IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA

[2025] NZEmpC 16
EMPC 430/2023

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	THE CHIEF OF THE NEW ZEALAND DEFENCE FORCE Plaintiff
AND	WARREN WILLIAMS First Defendant
AND	NICHOLAS SHEARER Second Defendant
AND	ALLAN FINN Third Defendant

Hearing:	9–11 July 2024 (Heard at Wellington Further evidence filed by agreement on 13 September 2024)
Appearances:	JP Boyle and I Kitchin, counsel for plaintiff P Cranney and D Allan, counsel for defendants
Judgment:	10 February 2025

JUDGMENT OF JUDGE KATHRYN BECK

Introduction

[1] This is a de novo challenge to a determination of the Employment Relations Authority relating to three regional technical managers (RTMs) employed by the Chief of the New Zealand Defence Force (NZDF).[1]

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1 *Williams v Chief of Defence Force* [2023] NZERA 631 (Member Tan).

[2] Warren Williams, Nicholas Shearer and Allan Finn claimed that the hours of work clauses in their individual employment agreements (IEAs) were availability provisions which required them to be available to perform work in addition to their guaranteed hours. They claimed these provisions were not compliant with the requirements of s 67D of the Employment Relations Act 2000 (the Act) because they did not provide for reasonable compensation.[2]

[3] NZDF denied that the hours of work clause was an availability provision. It said that, in any event, it was open to the defendants to decline work outside their guaranteed hours. In the Authority, NZDF did not argue in the alternative that if it was found to be an availability provision, the hours of work clause was compliant with s 67D. Rather, its main defence was that the defendants were not required to be available.[3]

[4] The Authority found that:[4]

(a) the defendants were required to be available to perform work in addition to their guaranteed hours;

(b) the clause was an availability provision which required the defendants to be available to perform work in addition to their guaranteed hours; and

(c) the clause was not compliant with the requirements of s 67D of the Act because it did not provide for reasonable compensation and there was no genuine entitlement to refuse to perform work that was in addition to guaranteed hours.

[5] As noted above, NZDF challenges those findings. It seeks declarations that:

(a) the defendants were not required to be available to perform work in addition to their guaranteed hours; and

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2 At [3].
3 At [4].
4 At [88].

(b) the hours of work clause in their IEAs is not an availability provision.

Issues

[6] The parties have provided a joint chronology and have agreed the key issues to be determined:[5]

(a) whether the defendants were required to be available to perform work in addition to their guaranteed hours;

(b) whether the defendants' IEAs contain an availability provision as defined by s 67D of the Act; and

(c) in the event it is determined the defendants' IEAs contain an availability provision, whether they provided for the payment of reasonable compensation within the meaning of s 67D(7) of the Act.

The law

[7] Section 67D deals with the legality of availability provisions. It defines an availability provision as a provision in an employment under which:[6]

> (a) the employee's performance of work is conditional on the employer making work available to the employee; and
> (b) the employee is required to be available to accept any work that the employer makes available.

[8] An availability provision may only be included in an employment agreement where that employment agreement specifies agreed and guaranteed hours of work and may only relate to a period which is in addition to the guaranteed hours of work.[7] Further, an availability provision must not be included in an employment agreement unless the employer has genuine reasons based on reasonable grounds for including the availability provision.[8]

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5 Although the defendants sought a compliance order in their statement of defence, the parties agreed at the hearing that no such orders would be necessary in the event that the defendants are successful.
6 Employment Relations Act 2000, s 67D(1).
7 Section 67D(2).
8 Section 67D(3)(a) and (5).

[9] All availability provisions must provide for the payment of reasonable compensation to the employee for making themselves available.[9] In determining what compensation is payable under an availability provision, the following must be considered:[10]

> (a) the number of hours for which the employee is required to be available:
> (b) the proportion of the hours referred to in paragraph (a) to the agreed hours of work:
> (c) the nature of any restrictions resulting from the availability provision:
> (d) the rate of payment under the employment agreement for the work for which the employee is available:
> (e) if the employee is remunerated by way of salary, the amount of the salary.

[10] However, an employer and an employee who is remunerated for agreed hours of work by way of salary may agree that the employee's remuneration includes compensation for the employee making themselves available for work under an availability provision.[11]

[11] Where an employment agreement contains an availability provision that is not included for genuine reasons or which does not provide for the payment of reasonable compensation to the employee for making themselves available, that provision is not enforceable against the employee.[12]

[12] An employee is entitled to refuse to perform work above their guaranteed hours if their employment agreement does not contain an availability provision which provides for reasonable compensation for making themselves available.[13]

[13] These provisions of the Act took effect on 1 April 2016.[14] However, where parties entered into an individual employment agreement before the amendment came into force, those provisions only applied to the agreement from 1 April 2017.[15]

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9 Section 67D(3)(b).
10 Section 67D(6).
11 Section 67D(7).
12 Section 67D(4).
13 Section 67E.
14 Employment Relations Amendment Act 2016, ss 2 and 9.
15 Employment Relations Act 2000, sch 1AA cl 3(3).

Facts

[14] The defendants were employed by NZDF as RTMs within its Communications and Information Systems (CIS) branch.

(a) Mr Finn commenced employment with NZDF in 1976. He moved into the RTM role on 13 October 2010. His employment ended on 31 December 2020.

(b) Mr Williams commenced employment with NZDF in 1985. He took up the RTM role in September 2010. He moved into a new position in June 2020 and remains employed by NZDF.

(c) Mr Shearer commenced employment with NZDF on 20 January 1999. He moved into the RTM role on 7 April 2017. He moved into a new position in June 2020 and remains employed by NZDF.

[15] The defendants' IEAs were the same. They contained the following material terms:

Variations	Unless this agreement allows otherwise, this agreement may only be changed where both parties agree in writing.
Complete and full Agreement	This agreement, together with the Letter of Offer represents a full record of the terms and conditions of your employment. Any previous written or oral agreement, understanding or undertaking, or past custom or practice between you and NZDF is superseded by this agreement and the Letter of Offer.
Your position	Your Position Description sets out your role and the competencies necessary for its effective performance. However your position will evolve with the changing needs of NZDF. You agree to be flexible in your work duties. Your manager may make fair and reasonable changes to your Position Description after consulting you. You are expected to perform all tasks, activities and processes relevant to achieving NZDF's needs and those that are within your capability whether they are defined or referred to in your Position Description or not. You

	agree to use your best endeavours and due diligence to perform these tasks, activities and processes professionally and competently to a high standard.
…	
Remuneration Policy	NZDF's remuneration policy is to recognise the nature of your position and the requirement it places on your time, skill and commitment through an annual total remuneration package made up of salary, optional benefits (such as superannuation) and, in certain circumstances, payment of allowances.
…	
Total Remuneration	Your total remuneration is full compensation for the work required, and the work you undertake, in your position. Overtime will not be paid.
…	
Hours of work	You will work on average a minimum of forty (40) hours per week. Standard business hours are between 7.00 am and 7.00 pm, Monday to Friday. You are required to work such hours and days as are reasonably necessary to achieve the performance expectations established in your Position Description, your Performance and Development Plan, those directed by your manager and those required by the NZDF to generally meet operational needs.
Flexible working arrangements	You hold a responsible position in the NZDF and will act with flexibility and adaptability to work commitments. Your actual hours of work will be determined by your manager. Where you are employed in a position involving standard hours, you will be granted the opportunity of working flexible working hours wherever practicable. While the approval of flexible working arrangements for specified periods is encouraged, these arrangements are not a right, and must not compromise NZDF operational effectiveness, security, or disadvantage others. In considering the applicability of such arrangements, your manager will include the need to achieve, effectively and efficiently, the tasks and objectives set by your manager, as well as your needs.
Overtime	Overtime will not be paid. Time off in lieu will not be granted.

[16] The position description for the role of RTM dated 23 March 2015 contained the following material provisions:

Unit Purpose

The Communications and Information Systems (CIS) is a consolidated organisation that provides global information, communications and technology (ICT) excellence to sustain NZDF maritime, land and air operations. CIS provides ICT support to equip and sustain the three Services to enable them to meet operational outputs now and into the future.

Position Purpose

Effective and efficient delivery of ICT support services at Camp/Base and Headquarter functions within NZDF. Manage the delivery of technical support where required and ensure the appropriate escalation for resolution.
…

Major Area of Work	**Deliverables/Outcomes**
General Duties	• Manage the Regional Technical Services team, provide staff administration, work programme management, staff mentoring and career development. … • Ensure supportability of NZDF applications and systems are achieved through all channels of CIS Operations in collaboration with the wider CIS Branch. … • Provide technical advice, process advice and support to the wider CIS Branch through socialisation and education. …
Specific Job Requirements	• May be required to be available for work outside core hours. • Driver license. • Obtain and maintain appropriate level of security clearance required for the position. • Must be able and willing to travel within New Zealand and overseas.

[17] It is not disputed that the RTMs undertook on-call work outside their normal hours up until 31 May 2019. The question is whether they were required to do so. I deal with that later.

[18] On 13 July 2017, Mr Finn was provided with IEA variations for the staff who reported to him and was asked to obtain those staff members' signatures for the

variations. These variations related to changes necessary in order for NZDF to comply with ss 67D and 67E of the Act.

[19] The variations recognised that the employees were required to participate in an after-hours duty roster and set out an annual on-call allowance in addition to their total remuneration payable fortnightly to compensate for the duty roster duties. The allowance was calculated on the basis of $50 per day. It varied between employees based on the roster that was in place for them. The annual allowance ranged from $1,820 to $18,200 per annum.

[20] On 19 July 2017, Mr Finn queried whether the same on-call variations his staff had just signed should apply to the RTMs. Over the period 21 July 2017 to 30 May 2019, various emails were exchanged in relation to whether the RTMs were entitled to compensation for being on call.

[21] On 31 May 2019, the RTMs were directed to stop undertaking on-call work. After that date, the parties continued to discuss whether the defendants had a claim under s 67D of the Act.

[22] On 21 November 2019, the defendants were offered a payment to cover the period of 1 April 2017 to 31 May 2019. The offer was not accepted due to it being different and less than the amount offered to other workers.

[23] The matter was unable to be resolved, and a personal grievance was raised by the defendants' representative, Sheryl Cooney, on 27 July 2020 on behalf of all three defendants.

[24] As already noted above, the defendants were successful in the Authority, and NZDF has now challenged the determination. This is a hearing de novo of the issues.

Analysis

Did the defendants' IEAs contain an availability provision?

[25] The agreed list of issues set out above identifies three issues for determination. I begin by discussing the second issue.

[26] The Act states that an availability provision is one where the employee's performance of work is conditional on the employer making work available to the employee and where the employee is required to be available to accept any work that the employer makes available.[16]

[27] The scope of s 67D was discussed in detail by the full Court in *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd*.[17] In that decision, the Court was considering whether the following provision was an availability provision:[18]

> [Employees] may be required to work reasonable overtime in excess of their standard hours (subject to safe operating procedures) provided that work is voluntary on days which are otherwise non-rostered days for an individual employee.

[28] The Court held that the provision was an availability provision as it required an employee to accept overtime work when required by the employer and because the performance of that overtime work was conditional on the employer making that work available.[19] Further, the Court held:

> [29] … an employee's time is a commodity which has a value. … It seems to us to be self-evident that the value of an employee's otherwise private time applies equally whether they are waiting to be called in for work or on the off-chance they might be required to undertake additional hours of work at the end of their usual working day. In either case the employee is forgoing opportunities in their private life. …
>
> [30] If an employer wishes to rely on being able to *require* an employee to work overtime, as opposed to it being a voluntary exercise, it must comply with the requirements of the Act, including by providing reasonable compensation for the availability the employee has committed to providing for the employer's benefit.

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16 Employment Relations Act, s 67D(1).
17 *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd* [2019] NZEmpC 47, [2019] ERNZ 78.
18 At [25].
19 At [26].

[29] I consider that the circumstances in the *Postal Workers* case are broadly parallel to those in the present case.

[30] The hours of work provision in the defendants' IEAs provided them with 40 guaranteed hours per week but also stated the following:

> You are *required* to work such hours and days as are reasonably necessary to achieve the performance expectations established in your Position Description, your Performance and Development Plan, those directed by your manager and those required by the NZDF to generally meet operational needs.
>
> (Emphasis added)

[31] The position description stated amongst other things that that they were required to manage the delivery of technical support where required and ensure the appropriate escalation for resolution, and it also noted that they may be required to be available for work outside core hours.

[32] The flexible working arrangements provision stated:

> You hold a responsible position in the NZDF and will act with flexibility and adaptability to work commitments. Your actual hours of work will be determined by your manager.

[33] The plaintiff submitted that the provisions set out above never required the defendants to undertake work outside of their ordinary work hours. It was submitted that any such work was carried out voluntarily. In particular, the plaintiff noted that the defendants were only required to work hours and days that were "reasonably necessary" and submitted that it was not reasonably necessary to work on call outside of business hours. It was also suggested that the flexible working arrangements provision was for the benefit of the employees and that the position description which referred to working outside of core hours lacked specificity.

[34] I do not accept those submissions. Up until 31 May 2019, there was nothing to indicate to the RTMs that it was not reasonably necessary for them to be on call 24/7. Even if it was not reasonably necessary, the hours of work provision clearly indicated that the parties intended that it may be reasonably necessary for the RTMs to work overtime in addition to their normal hours and required them to work any such overtime hours. As noted by the Authority, any other interpretation would render parts

of the hours of work provision redundant.[20] Further, although the flexible working arrangements provision was partially for the benefit of the RTMs, the portion of that provision relied on above was for the benefit of NZDF in that it placed obligations on the RTMs to work flexibly in light of their responsible position. Finally, even if the position description lacked specificity, it provides additional context for interpreting the hours of work provision.

[35] The hours of work provision is an availability provision, particularly when viewed within the context of the rest of the IEA and position description. It specifically requires the defendants to be available outside of the core guaranteed hours set out in the IEAs when reasonably necessary. As in the *Postal Workers* case, the defendants in the present case were required to accept overtime work when required by the employer, and the performance of that overtime was conditional on the employer making that work available.[21]

[36] The parties also conducted themselves in accordance with those terms.[22] The RTMs were named on the on-call roster and were called upon outside of hours.[23]

[37] The plaintiff argued that the contrast between the terms of the RTMs and those of the Computer Support Technicians, who reported to them, illustrated that the provisions in the RTM's agreements were not availability provisions. In the technicians' case, they and NZDF entered into specific variations which required them to be "on standby, be called back to work, and carry out related overtime to complete critical and priority work". They specifically agreed to make themselves "available to go on to a standby roster and be available to work that roster".

[38] I agree that the provisions negotiated with the technicians are very clearly availability provisions and are intended to be so – NZDF agreed they were such in the context of s 67D. However, the comparison is not particularly helpful. In the case of

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20 *Williams v Chief of Defence Force,* above n 1, at [73]–[76].

21 This case is distinguishable from *Fraser v McDonald's Restaurants (NZ) Ltd* [2017] NZEmpC 95 [2017] ERNZ 539 where the employees had the ability to reject additional hours.

22 See *Fraser v McDonald's Restaurant (NZ) Ltd*, above 21, at [54]–[55] for a discussion of the relevance of post-contractual conduct, although I do not consider that the interpretation exercise in this case hangs on the parties' application of the agreement.

23 See below at [41]–[55].

the technicians, NZDF agreed they were required to be available and negotiated accordingly. In this case the parties are in dispute. One type of worker's position being clearer or arguably stronger does not inform the situation of another worker. The question is not whether the RTMs' individual agreements contained an availability provision in contrast to the technicians, but whether objectively their agreements contained such a provision.

[39] For the reasons set out above, I find the defendants' IEAs contained an availability provision as defined by s 67D of the Act.

[40] For completeness, although the defendants' claim only ran until 31 May 2019, there is no evidence that the IEAs were varied in writing at the time. They were only instructed that they were not required to be on call. Therefore, the availability provision may have continued beyond that date.[24]

Were the defendants required to be available to perform work in addition to their guaranteed hours?

[41] Having resolved that the hours of work provision was an availability provision, it is clear that the defendants were required to be available to perform work in addition to their guaranteed hours.

[42] However, during the hearing, the parties spent considerable time addressing the issue of whether the defendants could have turned down overtime work that arose in the context of the plaintiff's rostering arrangements. That issue, although not necessarily strictly relevant to the matters before the Court, may be relevant to the parties when they negotiate what compensation ought to be payable.[25]

[43] It was clear from the evidence that, up until 31 May 2019, the defendants genuinely considered themselves to be required to be available to be contacted outside of hours and to respond unless other arrangements had been made.[26] The question is whether they were in fact required to be available.

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24 *Stewart v AFFCO New Zealand Ltd* [2022] NZEmpC 200, [2022] ERNZ 1013 at [47].

25 See Employment Relations Act, s 67D(6)(c).

26 Such as when they were on leave and another RTM would cover their colleague's region as well as their own.

[44] For the reasons set out below, I find that they were required to be available.

[45] This is supported by a letter sent on 26 September 2015 from Briar Johnson, who managed Mr Williams and Mr Finn, to Keith Tasker, the deputy director of ICT Operations at the time. In that letter Ms Johnson purported to formalise "some agreements we had made as a local management team, Will, Allan and I." She relevantly stated that RTMs had taken their vehicles home for some time "given the geographical areas they cover and the expectation of being on call 24/7. It has shown to be the most effective use of their time, the resource and provides the best support to our team and customers."

[46] While this correspondence recorded the arrangements in 2015, it is clear that those arrangements – that they be on call 24/7 – remained in place from 1 April 2017 right up to 31 May 2019.

[47] The roster that the parties referred to was not available. However, there was no dispute that the defendants were named on it, with their contact details, as escalation points in the event their team members could not resolve issues or were unable to be contacted. Further, there is no dispute that they were contacted and did respond after hours over the relevant period. There also appears to be no dispute that this was with the knowledge of their direct manager, Mr Tasker.[27]

[48] Mr Shearer confirmed that the roster he worked from when he was the service desk manager, prior to becoming an RTM, named the RTMs as an escalation point, and they were contacted out of hours if necessary. He advised the Court that he was never instructed not to call the RTMs after hours, nor was there a note on the roster to that effect. His evidence was that if a technician could not be contacted or could not do the job, the RTM was the next point of contact even if out of hours.

[49] Once Mr Shearer became an RTM, his name was put on the roster as an escalation point (although not by him). The only changes he made to the roster spreadsheet were to update the names of his team members as they rolled over week

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[27] Mr Tasker gave evidence in the Authority but has subsequently retired and did not give evidence in Court.

to week. He did not consider he was authorised to remove his own name from the roster when he had not put it there.

[50] The defendants accepted that they were not contacted every night. They also accepted that when they were contacted, they were not always required to attend site – there were some issues that could be resolved on the phone. Mr Shearer described their role on call as supporting the incident resolution and incident management process in whatever form that took.

[51] Mr Roger Broadhurst has held a number of senior roles within NZDF since his employment in January 1983. In February 2018, he held the role of director of ICT Operations and Transition. It was while in that role that his direct report, Mr Tasker, brought the defendants' claims to his attention. Mr Broadhurst accepts that there was a practice of RTMs being called and attending incidents outside of hours. However, he says this was not part of their role. He says it was their role to manage staff and not be on the tools themselves. He accepts that the RTMs felt the calls they were receiving were critical. However, he says he accepted the risks and consequences of ICT services not being able to be restored outside of normal working hours and so, as already noted above, directed them to stop accepting those calls.

[52] The direction changed the then current practice. However, Mr Broadhurst's view that the practice was not necessary (coming to the situation some years after it had been in place) does not mean that the defendants were not previously required to be available. Mr Broadhurst accepted that the RTMs were previously a step in the escalation process outside of hours and that they had an obligation to deal properly with matters escalated to them. His evidence was also that while such a practice was not common in his previous directorate, it appeared to be common in network or IT operations.

[53] The Court was also provided with a draft Operations Support Manual prepared by NZDF.[28] Mr Broadhurst accepted that while it was not a finalised or published document, it was, insofar as the defendants were concerned, a picture of what was

[28] Defence Command and Control System Service Operation Information Technology Service Management Operations Support Manual.

happening in September 2018. It recorded that the RTMs were "on call after hours" and required them to comply with procedures.

[54] Ultimately, it was accepted practice that the RTMs were on call after hours. The rosters and other relevant documentation stated that they were on call, and the RTMs acted in accordance with that roster. Further, their IEAs required them to work such reasonably necessary hours and days as required to generally meet the operational needs of NZDF and as directed by their manager. I consider that the rostering arrangements triggered those obligations. Therefore, the evidence supports their claim that they were in fact required to be available, at least up until 31 May 2019.

[55] The plaintiff submitted that the defendants chose to be available, as evidenced by the fact that some continued to provide assistance after hours even after the direction that they were not to do so. However, the fact that their commitment to NZDF and their roles meant that they were not inclined to refuse calls after hours does not detract from the position that it was a requirement of the role up until 31 May 2019.[29]

Did the availability provision provide for the payment of reasonable compensation?

[56] The defendants did not take issue with whether there were genuine and reasonable grounds for them to be subject to availability provisions. Their concern was that they were not being properly compensated for it, once the new legislation was introduced, in contrast to the staff they managed. They felt it was inequitable.

[57] NZDF says that, even if the provision is read as an availability provision, when the defendants were on call, it was not onerous. Therefore, it was submitted that any salary they were paid, given the total remuneration provision, should be regarded as remunerating them for being available as well.[30] In particular, NZDF highlighted that the remuneration provisions covered both "work undertaken" and "work required" and

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29 See also *Stewart v AFFCO New Zealand Ltd,* above n 24, at [47].

30 Updated evidence of the defendants' remuneration was provided by consent by way of a memorandum dated 12 September 2024.

that they specifically acknowledged the nature of the position and the requirements they placed on the defendants' time.[31]

[58] While there is no form specified for the agreement referred to in s 67D(7), I agree with counsel for the defendants that there needs to be an express recognition that the salary takes into account availability provisions.[32] There is nothing in the defendants' agreements that expressly does that, even though NZDF had a year between 1 April 2016 and 1 April 2017 to remedy that issue. Nor was there any evidence that it was included in the round.

[59] The remuneration policy provision refers to a recognition of the requirement placed on the employee's "time, skill and commitment". However, it does not appear to contemplate availability. Nor is it clear that work either undertaken or required encompasses a requirement to be available. The agreement does state that overtime will not be paid, but it was agreed prior to s 67D coming into force, and the reference to overtime does not in itself answer the question of whether the parties have agreed that the RTMs' remuneration includes compensation for making themselves available.

[60] Further, there was no evidence of availability being discussed in connection with remuneration when salaries were reviewed. Nor is there any evidence of availability being part of the remuneration-setting exercise.

[61] Mr Boyle, counsel for NZDF, acknowledged that many staff had total remuneration provisions in their employment agreements, even the staff who received an allowance for availability after the Act was amended. He submitted that those other staff were not being reasonably compensated so that a further allowance was required, but that the RTMs were being reasonably compensated so that no further agreement was required.

[62] I do not accept that submission. NZDF has previously offered compensation to the defendants (this was not on a without prejudice basis), which indicates that NZDF recognises that there was a value of their being on call over and above their

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31 See above at [15].

32 *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd,* above n 17, at [56].

salaries. However, that offer was rejected by the defendants on the basis that they considered they were entitled to the same compensation as the technicians who worked for them.

[63] Further, if NZDF considered that the standard total remuneration provisions in its IEAs were agreements for the purposes of s 67D(7), it seems inherently unlikely that it would have offered further compensation to the computer support technicians on the basis that the salary did not provide reasonable compensation for availability requirements. On the balance of probabilities, it is more likely that NZDF considered that the total remuneration provisions were not agreements under s 67D(7). This analysis is borne out by the correspondence between the parties from 2017 until 2020, which does not indicate any coherent position of that sort.

[64] Accordingly, I find that there is no evidence of agreement between NZDF and the individual employees that their remuneration included compensation for them making themselves available for work under the availability provision. I also find that the defendants' employment agreements did not provide for the payment of reasonable compensation within the meaning of s 67D(7) of the Act.

[65] That is not to say that the RTMs are necessarily entitled to the same payments as their reports received. It seems to me that those employees had specific restrictions on them and were called upon more frequently than the RTMs. The parties may wish to consider the factors set out in s 67D(6) as an objective starting point for negotiations. A degree of compromise may be required from both parties.

Outcome

[66] I make the following findings:

(a) The defendants' IEAs contained an availability provision as defined by s 67D of the Act.

(b) Up until 31 May 2019, the defendants were required to be available and on-call 24/7 to perform work in addition to their guaranteed hours.

(c) The defendants' IEAs did not provide for the payment of reasonable compensation within the meaning of s 67D(7) of the Act.

[67] The parties should meet as soon as practicable to agree the quantum of any reasonable compensation. In the event they are unable to agree, they can return to the Court.

Costs

[68] Costs are reserved. If the parties are unable to agree, the defendants will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with the plaintiff having a further 14 days within which to respond. Any reply should be filed and served within a further seven days.

Kathryn Beck
Judge

Judgment signed at 4.30 pm on 10 February 2025