

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 109
5374411

BETWEEN MURRAY MCLENNAN
 JUNE POLSON,
 RON STEEL,
 HAYDEN WILLIAMS
 Applicants

AND NEW ZEALAND POST
 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Graeme Clarke, Advocate for Applicants
 Laura Willson, Counsel for Respondent

Investigation Meeting: 2 July 2012 at Wellington

Submissions received by: 6 July 2012

Date of Determination: 26 September 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is a problem about complaints from Murray McLennan, June Polson, Ron Steel and Hayden Williams in regard to how New Zealand Post Limited has implemented a change of roster arrangement at the Te Puni Mail Centre in Petone. The applicants are posties employed by New Zealand Post Limited. They have been required to commence their rosters at 7am instead of commencing work at 6am previously. The 7.00am starts mean that they finish their roster an hour later. The 6am start involved them each being required to undertake administrative duties before

their deliveries of mail. Thus, they see themselves as part time postal employees, whereas New Zealand Post has treated them as full time employees.

The issues

[2] The issues to be determined are:

- i. Was the roster change process lawful and/or compliant with the provisions of the applicants' terms and conditions of employment?
- ii. Whether New Zealand Post has breached the provisions of the Collective Employment Agreement (CEA) in altering the duties and hours of work of each of the applicants;
- iii. What is the status of individual letters involving terms and conditions of appointment and the relationship with the Collective Employment Agreement?
- iv. Whether the applicants have been disadvantaged in their employment in regard to the roster change as implemented;
- v. What remedies apply in the event of any finding in favour of the applicants?

[3] Both parties have agreed that costs be reserved.

The terms of the collective employment agreement

[4] The relevant terms under the Collective Employment Agreement include the following:

1. Page 14: ***"To consult people on important issues:"***

...

17. *We are committed to consulting employees and their Unions on important issues that affect their work.*
18. *New Zealand Post will continue to change to meet the needs of our customers and stay successful. The Executive Leadership team believes that people who are actively involved in decisions about change will be more committed to helping make New Zealand Post a successful business.*

As much as possible, management will consult with people directly affected by proposed changes.

19. *When consulting with people we will:*
 2. *Make sure that any proposed change is legal and that it recognises everyone's rights under this agreement;*
 3. *Give people enough time to consider the proposed change and make comments and suggestions;*
 4. *Give careful thought to these comments and suggestions;*
 5. *Try to reach an agreement on the proposed change and how it will be put in place;*
 6. *Do this in a way that meets our commitment to treat people fairly and with respect.*
20. *There may be situations where, for commercial reasons, management cannot tell people about changes that need to be made. In this situation management will:*
 7. *Meet our obligations under this agreement;*
 8. *Try to reach an agreement on how change will be put in place;*
 9. *Do this in a way that meets our commitment to treat people fairly and with respect.*
21. *Employees have the right under law to be represented by whomever they choose. New Zealand Post respects that right and will recognise employee representatives.*

[5] Under section B “**Scope**” words and phrases are defined. An explanation of some of the words and phrases used in the agreement include:

Consult/consultation with the Union

The company will consult with the Union by informing them of proposed changes, providing the opportunity to comment, and careful considering any such comment before a final decision is made.

In any discussion during the consulting process the objective of both parties will be to reach agreement on the proposals. Reasonable time is to be allowed for discussion, but progress must not be unduly delayed.

In the event that agreement cannot be reached within a sensible timeframe, New Zealand Post will decide on whether to proceed with the proposal, either in its original or in a modified form.

[6] In section C of the Collective Employment Agreement there are various provisions relating to hours of work. Relevant to this matter is the provision on “*roster changes – operations/delivery*”. The section provides for:

- ...
8. *Where the company wishes to change the rosters for employees in the Operations and Delivery Occupational Groupings, the company must consult to:*
- *Ensure that any proposed change to the roster falls within the specific conditions for each occupational group;*
 - *Give the appropriate employee representatives (e.g. the Union Work Site Committee) and employee(s) adequate time to consider the proposed roster;*
 - *Give due regard to the employee’s personal circumstances;*
 - *Give careful consideration to their views;*
 - *Try to reach an agreement with the employee(s) on the proposed roster.*
 - *If agreement cannot be reached, the company will decide whether to proceed with the proposed changes to the roster.*
 - *The company will not change the days to be worked under the roster unless such changes are necessary to meet business or delivery requirements.*

Members of the union covered by a collective employment agreement

[7] The applicants are each covered by the provisions of the Collective Employment Agreement. They are each members of the Post Office Workers Union of Aotearoa Inc (PWUA).

[8] The applicants’ terms and conditions are specified in the 2011/2013 collective employment agreement. In addition Murray McLennan, Ronald Steel, June Polson and Hayden Williams have hours of work arrangements contained in letters of offer dated 24 May 2011, 9 February 2007, 3 April 2007, and 5 October 2010 respectively. Mr McLennan also has terms and conditions including duties and responsibilities, superannuation, annual leave, dress standard and period of notice/termination separately provided in a letter dated 1 April 2004. Mr Steel has additional terms and conditions relating to duties and responsibilities in a preceding letter dated 3 August 2004 and including grade and hourly rate, allowances, superannuation, annual leave, dress standard, period of notice/termination. In addition his letter dated 9 February

2007 permits under the duties and responsibilities for New Zealand Post “*from time to time to require him to cover admin support duties*”. Ms Polson has terms and conditions provided separately in her letter of appointment dated 6 September 2006. These cover duties and responsibilities, grade and hourly rate, industry payments, superannuation, annual leave, dress standard, period of notice/termination. Finally, Mr Hayden Williams has his terms and conditions outlined in a letter dated 22 June 2007. In each instance their hours of work involved a change that was implemented later to start work at 6am.

Changes at New Zealand Post

[9] New Zealand Post operates a mail delivery network that delivers mail items to approximately 1.1 million addresses, six days per week. It employs approximately 2,300 postal delivery officers (“*posties*”) to deliver mail. There are approximately 120 delivery branches across New Zealand. Mail is dropped off at each branch six mornings a week to be sorted and then delivered. The Te Puni Delivery Branch employs 46 posties.

[10] In November 2011 New Zealand Post started a recast of the postal employees’ rounds at Te Puni. A recast is a process carried out to review a delivery round for size (governed by clauses 65 and 66 section N of the CEA. The recast was completed on or about 20 February 2012. The recast continued until 20 February 2012 and set to “go live” from 20 March 2012. Each of the applicant’s rounds was sized based on a drop in work loads due to declining mail volumes. Their rounds were sized to equate to 37 hours 40 minutes per week. Following the recast the applicants continued to perform the early morning duties.

[11] On 14 March 2012 NZ Post announced the implementation of a PPM (posties pay method). This involved the roster change and the outcome was confirmed in writing subsequently. Ron Steel and Hayden Williams were advised on 14 March 2012, and Murray McLennan and June Polson were informed of the confirmation on 19 March 2012. The recast was launched on 20 March 2012.

[12] The union invoked mediation and both parties attended (27 March 2012).

[13] In early May there was a reconsideration of the work allocation of each of the four applicants. Mr Nigel Burton Te Puni delivery group leader considered changing the Te Puni roster which meant the applicants’ early morning duties would cease and

their start and finishing times would be one hour later. On 21 May 2012 New Zealand Post communicated the roster change proposal. Mr Burton says that in the back of his mind was the operation at Wellington South and says he had been told by other Te Puni posties they had an interest in picking up the early morning duties should the proposal go ahead. There was a meeting with Ron Steel, Murray McLennan, June Polson and Hayden Williams, and Nigel Burton on 22 May 2012.

[14] The PPM stood on its own and was exclusive to the roster change proposal. Mr Burton handed out feedback forms to all Te Puni employees and provided seven days consultation (23-29 May 2012). There was one week available for feedback. The feedback involved:

- a) Twenty-one forms (out of a possible 23 forms) were returned.
- b) Comments focussed on workloads and treatment needing to be the same.
- c) Fifteen Te Puni posties were in favour of the proposed change.
- d) One postie was opposed.
- e) Five posties were neutral.

[15] On 7 June 2012 Mr Burton communicated the PPM exclusive roster implementation to Murray McLennan and June Polson, in writing. Ron Steel was verbally advised, and a telephone message was left for Hayden Williams. On 12 June 2012 Ron Steel and Hayden Williams were advised in writing.

[16] On 14 June 2012 the union (through Graeme Clarke, advocate) for the first time raised potentially relevant personal circumstances. This came as a shock to Mr Burton. Mr Burton says that on 18 June 2012 Ron Steel confirmed that he was not told to communicate the personal circumstances. Nevertheless it is common ground that the first time any personal circumstances were raised was on and/or about 14 June.

[17] On 22 June 2012 there was a meeting with the four applicants and New Zealand Post to obtain any details pertaining to their personal circumstances; for the personal circumstances to be considered and a decision made on the implementation to go ahead as previously communicated. The decision to go ahead has been

challenged by the four applicants. The roster change went live on Monday 25 June 2012 after the consideration of the personal circumstances.

Determination

[18] I hold that New Zealand Post was entitled to change the hours under section C clauses 8-10 of the CEA and that these applied to the applicants.

[19] I hold that it has not been proved that there has been a role change. Each of the applicants is principally a postie working for New Zealand Post full time. The individual arrangements are still subject to the operation of the CEA applying I hold.

[20] I hold that each postie was given notice of the proposed roster change (22 May 2012). Indeed their representative was notified of the proposed roster change on 21 May 2012 also. There were further communications on 23 May 2012. In the time there was an opportunity for each of the applicants to communicate and have an opportunity for input and comment. Mr Burton's process was untidy and did lack specificity in regard to the form that he prepared and distributed. However it was not fatal, I hold. I hold that the evidence does suggest that the applicants purposefully did not provide any feedback on the proposal. Once New Zealand Post realised that there were personal circumstances involved with the applicants an attempt was put in place to get feedback from them.

[21] Thus, there can be no unjustified action because New Zealand Post operated under the provisions of the CEA; New Zealand Post provided notice of the arrangement proposed; and New Zealand Post consulted. The changes have meant changes to each of the applicant's hours and an impact on their personal arrangements, but these have to be subsumed by the rights under the CEA, I hold.

[22] In conclusion, I hold that there has been no breach by New Zealand Post and there has been no unjustified action disadvantage for a claim for a personal grievance. There is nothing to enforce about the change. The applicants' claims are dismissed.

[23] Costs are reserved.