have expressly done so given the context where other forms of leave are recorded in the same paragraph as annual leave in the clause immediately above.[14] The omission must be taken to be deliberate and the requirement cannot be read in.[15]

[39] Further, the types of leave were treated differently on a day-to-day basis. Annual leave and other types of leave were applied for separately under the terms of the collective agreement. Annual leave was approved by the employee's immediate manager and other leave required leadership team member or CEO approval.[16]

[40] On their face, the clauses in the collective agreement distinguish between how leave types would be dealt with during employment (as noted above) and then on termination (where only annual leave is referred to as being paid out), indicating an intention to treat statutory leave and additional leave differently. Objectively, it is not possible to read in a meaning that the company was required to pay out additional leave on termination.[17]

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13 See generally *Edminstin v Sandford Ltd* [2017] NZEmpC 70, [2017] ERNZ 329 at [43].
14 See above at [25].
15 See generally *Bathurst Resources Ltd v L & M Coal Holdings Ltd,* above n 9, at [116].
16 Clause 23.11 of the collective agreement.
17 That said, I note that had the company wanted to change its practice of paying out leave, given the length of time the practice had been in place, it would have had to engage in a good faith process before making the decision to do so.

[41] Accordingly, I find that Channel was not required pay out the balance of additional leave entitlements on termination under the terms of the collective agreement. The Authority erred in its finding.

Was the payment for unused leave a discretionary payment?

[42] The Authority found that there was nothing before it that indicated that the payment of accrued leave entitlements upon termination was expressed as being made under the exercise of a discretion.[18] The company says the Authority erred.

[43] I have formed the view that the payment of accrued leave entitlements was discretionary in terms of s 14 of the Holidays Act; however, the offer to make such payment was irrevocable for reasons I set out below.

[44] Unlike the Authority, I have found that under the collective agreement, there was no requirement to pay accrued leave entitlements upon termination. I do not agree with the Authority's finding that the additional leave entitlements were akin to wages and form an entitlement because they accrue each week and relate to the performance of service.[19] If employees took additional leave during their employment, this payment would form part of their gross earnings; however, wages and leave are distinct under both legislation and the collective agreement. Wages are payments agreed to be paid to a worker for the performance of service or work.[20] This would exclude accrued additional leave which is not actually taken and therefore has not been agreed to be paid. However, that is not the end of the matter in relation to the issue of whether the payment was discretionary.

[45] In its buyout offer sent to employees in November 2021, the company clearly promised to pay out such entitlement on termination by stating: "if you choose not to accept this "one off" offer to cash out your leave, it will be paid out at the time of any redundancy."

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18 *Holroyd v Channel Infrastructure NZ Ltd*, above n 1, at [52].
19 At [43].
20 Wages Protection Act 1983, s 2.

[46] Parties to an employment relationship are bound by the statutory obligations of good faith. Having made that promise, absent intervening circumstances, the company was obliged to keep it. Failure to do so could be grounds for a personal grievance.[21]

[47] Notwithstanding that there is no requirement to pay out unused additional leave balances under the collective agreement, having made the express commitment to pay it out "at the time of any redundancy", the company created an expectation of payment. There may therefore have been a corresponding obligation to make the payments under good faith. This obligation would also be consistent with the Court's jurisdiction to consider claims in equity.[22] In that way, the payment was not discretionary per se because the company did not have an absolute right not to make payment without some recourse being available to the employees to enforce the promise to pay.

[48] However, that does not answer the essential question of whether it was a discretionary payment that was excluded under cl 14(b)(i).

[49] Neither party referred to the definition of "discretionary payment" in s 5(1) of the Holidays Act:

> **discretionary payment—**
>
> (a) means a payment that the employer is not bound, by the employee's employment agreement, to pay the employee; but
>
> (b) does not include a payment that the employer is bound, by the employee's employment agreement, to pay the employee, even though—
>
> (i) the amount to be paid is not specified in that employment agreement and the employer may determine the amount to be paid; or
>
> (ii) the employer is required under that employment agreement to make the payment only if certain conditions are met

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21 The obligation of an employer to act fairly and reasonably consistent with its statutory obligation of good faith is well established and has been applied in cases involving bonus payments. See for example *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, [2017] ERNZ 352, at [49]–[51].

22 *Newick v Working In Ltd* [2012] NZEmpC 156 at [59]. In some circumstances, a commitment to pay may also give rise to an alternative claim for estoppel. See *Schollum v Corporate Consumables Ltd* [2017] NZEmpC 115, [2017] ERNZ 668 at [155]–[166].

[50] It is that definition that must be applied when ascertaining whether a payment is discretionary in terms of s 14(b)(i) of the Holidays Act. The focus of the s 5 definition is on whether the employer is required to make the payment under the terms of the employment agreement. This is consistent with the definition of gross earnings in s 14(a) of the Holidays Act.

[51] Here, the company did not have a contractual obligation under the collective agreement to make the payment. Nor, for reasons I set out below, did a contractual obligation arise under the buyout offer (until the offer was accepted by the employees). Accordingly, the payments on termination were discretionary payments under s 5(1) of the Holidays Act and excluded by s 14(b).

Did the leave buyout offer become an enforceable term of the employees' employment agreements?

[52] The Court of Appeal in *Metropolitan Glass and Glazing Ltd v Labour Inspector, Ministry of Business and Innovation and Employment* held that "the key element of the definition of gross earnings is that the payment at issue must be one the employer is contractually bound to pay."[23] Accordingly, in terms of the matters at issue in this proceeding, the essential question for the Court is whether the payment was required under the employees' employment agreement.[24]

[53] It is a well-established principle that a contract of employment between employer and employee may comprise a number of different sources. The formal written employment agreement is never the entire contract of service. It is only one source (albeit often the main source) of contractually binding terms.[25]

[54] In discussing the meaning of gross earnings under s 14 of the Holidays Act, the Court of Appeal in *Metropolitan Glass* held:[26]

> The hallmark of a discretionary payment and what distinguishes it from gross earnings is that it is a payment the employer is not contractually bound to make. If the employer was contractually bound to make the payment, then

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23 *Metropolitan Glass and Glazing Ltd v Labour Inspector, Ministry of Business and Innovation and Employment* [2021] NZCA 560, [2021] ERNZ 1006 at [39] [*Metropolitan Glass*].

24 Holidays Act 2003, s 14(a).

25 *Metropolitan Glass,* above n 23, at [26].

26 *Metropolitan Glass,* above n 23, at [29].

> subject to a limited number of specified exceptions, it is gross earnings. The source of the employer's contractual obligation is irrelevant.

[55] In the Authority, the parties focused on whether the payment was discretionary and therefore excluded by s 14(b)(i). In determining that payment for additional leave was not discretionary, the Authority concluded that first, the collective agreement required these payments on termination. Second, additional leave was akin to wages and not subject to the company's discretion. I have found differently on both conclusions.[27]

[56] The company maintained that paying additional leave on termination was discretionary. However, it accepts that if employees took additional leave during their employment, this payment would form part of their gross earnings.

[57] The employees say that the leave buyout offer by the company became an enforceable term of the employment agreement for both those who accepted the offer and cashed up/sold their leave and those who chose not to do so. Accordingly, payment for the untaken additional leave also falls within gross earnings under the Holidays Act.

[58] I consider that the correct focus of the analysis is on the definition of gross earnings itself and whether there was a contractual obligation.

[59] Mr Cranney's submission was that even if there was no express obligation under the collective agreement to pay additional leave entitlements, such an obligation was created once the buyout offer was made. He argued that under *Metropolitan Glass,* it then became an enforceable obligation to be included as gross earnings for the purposes of calculating redundancy compensation. Mr Cranney said that the company's discretion was limited to whether it chose to make an offer; however, once an offer was made and accepted, it became binding, including for those employees who did not expressly opt into it.

[60] Mr Clarke, counsel for the company, referred to the additional leave payments on termination as gratuitous. In answer to questions from the Court, he submitted that

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[27] See above at [43] and [44].

opting into the offer therefore did not form a contract as the employees did not provide any consideration. That said, in its written submissions, the company accepted the possibility that the leave buyout could bind the individual members who opted in. However, it says the Authority failed to consider the variation clause in the collective agreement, and the wording of the leave buyout which states it is a "one-off offer", consistent with the use of a discretion. The company argues that it was not an offer capable of contractually varying the collective agreement. Instead, it was made at the company's discretion on an individual basis, to those covered by the collective agreement. It says that even if the leave buyout could become an enforceable term of the collective agreement, the employees who opted into the offer expressly did so on the basis that it would be excluded from the calculation of redundancy compensation.

Analysis

[61] There are two separate circumstances that must be considered. First, the position where the buyout offer was accepted; and second, where it was not.

[62] In relation to the first scenario, where the employees accepted the offer and were paid out during their employment, the company's argument that such circumstance does not amount to a binding contract is strained. There was an offer recorded in an email with clear terms; 44 employees expressly accepted that offer within a specified timeframe, and the company executed the deal. All the elements of a contact are present. It was not unlawful; it complied with the buyout provisions of the Holidays Act, and it was not barred by the terms of the collective agreement.

[63] I do not accept the company's argument that the payments were gratuitous and that there was no consideration present. There was a clear exchange of consideration. The employees sold leave that they had accrued and were otherwise entitled to take under the terms of the collective agreement. The corresponding consideration or benefit to the company was a reduction in its contingent liability and the leave it owed. While there may have been other factors at play, it is not for the Court to look at the value of the consideration; it is enough that consideration was present.

[64] The terms were simple and set out in the email. The company paid money and the employees' leave balances were reduced accordingly. The submission that the

employees who accepted the buyout did so on the basis that it would be excluded from the calculations is inconsistent with the wording of the offer itself – "future redundancy calculations will not be impacted if leave is "cashed out" as part of this one-off offer". That wording cannot objectively be read as excluding the payment as suggested by the company.

[65] Accordingly, I find that the company entered into an individual agreement with each of the employees who opted to accept the buyout proposal. Under the terms of that agreement, the company was contractually bound to make the payments to those employees. Such individual agreements sat alongside the collective agreement, and were not inconsistent with it.[28] I deal with the impact on the collective agreement below.

[66] In relation to the second scenario, where the employees did not accept the buyout offer, the position is different. Mr Cranney argues that a contract was also created in this instance, albeit one with different terms where the requirement to pay was on termination.

[67] As set out above,[29] I agree that having made the promise to pay on termination, as a matter of good faith the company was obliged to pay out. However, that obligation did not arise as a matter of contract or under the terms of the employment agreements. The obligation of good faith is a statutory obligation. While based on the common law implied term of trust and confidence, the legislative obligation goes further,[30] but unless incorporated by the parties into their employment agreement, it is not a term of that agreement.[31]

[68] I have reviewed the terms of the collective agreement. They do not expressly, or otherwise, include the statutory obligations of good faith.

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28 Employment Relations Act 2000, s 61.
29 See above at [47].
30 Employment Relations Act 2000, ss 3(a)(i) and 4(1)(a).
31 See for example *Wiles v Vice-Chancellor of the University of Auckland* [2024] NZEmpC 123, [2024] ERNZ 488 at [125]–[126].

[69] The leave buyout offer stated that "if you choose not to accept this "one-off" offer to cash out your leave, it will be paid out at the time of any redundancy". Mr Cranney submits that the consequence of this was that any employee who refrained from taking leave between the date of the offer and the date of any redundancy would be paid for it at the time of any redundancy. Further, he says the forgoing of the leave entitlement in those circumstances, in return for payment, was part of the employment agreement.

[70] Offer, express acceptance, the exchange of consideration, and the subsequent execution by the company are factors that establish a contractual arrangement, in relation to those who sold leave. These elements are not present in relation to the second set of employees. There is only an offer (which was not accepted) and a promise to pay out on termination.

[71] It is a fundamental principle of contract law that an offer or bare promise does not form a contract.

[72] Mr Cranney argues that these employees' silence amounts to acceptance and the consideration was forgoing taking their leave over the period up until termination. This argument is strained. While there was an offer, silence and inactivity without more, cannot amount to acceptance.[32] Further, there was no consideration. There is no evidence that the employees who did not accept the offer were prohibited from taking leave had they wanted to do so. Their employment arrangements appeared to be unchanged.

[73] As noted above, the employees may well have had grounds for a personal grievance had the additional leave not been paid on redundancy. However, such a claim would not arise under the employment agreement or be based on a contractual obligation to pay. It was not an enforceable term of their employment agreement.

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[32] See generally *Bobux Marketing Ltd v Raynor Marketing Ltd* [2002] 1 NZLR 506 at [33]*;* and *Bank of New Zealand v Donaldson* [2016] NZHC 1225 at [56].

Did the leave buyout offer become an enforceable term of the collective agreement?

[74] The company says that the Authority erred in finding that the leave buyout offer made on 19 November 2021 became an enforceable term of the collective agreement and its terms became contractually binding.

[75] Clauses 6 and 7 of the collective agreement state:

> **6 COMPLETENESS OF AGREEMENT**
>
> The terms and conditions of this Agreement, in conjunction with the relevant provisions of The General Terms and Conditions of Employment (where these are not superseded by the terms of this Agreement), replace any previous agreements and understandings.
>
> **7 VARIATIONS OF AGREEMENT**
>
> This Agreement may be varied, subject to the established ratification procedures, by the agreement in writing of the appropriate signatory parties to the contract. Agreed variations will be appended to the Agreement and will be incorporated in the next renewal.

[76] I agree with the plaintiff that any agreement reached with an individual in relation to the sale and purchase of leave could not and did not form part of the collective agreement. No variation or ratification process took place as required by the Employment Relations Act 2000[33] or the terms of the collective agreement itself. In the absence of such processes, the terms of the sale and purchase of leave could not form part of the collective agreement.

[77] However, on reviewing the Authority's findings,[34] the determination did not go as far as was suggested by the plaintiff. The finding was that the leave buyout offer became part of the contract of service and, as such, became contractually binding. He did not find that the terms became part of the collective agreement.

[78] As noted above, I consider he has erred in relation to those who did not accept the payment offer.

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33 Employment Relations Act 2000, s 51.

34 *Holroyd v Channel Infrastructure NZ Ltd*, above n 1, at [61]–[62].

Should the employees who received leave buyout payments within 52 weeks of their last days of employment have had such payments included as gross earnings when calculating redundancy compensation?

[79] In relation to the employees who reached buyout agreements with the company, I find that such payments properly come within the definition of gross earnings. For the reasons set out above, the payments became part of the terms and conditions of their employment and were amounts that the employer was required to pay under the employees' employment agreements. As such, they should be included as gross earnings in the calculation of the redundancy payment.

[80] While I consider that the company was obliged to pay the other employees the balance of payments on termination, I do not consider that such payments are required to be made under the employees' employment agreements. There was an obligation of good faith but there was no contractual obligation to pay. While it is an unattractive outcome for the employees who did not accept the leave buyout offer, those payments do not come within the definition of gross earnings under s 14 of the Holidays Act 2003,[35] and they were not required to be included as gross earnings in the calculations of the redundancy payment.

Outcome

[81] The challenge is successful in part. I make the following findings:

(a) The Authority erred in finding that the additional leave payments were required to be paid out upon termination under the terms of the collective agreement.[36]

(b) The Authority erred in finding that the payment for additional leave on termination was not excluded by s 14(b) of the Holidays Act.[37]

(c) The Authority did not err in finding that the leave buyout offer became an enforceable term of the employment agreements of the employees

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35 *Metropolitan Glass,* above n 23, at [39]–[44].
36 At [42].
37 At [43].

who had sold their leave, but did err in finding that it became an enforceable term of the agreements of those who did not sell their leave.[38]

(d) The Authority did not find that the leave buyout offer became an enforceable term of the collective agreement.

(e) The Authority did not err in finding that the employees who received leave buyout payments as part of the agreement to sell should have had such payments included as gross earnings when calculating redundancy compensation, but did err in finding that employees who received payment for additional leave on termination should have such payments included as gross earnings when calculating redundancy compensation.[39]

Orders

[82] I order that the determination of the Authority in relation to the above findings is set aside and this judgment stands in its place.

[83] Funds are currently held in the Court's trust account. The Court does not have the information necessary to make orders in relation to those funds.

[84] The parties are directed to confer with a view to agreeing how those funds will be dealt with. The parties are required to advise the registry of the outcome of those discussions within seven days of the date of this judgment.

[85] If necessary, the registry is directed to convene a directions conference as soon as practicable thereafter.

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38 At [62]–[64].
39 At [63]–[64].

Costs

[86] There has been success on both sides and the issues involved the interpretation of a collective agreement. Accordingly, I am minded to let costs lie where they fall. However, if either party wishes to make an application, they should do so within 14 days of the date of this judgment. The other party will have a further 14 days within which to respond. Any reply should be filed within a further seven days.

Kathryn Beck
Judge

Judgment signed at 4.30 pm on 8 December 2025

APPENDIX

1	Andrew Hau
2	Craig Clement
3	Keith Smith
4	Dieter Challenor
5	Mark Cathcart
6	Dave Shaw
7	Glenn Orford
8	Julian Duff
9	Jeffrey Balfour
10	Logan Suvalko
11	Brentyn Kidd
12	Clint Marris
13	Darren Sawford
14	Simon Heaps
15	Adam Tremain
16	Jeffrey Cunningham
17	Bradly Scott
18	Mathew Foster
19	Dale Foreman
20	Kaden Hunter
21	Russell Gavin
22	Daniel Johnson
23	Duncan Finlayson
24	Jonathan Hoori
25	James Hunt
26	Mark McQuinn
27	Amon Uffindell
28	Blair Goble
29	Michael Atienza
30	Craig Kelly
31	Sam Hodge
32	Rob Smith
33	Isaac O'Grady
34	Daniel Macinnes
35	Dwayne Kitchen
36	Benny Carlos
37	Jason Prowse
38	Mathew Haddon
39	Henry Reno
40	Kyle Reid
41	Peter Burrows
42	Ray Garmson
43	Angus Blacklaws
44	Todd Morgan
45	Grant Mccullum
46	Shane Hool
47	Fenton McKay

48 Jason Newman
49 Cliff Watson
50 Reggie Iyer
51 James Molloy
52 Paul Jones
53 Vance Whyte
54 Patrick O'Halloran
55 Wade Snowden
56 Clinton Drake
57 David Howard
58 James McRae
59 Shaun McMurchy
60 Chris Platt
61 Richard Beddis
62 Michael Churcher
63 Beau Roughton
64 Russell Windle
65 Aidan Jones
66 Adam Hall
67 Daniel Flood
68 Tom Heywood
69 Leon Watson Meyer
70 Melanie Megaw
71 Kay Boon
72 Craig Alison
73 Joe McNamara
74 Ralph Ludgate
75 Ken McBeth
76 Karl Diamond
77 Sean Brown
78 Kris McKay
79 Ian Jaques
80 Paul Newton
81 Timothy Aubrey
82 Paul Austin
83 Roy Bot
84 Aaron Butler
85 Hamish Lawrie
86 Bradley Fergus
87 Llewellyn Botha
88 Greg Ventnor
89 Thomas Delamare
90 Karl Morgan
91 Thomas Flood
92 Korey Taylor
93 Stuart McLeod
94 Rob Chalmers
95 Yuri Van Houten
96 Jim Tamboer
97 Lucaas Manihera

98	Sam Claris
99	Brad Nelson
100	John Goldsmith
101	Grant Harrington
102	Brian Weir
103	James Gurnick
104	Turi Fricker
105	Chris Westlake
106	Andy Hughes
107	Brad Gray
108	Joe Neho
109	Jason Rigger
110	Francois Odendaal
111	Vaughan Tait
112	Steve Little
113	Pieter Skinner
114	Colin Maunder
115	Peter Macmenigall
116	Robert Jones
117	Ben Fergus
118	Gavin Andrews
119	Kerry Guy
120	Zinzan Hodgson