

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Antonius Cornelius Van Tiel (Applicant)

**AND** Air New Zealand Limited (Respondent)

**REPRESENTATIVES** Antonius Van Tiel in person  
Graeme Norton for the respondent

**MEMBER OF AUTHORITY** James Wilson

**INVESTIGATION MEETING** 19 May 2005

**DATE OF DETERMINATION** 23 June 2005

**DETERMINATION OF THE AUTHORITY**

**Mr Van Tiel's problem**

[1] In April 2004 Mr Van Tiel applied for a position as aircraft Mechanical Engineer with Air New Zealand. He says that he applied for this job because the possibility of a 12 hour shift roster would give him more time to spend with his family. He says that he anticipated that the additional allowances paid for 12 hour shifts would compensate for a drop in base salary. Mr Van Tiel says that at interview, and at the time he was offered the position, he was "told" that he would be on a 12 hour shift pattern.

[2] Mr Van Tiel took up his position on 31 May 2004. He was advised when he commenced that he would work an eight hour shift pattern, Monday to Friday. He says he immediately asked the Engineering Manager, Mr Murray Lockhart, when he would be given 12 hour shifts. He says he was told that he would be required to work on this roster for two months induction and training. At the end of two months he says he again, and repeatedly, inquired of Mr Lockhart when he would be given 12 hour shifts. Finally in late August, he says he was advised that Air New Zealand were currently trying to reduce the number of staff on the 12 hour shifts. He says he had no option, because of the reduction in take-home pay, but to resign.

[3] Mr Van Tiel has requested that the Authority require Air New Zealand to reimburse him for the difference between his actual earnings at Air New Zealand and what he would have received had he worked 12 hour shifts, together with the difference between what he has earned since he left Air New Zealand and what he would have earned had he continued to be employed at Air New Zealand but on 12 hour shifts. He also seeks compensation for the stress, humiliation etc this whole episode has caused him.

## **Air New Zealand's response**

[4] Air New Zealand, in response to Mr Van Tiel, says that there was never any guarantee given to Mr Van Tiel that he would work 12 hour shifts. They say that any discussion of 12 hour shifts was on the basis that he might, at some time in the future, be put on 12 hour shifts. They point out that his written employment agreement, which he signed, makes no mention of 12 hour shifts. The agreement, in respect to shifts says:

*You will be employed as a full-time shift worker. However, in the course of your employment you may be required to move to day work either on a short term, long-term or indefinite basis in order to meet Company operating requirements.*

## **What was Mr Van Tiel told?**

[5] Mr Van Tiel says that he was "told" on three separate occasions that he would be working 12 hour shifts:

(i) At the interview for the position, Mr Van Tiel says, he inquired about 12 hour shifts and was told he would "probably be on 12 hour rotating shifts". Air New Zealand say that the interview panel had very clear instructions not to give applicants any understanding, let alone guarantee, that they would work 12 hour shifts. In support of this position one of the interview panel, Mr Jai Chand, gave evidence that no undertaking was given to Mr Van Tiel as to what shifts he would be placed on if he was successful. Mr Chand says that all interviewees were advised that there were three shift patterns and applicants could be placed on any of these shifts.

(ii) Mr Van Tiel says that before taking up his appointment, he spoke to an HR consultant employed by Air New Zealand, Mr David Webster. He says that he specifically asked Mr Webster to confirm that he would be placed on 12 hour shifts and that Mr Webster had given him assurances in this regard. In response Mr Webster says that he does not recall making any such assurances and does not believe he did so. Mr Webster says that the placing of new employees on particular shifts was done by the Hanger Foreman and the Engineering Manager. He says he does recall conversations with Mr Van Tiel regarding medical requirements and a commencement date but does not recall a conversation regarding shift work.

(iii) Mr Van Tiel says that, when he first started work, he was given the understanding, by Mr Lockhart, that after two-months training and induction he would be put on 12 hour shifts. He says he subsequently made "repeated requests" of Mr Lockhart that he be transferred to this shift pattern. Mr Lockhart says that, while he recalls discussions regarding shifts, he had at no time given Mr Van Tiel any assurance or understanding that he would move to 12 hour shifts. He says that during this period the engineering work was decreasing and that the company were looking to reduce the number of employees on 12 hour shifts. He says he was very open with Mr Van Tiel in this regard.

## **Discussion**

[6] In cases such as this the Authority is required to decide questions of fact based on "the balance of probabilities" i.e. which party's recollection of events is the more probable. I have no doubt that Mr Van Tiel believes that he was given an assurance that he would be placed on a 12 hour shift roster. However on balance I find that he was mistaken in this belief. While the various representatives of Air New Zealand no doubt intended that he be given some hope of achieving this objective, it is improbable that they gave him any specific guarantee. In circumstances such as this – that is when an employee is considering employment with a new employer - it is not uncommon for the employer to put a positive "spin" on the conditions of employment so as to attract the prospective employee and for the prospective employee to perceive the proffered conditions uncritically and in the best possible light. A positive and encouraging discussion does not of itself create an employment agreement or a condition of employment. In this case I find that Air New Zealand advised Mr Van Tiel that it was possible, even likely, that he would be placed on a 12 hour shift pattern. This expression of a possibility did not amount to an undertaking nor did it constitute a condition of Mr Van Tiel's employment.

## **Determination**

[7] As set out above I find that the provision of 12 hour shifts did not form part of Mr Van Tiel's employment agreement and Air New Zealand had no contractual obligation to provide these shifts to Mr Van Tiel. When it became clear to Mr Van Tiel that he would not be rostered on 12 hour shifts in the foreseeable future he chose to resign from his position. He is not entitled to the remedies he seeks.

## **Costs**

[8] Costs are reserved and the parties are urged to settle this matter between themselves in the first instance. If they are unable to do so, Air New Zealand may apply for an award in respect to costs.

James Wilson  
Member of Employment Relations Authority