



New Zealand Employment Relations Authority Decisions

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Malloy v NZ Steel Limited AA307/10 (Auckland) [2010] NZERA 723 (30 June 2010)

Last Updated: 11 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 307/10 5279746

BETWEEN

AND

TIMOTHY MALLOY Applicant

NZ STEEL LIMITED Respondent

Member of Authority: Representatives:

Investigation Meeting:

Yvonne Oldfield

Mr Malloy in person Philip Skelton for Respondent

2 June 2010

Determination:

30 June 2010

Employment Relationship Problem

DETERMINATION OF THE AUTHORITY

Steel, relies upon clause 20.2.1 of his Collective Agreement1 (*"Variation of Duties"*) in directing Mr Malloy as it has. Mr Malloy says the task is neither a part of his job description as a Fitter/Welder nor a permitted variation in terms of clause 20.2.1.

[3] Determination of this employment relationship problem does therefore require consideration of the effect of provisions in the collective agreement. For the reasons set out in the attached Minute, all parties to that agreement have been notified of the existence of this employment relationship problem and given an opportunity to comment on it. Since none took up that opportunity I now proceed to determine the problem on the basis of evidence and submissions from Mr Malloy and New Zealand

Steel.

[4] The circumstances giving rise to this dispute are a result of the disestablishment, in late 2005, of the warehouse night shift. After that, fitters would defer until morning any non-urgent repair work that came up during the night. Urgent repairs requiring a large part (which could not be accessed via carousel) was managed by bringing in an on-call store person to issue the part. And if a night shift fitter urgently needed a small part the team leader or shift supervisor would access the warehouse and get it.

[5] These arrangements continued in place until 2009 when the number of night shift fitters was reduced, with many shift

employees (including shift supervisors) reverting to day work. To address the fact that a shift supervisor would not always be available to issue parts the company and the union (EPMU) reached an interim agreement that night shift fitters would train to use the carousel.

1 The *New Zealand Steel Collective Employment Agreement* 1 June 2008 to 31 May 2011.

[6] The agreement was interim in nature because it was envisaged that a night shift position would be restored to the warehouse before long. For cost cutting reasons this has subsequently been deferred. The result is that for the foreseeable future, night shift fitters urgently needing a part will continue to be expected to go and get it from the warehouse themselves.

[7] Mr Malloy does not object to logging on to the system to check whether a particular part is available, to reserving it on the system, or to walking over to the warehouse to get an item. He acknowledged that fitters usually find it worthwhile to be present when an item is issued so that they can check that it is correct. In the past he has often accompanied team leaders to the warehouse for this reason. Nor does he say that the task is particularly onerous in itself. He has already completed the requisite training and acknowledged that it was straightforward and required very little skill. Nor, finally, does he dispute that the need to access stores in this way does not arise very often. Evidence put forward by the respondent showed that on average an individual night shift fitter might expect to have to retrieve a part to complete an urgent job only once every few months.

[8] Mr Malloy's objections are rather:

- i. a matter of principle since he says this task is simply not fitter's work;
- ii. that it is the "thin end of the wedge" and will lead on to further demands to perform work which is not part of his responsibilities as a fitter, and
- iii. that it could expose fitters to the risk of allegations of dishonesty should stock go missing.

[9] Mr Malloy attached to his statement of problem a job descriptions dated 1978^[1] which stated that the primary function of a fitter/welder was to:

"inspect, repair, replace, install, dismantle, assemble, adjust and maintain all mechanical equipment in the Plant and Workshops." [10] Mr Malloy said additional tasks have been added to his role over the years including data entry, completion of time sheets, generation of works orders, job safety analyses and safety audits. He said he is also redeployed to other parts of the plant when necessary as a result of *"insufficient manning"*

[11] The respondent says the task of retrieving parts from the warehouse carousel is *"connected with or incidental to"* Mr Malloy's usual duties in terms of Clause 20.2.1 which provides:

"VARIATION OF DUTIES

20.1 INTENT

20.1.1 Due to the ever changing demands of the market place and operational needs it is necessary to have maximum employee flexibility and mobility often at short notice.

20.1.2 The parties commit themselves throughout the term of this CA to positively support the intentions and achieve the desired outcomes of both parties under this clause.

20.1.3 Where is [sic] can be foreseen that a new variation of duties will be required, consultation shall take place between the employees affected, management and the union delegate before variations shall take place.

20.2 NORMAL SCOPE OF DUTIES/TASKS

20.2.1 It is recognised that on a temporary basis employees may be directed by Management during their ordinary working hours to undertake a range of duties in connection with, or incidental to, the employee's usual duties.

20.2.2 This range of work is to be considered within the employee's normal scope of duties/tasks.

20.3 OTHER DUTIES/TASKS

20.3.1 Prior to any employee(s) undertaking duties or tasks other than the employee(s) normal scope of duties/tasks on a temporary basis, consultation and agreement must take place between the employee(s) affected, management and the Union Delegate.

[12] The respondent accepts that accessing the carousel to obtain parts is not part of a fitter's usual duties. However it says that in addition to their usual duties employees may be asked to perform range of duties in connection with or incidental to the employee's usual duties. Such work is part of the normal scope of duties and does not amount to a variation of duties.

[13] The respondent argues that a duty can be described as being *"in connection with"* an employee's usual duties if they are associated with them and *"incidental to"* those duties if liable to occur as a consequence of them. It says that the duty of selecting a part fits these definitions and therefore that clause 20.2.1 applies (rather than 20.3.) The respondent accepts that

the situation would be different if it was asking Mr Malloy to do the work full time but notes that the work can be described as temporary in that it is to be done only once every few months.

[14] The company says that it has acted in a manner consistent with the expressed intention of the parties and that it consulted with the union on the issue and reached agreement. It has provided training to Mr Malloy, who now has the necessary skills, and has not asked him to do heavy work. It says that to ask Mr Malloy to access spare parts from the stores, from time to time, when no store person is present, is a reasonable exercise of its rights under clause 20.2.1. The company says:

"it is not reasonable to expect NZ Steel to have to call back a storeman (and pay overtime rates) to access a part for Mr Malloy (so that he can then undertake his job) when, on the odd occasion that it may be required, Mr Malloy can himself access the part from the stores."

[15] In the alternative, the company also argues that it would be a matter of management prerogative to direct Mr Malloy as it has.

[16] Mr Malloy challenges the assertion that clause 20.2.1 applies, pointing out that while the requirement to access the warehouse may only arise *"from time to time"* it is an ongoing expectation on the night shift fitters and therefore not *"temporary."*

[17] The question for determination is therefore whether the respondent is entitled, by operation of the collective agreement, or by virtue of management prerogative, to direct Mr Malloy as it has.

Determination

[18] Mr Malloy concluded his application to the Authority with what he described as an analogy that fitted the situation:

"I may go to the hardware shop from time to time to obtain materials for a project [but] going there does not extend to helping myself, operating the till, and correcting stock levels, all when the store owner is not there."

[19] The problem with this analogy is that the situation Mr Malloy describes is already to be found at supermarkets equipped with self-scanning checkouts, and if that technology is not yet to be found at the large hardware retailers it may only be a matter of time.

[20] When such new technology is introduced it leads to changes in ways of working, as Mr Malloy acknowledged by the examples he gave of changes to his duties over the years. No case can be made against such changes provided they are introduced in good faith and in a manner consistent with the collective agreement.

[21] I am satisfied that this is what happened here. I conclude that from time to time, for the reasons advanced by the respondent, Mr Malloy may be required to access parts from the warehouse carousel for use in his work as a fitter.

Yvonne Oldfield

Member of the Employment Relations Authority

[\[1\]](#)

I was also provided with a draft job description dated 2008. Both parties accepted that it could be treated as a guide to the role despite not having been formally implemented however it did not identify specific tasks to be performed and so was of limited assistance in relation to this matter.