

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Wayne Albert Gollop (Applicant)  
**AND** Canpac International Limited (Respondent)  
**REPRESENTATIVES** Wayne Gollop In person  
Phillip Karl, Advocate for Respondent  
**MEMBER OF AUTHORITY** Janet Scott  
**INVESTIGATION MEETING** 6 April 2006  
**DATE OF DETERMINATION** 11 April 2006

**DETERMINATION OF THE AUTHORITY**

**Employment Relationship Problem**

Mr Gollop submits he has been discriminated against and unjustifiably disadvantaged in his employment. To remedy his alleged grievance he asks for a direction that he be reinstated to day shift or alternatively that he be made redundant.

The company denies the allegations.

**Background**

Canpac International Ltd (Canpac) is a limited liability company and a wholly owned subsidiary of Fonterra. Its business is the packaging of (mainly) milk powders for sale and distribution globally. It runs three shifts round the clock over five days of the week (Sunday night through Friday evening). The company requires flexibility in managing/crewing shifts to enable it to adjust to client demand for its products.

Mr Gollop has been employed by the respondent for a period of 22 years. Mr Gollop's employment has been affected by restructurings that occurred in 2001 and 2003. The latest restructuring had implications for the problem Mr Gollop has submitted for determination.

On 22 October 2003 the company wrote to Mr Gollop. He was invited to express his interest in a number of options that arose from an Operations Re-Structure. Those options included expressing an interest in voluntary redundancy. Mr Gollop elected to be redeployed as a Senior Operator on his current rate of pay. He also expressed an interest in working on day shift.

In the event Mr Gollop's preferences were realised and on 27 November he was redeployed on day shift to a Senior Operators role (grade 3) albeit he retained his grade 4 rate of pay. However, as a

result of this redeployment Mr Gollop, who was appointed to a newly created position, had a starting date for the assessment of “current continuous service” (for the purposes of Clause 4.5 of the Collective) of 1 December 2003.

In 2004 the company had a need to fill vacancies on its afternoon shift operation albeit the vacancies did not occur simultaneously. In the circumstance of the first vacancy the company had to turn to operators on the dayshift to fill the vacancy on afternoon shift. Mr Gollop and another worker had the same start dates for the calculation of “current continuous service” for the purposes of Clause 4.5 (see below p. 4). As provided in the Collective, a coin was tossed as to which worker would be required to transfer. Mr Lea lost that toss and transferred. Mr Gollop remained on day shift for the time being.

However, on 13 October 2004 the company gave Mr Gollop (who now had the least current continuous service in the grade 3 role on day shift) 14 days notice that he was required (for operational reasons) to fill a vacancy that was equivalent to his role that had arisen on afternoon shift. As Mr Gollop was filling a *vacancy* that had opened up on afternoon shift the transfer was a permanent one. Mr Gollop was not happy about the transfer but in the event he did not raise a personal grievance over it.

In July 2005 the company had a need to provide temporary coverage on day shift. Knowing Mr Gollop’s preference for working on days that temporary position was offered to Mr Gollop and accepted by him. The letter given to him on July 19 required him to transfer pursuant to clause 2.2.2(f) of the Agreement and he was clearly advised the transfer was temporary.

However, on 20 September 2005 Mr Gollop was advised that due to an increase in production requirements on afternoon shift he was required to transfer back to afternoon shift with effect from 5 October 2005.

Mr Gollop raised a personal grievance in relation to the transfer alleging he was being discriminated against and disadvantaged in his employment.

## **Positions of the Parties**

### **Applicant**

Mr Gollop submits that his transfer to afternoon shift with effect from 5 October 2005 discriminated against him and unjustifiably disadvantaged him in his employment. While he challenged the 2004 transfer to afternoon shift he accepts his current challenge is limited to the most recent transfer (5 October 2005).

In his written notice to the company raising his alleged grievance (21 September 2005) Mr Gallop spelt out his concerns – concerns that were reiterated at the Investigation Meeting along with additional submissions.

- He is being discriminated against in that he is the only grade 3 operator required to shift from days to afternoons in the canning department (apart from Kevin Lea). He also considers he is being discriminated against as he cannot get out of the pinball situation between day and afternoon shift as the company downsizes afternoon shift when the work slows down and then puts a third line on afternoons when work picks up.

- He is severely disadvantaged because being shifted results in his losing his shift service leaving him with the least service and vulnerable to being shifted as needed. As a result he cannot maintain a full time position on day shift or gain seniority because he is always being moved.
- The company is promoting a grade 2 operator to do his job on day shift.
- There is no procedural fairness in this situation. The requirement to transfer should be shared by all equivalent grade 3 operators. He feels he has done his share of afternoon shift and notes that some day shift workers have never worked on afternoon shift.
- He considers his human rights are being violated. The Human Rights Commission states that everyone must be treated equally. There is no equal treated in his situation.
- At the investigation meeting Mr Gollop noted that he might be being discriminated against in relation to the prohibited ground of discrimination – family status. Mr Gollop submitted he wants to spend evenings with his wife now their kids are off their hands.
- Mr Gollop accepts the company have managed his transfers pursuant to the provision of the Dairy Workers Collective Agreement. However, he considers the company is exploiting the Agreement having made him transfer several times over the last four years.
- Mr Gollop also argued that he considers his appointment to the day shift position in December 2003 was a permanent appointment, a position which he is entitled to retain. Mr Gollop produced advertisements for permanent shift positions to support his position that an appointment to a permanent position is just that for others so why should it not be the same in his case.

By way of remedies Mr Gollop seeks reinstatement to day shift. In the alternative he seeks to be made redundant.

Lastly, Mr Gollop says he asked the Dairy Workers Union to pursue his alleged grievance on his behalf. He acknowledges, however, that the Union refused to assist him taking the view the company is acting within the agreed terms of the Collective Agreement.

### **Respondent**

- Canpac denies Mr Gollop's assertion that it is exploiting the Agreement in transferring him. It submits Canpac is a manufacturer of fast moving consumer goods. Its business must be flexible in order to meet customer requirements; hence the necessity to have the ability to deploy staff to areas where needed to cope with increases (or decreases) in demand which fluctuates. The Collective Agreement between the company and the Union caters for these circumstances by allowing the company to change a shift worker's starting time by giving 14 days notice Cl 2.2.2(f). The Dairy Workers Union is involved in all shift transfers to ensure the company complies with the Agreement.
- Mr Gollop's transfer in 2005 was affected in a manner completely consistent with the Collective Agreement. The shift transfer provisions in the Agreement apply to all shift transfers for all grades of worker. Transferring Mr Gollop back to day shift would in fact be a breach of the shift transfer provisions in the Collective.

- The company denies exploiting the agreement to transfer Mr Gollop. Shift transfers are made for operational needs only. In September 2005 a transfer of a shift operator from days to afternoons was required and Mr Gollop being the shortest serving operator on day shift was selected to be transferred. It was explained that other grade 3 operators on day shift had been confirmed in their current grade 3 day shift operator positions after the restructuring in 2003. As Mr Gollop was appointed to a new position at that time his service commenced at the start of his new appointment (1 December 2003) leaving him and Mr Lea who was appointed to a grade 3 operator position at the same time with the least shift service.
- The company states it cannot make Mr Gollop redundant as his position is not redundant and it points out lastly that since this grievance has arisen appointment have been made to afternoon shift. As a result Mr Gollop no longer has the least shift service of grade 3 operators on afternoons so he will not be vulnerable to being shifted from afternoon shift in future because he has the least shift service. It also notes that Mr Gollop is second in line for an appointment to any permanent vacancy that might open up on day shift.

The respondent's noted that the Dairy Workers Union supports its position regarding the application of the shift transfer provisions.

## **Collective Agreement Provisions**

Mr Gollop's employment is governed by the Dairy Collective Employment Agreement which is negotiated at intervals between the company and the New Zealand Dairy Workers Union.

At Clause 1.1 Intent the agreement provides that workplace structures, processes and culture will be jointly developed to provide a solid basis for achieving an efficient and competitive business to provide a rising standard of living for workers, a safe and healthy working environment, a profitable and expanding sustainable business and customer satisfaction.

The agreement provides for workers to be employed as 'day workers' or 'shift workers'. (Mr Gollop is employed by the company as a 'shift worker').

Clause 2.2.2 Shift Work provides at sub clause (f) that the respondent is entitled to change a shift worker's normal starting time. Fourteen days notice of change must be given.

Clause 4.5.1 Shift Transfers regulates appointments when *permanent* vacancies occur in shift operations. In the first instance the vacancy is to be advertised internally. Where more than one worker applies for the vacancy the worker who is doing the same job in the same department on a different shift and who has the longest current continuous service in that job on their current shift shall be offered the job. Conversely, where a position on a particular shift becomes redundant and there is more than one worker affected, then the worker with the least current continuous service in the redundant position is to be redeployed first. The agreement also enshrines a system for choosing between workers with equal service – the decision will be made by method of coin toss – with the employer providing the coin and the union conducting the toss.

Clause 4.5.4 provides that where a worker has their shift start time changed pursuant to Clause 2.2.2(f) their shift service will not be disadvantaged. However, where a change is made other than pursuant to Clause 2.2.2(f) their previous shift service will no longer count and their shift service will commence from the time of the shift change.

## Discussion and Findings

For Mr Gollop to succeed in his claim he must show that he has been discriminated against within the meaning of s.104 of the Act and/or must show that the respondent has breached its duty towards him such that he has been unjustifiably disadvantaged in his employment.

Mr Gollop elected to accept a grade 3 shift operator's position after the restructuring that occurred in 2003. His start date for 'shift service' calculations was 1 December 2003 which meant he and one other worker had the least service as grade 3 operators on day shift. However Mr Gollop retained his current pay rate and he qualifies for shift allowances provided in the Collective Agreement he accepts binds his employment.

That is the position that Mr Gollop elected to take in 2003 and he has and will benefit from the provisions of the collective e.g. he was spared an earlier transfer to afternoon shift when he effectively won the toss that decided the other worker with the same shift service as himself would have to transfer to afternoons. He is now building up shift service and a new operator will have to transfer from afternoons when required in future sparing Mr Gollop the pinball effect he says he has suffered. His service is also building so that he is now second in line for a permanent position on day shift when a vacancy comes about. In short, Mr Gollop is bound by collective provisions that represent the best possible negotiated outcome between the parties. It reflects a balancing of the interests of the 700 strong workforce and a company that must run a profitable and sustainable business in the interests of its shareholders and total workforce

I find the respondent has scrupulously applied the shift transfer provisions of the Collective Agreement in transferring Mr Gollop from day to afternoon shift in October 2005. For the sake of clarity I find, too, that the company was entitled to transfer Mr Gollop from day shift to afternoon shift in October 2004 and it did so pursuant to the provisions of the Collective which apply to filling permanent vacancies. Mr Gollop submitted he did not know that transfer was permanent. I find, rather that Mr Gollop has a closed mind to the reality of the Collective in respect of shift transfers. The appointment to afternoon shift in October 2004 was stated to be to a vacancy that had opened on afternoon shift. If Mr Gollop did not know the appointment was permanent it was because he chose not to know in the face of endless explanation and ongoing discussions that have taken place with Mr Gollop on the matter of his shift transfers.

In closing on this matter I will address one or two of the more significant submissions made by Mr Gollop.

- Mr Gollop was appointed to a permanent position on day shift in 2003. However, the shift transfer provisions of the Collective Agreement entitle the company to transfer any shift worker for operational reasons to other shifts on a permanent basis. As noted in 2004 the company transferred Mr Gollop to an afternoon shift position for operational reasons and it did so in strict adherence to the collective agreement shift transfer provision.
- Mr Gollop submits he has been discriminated against because of 'family status' in that he wishes to spend his evenings with his wife. 'Family status', as a prohibited ground of discrimination under s.104 of the Act (from which my jurisdiction comes), takes its meaning from s.21 of the Human Rights Act 1993. Family status means (i) having responsibility for

part-time care or full-time care of children or other dependants; or (ii) having no responsibility for the care of children or other dependants or; (iii) being married to or being in a civil union or de facto relationship with a particular person or; (iv) being a relative of a particular person. These definitions do not encompass the situation of a worker wishing to spend evenings with his wife and accordingly Mr Gollop has not been discriminated against within the meaning of the Act.

- The company has not promoted a grade 2 operator to do Mr Gollop's job on day shift. Every shift has a shift reliever to cover for breaks and absences. This also gives the company the opportunity to up skill employees and to improve its overall flexibility to meet customer demands. The evidence in this matter reveals that there have been no permanent appointments to grade 3 operator positions on day shift since Mr Gollop was transferred to afternoon shift so it is not the case that a lower grade worker has been promoted to do Mr Gollop's job on day shift. An unusual incidence of absence on the job has kept Mr Singh in his relief position on day shift but he has been and remains a relief worker.
- While Mr Gollop has moved back and forth from day to night shift it is the case that on one occasion he was offered and accepted a *temporary* position on days because the company knew his preference was to work on day shift. As another worker on afternoons now has less shift service than Mr Gollop he should in future be relieved of the 'pinball effect' he complains of.

## **Determination**

For the reasons cited I must find that Mr Gollop has not been discriminated against in his employment. Nor has he been unjustifiably disadvantaged. I must decline his claim and he is not entitled to the remedies he seeks.

## **Costs**

Mr Gollop was the unsuccessful party in this matter. However, the respondent does not seek costs in the matter so no costs will be awarded against Mr Gollop.

Janet Scott  
Member of Employment Relations Authority