IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2025] NZEmpC 124
EMPC 360/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	E TŪ INCORPORATED Plaintiff
AND	MAINLAND POULTRY LIMITED Defendant

Hearing:	11 April 2025 (Heard at Dunedin and by submissions filed on 30 April 2025, 8 May 2025 and 13 May 2025)
Appearances:	E Griffin and N Santos, counsel for plaintiff G Bevan and G Brimble, counsel for defendant
Judgment:	26 June 2025

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] This case involves an issue about the correct interpretation of a provision in a collective agreement. If the provision is interpreted as E Tū Inc (the Union) says it should be, the employees it is representing (the affected employees) will be entitled to a shift allowance; if it is interpreted as the employer (Mainland Poultry Ltd) says it should be, they will not. The Employment Relations Authority (the Authority) agreed with the company's interpretation. The Union challenges that determination on a de novo basis.

The facts

[2] The affected employees pack and grade eggs for Mainland Poultry Ltd at its Waikouaiti plant. The plant operates 24 hours per day, seven days a week.

[3] Packing and grading staff work four days on, two days off. That means that the days of the week change, and they work Saturday and Sunday, depending on the roster cycle. The hours within which the work is performed (6:30am to 3:00pm) do not change, but occasionally overtime is worked.

[4] There are three teams in packing and grading and there are always two teams working mornings on any given day of the week. Two teams overlap each day, but they do not work the same cycle of days as the other team on the shift. Packing and grading staff only work the morning shift and have their own roster for their four-days-on/two-days-off shift cycle.

[5] The current collective agreement makes provision for shift work, including allowances, and has for many years.[1] The dispute is about whether the affected employees are entitled to a shift allowance under cl 11 of the collective agreement.

[6] The parties agree that the work performed is a "shift" for the purposes of the collective agreement, and there is no dispute that they are permanent shift workers. The dispute squarely centers on the meaning of the phrase "alternating or rotating" for the purposes of cl 11.

[7] Clause 9 of the collective agreement is headed "Hours of work". It provides that:

> **Clause 9 Hours of Work**
>
> (a) The parties acknowledge that ordinary hours of work may vary

---

[1] It is not clear on the evidence when these provisions were originally introduced into the collective agreement, but it is common ground that they have existed from at least 2006. The August 2006-2007 collective agreement is the first available which included a shift allowance provision; the next is the one that applied between 25 August 2013 and 24 August 2014 (the 2013-2014 collective agreement).

according to an employees' role, the employer's operational requirements and the sites at which the employees work. The ordinary hours of work shall generally be as specified in Schedule 1 to this Agreement unless otherwise agreed in accordance with the terms of this clause.

(b) The employer may operate a roster in which case employees will be employed to work shift work. In other cases, employees will work ordinary hours, Monday to Friday as per Schedule 1.

(c) The employer may review the rosters as required by operational requirements, and employees may be requested to change roster based on those operational requirements and employee skills.

(d) Where the employer wishes to change the hours of work of an employee, or group of employees, the employer will in the first instance put a written proposal to affected staff that will form the basis for consultation.

(e) Any agreement will specify the hours and any other related entitlements and the agreement shall be put in writing and signed by the employer and Union representative.

(f) If agreement cannot be reached through this consultation process, or business demand changes, the employer has the right to alter rosters giving the employees concerned 4 weeks' notice.

(g) General Terms and Conditions for any roster change:

(i) New rosters, defining the numbers per crew, skills and support required, will be notified to those involved not less than 14 days prior to the commencement of the roster provided that less notice may be given in exceptional circumstances.

(ii) Staff involved shall be able to change or swap rostered days within the defined crews. All requests to swap rosters must be made in writing to the Site Manager with a minimum of 7 calendar days' notice, with the exception of personal emergencies.

(j) The normal working week shall commence on Monday at the normal starting time of-the employer.

[8] Ordinary hours of work are specified in sch 1. It provides that:

SCHEDULE 1 – HOURS OF WORK

1. Ordinary Hours

Function	Ordinary Hours	Hours	Sub Function	Existing Variations
Livestock	Up to 8 hours per day or 80 hours per fortnight	6.00am-6.00pm	All Farms	
			Depop Crew	To meet operational requirements the Depop crew can start earlier than 6am on ordinary hours if an equivalent early finish is achieved
			Packing & Grading	
Waikouaiti	Up to 8 hours per day or 80 hours per fortnight	6.00am-6.00pm	Processing	
			Cleaners	P&G cleaners rostered ordinary hours of work are on afternoon shift
			Stores	
			Drivers	To meet operational requirements, start time and start location can vary depending on the truck runs if an equivalent finish is achieved
			Feedmill	
Spartan Road	Up to 8 hours per day or 80 hours per fortnight	6.00am-6.00pm	Processing	Alternative hours have been agreed with staff to extend the working day from 3am - 4pm on ordinary hours
			Stores	

2. Waikouaiti Packing and Grading Alternative Roster 4 x 4 Roster

(a) Alternatively, at Waikouaiti in Packing and Grading, the ordinary weekly hours of work may be rostered as 4 consecutive 10 hour days worked, with the following 4 consecutive days rostered off. Employees employed under this provision shall not be paid overtime until they have worked 10 hours per rostered day. Each daily duty shall be continuous except for meal periods and rest breaks.

(b) Additional days may be worked in relation to clause 2(a) by agreement between the employer and employee, up to a maximum of 2 additional days/weekly roster and no more than 5 consecutive days in each roster period. Additional days shall be paid at the overtime rate.

(c) Employees rostered as per clause 2 (b) above shall be paid a roster allowance of $14.89 per rostered day. This allowance shall not be payable for additional days worked paid at overtime rate.

[9] Clause 11 is headed "shifts". It provides that (emphasis added):

Clause 11 Shifts

(a) For the purposes of this clause *a shift refers to a single, continuous period of work* to be performed by one or more employees, excluding overtime and call-back. *A shift shall be defined by a starting and finishing time*. Shifts shall be defined as morning, afternoon or night shifts. Where an employee is employed to work during ordinary hours between Monday to Friday, that work is not shift work for the purposes of this agreement.

(b) Shifts may be worked as negotiated by the employer with the employees affected.

(c) Shifts shall be defined as:

(i) **Morning Shift**

Shift work that is alternating, rotating or fixed, where the ordinary hours of work fall between 6.00am – 2.30pm.

(ii) **Afternoon Shift**

Shift work that is alternating, rotating or fixed, where the ordinary hours of work fall between 2.00pm – 10.30pm.

(iii) **Night Shift**

Shift work that is alternating, rotating or fixed, where the ordinary hours of work fall between 10.00pm – 6.30am.

(d) …

(e) …

(f) (i) Where shifts are worked the following shift allowance shall apply (from 25th March 2023):

Morning:	$12.72/shift
Afternoon:	$15.88/shift
Night:	$20.26/shift

(ii) *A morning shift allowance shall only be paid when it forms part of an alternating or rotating shift pattern* or such shift is of a temporary nature being worked for a period up to and including four weeks duration.

(iii) The above allowance shall form part of an employee's ordinary rate of pay for any period that a shift is worked.

(iv) Where an employee's shift straddles morning and afternoon shifts: or afternoon and night shifts: or night and morning shifts: the shift allowance will be determined based on the majority of hours worked within that shift (for example if during an 8 hour shift an employee works five hours between 6am and 2.30pm and three hours before 6am, the morning shift rate applies).

(g) Employees regularly employed on afternoon or night shifts as defined in (b) above shall after 12 months continuous service with the employer be entitled to an additional holiday of one week over and above the entitlement in clause 16 (a).

Outline of submissions

The Union's submissions

[10] The Union submits that the affected employees' work pattern is an alternating and/or rotating one, so they are entitled to the allowance.

[11] At its core, the argument is that the terms "alternating" and "rotating" must be given their ordinary meaning. It is submitted that, while the hours of the shift are fixed, the days of work required to complete it are not. Given that the days an employee works in one week will differ from one to the next, the work pattern cannot be described as "fixed", meaning that the shift pattern must either be alternating or rotating.

[12] Counsel for the Union, Ms Griffin, submitted that the purpose of shift allowances is to provide modest compensation to workers who work non-standard hours and days. In this regard she emphasised that weekends are typically used for leisure or social activity, and that the work pattern means that the affected employees can never commit to a non-work activity to be done on a particular day of the week. It is this social disruption, she says, that the shift allowance is designed to compensate for.

[13] It was submitted that a broader, purposive, interpretation of cl 11 is in line with general principles of contractual interpretation, including that agreements are to be read as a whole to determine the parties' objective intention.[2]

The company's submissions

[14] The company contends that the affected employees work a "fixed" morning shift and are therefore excluded from the allowance.

[15] A "shift" is defined in cl 11(a) purely based on starting and finishing time. Mr Bevan, counsel for the company, submitted that, because the affected employees' shift always starts and finishes at the same time, it is, by definition, the same "fixed" shift. The days of the week in which the shift is worked may change, but this is irrelevant.

[16] The company further submits that, within the context of cl 11, the terms "alternating or rotating" refer only to a pattern where an employee changes between different shifts defined by time. That is, they might move to an afternoon shift from a morning shift, or to a morning shift from a night shift. Because the affected employees always work the morning shift, their shift is "fixed".

Approach to interpretation

[17] The principles to apply when interpreting an employment agreement, collective (as in this case) or individual, are well settled. The approach is objective. The aim is to ascertain the meaning which the agreement 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 agreement.

[18] This objective meaning is taken to be that which the parties intended. While the meaning of a clause in an agreement may appear clear, meaning is informed by

---

2 See *AFFCO New Zealand Ltd v New Zealand Meat Workers and Related Trades Union Inc* [2016] NZCA 482, [2016] ERNZ 225; *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432; *New Zealand Air Line Pilots' Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948, [2017] ERNZ 428.

context. A provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole, and any relevant background.[3] The cross-check exercise may also be informed by the parties' subsequent conduct, as reflective of what the parties themselves intended the words to mean.[4]

[19] In undertaking the interpretative exercise, the Court does not substitute its own view of what it considers would be reflective of business common sense or, conversely, commercial absurdity.[5] But the Court does have regard to the fact that collective agreements are relational agreements, often built up over time, and are not commercial, arms-length, agreements. While the Court is not justified in concluding that a collective agreement does not mean what it says simply because it considers that, so interpreted, it is unduly favourable to one party,[6] a fully informed objective observer knowing the context in which a collective agreement is negotiated and develops over time, and understanding the mutual obligations of good faith that apply on each party in such negotiations, would factor these points into their assessment of meaning.[7]

[20] By way of explanation, and as the Supreme Court in *FMV v TZB*[8] has emphasised, the "theme" of the Employment Relations Act 2000 is "relationships, not contracts." Employment relationships, as the Court pointed out, are fortified by overarching duties of broadly crafted good faith obligations (described as "the real focus under the current Act") and the Act's intended levelling effect. The majority went on to refer to the design of the specialist institutions (Mediation Services, the Employment Relations Authority, and the Employment Court) as intended to give effect to the Act's overall object of building productive employment relationships through the promotion of good faith.[9]

---

3 *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696. See too *Firm PI 1*, above n 2, at [60]-[63].

4 *Wholesale Distributors Ltd v Gibbons Holdings Ltd* [2007] NZSC 37, [2008] 1 NZLR 277.

5 *New Zealand Air Line Pilots' Assoc Inc*, above n 2, at [71]-[77].

6 *Firm PI,* above n 2, at [89]-[90], citing Lord Hoffmann's observations in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, at [15]. See also *Dean v Chief Executive of the Ministry for Primary Industries* [2017] NZEmpC 139, [2017] ERNZ 808 at [47]-[50].

7 See s 216.

8 *FMV v TZB* [2021] NZSC 102, [2021] 1 NZLR 466, [2021] ERNZ 740.

9 At [1]-[2] and [44]-[59].

[21] All of this is relevant to the contextual lens that is appropriately applied when interpreting employment agreements. As has previously been observed, employers do many things for their employees aimed at supporting employment relationships, which are not driven solely by economic efficiency or business common sense.[10] The provision of shift allowances for working at unsociable times impacting on an employee's personal life (relevant in this case) may be said to provide an example. The long service leave arrangements at issue in *Le Gros* provide another.

[22] Finally, in *Air New Zealand* the Supreme Court majority expressly left open the question of whether the nature and scope of the Employment Court's equity and good conscience jurisdiction is relevant to the interpretative exercise.[11]

[23] I approach the interpretation exercise in this case on the foregoing basis.

Analysis

[24] The affected employees are employed to undertake shift work. That differentiates them from those employees who are employed to work during ordinary hours between Monday and Friday. The affected employees work four days in a row, then take two days off; that cycle of work then repeats. This means that they often work weekends, not just Monday to Friday. Regardless of the day of the week, the affected employees always work the same hours: 6:30am to 3:00pm (sometimes overtime).

[25] Clause 11 of the agreement differentiates three shifts, to support its 24 hour per day operation. A morning shift is defined in cl 11(c)(i) as being from 6:00am to 2:30pm. That means the affected employees work half an hour past the "morning shift", but cl 11(f)(iv) explains that, if the work straddles the time between morning and afternoon, then the shift is considered to be the one where the majority of hours are worked. Accordingly the affected employees not only work the morning shift, they *always* work that shift.

---

10 *Le Gros v Fonterra Co-Operative Group Ltd* [2023] NZEmpC 193, [2023] ERNZ 800.
11 *Air New Zealand Ltd*, above n 2, at [42].

Natural and ordinary meaning

[26] I start with the natural and ordinary meaning of cl 11.

[27] Clause 11 deals with "shifts" (short title) and provides for shift allowances to be paid. Two specific exclusions are built into cl 11.

[28] First, where an employee is employed to work ordinary hours between Monday to Friday, no allowance is payable because the work is deemed not to be shift work for the purposes of the collective agreement (cl 11(a)).[12]

[29] The second exclusion arises under cl 11(f)(ii). Under cl 11(c)(i) morning shift work is defined as being "shift work that is alternating, rotating or fixed, where the ordinary hours of work fall between 6:00am – 2:30pm". Clause 11(f)(ii) provides that a morning shift allowance is only payable when the shift forms part of an "alternating or rotating shift pattern" or such shift is of a temporary nature being worked for a period up to and including four weeks' duration. It follows, on a plain and ordinary reading, that the parties intended that no shift allowance would be payable in respect of a morning shift when that shift forms part of a fixed shift pattern. This differs from the position in respect of the afternoon and night shifts. An allowance is payable in respect of either type of shift where the shift pattern is fixed, rotating or alternating.

[30] The collective agreement does not define what constitutes a "shift pattern", or a fixed, rotating or alternating shift pattern.

[31] The Concise Oxford English Dictionary defines "Pattern" as including "a regular form or sequence discernible in the way in which something happens or is done: *a change in working patterns*."[13]

[32] "Rotate" is defined as "move in a circle around an axis…".[14] "Alternate" is defined as "Occur or do in turn repeatedly. Change repeatedly between two contrasting

---

12 It is common ground that the affected employees undertook morning shift work, so the first exclusion does not apply.

13 Catherine Soanes and Angus Stevenson (eds) *Concise Oxford English Dictionary* (11th ed, Oxford University Press, New York, 2008) at 1050.

14 At 1251.

conditions. 1. Every other. (of two things) each following and succeeded by the other in a regular pattern."[15]

[33] The ordinary meaning of the word "fixed" is definitely or permanently placed. Cambridge Dictionary defines it as "arranged or decided already and not able to be changed".[16]

[34] What is the shift pattern of the morning shift work performed by the affected employees? The start and finish times for each day of work remain the same, no matter which day they work; the days of work change because the shift pattern is four days on and two days off.

[35] It may be said that it is significant that cl 11(f)(ii) refers to a morning shift allowance only being payable where it forms part of an alternating or rotating shift pattern, or such shift is of a temporary nature. No reference is made in cl 11(f)(ii) to "fixed" and, while cl 11(c)(i), (ii) and (iii) all refer to "*shift work* that is alternating, rotating or fixed", cl 11(f)(ii) refers to an "alternating or rotating *shift pattern*". That, on its face, leaves open the possibility that shift work may be fixed (for example as to the hours of the day during which the shift is worked) but the shift pattern may vary (for example as to the days of the week that work is undertaken). So, as Ms Griffin submits, the qualifier to a shift allowance in cl 11(f)(ii) is focused on the pattern of the shift, not the shift work itself.

[36] There is a common-sense intuitive logic to saying that the morning shift pattern is rotating given that the affected employees are rostered to work according to a cycle which moves through different days each week, gets to day six and then starts again. But there are difficulties with this.

[37] It is not without significance that the focus of cl 11 is on shifts as defined by reference to times of the day, rather than days of the week. In this regard a shift is defined by its starting and finishing time as stated in cl 11(a). A single shift is either

---

15 At 38.

16 Cambridge Dictionary "fixed" <dictionary.cambridge.org>.

morning, afternoon, or night. On this analysis a shift pattern is either always the same ("fixed" as to whether it is morning, afternoon or night), moves between two different times ("alternating" as between, for example, morning then afternoon then back to morning), or moves between three different times ("rotating" around morning, afternoon and evening).

[38] As cl 11 makes clear, a shift allowance is always payable for afternoon or evening shifts, whether they are fixed, alternating or rotating, but is only payable for alternating or rotating morning shifts. The deliberate exclusion of "fixed" for morning shifts arguably signals the parties' intention that a morning shift worked on a fixed-time based pattern, regardless of the days worked, would not attract an allowance.

[39] All of this suggests that, on a natural and ordinary reading of cl 11, an alternating or rotating shift pattern is one that moves between other shifts, either on an alternating or rotating basis.

[40] During oral submissions, I invited submissions on whether the words "starting time" can refer not only to hours of the day but also days of the week. This would mean, for example, that a shift could be "6.00am on a Saturday", rather than merely being "6:00am". I agree with Mr Bevan that such an intention is unlikely given that cl 11 is squarely focused on hours. While, as Ms Griffin noted, there is a reference to days of the week within the clause, this is only a single instance, and it is used to exclude those that work ordinary hours between Monday to Friday as not being shift workers at all.

[41] While I accept that the wording of cl 11 is not particularly clear, on balance I prefer the company's interpretation. My preliminary view is that the affected employees are working a fixed shift pattern and are accordingly not entitled to a morning allowance as provided for in cl 11.

Cross-check

[42] There are two points raised by the parties which are said to be relevant to the contextual cross-checking exercise.

[43] First, conduct. The way in which a clause in a collective agreement has been interpreted and applied over time, or reproduced in successive collective agreements, may be relevant to the interpretative exercise as being indicative of objective intention.[17]

[44] The company argued that the shift provisions in cl 11 have been in place since at least 2006, and were renegotiated in 2019, without any issue about the allowance being raised by affected employees until 2021. This, it said, showed that the parties objectively understood that these workers were not entitled to the shift allowance.[18]

[45] It is not any subsequent conduct that suffices. As the Supreme Court has made clear:[19]

> [63] Even if the meaning suggested by post-contract conduct is not the most immediately obvious objective meaning, the parties' shared conduct will be helpful in identifying what they themselves intended the words to mean. That, after all, must be the ultimate determinant. *If the Court can be confident from their subsequent conduct what both parties intended their words to mean*, and the words are capable of bearing that meaning, *it would be inappropriate to presume that they meant something else*.

[46] In this case, as Mr Bevan said, the non-payment of the shift allowance was consistent all the way from 2006 to 2021 and during that period no issue as to entitlement arose. In addition, cl 11 was renegotiated in 2019 and amendments were made to it at that time.

[47] The real question is whether the Court can be confident that the Union's silence on the entitlement issue is reflective of a shared intention that the morning allowance was not payable to workers in the affected employees' position.

[48] The company's argument that the Union is large and sophisticated, so it is unlikely that it would fail to appreciate affected employees were being denied their rights for such a long period of time, particularly where the clause was brought to their

---

17 *Le Gros*, above n 10, at [40].

18 *Spotless Services (NZ) Ltd v Service & Food Workers Union Nga Ringa Tota Inc* EmpC Auckland AC44/06, 10 August 2006.

19 *Gibbons Holdings Ltd*, above n 4. Emphasis added.

attention when renegotiated in 2019, has some weight but must be viewed in context and through a lens of collective agreement and industrial relations reality.

[49] I accept the Union's point that there is a need for caution in the Union bargaining context, because the negotiating party (the Union) is not the same as the beneficiary party (the employees). Ms Griffin made the further point that it is not unusual for points like this to be missed, even for many years, including by large and well-resourced unions like E Tū. Nor is it uncommon for issues such as this to "fester" for years before a claim is raised.[20] In the present case, it was said that the Union was not aware that affected employees were not being paid a shift allowance until it was brought to their attention by newer employees in 2021. It pursued a claim as soon as it came to its attention.

[50] I also recognise, in reality, that parties to a collective agreement may prioritise other issues during collective bargaining and in deciding what matters should be litigated and when. Delays can occur not because of agreement with the other party's interpretation of a clause, or the way it is being applied, but because of the reality of the industrial landscape.

[51] These contextual factors go to the degree of confidence the Court can have when being invited to place significant weight on a lack of complaint as reflective of a shared intention as to the meaning of a provision in a collective agreement.

[52] In the present case it is notable that the position as to non-payment of the allowance was not completely consistent across the existence of cl 11. The Union pointed to two occasions where payment was made for workers working a four-days-on, four-days-off shift schedule. Witnesses for the company explained in evidence that these payments were made by mistake. That may be so, but it reflects that mistakes can be made in complex collective agreements, even with well-resourced

---

[20] See, for example, *New Zealand Post Primary Teachers' Assoc v Board of Trustees for Rodney College* [2022] NZEmpC 118, [2022] ERNZ 444; and *AsureQuality Ltd v New Zealand Public Service Assoc Inc* [2018] NZEmpC 70, (2018) 15 NZELR 896.

parties, and that subsequent conduct (said to reflect common intention) must be approached with caution.[21]

[53] While I have considered the evidence, I am not confident that the lack of dispute in the circumstances of this case is sufficiently clear-cut to support a finding that there was a shared understanding between the parties.[22]

Underlying purpose of allowance payments

[54] Second, the underlying purpose of providing allowances in cl 11 was said by the Union to be relevant to the interpretative exercise.

[55] The Union submitted that the underlying intention of the shift allowance provisions in the collective agreement is to compensate for working unsociable hours, and to acknowledge the negative impact this has.

[56] The evidence from both the Union and the company confirmed that shift allowances were created because the company moved to a 24-hour operating basis, requiring some employees to work inconvenient hours. This purpose is reflected in the increasing scale of allowance payable per shift as between morning, afternoon and night; the differentiation between morning shift work that attracts a morning allowance (alternating or rotating) and the morning shift work that does not (fixed); and the way in which straddled shifts are dealt with in terms of the applicable allowance.

[57] The Union submitted that the shift allowances are intended to compensate for more than just unsociable hours but also "unsociable days". Three of the affected employees gave evidence as to the impact of their shift work (when it occurred on one or other or both days of the weekend), including that they were routinely unable to attend important family, social, cultural and community activities. I have no difficulty accepting this evidence.

---

21 See *Le Gros*, above n 10, where the Court dismissed the issue as being a "rarity," meaning that subsequent conduct was not relevant in that case.

22 See *Ovation New Zealand Limited v New Zealand Meat Workers* [2018] NZEmpC 151, [2018] ERNZ 455, where the Court rejected a subsequent conduct argument, but this was on the basis of the fact that there were historical disagreements between the parties about the issue.

[58] However, what emerges from the wording of cls 9 and 11 when read together is that shift allowances are directed at working hours as opposed to days. Workers who work the afternoon and night shifts always receive a shift allowance; the hours worked on those shifts are inarguably unsociable. In this regard the afternoon shift concludes at 10:30pm, while the night shift begins at 10:00pm and concludes at 6:30am. It can reasonably be inferred that this explains the higher-level payments associated with each. It may, however, also be said to reflect that the purpose of the clause is to compensate for unpleasant working hours, rather than what might be described as unsociable working days. That is reinforced by the juxtaposition to ordinary working hours contained in cl 9.

[59] A well-informed objective observer would be unlikely to see the four-day-on two-day off roster as lending weight to an interpretation that the parties intended to provide for an allowance for workers working the morning shift four days of the week, including (on occasion) Saturdays and Sundays, when their hours of work remained the same for each of those days.

[60] The contextual cross-check does not alter my preliminary view of the interpretation of cl 11.

Conclusion

[61] While the wording of cl 11 is not as clear as it could be, and does, as the company accepted, have a degree of ambiguity, I conclude that the affected employees work a fixed shift and are not entitled to a morning shift allowance under cl 11(f)(ii) of the collective agreement.

[62] I have reached the same conclusion as the Authority. The challenge is dismissed.

[63] I do not anticipate that any issue of costs will arise but if I am wrong, I will receive memoranda, to be filed by the company within 20 days of the date of this

judgment; the Union within a further 20 days and anything strictly in reply within a further 10 days.

Christina Inglis
Chief Judge

Judgment signed at 12.45 pm on 26 June 2025