

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Jane Huriwai (First Applicant)
AND Hine Kahu (Second Applicant)
AND Tui McGregor (Third Applicant)
AND Julie Pope (Fourth Applicant)
AND Florence Makan (Fifth Applicant)
AND Gail Simmons (Sixth Applicant)
AND Maria Weston (Seventh Applicant)

AND Quality Service Enterprises Limited (Respondent)

REPRESENTATIVES Luci Highfield for the applicants
Paul McBride for the respondent

MEMBER OF AUTHORITY Paul Stapp

INVESTIGATION MEETING On the papers
3, 13, 18 & 15 December 2004

DATE OF DETERMINATION 3 March 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. This is an application for the determination of a dispute that the parties have agreed requires resolving. The parties agreed for the Authority to determine the problem on the papers following mediation.

The facts

2. The parties representatives filed an agreed statement of facts that reads as follows:

“1. This dispute is concerned with the interpretation of clause 13 of Quality Service Enterprises Limited Hutt Valley Health Collective Agreement and, in particular, whether service performed with another employer is deemed to be service to the Respondent for the purposes of the Applicants’ claim to long service leave.

THE PARTIES

2. *At all relevant times the Respondent was a duly incorporated company having its registered office at Auckland, and carrying on business as a provider of cleaning and other contract services.*

3. *At all relevant times, the Applicants were cleaners at the Hutt Hospital site.*
4. *At all relevant time the Applicants were members of the Service and Food Workers Union Inc. (“the Union”).*

THE EMPLOYMENT RELATIONSHIP

5. *The Applicants started work as cleaners at the Hutt Hospital on the following dates (as provided by them, and not otherwise known to the Respondent):*

Jane Huriwai 1979

Hine Kahu 1985

Florence Makan 1979

Tui McGregor 1985

Julie Pope 1984

Gail Simmons 1972

Maria Weston 1986

6. *The Respondent first secured the Hutt Hospital and associated cleaning work with effect from September 1994, and first employed each of the Applicants with effect from 3 September 1994. The securing of that work followed a competitive tender process.*
7. *The Respondent offered each of the Applicants employment and each of the Applicants accepted that.*
8. *As between the dates listed in para.5 in 2 September 1994, the Applicants had been employed by one or more of:*
 - 8.1 *Wellington Hospital Board;*
 - 8.2 *Wellington Area Health Board;*
 - 8.3 *Hutt District Health Board*

and/or the Respondent’s competitors and predecessors performing the Hutt Hospital cleaning work;

- 8.4 *Crothalls Ltd;*

- 8.5 *Tempo DNC; and*
- 8.6 *Avalon Property Services Limited.*
9. *Except as provided by the CEC, the duration of the Applicants' previous employment with the DHB or its predecessors was not expressly assumed or recognised by the Respondent. The parties disagree about any recognition in practice.*
10. *In November 1999 the Hutt District Health Board again let the tender. The Respondent retained the cleaning services contract for the sites, including Hutt Hospital.*
11. *On 6 December 1999, the Respondent and the Union entered into a collective contract entitled "Quality Service Enterprises Limited Hutt Hospital Domestic Employees Collective Contract" ("the 1999 CEC").*
12. *The 1999 CEC expired on 13 November 2001.*
13. *In or about May 2002 a new collective employment agreement was negotiated between the Union and the Respondent. During bargaining an issue regarding interpretation of clause 13 of the 1999 CEC arose. Clause 13 of the 1999 CEC was included into the new CEC subject to resolving the interpretation dispute.*
14. *In mid 2002 the DHB again sought tenders for the cleaning work.*
15. *On 15 October 2002 the Respondent lost the tender for cleaning services at Hutt Hospital. Its competitor, Manchester Property Clear Limited was awarded the contract.*
16. *In December 2002 the Applicants' employment with the Respondent terminated. In accordance with common industry practice, each of the Applicants was immediately offered and accepted employment by Manchester Property Care Limited.*

THE CLAIM

17. *The Applicants contend that the Respondent is liable to treat the Applicants as if the entirety of their employment by the entities listed in para.8, together with the employment by the Respondent, is all deemed to be employment by the Respondent for long service leave purposes. The Respondent denies that.*
18. *The parties are agreed that if the Applicants' contention is correct, the sums in Schedule A would be due (schedule A is attached).*
3. For completeness the clause in the CEC reads as follows:

“13. LONG SERVICE LEAVE

13.1 *An employee shall be entitled to special leave in recognition of long service with the employer party to this contract as follows:*

13.1.1 *One special holiday of two weeks after the completion of 15 years and before the completion of 25 years of current continuous service with the same employer;(my emphasis)*

13.1.2 *One special holiday of three weeks after the completion of 25 years and before the completion of 35 years of current continuous service with the same employer;(my emphasis)*

13.1.3 *One special holiday of five weeks after the completion of 35 years of current continuous service with the same employer (my emphasis)*

13.2 *The special holidays provided in sub clause 13.1 hereof shall be on ordinary pay as defined by the Holidays Act 1981 and may be taken in one or more period and at such time or times as may be agreed between the employer and the employee.*

13.3 *If an employee, having become entitled to a special holiday under this clause, leaves the employment before such holiday has been taken, they shall be paid in lieu thereof.*

13.4 *For the purposes of this clause current continuous service with the same employer is defined as not less than six months’ continuous service on premises controlled by Hutt Health or its predecessors” (my emphasis).*

The Parties’ Submissions

4. The parties’ approach to this matter was made in detailed submissions that I do not intend to reproduce. I have had careful regard to them and applied the law on the interpretation of the parties’ agreement having regard to the plain meaning of the words.
5. The Applicants’ submissions are that they wish the Authority to determine whether clause 13 of the Collective Employment Contract requires the Respondent to treat all time worked at Hutt Hospital as service for the purposes of entitlement to long service leave. They say that the problem is straight forward in that the parties have defined what “*current continuous service*” for the purposes of entitlement to long service means in clause 13.4. They say therefore simply that the application of that definition should be confirmed.
6. The Respondent’s argument put to the Authority is whether the Respondent is bound by clause 13 of the CEA to award the Applicants for services provided not to it, but to its competitors and competing with the Respondent? In other words, is the Respondent bound to recognise “*long service to the Respondent*” when in fact none of the Applicants had provided sufficient service to the Respondent to trigger the clause?

Determination

7. The plain meaning of the words makes the interpretation of clause 13 clear. I accept that the employer party to the agreement is Quality Services Enterprises Ltd (QSE).
8. In this case the term in clause 13.4 is particularly plain in that it provides the definition for current continuous service with the same employer. If there was no such clause providing a definition then the respondent's arguments would have considerable weight. However, the existence of the definition means that an employee of QSE with not less than six months' continuous service on premises controlled by Hutt Health or its predecessors is eligible for long service leave subject to them completing the required lengths of service.
9. I resolve the employment relationship problem by determining that the applicants referred to in Schedule A are due the sums in that schedule as agreed.
10. Costs are reserved.

P R Stapp

Member of the Authority

Schedule A

<i>Name</i>	<i>Year started</i>	<i>No. of years at service at December 2002</i>	<i>No. of weeks long service leave owing at December 2002</i>	<i>Number of hours worked each week at December 2002</i>	<i>Hourly rate at December 2002</i>	<i>Amount owing</i>
<i>Jane Huriwai</i>	<i>1979</i>	<i>23</i>	<i>15 years – 2 weeks</i>	<i>10 hours</i>	<i>\$10.60</i>	<i>\$212.00</i>
<i>Hine Kahu</i>	<i>1985</i>	<i>17</i>	<i>15 years – 2 weeks</i>	<i>14 hours</i>	<i>\$10.60</i>	<i>\$296.80</i>
<i>Florence Makan</i>	<i>1979</i>	<i>23</i>	<i>15 years – 2 weeks</i>	<i>40 hours</i>	<i>\$10.60</i>	<i>\$848.00</i>
<i>Tuhi McGregor</i>	<i>1985</i>	<i>17</i>	<i>15 years – 2 weeks</i>	<i>11 hours</i>	<i>\$10.60</i>	<i>\$233.20</i>
<i>Julie Pope</i>	<i>1984</i>	<i>18</i>	<i>15 years – 2 weeks</i>	<i>40.5 hours</i>	<i>\$10.60</i>	<i>\$858.6</i>
<i>Gail Simmons</i>	<i>1972</i>	<i>30</i>	<i>25 years – 3 weeks</i>	<i>30 hours</i>	<i>\$10.60</i>	<i>\$954.00</i>
<i>Maria Weston</i>	<i>1986</i>	<i>16</i>	<i>15 years – 2 weeks</i>	<i>45 hours</i>	<i>\$12.17</i>	<i>\$1,095.30</i>
<i>TOTAL</i>						<i>\$4,497.90</i>