

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 219
5601269**

BETWEEN UNITE UNION
 Applicant

AND RESTAURANT BRANDS
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Duncan Allan, Advocate for Applicant
 Natalie Cooper, Advocate for Respondent

Investigation Meeting: 28 June 2016 at Auckland

Submissions received: 22 July 2015 from Applicant and from Respondent

Determination: 4 July 2016

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Unite Union (Unite) has applied to the Authority to resolve a dispute about the interpretation and operation of a clause in a collective agreement.

[2] Clause 3.1 Remuneration in the CEA operative 1 April 2015 – 31 March 2017 (the current CEA) sets out the hourly rates for employees at various levels. The position of Shift Supervisor – Sole Charge (SSSC) contains a statement in parentheses after the hourly rate that: *(This rate includes the base rate and the sole charge allowance listed under Allowances)*. The other rates set out in clause 3.1 do not have such a statement after the hourly rate.

[3] Overtime rates as set out in clause 8.1 of the current CEA states that overtime is payable: *“at time and a half of the ordinary rate”*.

[4] Unite interprets the overtime rates in clause 8.1 of the current CEA to apply to the ordinary rate being the hourly rates set out in clause 3.1 of the current CEA, including that for a Shift Supervisor – Sole Charge (SSSC).

[5] The Respondent, Restaurant Brands Limited (Restaurant Brands) disputes that the overtime payment is applicable to the full hourly rate for the SSSC position, claiming that it is payable on the 'base' rate as set out in clause 3.1 of the current CEA only, which it claims is the 'ordinary' rate, and not on the combined hourly rate of the base rate and the sole charge allowance.

Issue

[6] The issue for determination is whether or not Restaurant Brands has correctly applied the overtime rate to employees during the periods in which they are worked over-time in the SSSC position.

Background Facts

[7] Restaurant Brands is a corporate franchisee and specialises in managing multi-site branded food retail chains, and operates the New Zealand outlets of KFC, Pizza Hut, Starbucks Coffee, and more recently Carl's Jr.

[8] Prior to 2006, employees were employed on individual employment agreements (IEAs) specified by the brand outlet.

The IEAs

[9] The Pizza Hut 2005 IEA set out the hourly rates applicable to levels of experience and set an hourly rate for the SSSC position. There is no Allowance clause or rate specified, and overtime is stated as payable on the ordinary rate.

[10] The KFC 2005 IEA sets out the hourly rates applicable to levels of experience and contains a separate Allowances clause specifying allowances payable including: Late Shift Allowance, Broken Shift Allowance, Higher Duties Allowance, and Shift Supervisor Allowance.

[11] Overtime is stated as payable on the ordinary rate. However the Allowances section states: "*Allowances are excluded from overtime rates*".

[12] The Starbucks 2005 IEA sets out the hourly rates applicable to levels of experience. The section of the IEA headed Wages also notes that: "*Any employee designated to act as a Shift Supervisor with responsibility for supervising duties, will be entitled to an additional allowance of \$2.00 per hour for those shifts they work as a Shift Supervisor (sole charge)*". Overtime is stated as payable on the ordinary rate.

CEAs 2006 to 2012

[13] During 2005 – 2006 Unile and Restaurant Brands negotiated the first CEA covering members working in all of the brand outlets Restaurant Brands had at that time. The rates of remuneration were set out in three designated Brand sections in Schedule A of the CEA operative from March 2006 to March 2008 (the 2006/8 CEA).

[14] The remuneration section of Schedule A stated the rates payable to employees of Pizza Hut and KFC who were at a level of LAS (Adult & under 18 years). Below the rates section was a section entitled: “*Allowances*” which included the allowances Sole Charge Shift Supervisor, Retail Management Training, and Late Shift Allowance. The allowance paid to a SSSC position stated:

Pizza Hut – Sole Charge Shift Supervisor payment of \$2.75 per hour is payable for the hours worked in a sole charge capacity (LAS rate \$12.51 + \$2.75 = \$15.26 p/hr)

KFC - Sole Charge Shift Supervisor payment of \$3.84 per hour is payable for the hours worked in a sole charge capacity (LAS rate \$12.27 + \$3.84 = \$16.11 p/hr)

Starbucks - Sole Charge Shift Supervisor payment of \$2.75 per hour is payable for the hours worked in a sole charge capacity (LAS rate \$12.90 + \$2.75 = \$15.26 p/hr)

[15] Overtime was set out at clause 6 which stated: “*Authorised overtime shall be payable at time and one half of the ordinary rate ...*”

[16] The CEA operative 1 April 2010 to 31 March 2012 (the 2010/12 CEA) set out wage rates in Schedule A which was expanded to include a definition of when a Shift Supervisor was entitled to claim for the sole charge allowance and stated:

Sole Charge – Shift Supervisor

‘Sole Charge’ occurs when the Shift Supervisor is ultimately responsible for the direction and management of rostered staff, product quality, food safety, customer flow and customer needs, including service recovery and resolving customer complaints, during a shift.

If rostered as a Shift Supervisor responsible for running a shift (as above), the employee remains in this position for the duration of the rostered period and is paid accordingly, regardless of other management on site.

[17] Allowances were set out in a separate section noting that they were: “*In addition to Hourly Rates of Pay*). Overtime was set out in the 2010/12 CEA at clause 6 which states: “*Authorised overtime shall be payable at time and one half of the ordinary rate ...*”

[18] The CEA operative 1 April 2012 to 31 March 2013 (the 2012/13 CEA) set out wage rates in clause 3.1 rather than in a schedule. The rate for the SSSC position was amended in the sections applicable to KFC and Pizza Hut by the addition of a statement in parentheses that: *(This rate includes the base rate and the sole charge allowance listed under Allowances)*.

[19] The Starbucks section has two rates for SSSC, one being ‘*Learning to Lead*’ and one being ‘*Learning to Lead & RMT*’, however it also includes the additional statement in parentheses that: *(This rate includes the base rate and the sole charge allowance listed under Allowances)*.

[20] Clause 3.3 sets out the allowances payable as being: SSSC Allowance, Late Shift Allowance, Broken Shift Allowance, and Higher Duties Allowance. After all the allowances apart from the Broken Shift Allowance is stated: “*(in addition to base rate)*).

[21] Overtime is set out in the 2012/13 CEA at clause 6 which states: “*Authorised overtime shall be payable at time and one half of the ordinary rate ...*”

The current CEA 2015 to 2017

Clause 3.1

[22] The CEA operative 1 April 2015 to 31 March 2017 (the current CEA) set out wage rates in clause 3.1. The KFC and Pizza Hut have a rate for a Team Member LAS and a rate for SSSC which states the respective brand rates for the SSSC positions. After each of the rates is a statement in parentheses that: *(This rate includes the base rate and the sole charge allowance listed under Allowances)*.

[23] Starbucks Coffee has one rate for a SSSC position in the 2015/17 CEA, and Carl’s Jr is included and also has a SSSC position. In both cases, the rate for the SSSC positions accompanied by a statement in parentheses that: *(This rate includes the base rate and the sole charge allowance listed under Allowances)*.

[24] The statement in parenthesis does not appear after any hourly rates of pay in clause 3.1 of the current CEA except for the SSSC position.

Clause 3.2

[25] Clause 3.2 sets out the application of the pay rate for a SSSC as occurring: “*when the Shift Supervisor is ultimately responsible for the direction and management of rostered staff, product quality, food safety, customer flow and customer needs ... during a shift*”

Clause 3.4

[26] Allowances are set out at clause 3.4 and are identical to those in the 2012/13 CEA. However under the heading “*Allowances*” is the statement: “*Allowances are paid in addition to Hourly Rates of Pay*” and under each allowance is the statement: “*(in addition to base rate)*”. The only exception is for the Broken Shift Allowance which is expressed as a payment: “*per day*”.

Clause 8.1

[27] Overtime is set out in the 2015/17 CEA at clause 81 which states: “*Authorised overtime shall be payable at time and one half of the ordinary rate ...*”

[28] The IEAs and earlier CEAs had a waiver clause regarding overtime which stated: “*Notwithstanding authorised overtime, by mutual agreement an Employee may work overtime that shall be payable at the ordinary rate ...*”, however this waiver is not included in the 2015/17 CEA.

Clause 11

[29] Clause 11 concerns training and states: “*The Employer will provide training for an Employee and pay at his/her ordinary rate of pay while he/she is attending required training*”.

Clause 17

[30] Clause 17 concerns attendance at communications meeting and states: “*The Employer is able to hold operational communications meetings, at ordinary time rate, without incurring any penalties*”.

Dispute

[31] Mr Mike Treen, National Director of Unite said that he had first become aware that Restaurant Brands was paying overtime on the Team Leader LAS hourly rate rather than on the SSSC hourly rate which included the SSSC Allowance during May 2015.

[32] He had not raised the issue earlier as he had been unaware that was occurring and had assumed that the 'ordinary' rate of pay used for overtime calculations meant the 'base' rate plus the sole charge allowance as set out under the Allowances clause at clause 3.4.

[33] Mr Paul Diver, an Employment Relations Consultant who had been engaged by Restaurant Brands and involved with the bargaining of all the CEAs between Unite and Restaurant Brands since 2006, said he interpreted the 'ordinary rate' to mean the 'base rate'.

[34] Mr Diver said there had never been any ambiguity with that interpretation and that allowances had always been excluded from the calculation of overtime. Employees who performed work as Shift Supervisors are normally part of the Team Member LAS rate and their ordinary hourly rate is the Team Member LAS rate for all the hours worked.

[35] As a SSSC they receive an hourly allowance in addition to the ordinary hour (or base) rate to compensate them for the additional responsibility of undertaking that role, whereas the overtime rate is compensation for working additional or long hours.

[36] Mr Treen mailed Restaurant Brands on 25 May 2015 raising Unite's interpretation of clause 3.1 and requesting that Unite members be paid overtime at the hourly rate set out in clause 3.1 of the current CEA.

[37] On 9 June 2015 Ms Anna Jones of Paul Diver Associates responded on behalf of Restaurant Brands to Unite's email dated 25 May 2015 disputing Unite's interpretation of clause 3.1 of the current CEA.

Determination

[38] Unite submits that the ordinary rate for a SSSC is the base rate plus the Shift Supervisor – Sole Charge Allowance. That is the 'ordinary' rate to be applied to overtime payments for a shift worked as SSSC.

[39] Restaurant Brands submits that the correct interpretation of the clause is that the 'base' rate is the 'ordinary' rate and this has remained constant in its application to the calculation of overtime rates.

[40] It submits that the current CEA (and all previous versions of the CEA) outline that the Sole Charge Shift Supervisor Allowance is payable when an employee is operating in a SSSC position. It is a separate allowance specifically for the hours worked in the sole charge position capacity, and is not included for the purpose of calculating overtime. Thus applying Unite’s interpretation of what constitutes ordinary pay effectively results in double payment once the overtime rates are triggered.

The Law regarding collective agreements

[41] In considering a dispute about the interpretation and operation of a clause in a collective agreement it is necessary to apply the law as it relates to collective agreements.

[42] In *NZ Amalgamated Engineering, Printing and Manufacturing Union v Amcor Packaging (New Zealand) Limited*¹ Judge Ford introduced a summary of the law regarding the interpretation of collective agreements as follows:²

The leading authority on contract interpretation in this country is the decision of the Supreme Court in Vector Gas Ltd v Bay of Plenty Energy Ltd. That decision related to the construction of a commercial contract but the Court of Appeal in Silver Fern Farms Ltd v New Zealand Meat Workers and Related Trade Unions Inc made it clear that the principles of interpretation prescribed in Vector had equal application to employment agreement. The court is required to apply a principled approach to the interpretation of employment agreements and disputes as to meanings must be determined objectively. Vector highlighted the significance of the awareness of context as a necessary ingredient in ascertaining the meaning of contractual words emphasising commercial substance and purpose over semantics and the syntactical analysis of words.

[43] In *New Zealand Professional Firefighters Union v New Zealand Fire Service Commission*³ The Employment Court stated:⁴

In summary, it would appear from Vector that the starting point for any contractual interpretation exercise is the natural and ordinary meaning of the language used by the parties. If the language used is not on its face ambiguous then the Court should not readily accept that there is any error in the contractual text. It is, nevertheless, a valid part of the interpretation exercise for the Court to “cross-check” its provisional view of what the words mean against the contractual context because a meaning which appears plain and unambiguous on its face is always susceptible to being altered by context, albeit that outcome will usually be difficult to achieve.

¹ [2011] NZEmpC 135

² At [12]

³ [2011] NZEMPC 149

⁴ At [17]

[44] A recent Supreme Court decision, *Firm PI 1 Ltd v Zurich Australian Insurance Limited*⁵, the Court stated in respect of contractual interpretation:⁶

It is sufficient to say that the proper approach is an objective one, the aim being to ascertain “the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract”. This objective meaning is taken to be that which the parties intended. While there is no conceptual limit on what can be regarded as “background” it has to be background that a reasonable person would regard as relevant. Accordingly, the context provided by the contract as a whole and any relevant background informs meaning.

[45] The judgment sounded a cautionary note however, the Court stating that:⁷

... where contractual language, viewed in the context of the whole contract, has an ordinary and natural meaning, a conclusion that it produces a commercially absurd result should be reached only in the most obvious and extreme of cases.

[46] In *New Zealand Air Line Pilots Assoc Inc v Air New Zealand Ltd*⁸ the Employment Court noted that collective agreements are not contracts in the traditional sense of the word:⁹

... Rather, they represent the development of a particular employment relationship between an employer and a union over a long period, which is confirmed and altered from time to time in collective instruments which must and do expire and are renegotiated. regard must also be had to its adoption and re-adoption in successor collective agreements which have been settled in evolving circumstances”.

[47] Chief Judge Colgan in that judgment summarised the principles to be applied for interpreting collective agreements as distilled from *Silver Ferns Farms Ltd v New Zealand Meat Workers and Related Trades Unions Ltd*¹⁰ as being:¹¹

- *Prior instruments between the parties or their predecessors may be considered;*

⁵ [2014] NZSC 147

⁶ at [60]

⁷ Ibid at para [93]

⁸ [2011] NZEmpC 149

⁹ Ibid at [14]

¹⁰ [2010] NZCA 317

¹¹ *New Zealand Air Line Pilots Assoc Inc v Air New Zealand Ltd* at [21]

- *The Court's task is to ascertain the meaning that the agreement would convey to a reasonable person having the background knowledge reasonably available to the parties in the situation in which they were at the time of reaching agreement.*
- *The language used is generally to be given its natural and ordinary meaning, recognising that it is unusual and/or difficult to accept that linguistic mistakes may have been made in a formal document. Relevant background information may, however, lead to such a conclusion.*
- *In these circumstances, a court should not attribute to the parties an intention which they clearly could not have had.*
- *The natural and ordinary meaning of the words used should not lead to a conclusion that flouts employment relations common sense.*

Prior Instruments

[48] Prior to the collective agreements being negotiated, the first being the 2006/8 CEA, Restaurant Brand employees were employed subject to IEAs. Whilst Restaurant Brands was tasked with drafting the first CEA, I observe that this arose out of bargaining negotiations between the parties, and was signed by both parties. I therefore consider that the IEAs can be regarded as prior instruments in that they provided a basis for bargaining to both parties.

[49] The IEAs contain three separate versions of how the SSSC pay rate was displayed: the Pizza Hut IEA set an hourly rate for the SSSC position whereas the KFC and Starbucks IEAs both had a separate allowance for when an employee operated in a sole charge supervisory position.

[50] The KFC IEA had a clause which expressly stated that allowances were excluded from overtime rates. The Starbucks IEA stated that any employee working in a supervisory position would be entitled to an: "*additional allowance*" of \$2.00 per hour.

[51] Whilst the 2006/8 CEA did not contain a statement that allowances were excluded from overtime payments, I note that in the Allowances section which is directly below the Remuneration section on Schedule A, it states that they are: *in addition to the above rates*".

[52] The Allowances section clearly notes that the SSSC payment is payable per hour for hours worked in the sole charge capacity and clarifies that the applicable rate is the LAS hourly rate plus the hourly allowance amount resulting in a total payment amount per hour. It is not expressed as part of the set rate for the SSSC position which was the case in the Pizza Hut IEA.

[53] I find that the 2006/8 CEA was permeated by an amalgam of the clauses in the IEAs. Both parties had the opportunity to bargain for clause inclusion and wording, and significantly to clarify definitions in that and the succeeding CEAs. It is regrettable that neither party chose to define 'base' rate introduced in the 2010/12 CEA, or indeed 'ordinary' rate.

[54] Prior to the 2010/12 CEA, under the remuneration schedule A, the wage rates according to the relevant level of training were listed simply under the heading '*Wages*', and Allowances were to be paid in addition to '*The Above Rates*' referring to the aforementioned rates.

[55] In the 2010/12 and 2012/13 CEA's remuneration schedule the wage rates according to the relevant level of training were listed under '*Hourly Rates of Pay*', and Allowances were to be paid in addition to '*Hourly Rates of Pay*' referring to the aforementioned rates.

[56] In the 2015/17 CEA clause 3.1 is the remuneration schedule, and the wage rates according to the relevant level of training were listed under '*Hourly Rates of Pay*', and Allowances were to be paid in addition to '*Hourly Rates of Pay*' referring to the aforementioned rates.

[57] It is consistent that there are 3 levels of hourly rates of pay. Using KFC as the example, these rates are Base (formerly Adult); Gold Star; and LAS. The hourly rates progress (according to qualification) from the Base (Adult) rate, to Gold Star; and then to LAS. Therefore Base is clearly delineated as meaning the starting rate.

[58] In all CEA's overtime is defined as being payable at time and one half of the *ordinary rate*. Although there is no definition of '*ordinary rate*' it is common business sense and logic that '*ordinary rate*' must be one of the 3 listed hourly rates of pay, otherwise overtime payments could not be made. Therefore a reasonable assumption would be that '*ordinary rate*' is the collective term of the 3 hourly rates of pay, and that the *base rate* is defined as the starting rate upon commencement of employment.

[59] The 2010/12 CEA introduced the term 'base' rate but neither party could recall how the word came to be introduced. The term '*base rate*' and '*ordinary rate*' were not defined in

either that or successive CEAs, but were used consistently without challenge until 2015 during the term of the current CEA.

[60] In *New Zealand Air Line Pilots Assoc Inc v Air New Zealand Ltd*¹² it was observed that collective employment agreements are developed by employers and unions, often over a long period of time. Lawyers may not have been involved in the process, and indeed were not in this case. I find that to be a significant factor in the drafting process of the CEAs.

[61] Prior to the 2012/13 CEA, the shift supervisor was one of the 3 ordinary grades and designated LAS, it was the only grade which qualified for the sole Charge Allowance and was set out in the form: LAS rate + allowance. This confirms that the SSSC payment was made up of the LAS rate (the ordinary rate for a shift supervisor) plus the allowance for being in sole charge.

[62] In the 2012/13 and 2015/17 CEAs an additional line is added to the hourly rates of pay schedule which is a combination of the ordinary rate of the LAS with the Sole Charge Allowance as set out in the Allowances Clause 3.4, demonstrated by the arithmetic of the LAS rate $\$16.44 + \$4.83 = \$21.27$.

[63] In order to indicate how the rate is made up the following has been added in parentheses: “*(This rate includes the base rate and the sole charge allowance listed under Allowances)*”. The reference to base rate clearly does not refer to the already defined base rate, that would not make sense arithmetically, but to the ordinary LAS rate of the supervisor. It follows that this part of the quoted rate is available for overtime when overtime is worked.

[64] If the SSSC rate as quoted was meant to consist of the rate for a Team Leader LAS plus the Shift Supervisor – Sole Charge Allowance for the purpose of calculating overtime, I find that there would have been no rationale for the statement in parentheses that the hourly rate for the SSSC position : “*...includes the base rate and the sole charge allowance listed under Allowances*” or indeed the need to set out the allowance in a separate clause. A single rate for the SSSC position would have been all that was required.

[65] I find that this supports Restaurant Brand’s interpretation that the ‘ordinary’ rate used for the overtime payment is the stated rate for the Team Leader LAS position, and that the allowance for carrying out the sole charge duties is a separate payment which does not form part of the rate used to calculate overtime payments.

[66] Consistent with Restaurant Brand’s view that overtime for an employee operating in the SSSC position was calculated on the stated rate for a Team Leader LAS, in 2006 it

¹² [2011] NZEmpC 149

configured the payroll system to pay overtime at time and a half on the Team Leader LAS rate excluding the allowance payment from the overtime calculation.

[67] Also consistent with the interpretation that the 'ordinary' rate as stated in clause 8.1 is one of the stated rates – Base, Gold Star, LAS set out in clause 3.1 of the current CEA - is the fact that both parties confirm that there were no claims made in bargaining for the 2015/17 CEA to change the way overtime was to be calculated.

[68] There is also no disagreement that the terms of settlement for the 2015/17 CEA do not contain any reference to the customary approach to the interpretation and application of the 'ordinary' rate being changed.

[69] I note that whilst the earlier IEAs and CEAs had an overtime waiver clause, the current CEA has not, which would imply that at least one aspect of overtime payment was discussed during the bargaining that preceded the making of the current CEA. However despite the overtime issue being on the table, there was no reference or clarification of to the wording or meaning of clauses 3.1 Remuneration and 3.4 Allowances.

[70] I find that the prior instruments provide support for Restaurant Brand's interpretation of clause 3.1 of the current CEA that the overtime premium is payable only on the ordinary rate (collective term of the 3 hourly rates of pay).

Ascertaining the meaning conveyed to a reasonable person with the background knowledge reasonably available to the parties at the time of reaching agreement

[71] A reasonable person having the background knowledge reasonably available to the parties at the time of reaching agreement would have been aware of prior instruments, including the CEAs.

[72] He or she would have been aware of the separate classification of allowances and that the sole charge shift allowance was an additional hourly rate payable in recognition of a level of responsibility being undertaken in addition to the Team Leader LAS position.

[73] A reasonable person would also have been aware that all hourly allowances in the current CEA (and previous CEAs) state that the hourly payments are: "*in addition to the base rate*", whilst the Broken Shift allowance is not

[74] Examining clauses 3.1, 3.4 and 8.1 of the current CEA together I find that a reasonable person having the background knowledge of the parties would take the notation

‘base’ rate as in parentheses to mean the ‘ordinary rate applicable to the Team Leader position and not to the base or beginning rate at which an employee commences employment.

Natural and Ordinary meaning of the language used

[75] This dispute has arisen as the result of a lack of clarity between the words ‘base’ and ‘ordinary’. The word ‘base’ is introduced in the 2012/13 CEA on the sentence in parentheses in clause 3.1.

[76] The Online Oxford dictionary defines “ordinary” as: “*with no special or distinctive features*” (*adjective*) and: “*what is commonplace or standard*” (*verb*)”. Normal is further defined as: “*conforming to a standard, usual, typical or expected*” (*adjective*). ‘Base’ is defined as: “*foundation or starting point for something*” (*verb*)”

[77] Unite submits that the ordinary meaning of ordinary rate differs substantially from base rate; the ‘ordinary rate’ is the ‘expected’ or ‘standard’ rate for working a shift. The ‘base rate’ is the starting point for determining what rate is applicable. Therefore while a ‘base rate’ will almost always make up a part of the expected rate, the reverse does not apply; the “ordinary rate” (what is expected) cannot be said to only be capable of including the ‘base rate’ (starting point).

[78] Restaurant Brands submits that in terms of this dispute, the two words mean the same thing. Ordinary pay, having: “*no special or distinctive features*” (i.e. allowances) easily translates to equal base pay, with base pay being the “*starting point*”.

[79] I find that in this case the definition of ordinary as having: “*no special or distinctive features*” can be regarded as the stated rate for a Team Leader LAS to which the addition of an allowance becomes a special or distinctive feature and the use of the word ‘base’ in parentheses relates to the stated rate for a Team Leader LAS.

[80] I find that applying the natural and ordinary meaning of ‘ordinary’ and the use of ‘base’ in the parentheses supports the interpretation of ‘base rate’ as being the ‘ordinary rate’.

Court not to attribute an intention to the parties which they could not have had

[81] As previously stated the 2006/08 CEA was a permeation of the previous IEAS. With the one exception of the Pizza Hut IEA, is the fact that allowances are separately stated.

[82] If the parties had intended that the SSSC Allowance would not be separate from the ordinary rate of pay, but instead was a specific ordinary rate of pay there would have been no

necessity to have included such an allowance in a separate clause setting out allowances in which overtime is not paid, and there would have been no necessity to specifically state that the SSSC rate comprised a base rate which was the Team Leader LAS stated rate plus an allowance.

[83] By setting out allowances in a separate section, and by stating in parentheses in clause 3.1 I find that the SSSC rate is a combination of the base rate and the sole charge allowance, I find that the intention of the parties at that time was that ‘*base*’ rate as used in parentheses would be synonymous with ‘*ordinary*’ rate.

Natural and Ordinary meaning of the language not lead to conclusion that flouts business common sense

[84] Overtime is normally payable to an employee who works hours in excess of their contracted hours. It is remunerated by the application of a penal rate to compensate the employee for working the additional hours.

[85] The SSSC Allowance is an hourly additional payment payable for the responsibility associated with a Team Leader LAS assuming a sole charge supervisory position.

[86] An employee working in a SSSC position who works overtime is paid overtime for the additional hours worked over their normal shift hours at the overtime rate of time and a half for their position of Team Leader LAS, and in addition also receives the SSSC Allowance for each hour worked once they have been rostered to work as a Shift Supervisor.

[87] The purpose of the SSSC Allowance is to acknowledge that a Team Leader LAS has accepted responsibility for: “ *the direction and management of rostered staff, product quality, food safety, customer flow and customer needs*” during a shift for which he or she receives an additional hourly allowance payment.

[88] Interpreting the meaning of ‘*ordinary*’ rate as contended by Unite would mean that a Team Leader LAS who is receiving an hourly allowance for the responsibility associated with a sole charge supervisory position would receive an increase in the allowance when working overtime, although the level of responsibility for which the allowance was being paid, had not increased.

[89] I find that a job does not increase in its level of responsibility because the number of hours worked increase, this would flout business common sense.

[90] I determine that the correct interpretation of clause 3.1 of the current CEA is that 'ordinary' rate and 'base' rate are synonymous terms and accordingly that overtime is payable for a SSSC position on the base rate and not on the combined rate of the base rate and the sole charge allowance listed under Allowances in clause 3.4.

Costs

[91] Costs are reserved. I accept that this was a genuine dispute about the interpretation, application or operation of the provisions of the Collective Agreement and I am not persuaded that this is a matter in which costs should be awarded.

[92] However in the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, submissions may be filed by the parties within 28 days of the date of this determination

Eleanor Robinson
Member of the Employment Relations Authority