

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 389  
3037153

BETWEEN                      JOSEPH ROLLESTON,  
                                         BRODYN MULLER, ALEX  
                                         SOON, RAYMONDO  
                                         SCHILDER  
                                         Applicant

AND                              0-I OPERATIONS (NZ)  
                                         LIMITED  
                                         Respondent

Member of Authority:      Vicki Campbell

Representatives:           Tracey Gallagher for Applicant  
                                         Sally Beard for Respondent

Investigation Meeting:     On the papers

Submissions Received:    14 and 16 November 2018 from Applicant  
                                         12 and 16 November 2018 from Respondent

Determination:              5 December 2018

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     This determination deals with a dispute about the interpretation, application, or operation of the collective agreement between ACI Operations NZ Limited t/a O-I New Zealand and Etu Inc.

[2]     As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. It has not recorded all evidence and submissions received.

[3] By consent of the parties this preliminary matter has been dealt with on the papers currently before the Authority.

### **Classification of roles**

[4] The starting point when interpreting provisions in a collective agreement is to consider the natural and ordinary meaning of the language used by the parties. Even if the words are plain and unambiguous, this does not preclude a consideration of the surrounding circumstances<sup>1</sup>. This acts as a cross-check as to whether some other or modified meaning was intended.

[5] The question of how particular provisions should operate is to be decided on conventional interpretation principles so as to determine the parties' intentions on an objective basis.<sup>2</sup>

[6] Through the collective agreement the Union and O-I have agreed on the classification of the occupations covered by the agreement. The classifications include Engineering Tradesperson and Glassworkers which are defined differently.

[7] Clause 4 defines an Engineering Tradesperson as:

...an employee who performs the work of a tradesperson. Such work shall include die-setting, turning, fitting, blacksmithing, millwrighting, welding, sheetmetal working, first class machining and the maintenance, development and construction of manufacturing plant and equipment.

and defines Glassworker as being:

...an employee employed in, or in connection with the production, decorating, labelling and screening of glass, including packing, sorting, consigning, packaging, recording operations, internal transport, the demolition and reconstruction of tank furnaces.

[8] The collective agreement provides for qualification payments at clause 28 in the following terms:

(b) (i) **Trade Certificate** – The basic hourly rate of an employee holding a Trade Certificate in any of the trades covered by this Agreement shall be increased by the Trade Certificate allowance prescribed in Part X Table 1 Section 6.2 or Part XI Table 1 Section 6.2 as applicable of this Agreement.

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<sup>1</sup> *Pyne Gould Guinness Ltd v Montgomery Watson (NZ) Ltd* [2001] NZAR 789; *Tertiary Education Union v Vice-Chancellor, University of Auckland* [2015] NZEmpC 169

<sup>2</sup> *Pan Pac Forest Products Limited v First Union Inc & 1 Or* [2018] NZEmpC 91 at [37].

The allowance so prescribed shall count in the calculation of overtime and penal rates and shall be paid to the employee on any leave.

[9] Clause 28 includes the following qualifying provision:

The payment for holders of Trade Certificates shall only apply as from the date the employee produces to the Company a notification from the New Zealand Qualifications Authority or its successor that he/she has passed the examination for that certificate for the trade in which he/she is employed. [my emphasis]

[10] Part X of the collective agreement sets out the basic wage rates applicable to each classification of worker including Glassworkers and Maintenance Tradespersons. The rates of pay specified under the Glassworker category include rates for Glass Technicians, Operators, Raw Material Operators and Waremakers. The rates of pay specified under the Maintenance Tradesperson category include rates for Engineering Tradesperson, Engineering Tradesperson Assistant.

[11] Mr Rolleston is engaged as a Hot End Co-ordinator/Waremaker and Mr Muller, Mr Soon and Mr Schilder as Machine Operator/Waremaker. These positions are classified as Glass Technicians under the classification of Glassworker.

[12] Each of the applicants holds a Trade Certificate qualification in Mechanical Engineering, General Engineering Level 4. The applicants say they use a significant amount of mechanical engineering skills in their current roles, which suggests they are employed in the trade of mechanical engineering. The applicants say they are actually employed as an engineering tradesperson and qualify for the trade certificate allowance set out in clause 28 of the collective agreement.

[13] Each of the applicants were made formal offers of employment in which O-I set out the specific terms and conditions that would apply to them including any applicable allowances. The specified list for each of the applicants does not include an allowance for holding a Trades Certificate.

[14] The position descriptions applying to the work undertaken by each of the applicants describes the minimum educational qualification as being NCEA Level 3. In contrast the job descriptions for trades positions describes the minimum qualification as being a Trade Certificate.

[15] In essence the applicants are asking the Authority to reclassify the roles they agreed to be employed in so that they will qualify for a Trades Certificate allowance.

[16] All Glassworkers perform the same role, with differing levels of seniority. The roles are generic and performed by employees who hold a trade qualification and those who do not.

[17] Each of the employees were offered and accepted employment as Glassworkers as defined under the collective agreement. The terms of the collective agreement including the classification of occupations would have been ratified by the employees covered by it, including each of the applicants. It is not for the Authority to rewrite the classification of their roles. Section 163 of the Act prohibits the Authority from varying the terms and conditions of a collective agreement that is currently in force under the Act.

[18] I decline to make the orders sought by the applicants and I can be of no further assistance to them.

### **Costs**

[19] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so O-I shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The applicants shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[20] The parties could expect the Authority to determine costs, if asked to do so, on its usual "daily tariff" basis unless particular circumstances or factors require an adjustment upwards or downwards taking into account that this matter was dealt with on the papers before the Authority and did not require attendance at an investigation meeting.

Vicki Campbell  
Member of the Employment Relations Authority