

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 558
5423618

BETWEEN TOI LIAM MOERUA
Applicant
AND TNL GROUP LIMITED
Respondent

Member of Authority: K J Anderson
Representatives: Toi Moerua, In person
Dean Organ, Advocate for Respondent
Investigation Meeting: 5 December 2013 at Auckland
Date of Determination: 9 December 2013

DETERMINATION OF THE AUTHORITY

Introduction

[1] The applicant, Mr Toi Moerua, commenced his employment as a Driver Level 4 – Nights, with TNL Group Limited (TNL) on 3 November 2011.

[2] The terms and conditions of Mr Moerua’s employment were provided by an individual employment agreement (IEA). Relevant to the matter before the Authority is that the IEA is a standard form agreement with “Individual Terms of Employment” provided at page 21. The pay rate for Mr Moerua was a flat rate of \$21.77 per hour for every hour worked.

[3] In March 2013, Mr Moerua joined the NZ Amalgamated Engineering, Printing & Manufacturing Union (the Union). As a consequence of membership of the Union, Mr Moerua’s terms and conditions of employment were now provided by the *TNL Group Ltd – EPMU Collective Employment Agreement* (the CEA). The practical effect of this for Mr Moerua is that his pay rate increased somewhat; from a flat rate

of \$21.77 per hour to a basic pay rate of \$20.60 per hour plus a night allowance of \$1.49 per hour: a total of \$22.10.

[4] The change in the pay rate is recorded in a *Conditions of Employment Adjustment* document and this was signed by Mr Moerua and a manager for TNL, Mr Hayden Garing, on 21 March 2013. The document records the comparison in the pay rates that Mr Moerua was receiving under the IEA and the CEA.

Mr Moerua's claim

[5] Mr Moerua claims that as the CEA provides for a night allowance that he is now receiving, he should have also been paid a night allowance of \$1.48 per hour whilst he was employed under the terms of the IEA. But apart from drawing the attention of the Authority to the *Conditions of Employment Adjustment* document, that (rather misleadingly) shows that his hourly rate under the IEA had a night rate component of \$1.48 as part of the total rate of \$21.77; there is nothing at all that supports Mr Moerua's argument.

[6] It has been explained to Mr Moerua by TNL, and by the Union and now the Authority, that there is no legal (or any other) basis for his claim. Quite simply, Mr Moerua signed the IEA and it states clearly and unambiguously that he would be paid \$21.77 for every hour that he worked. Mr Moerua acknowledges that he was paid this, apart from one week (ending 20/1/13) when he was paid a night allowance of \$1.41 for 5 hours (\$7.05). But Mr Moerua acknowledges that he was not paid this rate for the weeks before 20/1/13 or the weeks after, and it seems that he was mistakenly paid the night allowance for that one week only and the mistake was then corrected.

Determination

[7] While it seems that Mr Moerua has for some time (apparently) believed that he was entitled to be paid a night rate of \$1.48 per hour while he was employed under the IEA, the Authority finds that there is no legal or any other basis for this incorrect belief. Because Mr Moerua's claim is essentially lacking in substance, it is dismissed.

Costs

[8] Costs are reserved. The parties are invited to resolve this matter if they can. In the event that a resolution is not possible, TNL has 28 days from the date of this determination to file submissions. Mr Moerua has a further 14 days to respond.

K J Anderson
Member of the Employment Relations Authority