

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**CA 57/07  
5037867**

BETWEEN                      PAUL RAYMOND TURNER  
Applicant

AND                              PACIFICA SEAFOODS  
(CHRISTCHURCH) LTD  
Respondent

Member of Authority:        Helen Doyle

Representatives:             Errol Parker, Advocate for the Applicant  
Neil McPhail, Advocate for the Respondent

Investigation Meeting:      Kaikoura, Tuesday 13 February 2007

Submissions received:      24 April 2007 from Applicant  
4 May 2007 from Respondent  
11 May 2007 from Applicant

Determination:                25 May 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Prior to the investigation meeting, some of the employment relationship problems set out in statement of problem filed by the applicant, Paul Turner, were withdrawn.

[2] I shall shortly set out which employment relationship problems were withdrawn and the problems the Authority investigated and is required to determine.

[3] Mr Turner commenced his employment with Pacifica Seafoods Limited (Pacifica) at its Kaikoura fish plant on 6 November 2000. Mr Turner undertook work which included general duties, cray packing, fish processing and driving.

[4] On 28 October 2005, Mr Turner was advised that Pacifica's wet fish and crayfish quota were both to be sold to Sealord and Ngai Tahu Seafood Products respectively. Mr Turner was advised of his redundancy which was to take effect from 29 October 2005. To the extent that the documents lodged with the Authority suggest any confusion about the date of termination of Mr Turner's employment it was 29 October 2005.

[5] Mr Turner said that he was unjustifiably dismissed from his employment with Pacifica, disadvantaged by the unjustifiable actions of the respondent and discriminated against on the grounds of disability and employment status.

[6] Pacifica denied the personal grievances in its statement in reply and further said that they have not been raised within 90 days. The Authority set a date on 13 February 2007 to deal with the preliminary matter as to whether the grievances had been raised within the 90 day period. On 4 December 2006, Mr Parker wrote to the Authority and advised that Mr Turner withdrew his personal grievance claims against Pacifica and would pursue these matters with the Human Rights Commission.

[7] Mr Parker advised the Authority and Mr McPhail that Mr Turner still wished to pursue the disputes as set out in the statement of problem.

[8] The disputes, allegations of breach and recovery of money issues, were helpfully clarified by further correspondence from Mr Parker.

### **The issues**

[9] There is a dispute about Mr Turner's employment status. Pacifica say that Mr Turner was a casual employee. Mr Turner does not accept that he was a casual employee and says that he was a permanent employee.

[10] There is a dispute about whether Pacifica was required to give Mr Turner notice when it terminated his employment for redundancy, and if so, how much notice. Pacifica does not accept that it was required to give notice to Mr Turner as it says that he was a casual employee and that one day's notice was given. Even if the period was deemed by the Authority to be reasonable notice, Pacifica says that no payment would attach as Mr Turner was not working due to injury at the time of the redundancy and was on unpaid leave.

[11] There is a dispute about whether a variation to Mr Turner's individual employment agreement in 2005, which was signed before his redundancy, entitles him to a redundancy payment. Pacifica says that Mr Turner did not have a contractual entitlement to redundancy and was a casual employee.

[12] There is an issue about whether there were breaches of good faith by Pacifica in terms of its process when the business was sold and Mr Turner was made redundant. Pacifica denies any breaches of good faith and says that commercial sensitivity of the sale process was such that it precluded a normal consultative process. Pacifica says s.4(1B) of the Employment Relations Act 2000 entitled it to proceed in the manner that it did.

[13] There is an issue as to whether Mr Turner has been paid the correct amount of holiday pay. I advised Mr Parker and Mr McPhail that I would have a Labour Inspector review records from Mr Turner's employment so that it could be established whether Mr Turner was correctly paid all his holiday pay.

[14] There is an issue for determination as to whether Mr Turner is entitled to have taken into account in calculating his holiday pay his weekly compensation received under the Injury Prevention, Rehabilitation and Compensation Act 2001.

[15] There is an issue about whether Mr Turner is entitled to payment for public holidays that fell during the period that he was injured and on unpaid leave.

[16] It was clarified during a telephone conference on 18 January 2007 held with the Authority, Mr Parker and Mr McPhail, that the issue in relation to the exchange of employee hours for subcontracted crayfishing would not be a matter for the Authority investigation and would probably be dealt with in the District Court.

### **The injury**

[17] Mr Turner said that he suffered his back injury at work on 6 February 2005 whilst lifting a heavy tub of fish. He saw the doctor on 9 February 2005 and Pacifica was then advised of his injury. The necessary forms were filled out with respect to the injury and Pacifica disputed whether Mr Turner had suffered a work-related injury. It was not until there was a review that Mr Turner received weekly compensation under the Injury Prevention, Rehabilitation and Compensation Act 2001 for the period

9 February to 31 March 2005. The compensation was paid to Mr Turner on 13 December 2005 which was after the termination of his employment. Compensation for the period 1 April to 30 November 2005 was paid on 6 April 2006 after another review hearing.

[18] As Mr Turner received no income at all from 9 February 2005, he asked Pacifica to pay him annual leave, days in lieu and sick days that were owing to him. Mr Turner disputes that he received the sick days but agrees that he was paid cashed-up annual leave and days in lieu in late March 2005.

### **The background to the employment relationship problem and the relevant employment agreement**

[19] Mr Turner recalls when he commenced employment being shown an employment agreement but says that he was never asked to sign it.

[20] Mr Turner subsequently signed an individual employment agreement on 22 January 2003. There is a conflict in the evidence about the reason why Mr Turner signed an individual employment agreement at that time.

[21] Marie TeAu was at that time the compliance/human resource manager with Pacifica. Ms TeAu gave evidence that in November 2002 there was a total review of Pacifica's operations due to a downturn in business. As a result of that review it was determined that Mr Turner's hours had to be changed along with his employment status. Ms TeAu said that Mr Turner and another employee, Eric, were advised in January 2003 that due to the change of operations and the downturn in business it was no longer viable to maintain their positions. Ms TeAu said that as part of Mr Turner's redeployment he was offered casual work, with the understanding that at times there may be considerable work when there was a cray season but at other times very little work when there was no fish or crays due to bad weather.

[22] Ms TeAu said the casual employment agreement Mr Turner signed was very similar to Mr Turner's permanent agreement and that the major difference was contained in Schedule A to the agreement which provided *Days of work are on an as required basis*. The other difference Ms TeAu said was that there was no notice clause in the agreement. The agreement Mr Turner signed in January 2003 has provisions that are inconsistent with casual employment such as an entitlement for

annual and long service leave and an abandonment of employment clause. Ms TeAu said Pacifica agreed not to take away Mr Turner's terms and conditions when he was surplus to requirements in 2003.

[23] Mr Turner said that he did not recall being advised in 2003 that his position was no longer viable or being offered work on a casual basis. He did not seem aware that he had been through a restructuring process and there was no evidence that he was offered any redundancy compensation or other entitlements. Mr Turner said that after 22 January 2003 he still turned up in the morning and worked eight hours usually between 7am and 4pm. He said that he was sometimes told not to come in if a boat was delayed and he agreed that there were quiet times. Mr Turner said that he was not aware that he was seen as a casual employee and he saw himself as part of a good team at Pacifica. I do note that one of the duties set out in Schedule A of Mr Turner's employment agreement required him to work with other Pacifica staff as a team to ensure a productive environment. Mr Turner said that if he took leave or a sick day he was paid.

[24] Ms TeAu produced a spreadsheet after the investigation meeting to show the hours Mr Turner worked from 1 January 2002 compared with a permanent employee. The spreadsheet shows a variation in the hours Mr Turner worked each week from 1 January 2002. Mr Turner said that the busy time was between April and September each year and there would be a quiet period between September and November each year when many staff would take holidays.

[25] In September 2003, Mr Turner's individual employment agreement was varied with the effect that he became eligible to an additional week's holiday upon completion of five years continuous service instead of seven years as provided in clause 10(b) of his individual employment agreement before variation.

[26] On 6 February 2005, Mr Turner injured his back.

[27] On 7 February 2005, there was a meeting with Mr Turner and Ms TeAu amongst others. The matters that were discussed, and whether there was agreement as a result of that meeting, are to be decided elsewhere. In the circumstances, the only matter I make comment about is with respect to Mr Turner's employment status which is an issue for me to determine.

[28] On 17 February 2005, Ms TeAu completed an employer questionnaire and work injury report for Pacifica's accident insurance provider, Injury Management New Zealand (IMNZ) about Mr Turner. Ms TeAu wrote under *other comments* about Mr Turner: *hours reduced from full time employee to casual effective 14 February 2005. Hours of casual Sat plus Sundays only now ....*

[29] Mr Turner placed some reliance on this to support that he was a permanent employee. Ms TeAu said that there was never any intention on her part to identify Mr Turner as a permanent employee. She said that the statement was intended to refer to Mr Turner going from a full time casual to a part time casual due to the reduction in casual work. Ms TeAu attached a Board report dated 21 February 2005 in support of that in which she records that Mr Turner is on a casual contract but only has Saturday and Sunday casual work available. Ms TeAu also refers to correspondence that she had with WINZ and Mr Turner in which she stated Mr Turner was employed on a casual basis.

[30] On the week ending 25 March 2005, Pacifica says that all available annual and sick leave was paid out to Mr Turner.

[31] On 20 September 2005, Ms TeAu sent a variation of employment agreement by way of memorandum to all Pacifica Kaikoura staff. The variation was to meet the requirements of Part 6A of the Employment Relations Act 2000, sub-part 2 as inserted by the Employment Relations Amendment Act (No 2) 2004. Section 69N requires that every individual employment agreement in force before the commencement of the section must be varied to include an employee protection provision. For completeness, after 2005, there were further amendments to this part of the Act. I also note that there is no penalty in the Employment Relations Act 2000 for a breach of this requirement.

[32] Mr Turner could not recall signing the variation to his individual employment agreement. However Ms TeAu said that she understood he had. The signed copy could not be located. I accept in the absence of any objection from Mr Parker and Mr McPhail that the variation was signed by Mr Turner.

[33] The employee protection provision to be included by way of variation is required to, amongst other matters, set out the process to be followed at the time of

restructuring to determine what entitlements, if any, are available for employees who do not transfer to the new employer in the event the business was sold.

[34] The variation provided in that respect: *If the employee chooses not to transfer to the new employer, or if there are no employment opportunities with the new employer, he/she will be deemed to be redundant and clause 42 hereof will apply.*

[35] Ms TeAu said that she had no idea what clause 42 referred to and that it must have been a mistake. No guidance was found in Mr Turner's individual employment agreement which contains only 30 clauses. Mr Turner's individual employment agreement is silent both on notice and redundancy compensation.

[36] Although the variation provides that it came in force on 1 December 2005, the Employment Relations Act 2000 provides that every individual employment agreement must be varied to include the employee protection provision by the earliest of three particular dates including, if an employer's business is restructured, before the restructuring occurs. In my view, it is clear that the variation was required to be complied with and take effect before the restructuring occurred and Mr Turner was notified of the sale to Sealord/Ngai Tahu on 28 October 2005.

### **The sale of wet fish and crayfish quota**

[37] The Chief Executive of Pacifica, Bryan Skeggs, provided a statement of evidence. Mr Skeggs was unavailable for the investigation meeting so the evidence was admitted on the basis that if there were any questions, the Authority could contact Mr Skeggs by telephone.

[38] Mr Skeggs' statement of evidence in the main addressed the background matters leading to the sale of the quota. The balance of his evidence was about the meeting with other staff and Mr Turner on 28 October 2005. Ms TeAu was also present at that meeting and I did not consider it necessary to telephone Mr Skeggs in the circumstances.

[39] Mr Skeggs explained in his statement of evidence the reason why Mr Turner and the other employees at Pacifica Kaikoura were only advised about the sale on 28 October 2005. Mr Skeggs said that the sale was unplanned. In early October 2005 the

Skeggs Group was approached by PriceWaterhouse on behalf of Sealord expressing a desire to buy crayfish and wet fish quota fished at Kaikoura and Christchurch.

[40] Mr Skeggs had discussions on 12 October 2005 with PriceWaterhouse executives about the proposal. It became apparent that Sealord was only interested in the wet fish quota and the crayfish was to be sold to Ngai Tahu, a shareholder of Sealord. Time was of the essence because the fishing quota year had just begun on 1 October 2005. A confidential price offer was made and then there were further negotiations with a deal completed over the next week and a half. Mr Skeggs said in his statement that complete confidentiality had to be observed for commercial reasons and that it even precluded Pacifica from informing senior staff.

[41] Mr Skeggs said that on 25 October 2005 he sent an email to the Finance Manager, Steven Higgs, and Marie TeAu telling them that they were to attend a meeting in Nelson the next morning. He said that consistent with the confidentiality, he did not advise them about the purpose of the meeting.

[42] On 26 October 2005, Ms TeAu said that she was advised by Mr Skeggs at Nelson airport about the sale. Mr Skeggs, Ms TeAu and Mr Higgs then attended a meeting with Sealord/ Ngai Tahu in Nelson. Ms TeAu said that at the meeting Pacifica endeavoured to obtain employment with Sealord for as many of the staff as possible but were only successful in obtaining temporary employment for five permanent staff.

[43] On 27 October 2005, Ms TeAu and Mr Skeggs travelled to Kaikoura to commence meeting with staff. The first meeting with employees other than management staff took place on 28 October 2005 at 10.30am. Mr Turner did not attend that meeting. Ms TeAu said that at the first meeting on 28 October 2005, the permanent employees elected to finish on 29 October 2005 rather than dragging the process out. Sealord and Ngai Tahu were in any event taking over the quota on 30 October 2005.

[44] On 28 October 2005, Mr Turner attended an individual meeting with Ms TeAu and Mr Skeggs in the afternoon and was advised of the sale. He was told that as a result there would be no more work available from 29 October 2005. He was advised that any payments owing would be paid to him in the next pay run after termination.

[45] On 29 October 2005, all staff employed by Pacifica became redundant.

[46] In December 2005, Mr Turner, having received no payments at all after the meeting on 28 October 2005, requested a meeting with the General Manager of Pacifica to discuss why he had not received a redundancy payment and others had. Ms TeAu also attended the meeting and wrote to Mr Turner on 21 December 2005. Ms TeAu referred in her letter to the individual employment agreement Mr Turner signed on 22 January 2003 and said amongst other matters: *Please note that in your agreement signed on 22/01/03, Schedule B attached to it clearly specifies your employment status as differing from the full time employees you have been benchmarking yourself against. You may be confusing this agreement with an earlier one signed on 15/02/00 when first commencing work with the company.* Ms TeAu also advised in the letter that Mr Turner did not have a contractual entitlement to redundancy compensation

#### **Was Mr Turner a casual or a permanent employee?**

[47] The individual employment Mr Turner signed on 22 January 2003 did not specifically state that Mr Turner was a casual employee.

[48] Pacifica relies on Schedule A to the employment agreement which provides that Mr Turner's days of work are on an as-required basis and the absence of any notice period within the body of the agreement itself.

[49] Pacifica says that Mr Turner went from a permanent employee to a casual employee following a restructuring in late 2002 and early 2003 with his knowledge and consent. Mr Turner says that he was unaware of the restructuring and that he thought the new agreement he signed was the same as the employment agreement he had been shown in 2000 when he commenced employment. The agreement does contain a three month probationary period from 6 November 2000 to be reviewed on 5 February 2001.

[50] There are difficulties in the fishing industry that preclude a definite work pattern. There is also a seasonal aspect to the work and weather issues. Fishing boats do not always arrive at the expected time and machinery can break down. There was an expectation that Mr Turner would be flexible in terms of the performance of his work and his hours could and did vary. Mr Turner had to on occasion work across seven days to make up 40 hours per week and sometimes he was asked not to come in

to work at all. His ordinary hours were set out in clause 2(a) of his employment agreement. They were not to exceed 40 hours per week or eight on any day Monday to Sunday. Any hours in excess of 40 per week were considered overtime.

[51] Mr Turner had an abandonment of employment provision in his employment agreement. The clause provided that if an employee was absent other than by reasonable authorised leave for more than two working days without notification to the employer, they would be deemed to have terminated their service.

[52] Mr Turner had to make arrangements for holidays. He gave evidence that it was suggested to him to take a holiday and use up some leave during a quiet time. He was entitled, upon five years' continuous service, to long service leave.

[53] Ms TeAu said this was a situation where the company maintained Mr Turner's original terms and conditions of employment even though he was made casual. Many of those terms and conditions of employment are inconsistent with a casual employee who is engaged for a short period with no expectation of ongoing employment and no regular work pattern. Mr Turner was certainly working full time hours in the weeks leading up to his accident.

[54] It is quite clear to me from the evidence and consideration of the various documents that there was regularity in Mr Turner's work pattern and importantly a clear expectation by him of ongoing employment.

[55] I do not find that Mr Turner was a casual employee with no regular work pattern or any expectation of ongoing employment whose employment terminated at the end of each engagement.

[56] I find that Mr Turner was a permanent employee.

### **Was there adequate notice given to Mr Turner?**

[57] Ms TeAu confirms that all the other permanent employees were paid one month in lieu of notice. In the Employment Court judgment of *Lewis v. Green* [2004] 2 ERNZ 55, a submission that no more than one month's notice would have been appropriate was accepted. Shaw J noted that this was in accordance with the judgment in *Charta Packaging Ltd v. Howard* [2002] 1 ERNZ 10 (CA) and in *Aoraki Corp Ltd v. McGavin* [1998] 1 ERNZ 601.

[58] Given the sale of the fish quota and the urgency there was no opportunity for notice to be worked out. That in itself would support that a notice period of at least one month would be reasonable. The notice given to Mr Turner was not reasonable. In this case, however, I accept Mr McPhail's submission that Mr Turner would not be entitled to monetary compensation for the one month period a he was on unpaid leave – *Lewis* at p.82 para.159.

**Should Mr Turner have been paid redundancy compensation?**

[59] Pacifica says that neither Mr Turner's original employment agreement nor the variation incorporating an employee protection provision into Mr Turner's individual employment agreement confers an entitlement to redundancy. Further, Pacifica says that Mr Turner was a casual.

[60] Pacifica is correct that Mr Turner's original employment agreement does not provide for redundancy compensation. The variation is confusing in this respect because of the reference to clause 42 which applies in the event there are no employment opportunities with the new employer or the employee chooses not to transfer to the new employer. Pacifica says this was a mistake and that there should have some reference back to the employee's individual employment agreement instead.

[61] A memorandum accompanied the variation and was dated 20 September 2005. It provided, amongst other matters, on p.2 that an employee protection provision deals with the process to be followed at the time of restructuring to determine what entitlements, if any, are available. The memorandum concludes by providing that: *As such all employment agreements signed since CEC 2004 already contain the following clauses and there will be a variation to all agreements signed pre-December 2004 out in the next few days to be signed to make sure all are covered.*

[62] The employee protection clauses for employment agreements signed after December 2004 do contain a provision for redundancy compensation.

[63] The variation document signed by Mr Turner was for eight employees who had employment agreements which were signed pre-December 2004. All of these employees were paid redundancy compensation when their employment with Pacifica

was terminated on 29 October 2005 with the exception of Mr Turner. With Mr Parker and Mr McPhail's agreement, I wrote to the seven employees with a view to obtaining their understanding of the basis for their redundancy payment and/or any discussion that took place prior to the payment being made.

[64] Six of the employees responded to the letter. Four wrote and said that the basis for payment was in their contracts although one appeared to have been told he was a casual but had received redundancy compensation. One employee said that she was told redundancy was not in her contract but that she would be paid. Another employee said that there was no clause in his contract but he was paid redundancy compensation. Mr Parker suggests in his submissions that there must be a redundancy clause somewhere for it to be applied. Pacifica does not accept that this was the case.

[65] Mr Parker submits that Mr Turner was entitled to what the other employees received. Mr Parker submits that this was a redundancy entitlement of one month's pay for the first year and two weeks' pay for each year of service thereafter. There is no evidence that Mr Turner has a contractual entitlement in that respect. Mr McPhail submits that the primary determining factor as to whether staff received a redundancy payment was their employment status. Staff being permanent received compensation and those being casual did not. The termination of Mr Turner's employment for redundancy proceeded on the basis he was a casual employee. I have found he was a permanent employee.

[66] Mr McPhail submits that even if Pacifica was wrong to classify Mr Turner as a casual employee that, in the absence of a contractual obligation to pay redundancy, it was entitled to adopt its own criteria as to who it would pay and who it would not. Mr McPhail submits that Pacifica saw Mr Turner as being in a different category of permanent to other workers and made its decision accordingly.

[67] The Authority does not have jurisdiction, except in the limited circumstances set out in s.161(2) of the Employment Relations Act 2000 which do not apply to this situation, to fix new terms and conditions of employment. I accept Mr McPhail's submission that good faith requirements do not entitle the Authority to fix a new term or condition for redundancy compensation as submitted by Mr Parker.

[68] I do not find that the advice given to Mr Turner on 28 October 2005 that moneys due to him would be paid the following week amounts to an agreement that redundancy compensation would be paid.

[69] The Authority must, in carrying out its role, promote good faith behaviour. In this case I have found that Mr Turner was a permanent employee. His entitlements at the date of his termination were assessed on the basis he was a casual employee. Pacifica should now reassess, in good faith taking into account all the information available, Mr Turner's entitlements on the basis of my findings that he was a permanent employee.

[70] That assessment should be completed by the end of June 2007 and Mr Parker advised of the outcome.

#### **Was Pacifica in breach of its duty of good faith?**

[71] Pacifica says that it was required to maintain confidentiality about the sale and therefore there was only an opportunity for very limited consultation. Section 4(m) of the Employment Relations Act 2000 provides that the duty of good faith applies when making employees redundant.

[72] Pacifica found itself in circumstances where it could not give its employees any advance warning of the sale. In that situation, it was even more important in terms of a good faith process, given Mr Turner's employment was to be terminated the following day for redundancy, that there be a discussion about entitlements. Mr Turner was simply advised that any moneys owing would be paid to him in the following week's pay. As it turned out, there was no money paid to him at all. Mr Turner had no opportunity to negotiate or discuss entitlements with Pacifica until after his termination when he requested a further meeting to ask why he did not get redundancy compensation when the other employees did.

[73] I do not intend to award a penalty for breach of good faith in this case. I am not satisfied that the grounds are made out to reach the degree of seriousness required. Rather, I am of the view that these good faith issues, given the absence of any real consultation and one days notice because of the need for Pacifica to maintain confidentiality, should form part of Pacifica's reassessment of Mr Turner's entitlements.

**Holiday pay issue**

[74] I am of the view that it would be useful if the review of the holiday pay could be carried out by the Labour Inspector after I have determined this matter as other issues may impact on the calculation of holiday pay. I will provide the Labour Inspector with a copy of this determination so that any additional matters can be taken into account. The Labour Inspector may request further information from Mr Parker and Mr McPhail and I am sure the parties will cooperate in providing it. I reserve leave for either party to return to the Authority if there are any issues with respect to holiday pay arising after that review takes place.

**Should payments received under the Injury Prevention, Rehabilitation, and Compensation Act 2001 be taken into account to calculate holiday pay?**

[75] Section 14 of the Holidays Act 2003 excludes from the meaning of gross earnings any weekly compensation payable under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act. The exception to this is the first week compensation payable by the employer.

[76] I do not find that Mr Turner is assisted by clause 2(b) of his individual employment agreement which is concerned with overtime payments and not gross earnings for the purpose of calculating holiday pay.

[77] In conclusion therefore, aside from the first week compensation payable by the employer, no payments received under the Injury Prevention, Rehabilitation and Compensation Act 2001 should be taken into account to calculate Mr Turner's holiday pay. It would be helpful if the Labour Inspector could clarify as part of the holiday pay review that the first week compensation payment was taken into account when calculating Mr Turner's holiday pay.

**Public holidays during the period Mr Turner was injured and on unpaid leave**

[78] An employee is entitled to be paid for a public holiday if it would otherwise be a working day for the employee. I do not find that the public holidays that fell during Mr Turner's unpaid leave would have otherwise been working days. This is because Mr Turner was not available to work on those days as he was injured. It did seem to me that Mr Turner may be entitled to payment for any public holidays into the period

covered by the payments received in late March 2005 when Mr Turner asked for his annual leave, days in lieu and sick leave to be cashed up.

[79] That is a matter that the Labour Inspector could consider as part of the review of the holiday pay.

### **Was Mr Turner paid the sick days owing?**

[80] This matter was not clearly raised as an issue until final submissions. Payment of the balance of Mr Turner's sick days appears to have been authorised but whether it was actually paid needs to be clarified. I have considered what, if any, loss Mr Turner suffered in the event he was not paid his sick days. In my view, given the backdating of the weekly compensation that occurred in December 2005, the loss could only be interest on the sick pay which Mr Turner should have received but may not have received for that period.

[81] I reserve leave if necessary for the parties to come back to the Authority about this matter although it may well be that Mr Turner has received payment for his sick days.

### **Costs**

[82] I reserve the issue of costs. Mr Parker and Mr McPhail should attempt to reach agreement on the matter, failing which submissions can be lodged with the Authority.

### **Summary**

- I have found that Mr Turner was a permanent employee at Pacifica as at 29 October 2005.
- I have found that the notice given to Mr Turner was not reasonable and that reasonable notice would have been one month. Mr Turner is not entitled to monetary compensation however as he was on unpaid leave.
- In terms of the redundancy compensation, I find that Pacifica should now reassess in good faith, taking into account all information available, any entitlements payable to Mr Turner on termination of his employment on the

basis of my finding that he was a permanent employee. That assessment is to be completed by the end of June 2007.

- I have made no award for a penalty for a breach of good faith in this case but have indicated that good faith issues in terms of the process should form part of Pacifica's reassessment in terms of Mr Turner's entitlements.
- The Labour Inspector is to undertake a review of holiday pay paid to Mr Turner.
- Mr Turner is not entitled to have payments that he received under the Injury Prevention, Rehabilitation, and Compensation Act 2001 taken into account to calculate holiday pay save as for the first week compensation payable by the employer.
- I do not find that the public holidays during Mr Turner's unpaid leave would have been otherwise working days. I have asked the Labour Inspector to include as part of a review of holiday pay whether there is an entitlement for payment of any holiday pay that fell in the period covered by the payments received by him in late March 2005.
- I have reserved leave to the parties to come back to the Authority if necessary with respect to the issue whether Mr Turner was paid his sick days in March 2005.
- I have reserved the issue of costs.

H Doyle

Member of Employment Relations Authority