IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2024] NZEmpC 180
EMPC 39/2024

IN THE MATTER OF	proceedings removed from the Employment Relations Authority by the Court
AND IN THE MATTER OF	an objection to an improvement notice
BETWEEN	DANSKE MOBLER LIMITED Plaintiff
AND	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Defendant

Hearing: 29 July 2024

Appearances: S Langton and R L White, counsel for the plaintiff
M L Brown, counsel for the defendant

Judgment: 20 September 2024

JUDGMENT OF JUDGE J C HOLDEN

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[1] This judgment is in respect of an Objection made by Danske Møbler Ltd to an Improvement Notice issued to it by the Labour Inspector on 10 January 2022.

[2] Danske Møbler is a New Zealand-owned manufacturer, importer and retailer of home furniture. It operates branded stores throughout New Zealand and its furniture is stocked by other retailers nationwide.

[3] Danske Møbler operates a factory in Mount Eden, Auckland. The factory has an upholstery division and a woodworking division. Danske Møbler employs skilled

furniture makers and upholsterers, apprentices and factory hands (together "manufacturing employees"). Manufacturing employees are:

(a) predominantly employed full-time under individual employment agreements; and

(b) paid an hourly wage.

[4] Under their employment agreements, full-time manufacturing employees are contracted to work 40 hours a week, 5 days a week, between 7am and 3.30pm, excluding a half hour for lunch.

[5] Danske Møbler can and does extend the factory's operating hours, but only to 5pm at the latest. Danske Møbler's factory is in a residential area and noise restrictions prevent it being open after 5pm. It also sometimes opens on Saturday morning.

[6] Where the operating hours are extended, manufacturing employees are offered overtime. It is purely voluntary; the employees decide whether and how much overtime they accept. Some employees work a lot of overtime, others never do.

[7] Danske Møbler's practice when a manufacturing employee takes family violence leave, bereavement leave, alternative holidays, public holidays or sick leave (together referred to as "FBAPS leave") is to pay them for the day based on their contracted hours, i.e. for eight hours.

[8] Between August 2020 and March 2021, as a result of receiving a complaint, the Labour Inspector carried out an audit of Danske Møbler's records for a sample of its employees. The complaint was not upheld but in the course of her audit, the Labour Inspector reached the view that Danske Møbler had failed to comply with some of its obligations under the Employment Relations Act 2000 and the Holidays Act 2003.

[9] The Labour Inspector and Danske Møbler were unable to agree on an enforceable undertaking.

[10] On 10 January 2022, the Labour Inspector issued an Improvement Notice to Danske Møbler requiring it to (among other things):

(a) review the wages and time records and holiday and leave records for all current and past employees from 17 August 2014 onwards; and

(b) identify periods of FBAPS leave; and

(i) calculate the correct relevant daily pay (RDP) for all of the periods identified, ensuring that the calculation is based on the amount of pay that the employee would have earned had they worked on the day concerned; or

(ii) if RDP was not appropriate, calculate average daily pay (ADP) for these periods.

(c) pay all current and past employees any arrears identified through those reviews and recalculations.

[11] On 8 February 2022, Danske Møbler filed an Objection to the Improvement Notice in the Employment Relations Authority. The proceedings were removed to the Court by the Court, by special leave under s 178(3) of the Employment Relations Act on the basis there was an important question of law that was likely to arise in this matter other than incidentally.[1]

[12] At issue, is the calculation of pay for FBAPS leave under the Holidays Act.[2] That requires the Court to consider ss 9 and 9A of the Holidays Act:

> **9 Meaning of relevant daily pay**
>
> (1) In this Act, unless the context otherwise requires, **relevant daily pay**, for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave,

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1 *Danske Mobler Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment* [2023] NZEmpC 233, [2023] ERNZ 1051.

2 Holidays Act 2003, ss 49, 60, 71 and 72I.

bereavement leave, or family violence leave,—

(a) means the amount of pay that the employee would have received had the employee worked on the day concerned; and

(b) includes—

(i) productivity or incentive-based payments (including commission) if those payments would have otherwise been received had the employee worked on the day concerned:

(ii) payments for overtime if those payments would have otherwise been received had the employee worked on the day concerned:

(iii) the cash value of any board or lodgings provided by the employer to the employee; but

(c) excludes any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

(2) However, an employment agreement may specify a special rate of relevant daily pay for the purpose of calculating payment for a public holiday, an alternative holiday, sick leave, bereavement leave, or family violence leave if the rate is equal to, or greater than, the rate that would otherwise be calculated under subsection (1).

(3) To avoid doubt, if subsection (1)(a) is to be applied in the case of a public holiday, the amount of pay does not include any amount that would be added by virtue of section 50(1)(a) (which relates to the requirement to pay time and a half).

9A Average daily pay

(1) An employer may use an employee's average daily pay for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave, bereavement leave, or family violence leave if—

(a) it is not possible or practicable to determine an employee's relevant daily pay under section 9(1); or

(b) the employee's daily pay varies within the pay period when the holiday or leave falls.

(2) The employee's average daily pay must be calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

a is the employee's gross earnings for the 52 calendar weeks before the end of the pay period immediately before the calculation is made

b is the number of whole or part days during which the employee earned those gross earnings,

> including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work.
>
> (3) To avoid doubt, if subsection (2) is to be applied in the case of a public holiday, the amount of pay does not include any amount that would be added by virtue of section 50(1)(a) (which relates to the requirement to pay time and a half).

[13] Section 9A and the concept of ADP was introduced into the Holidays Act in 2011.[3] Section 9 was also amended at that time. Prior to then, s 9 included a formula to be used if it was not possible to determine an employee's RDP; it was a four-week averaging formula.[4]

[14] The policy intent behind the introduction of ADP was to provide a method of calculation that is simple to apply and that does not create financial incentives for employers or employees to request, refuse or require leave to be taken at any particular time or times. The amendments also made the trigger for when an employer may move to an averaging formula more permissive.[5] When introducing the Bill, the Minister of Labour said that ADP was introduced to address the potential fluctuations in pay that may arise under the former 4-week averaging formula.[6] A 52-week averaging formula is now used.

[15] The policy intent of RDP was said to remain unchanged, that is, paying employees what they would have earned had they worked the day in question. The inclusion of both ADP and RDP serves the dual-purpose of ensuring a fair rate of pay for employees and ensuring that an employer is able to assess quickly whether RDP or ADP applies to an employee.[7] The overarching theme of the Parliamentary materials was about improving certainty under the Holidays Act when calculating pay for FBAPS leave for employees who work variable hours.

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3 Holidays Amendment Act 2010, ss 2 and 5.
4 Holidays Act, s 9(3) (as effective from 17 May 2007 to 31 March 2011); amended by Holidays Amendment Act 2010, s 5.
5 Holidays Amendment Bill 2010 (195-1) (explanatory note) at 4–5.
6 (19 August 2010) 665 NZPD 13331.
7 Holidays Amendment Bill 2010 (195-1) (explanatory note) at 4–5.

Danske Møbler's Objection

[16] In its statement of claim, Danske Møbler sought:

(a) an order rescinding the Improvement Notice insofar as it required Danske Møbler to review and conduct payment calculations for all current and past employees beyond the relevant statutory limitation period;

(b) an order rescinding the Improvement Notice insofar as it required Danske Møbler to review and conduct payment calculations for classes of employees in respect of which no breach had been alleged;

(c) a finding that Danske Møbler had correctly calculated and paid RDP to employees paid on an hourly rate and has therefore complied with the provisions of the Holidays Act in respect of those calculations and payments; and

(d) an order rescinding the Improvement Notice, insofar as it required Danske Møbler to review and conduct calculations of RDP payments to employees paid on an hourly rate.

[17] Danske Møbler also seeks costs.

[18] Danske Møbler's position with respect to the relevant date for the purposes of calculating arrears is that the Improvement Notice can only go back six years from the date an employer files an Objection to the Improvement Notice. It says this is because that is when the cause of action arises under s 142 of the Employment Relations Act.

[19] The Labour Inspector accepts that an Improvement Notice can only go back six years but says that is six years from the date the Improvement Notice was issued. She says that the appropriate order would be for the Court to vary the Improvement Notice pursuant to s 223E(3) of the Employment Relations Act. The Labour Inspector also accepts that Danske Møbler should not be required to review and conduct payment calculations for classes of employees in respect of which no breach has been

alleged. Again, the Labour Inspector says the appropriate course would be for the Court to vary the Improvement Notice accordingly.

The parties identified key issues

[20] The parties identified the key issues in the case as:

(a) Did Danske Møbler correctly calculate and pay RDP to manufacturing employees?

(b) Should the Improvement Notice issued to Danske Møbler be rescinded (or confirmed/varied) insofar as it required Danske Møbler to review and conduct calculations of RDP payments to manufacturing employees?

(c) Should the Court otherwise confirm, vary or rescind the Improvement Notice, applying the test in s 223E of the Employment Relations Act?

[21] To that list should be added the issue of the relevant back date for the purpose of calculating any arrears.

At issue is mutually agreed overtime

[22] The Labour Inspector says that for RDP and ADP, the calculation methodology is designed to ensure that an employee is able to take FBAPS leave and still get paid an amount akin to what they would have received if they had been working on the day in question. Where an employee regularly works overtime hours, the Labour Inspector says pay for these additional hours forms part of the RDP calculation as the omission of the overtime hours would result in financial disadvantage to the employee when taking FBAPS leave.

[23] The Labour Inspector relies on the Court of Appeal's decision in *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd*, which was decided under the Holidays Act as it stood prior to the introduction of s 9A.[8] There, the Court of Appeal

[8] *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd* [2012] NZCA 481, [2013] 1 NZLR

noted that the employee who regularly (but not invariably) worked unrostered overtime or exceeded productivity targets would be entitled to higher RDP than those who did so less often or only occasionally. The Court of Appeal said that outcome reflects the legislature's evident intention to ensure that the minimum entitlements of employees under the Holidays Act include not only their basic or ordinary time pay, but also other items of renumeration they would ordinarily receive, including unrostered overtime.[9]

[24] The Labour Inspector pointed out that the Court of Appeal said there was no distinction between rostered and unrostered overtime in s 9(1) of the Holidays Act; the Labour Inspector noted that there equally is no distinction between contractually-required and other mutually agreed overtime. She says that what is important is that an employee should not be financially disadvantaged by taking FBAPS leave and the pay for that leave should reflect what they would have received had they worked on the day in question.

[25] The Labour Inspector says that in some cases, Danske Møbler's method of calculating RDP could be appropriate (for example, where the employee only works their contractually-agreed hours, or works overtime only on rare occasions). She says, however, that where an employee works variable hours or consistently works overtime, using the employee's contractually-agreed hours is not appropriate and would result in the employee receiving less than they would have if they had worked on the day in question. She says if Danske Møbler is unable to accurately calculate RDP then it can use ADP to conduct the calculation**.**

[26] The Labour Inspector acknowledges that an employer can change methodology, depending on the circumstances.[10] The Labour Inspector also accepts that an employer may use ADP for the purposes of calculating payment for FBAPS leave in either of the two circumstances identified in s 9A(1).

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9 At [32].

10 *GD (Tauranga) Ltd v Price* [2019] NZEmpC 101, [2019] ERNZ 304 at [35].

[27] In the case of Danske Møbler, the Labour Inspector investigated the pay records for one employee in particular. He consistently worked more than his contractually-agreed hours so that Danske Møbler was, the Labour Inspector says, obliged to take the overtime payable for the additional hours into account in calculating RDP. If it could not identify what hours that employee would have worked on the days that he took FBAPS leave, then the calculation would need to be done as ADP pursuant to s 9A of the Holidays Act.

[28] Danske Møbler argues that RDP for manufacturing employees is based on their contracted hours of work, as set out in their employment agreements, which do not include overtime.

[29] In submissions, Mr Langton, counsel for Danske Møbler, distinguished the present situation from that in the *Postal Workers* case.[11] He said the distinction is that, in the *Postal Workers* case, the employees were required to work unrostered overtime under their employment agreements, and looking backwards from the date of the leave event, the employees had a pattern of working overtime.

[30] Danske Møbler notes that its agreements to work overtime are typically reached on the day in question, where there is work available, and the employee wishes to work. It says it is therefore possible for Danske Møbler to calculate the employees' RDP on the day in question, being derived from their contracted hours of work. It says that, at the date of the applicable leave event, there is no "agreement" – either under the employees' employment agreement or a separate one-off agreement that the employees will work overtime on that day. It therefore follows, Danske Møbler says, that, as there is no other agreement to work overtime at the time the employee takes leave, the amount of pay the employees would have received under their employment agreement, had they worked that day, was their pay for their contracted hours of work. It is, Danske Møbler says, possible and practical to ascertain this amount, so that the averaging approach in s 9A does not apply.

[31] Mr Langton draws a parallel between the present situation and that of casual employees who have not agreed to work on a particular day, so are not entitled to

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11 *Postal Workers Union of Aotearoa*, above n 8.

payment for FBAPS leave for that day. The speculative nature of whether the casual employee would have agreed to work the day in question was likened to whether overtime might have been worked in the present situation. As acknowledged, however, casual employees do not have an existing employment relationship as at the date of the applicable event (being affected by family violence, ill-health or bereavement, or a public holiday), whereas the employees at issue here do.

[32] Danske Møbler acknowledges that although the former s 9(3) of the Holidays Act was repealed from 1 April 2011 and replaced by the current s 9A, the gist of the Court of Appeal's judgment on the old s 9(3) would continue to apply. In other words, where it is not possible or practicable to calculate an employee's RDP, the averaging formula in s 9A applies.

I agree that pay for overtime is to be part of the calculation

[33] The purpose of the Holidays Act is to promote balance between work and other aspects of employees' lives and, to that end, to provide employees with certain minimum entitlements. These include paid FBAPS leave.[12]

[34] The intent behind RDP (as contained in s 9) is that employees should be paid what they would have earned had they worked on the day on which they took FBAPS leave, so that they are not financially disadvantaged when they take such leave.[13]

[35] There is nothing in s 9(1) that differentiates between remuneration that the employer is required to pay under an employee's employment agreement, and that which it would have paid as a result of a separate agreement. The comments by the Court of Appeal in the *Postal Workers* case in respect of rostered and unrostered overtime apply equally to pre-planned and not pre-planned overtime.[14]

[36] As the Court of Appeal noted, the calculation of RDP is necessarily a notional exercise to be taken retrospectively on the basis of what would have been paid if the

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12 Holidays Act, s 3.

13 Holidays Amendment Bill 2010 (195-1) (explanatory note) at 4–5; and see *GD (Tauranga) Ltd v Price*, above n 10, at [31].

14 *Postal Workers Union of* Aotearoa, above n 8.

employee had worked on the relevant holiday or leave day. The legislature recognised, however, that it might not be possible to establish the pay that would otherwise have been earned on the relevant day, which is where the averaging formula (then in s 9(3)) was intended to apply.[15]

[37] In declining leave to appeal, the Supreme Court noted that the replacement s 9A is broadly to the same effect as the previous s 9(3) save that:[16]

(a) the averaging period is the preceding 52 weeks rather than the preceding four weeks;

(b) it is cast in permissive rather than mandatory terms: "An employer may…"; and

(c) it is broader in its application than the former s 9(3) as it can be used if either it is not possible or practicable to apply s 9(1), or the employee's daily pay rate varies during the pay period when the holiday or leave falls.

[38] I do not agree that the calculation only includes overtime if it is contractual, albeit it may be uncertain; essentially the *NZ Post* situation. There is nothing in s 9 or elsewhere in the Holidays Act that ties RDP or ADP to contractually required work, and limiting s 9 in this way would be counter to the intent of the Act to allow employees to take FBAPS leave without being financially disadvantaged.

[39] As a result of its approach to date, Danske Møbler has failed to comply with the Holidays Act in respect of certain FBAPS leave events. While not a deliberate failure, the nature and extent of that failure requires further analysis.[17]

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15 At [29].
16 *New Zealand Post Ltd v Postal Workers Union of Aotearoa Inc* [2013] NZSC 15 at [3].
17 Employment Relations Act 2000, s 223E(2).

Danske Møbler has choices

[40] Pursuant to s 9(2) of the Holidays Act, Danske Møbler may agree a sum for RDP with its manufacturing employees, but the rate would have to be equal to or greater than the rate that would otherwise be calculated under s 9(1). This subsection presumably is to provide an administratively convenient way of determining RDP and to promote certainty.[18]

[41] Absent such agreement, where family violence leave, bereavement leave, sick leave or an alternative holiday is taken, and no overtime is offered to manufacturing employees who are working on the day in question, it is open to Danske Møbler to simply use the calculation for the eight contracted hours as that is the amount of pay that the employee would have received had they worked on the day concerned.[19] In those leave circumstances, Danske Møbler has complied with the Holidays Act.

[42] On public holidays or where a FBAPS leave event falls on a normal working day where some relevant manufacturing employees have worked overtime, it will not be possible to determine the amount of pay that an employee in that group who is on holiday/leave would have received had the employee worked on the day concerned. Reading the Holidays Act as a whole, indicates that RDP/ADP are a floor that an employer must not sink below.[20] There may be a choice as to whether to use ADP or RDP in the circumstances described in s 9A(1)(b), but where s 9A(1)(a) applies, and it is impossible to calculate RDP, at a minimum, Danske Møbler would need to use ADP.[21] To conclude otherwise could potentially enable an employer to pay less than the minimum entitlements.

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18 An equivalent provision has existed since the introduction of RDP in 2004. See Holidays Bill 2003 (32-2), cl 7.

19 Noting that if it is possible to identify a narrower group of employees who were offered overtime, for example if only upholsterers were offered overtime, that narrower group would be the relevant manufacturing employees.

20 Holidays Act, ss 49, 60, 71, and 72I.

21 *Max Pennington Motors Ltd v A Labour Inspector, Ministry of Business, Innovation and Employment* [2020] NZEmpC 64, [2020] ERNZ 215 at [26]. See also Holidays Amendment Bill 2010 (195-1) (explanatory note) at 5: "The averaging formula may be used when it is not possible or practicable to determine what the employee would have earned or where an employee's daily payment varies within the pay period in which the holiday or leave falls. In those situations, an employer may choose to continue to attempt to determine the employee's relevant daily pay or move to the average daily pay calculation. Where it is not possible to determine the employee's relevant daily pay, the employer **must** pay according to the employee's average daily pay." (emphasis added).

[43] The effect of using ADP is that, for a manufacturing employee who never chooses to work overtime, ADP will equate to the employee's contractual daily pay, but for a manufacturing employee who sometimes or usually works overtime, the figure will be higher. An employee who usually picks up overtime may be slightly disadvantaged financially if they take FBAPS leave on a day overtime is worked, because ADP will be an averaged sum for the preceding 52 weeks. That arises, however, because of the nature of the agreements to work overtime, which are only finalised on the day in question, even for employees who historically have always, or almost always, elected to work available overtime.

[44] Those are the minimum requirements on Danske Møbler. For administrative or other reasons, it may choose to use ADP for all FBAPS leave taken in a pay period in which some relevant manufacturing employees work overtime, even if none is worked on the day on which leave is taken, but that is a choice for Danske Møbler.

Timeframe for calculation

[45] As noted, the Labour Inspector accepts that compliance can only be required going back six years, but says that is from the date of the Improvement Notice. In that regard, she refers to the Court's decision in *Enterprise Motor Group (New Lynn) Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment*.[22]

[46] Danske Møbler also agrees that the timeframe for compliance should be limited to six years. In that regard, it agrees with the reasoning in the *Enterprise Motor Group*, being that Parliament cannot have intended there be a longer limitation period for Improvement Notices than the period of time an employer is required to keep wage and time records, leaving the employer vulnerable to compliance orders and penalties for failing to comply with minimum entitlements, and an Improvement Notice.[23]

[47] Danske Møbler submits, however, that the six years should be from the date the Objection to the Improvement Notice was filed in the Authority, as that is the date the "cause of action" arose for the purposes of s 142 of the Employment Relations Act.

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22 *Enterprise Motor Group (New Lynn) Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment* [2022] NZEmpC 194, [2022] ERNZ 991.

23 At [78]–[79].

It says *Enterprise Motor Group* was wrongly decided when it took the six years from the date of the Improvement Notice.

[48] Section 142 of the Employment Relations Act provides:

> **142 Limitation period for actions other than personal grievances**
> No action may be commenced in the Authority or the court in relation to an employment relationship problem that is not a personal grievance more than 6 years after the date on which the cause of action arose.

[49] Danske Møbler submits that, in the context of an Improvement Notice, "the cause of action" is informed by s 83 of the Holidays Act, which includes as an action before the Authority, a determination of an Objection to an Improvement Notice.[24] In that regard, Danske Møbler says that the process by which the Authority determines the Objection starts on the date the Objection is lodged and that then is the date the cause of action arose.

[50] Mr Langton, counsel for Danske Møbler, notes that the Labour Inspector would not know at the time that they served the Improvement Notice when, or whether, an Objection would be lodged. He says, therefore, that when issuing an Improvement Notice, the Labour Inspector would need to ensure that it requires the employer to look back six years, starting on the date that is 28 days after the date of the Improvement Notice.[25]

[51] I do not agree with Mr Langton; I agree with the reasoning in *Enterprise Motor Group*. It is on receipt of an Improvement Notice that an employer is on notice that the Labour Inspector considers the employer is in breach of its obligations. That is the operative date the cause of action arose for the purposes of s 142.[26]

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[24] Holidays Act, s 83(2)(a).

[25] 28 days being the timeframe within which an Objection to an Improvement Notice must be filed under the Employment Relations Act 2000, s 223E(1).

[26] See *Dillon v McDonald* (1902) 21 NZLR 375 (CA) at 391–392 where cause of action was defined as: "the act on behalf of the defendant which gives the plaintiff cause for complaint"; *Papps v Mahon* [1966] NZLR 288 (SC) at 292: "all the facts and circumstances necessary to give rise to a right to relief in law or equity"; and *Letang v Cooper* [1965] 1 QB 232 (CA) as cited in *New Zealand Post Primary Teachers' Assoc Inc v Secretary for Education* [2020] NZEmpC 74 at [42]: "a cause of action is the factual situation that enables one party to obtain a remedy from the Court against the other party". The possibility of a continuing right to a cause of action was noted in *Bhikoo v Stephen Marr Hair Design Newmarket Ltd* [2016] NZEmpC 32, (2016) 15 NZELR 694

Other issues with the Improvement Notice

[52] Danske Møbler says there are further difficulties with the Improvement Notice. First, it notes that it sets out steps that the Labour Inspector says Danske Møbler "must" take to comply with the provisions of the Employment Standards. Section 223D(2)(d) of the Employment Relations Act requires the notice to state what the employer "could" do to comply. Second, it notes that the Labour Inspector advised Danske Møbler (at subclause 6.1.6 of the Improvement Notice) that, "if RDP is not **appropriate**, [to] calculate ADP"[27] for the relevant periods and that the word "appropriate" is not in the legislation.

[53] It is unclear what Danske Møbler's substantive concerns are; it does not point to any disadvantage caused by the language used. There is no prescribed form for Improvement Notices.

[54] Section 223D was introduced as part of a suite of amendments and was intended to make available a less formal mechanism to the Labour Inspector to get employers to meet their obligations to their employees.[28] Here, the Improvement Notice fully informs Danske Møbler of the alleged breaches to be remedied, states the steps Danske Møbler could take to comply and by when compliance must take place. In my view, it complies with the legislation. [29]

[55] That conclusion addresses Danske Møbler's third concern, that the Improvement Notice must tell it exactly what it could do to "calculate the correct RDP" for all periods identified. The Improvement Notice provides that Danske Møbler should ensure the calculation is based on the amount of pay the employee would have earned had they worked the day in question. I have reached the same conclusion and confirmed that non-contractual overtime is included in the RDP calculation. An Improvement Notice need not be overly prescriptive, and to the extent

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at [51].

27 Emphasis added.

28 See *A Labour Inspector of the Ministry of Business, Innovation and Employment v IT-Guys NZ Ltd* [2019] NZEmpC 115, [2019] ERNZ 337 at [20]–[25] and [45].

29 See *A Labour Inspector of the Ministry of Business, Innovation and Employment v Smiths City Group Ltd* [2018] NZEmpC 43, [2018] ERNZ 124 at [82]–[83].

that any ambiguity remains, I consider the steps required to comply with the legislation have been made sufficiently clear by the conclusions in this judgment.

Variations ordered

[56] In conclusion, the Improvement Notice issued by the Labour Inspector dated 10 January 2022 is varied in the following respects:

(a) Insofar as it required Danske Møbler to review and conduct payment calculations for classes of employees in respect of which no breach had been alleged ("all current and past employees"), the review is only in respect of current and past manufacturing employees paid hourly wages.

(b) Insofar as it required Danske Møbler to review and conduct payment calculations beyond six years prior to the issuing of the Improvement Notice.

Costs are reserved

[57] Costs are reserved. If they cannot be agreed, memoranda may be filed.

J C Holden
Judge

Judgment signed at 3.30 pm on 20 September 2024