

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 257/07
5093605**

BETWEEN STEVEN KOLOVOS
 Applicant

AND NZ STEEL LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: David Fleming for Applicant
 Philip Skelton and Kylie Dunn for Respondent

Investigation Meeting: 15 August 2007

Further information: 20 August 2007
 21 August 2007

Determination: 22 August 2007

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Steven Kolovos ("Mr Kolovos") says he was unjustifiably dismissed by NZ Steel Limited ("NZ Steel") or alternatively, unjustifiably disadvantaged. NZ Steel says Mr Kolovos' temporary employment expired and he was not dismissed nor disadvantaged.

[2] The parties were unable to resolve the problem between them by the use of mediation.

[3] The Authority concentrates on resolving the problem irrespective of how the parties have chosen to describe it. Essentially, Mr Kolovos is aggrieved because he no longer has employment with NZ Steel. That is the problem this Determination disposes of.

The facts

[4] Mr Kolovos successfully interviewed for one of two temporary storeperson positions at NZ Steel's Glenbrook Mill following his expression of interest for "any available position" on an application form completed by him on 28 April 2006. NZ Steel subsequently offered temporary

employment to Mr Kolovos by letter dated 30 May 2006 ("the letter of offer") which materially provided:-

*We are pleased to offer you the temporary position of Storeperson in Supply responsible to the Stores Chargehand or his designate. **This temporary position is to cover for peak workload. Your term of employment will commence on a date to be agreed and finish approximately 25th August 2006. The fixed term employment agreement at this time shall end because of the expected return to normal workload for this department.** The terms and conditions of your employment are as per the current Collective Agreement.*

(emphasis added)

[5] Mr Kolovos in his prepared brief and in an affidavit says he was given the letter of offer in May 2007. That is what I find. The letter of offer concluded:-

Please complete the enclosed acceptance form and return it to the Human Resources Department by 6th June 2006. We look forward to hearing from you.

[6] On 8 June 2006 Mr Kolovos commenced employment and he signed an acceptance form accepting employment on the terms offered and acknowledged that he had had the opportunity to seek independent advice and further, that he had received a copy of information regarding services available for the resolution of employment relationship problems and grievances ("the acceptance form"). I find that despite his express acknowledgement, Mr Kolovos had not taken advice.

[7] Mr Kolovos concedes his knowledge that his employment would end as specified in the letter of offer and that it was temporary, but he further says that he was told not to worry and that his employment would be "rolled over". He says he was told the same thing each time his employment was extended. Mr Richard Heyes, the Supply Team Leader ("Mr Heyes") says that he *"would not have told Mr Kolovos that his employment contract would be rolled over"* and additionally that *"at no stage did [he] represent to Mr Kolovos that his employment would be rolled over indefinitely"*. NZ Steel's witnesses all deny making any such statements to Mr Kolovos.

[8] By letter dated 18 August 2006, Mr Heyes wrote to Mr Kolovos as follows:-

We are pleased to confirm that your temporary employment as Storeperson in Supply has been extended. Your term of employment will commence on 26th August 2006 and finish approximately Wednesday 1st November 2006. The fixed term employment agreement at this time shall end because of the expected completion of peak workload due to the stores upgrade. Should circumstances change, we would normally give, and would expect in return, one week's notice relative to the termination of your services with the Company.

[9] By letter dated 30 October 2006, Mr Heyes wrote again to Mr Kolovos in these terms:-

We are pleased to confirm that your temporary employment as Storeperson in Supply has been extended. Your term of employment will commence on 2nd November 2006 and finish approximately Wednesday 24th January 2007. The fixed term employment agreement at this time shall end because of the expected completion of peak workload due to the stores upgrade. Should circumstances change, we would normally give, and would expect in return, one week's notice relative to the termination of your services with the Company.

[10] By application dated 8 December 2006, Mr Kolovos applied for a permanent position as warehouse operator but was not successful.

[11] By letter dated 12 January 2007, Mr Heyes, this time as Procurement Team Leader - Materials & Freight, wrote again to Mr Kolovos in these terms:-

We are pleased to confirm that your temporary employment as Storeperson in Procurement has been extended. This temporary position is to cover peak workload. Your term of employment is extended until approximately 18th April 2007. The fixed term employment agreement at this time shall end because of the expected completion of peak workload. Should circumstances change, we would normally give, and would expect in return, one week's notice relative to the termination of your services with the Company.

[12] By application dated 19 March 2007, Mr Kolovos applied for a permanent position as warehouse supervisor but was not successful.

[13] By letter dated 19 April 2007, Mr John Handsaker Procurement Team Leader - Materials & Freight ("Mr Handsaker") wrote to Mr Kolovos in these terms:-

We are pleased to confirm that your temporary employment as Storeperson in Procurement has been extended. This temporary position is to cover peak workload. Your term of employment is extended until approximately 8th June 2007. The fixed term employment agreement at this time shall end because of the expected completion of peak workload. Should circumstances change, we would normally give, and would expect in return, one week's notice relative to the termination of your services with the Company.

[14] A letter dated 9 May 2007 was provided to Mr Kolovos and stated:-

*This is to confirm that your temporary employment as Storeperson in Procurement will finish on Thursday 7th June 2007.
Thank you for your efforts and contribution to NZ Steel during the period of this temporary employment.
Yours sincerely*

*John Hansaker
Procurement Team Leader - Materials & Freight*

[15] By application dated 16 May 2007, Mr Kolovos applied for a permanent position as oilerperson but he was not successful.

[16] Mr Hansaker discussed a further extension of Mr Kolovos' employment with National Distribution Union ("the Union") delegate Mr Shane Eason ("Mr Eason"). Mr Eason advised Mr Hansaker, the Combined Union Site Committee ("the Site Committee") was unlikely to agree to such an extension.

[17] Mr Handsaker formally sought the Site Committee's approval for an extension of Mr Kolovos employment in a document entitled "*Extension of Employment - Temporary Warehouse Officer Steve Kolovos*". The document sought to obtain "*NZS Site committee approval to extend the employment term of Steve Kolovos beyond 12 months*". The extension was requested to "*not later than November 30th, 2007*". Mr Handsaker emailed the document to Mr Eason on 17 May 2007.

[18] The Site Committee met on 18 May 2007. The Site Committee Meeting minutes record this in relation to Mr Handsaker's request:-

A proposal was received to extend the temporary employment of a stores employee. It was the belief of the Site Committee that the employee levels in this area are below the critical mass for the efficient running of the area and that this area are below the critical mass for the efficient running of the area and that this position should be permanent. There needs to be further discussion over this issue.

Motion: That the Site Committee does not endorse the request for the extension of the temporary employee in the Stores as this would be contrary to clause 12.5 of the Collective Agreement. Carried.

[19] On Monday 21 May 2007 in a feedback meeting, the Site Committee convenor Mr Peter Elsley ("Mr Elsley") advised NZ Steel's Glenbrook Employee Relations Manager Mr Barry McLeod ("Mr McLeod") that the request to extend Mr Kolovos' temporary employment was not agreed by the Site Committee because it believed that the numbers in the warehouse were below the "critical mass" required in the area.

[20] Later that day at a stores monthly meeting, a presentation of a proposed restructuring did not show Mr Kolovos' role. It was announced that Mr Kolovos was leaving and he was thanked for his service.

[21] On Mr Kolovos' final day of employment, Mr Brian Gleeson, NZ Steel Warehouse Supervisor provided a reference for Mr Kolovos dated 7 June 2007 as follows:-

Steve Kolovos has been employed with NZ Steel Procurement Department as a store person for the past 12 months.

During this period Steve has worked with a great deal of enthusiasm in the various jobs required. Steve's duties included day to day running of the Warehouse, forklift duties, relocating products, goods receipting and issues and has obtained an in-depth knowledge of SAP.

At all times I have found Steve to be totally honest, reliable and go out of his way to meet out(sic) customers needs.

I wish Steve well and am sure that whatever position he undertakes he will be an asset within that organisation.

Yours faithfully

Brian Gleeson

Warehouse Supervisor

[22] The following day Mr Elsley asked Mr McLeod to consider offering Mr Kolovos permanent employment similar to an accommodation made for a previous employee. Mr McLeod subsequently advised Mr Elsley that the Human Resources Vice-President had not agreed to accommodate Mr Kolovos in the same way.

[23] I find that NZ Steel subsequently replaced Mr Kolovos with another temporary worker to perform the same work.

[24] Mr Kolovos was a member of the union. The letter of offer specified that the terms and conditions of his employment were those set out in *The NZ Steel Collective Agreement* effective from 1 June 2005 to 31 May 2008 ("the Collective"). The Collective has these relevant provisions:-

12. Temporary Employees

12.1 Definition

A "Temporary Employee" is a person on a fixed terms contract of no less than two weeks and no longer than three months, extendable beyond three months after consultation with the appropriate plant/department Union delegate. Terms and conditions of employment are those expressed in the CA except for the provisions relating to Redundancy, Medical Insurance & Pension benefits.

12.2 Consultation

For all engagements of Temporary Employees the appropriate Union delegate will be consulted prior to the offer of employment. A Temporary Employee engaged for peak work load may be moved to a different plant, within the term of employment. The appropriate Union delegate at that plant to which the employee is transferred shall be consulted.

12.4 Employment Criteria

Temporary Employees may be employed for peak workload, training and projects, and absences. In cases of declared job redesign the company will approach the union, through SCT on a case by case basis to gain agreement on the usage of temporary employees.

12.4.1 Peak Workload

"Peak Workload" unexpected workload over a defined period that the current workforce is unable to undertake. Such employment may be for the purposes of:

- *An increase in work output for delivery, packaging and the like.*
- *Market related increases in shifts which enables the company to respond immediately to customer requests.*

12.5 Permanent Employee Manning Levels

Temporary Employees will not be employed when the number of permanent employees is below the "critical mass" required for the efficient operation of the plant.

12.7 Period of Employment

12.7.1 If Temporary Employees have accumulated 52 weeks employment with the company they shall be deemed to be a permanent employee unless agreed otherwise by the site committee.

12.7.2 Should the period of absence between assignments be greater than 13 weeks, Temporary Employees will not have any time worked credited to their total time worked.

12.7.3 Management may terminate the employment of Temporary Employees if they are employed to cover absences due to ACC, illness and parental leave, prior to, on or after the termination date specified in their letter of offer, by one week's notice in writing.

12.11 Service

12.11.1 Should Temporary Employees be successful in securing permanent employment at the company, then they will be deemed to have commenced their service from the nominal starting date of their first engagement as a temporary employee. Service-related payments will commence from that date.

The merits

[25] I have considered the very helpful submissions the lawyers have provided. I consider these issues arise for determination:-

- (i) Was Mr Kolovos a dismissed?; and if so
- (ii) Was the dismissal justifiable?; and if not
- (iii) What resolution is appropriate to settle the problem.

Was Mr Kolovos dismissed?

[26] NZ Steel says Mr Kolovos was not dismissed. It says Mr Kolovos' last period of fixed term employment ended on 7 June 2007 and that under the Collective it could only offer Mr Kolovos a further temporary agreement with the agreement of the Site Committee. It says that on 18 May 2007 when the Site Committee refused to approve a further period of temporary employment for Mr Kolovos, his employment ended on 7 June 2007 by effluxion of time.

[27] Mr Kolovos was purportedly a Temporary employee. Under the Collective at clause 12.1, such a person is one on a fixed-term contract of "*no less than two weeks and no longer than three months*". Fixed-term employments are governed by section 66 of the *Employment Relations Act 2000*. That section provides:-

66. *Fixed-term employment—*

- (1) *An employee and an employer may agree that the employment of the employee will end—*
 - (a) *at the close of a specified date or period; or*
 - (b) *on the occurrence of a specified event; or*
 - (c) *at the conclusion of a specified project.*
- (2) *Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must—*
 - (a) *have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and*
 - (b) *advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.*
- (3) *The following reasons are not genuine reasons for the purposes of subsection (2)(a):*
 - (a) *to exclude or limit the rights of the employee under this Act;*
 - (b) *to establish the suitability of the employee for permanent employment.*
 - [*(c) to exclude or limit the rights of an employee under the Holidays Act 2003.*]
- (4) *If an employee and an employer agree that the employment of the employee will end in a way specified in subsection (1), the employee's employment agreement must state in writing—*
 - (a) *the way in which the employment will end; and*
 - (b) *the reasons for ending the employment in that way.*
- (5) *Failure to comply with subsection (4), including failure to comply because the reasons for ending the employment are not genuine reasons based on reasonable grounds, does not affect the validity of the employment agreement between the employee and the employer.*
- (6) *However, if the employer does not comply with subsection (4), the employer may not rely on any term agreed under subsection (1)—*
 - (a) *to end the employee's employment if the employee elects, at any time, to treat that term as ineffective; or*
 - (b) *as having been effective to end the employee's employment, if the former employee elects to treat that term as ineffective.*

[28] The lawfulness or otherwise of any fixed-term employment is governed by this section. But the effect of Clause 12.1 of the Collective is that the parties agree any such fixed-term employment will be for periods of between two weeks and three months. They agree to recognise persons employed this way as "Temporary Employees". Fixed-term employments of durations outside of those limits will give rise to a technical breach as a breach of a term of the Collective, but will not necessarily for that reason alone render the fixed-term nature of the employment unlawful because section 66 continues to govern the situation.

[29] There are two pre-requisites to fixed-term agreements being entered into. The first is for the employer to have genuine reasons based on reasonable grounds to specify that the employment is to end in a specified way and, second, that the employee must be advised when and how the employment is to end and the reasons for it.

[30] In mid 2006, NZ Steel commenced a reorganisation of its warehouse. This was a multimillion dollar restructuring project which involved the dismantling of the existing storage system and the construction of a new vertical carousel shelving system. It required all stock housed in the warehouse to be unloaded from the old storage system, transferred to a temporary warehouse and then sorted and reshelved as construction of a new vertical shelving system was completed. It was initially anticipated that this project would be completed by December 2006. I shall call this warehouse reorganisation the "upgrade project".

[31] The work involved in the upgrade project was regarded by the parties as 'Peak Workload' under clause 2.4.1 of the Collective. I find that Mr Heyes had discussed the upgrade project with Mr Eason and Mr Sonny Williams a union area representative at the time. It is disputed as to whether Mr Kolovos was to perform normal warehouse duties or the work of the upgrade project. Notwithstanding that, I regard this upgrade project as the genuine reason based on reasonable grounds for Mr Kolovos' fixed term employment. It was, I find, the justification and agreement by the union for his temporary engagement. I find that the upgrade project was the real and actual reason for the limited duration of Mr Kolovos' employment.

[32] But was the conclusion of the upgrade project the agreed end?. Section 66 requires, **before** the employment is actually agreed, advice of when or how the employment is to end together with the reasons for the employment ending that way. The section additionally requires the employment agreement to state the way in which the employment will end and the reasons for the employment ending that way. Although the phrasing of these two informational requirements is dissimilar, I consider they are in essence the same thing. There must be informed consent, **before** there is actual agreement to enter into the employment and as evidenced by the written record in the employment agreement subsequently.

[33] I find that Mr Kolovos was provided with the letter of offer in May. That I accept was the advice to him before he accepted employment for fixed term employment. On 8 June 2006 when he actually commenced work, he accepted the terms of the employment as evidenced by his signature

on the acceptance letter of "the Contract of Employment" which I find refers to the letter of offer.

[34] It is disputed that Mr Kolovos was contemporaneously told that notwithstanding the various nominated and extended end dates, his employment would be rolled over. But it is clear that this was in fact what actually occurred. I consider it a reality that both parties accepted Mr Kolovos was engaged for the duration of the upgrade project and this was what was what he was offered and accepted in principle.

[35] The letter of offer specified that the employment would "*finish approximately 25th August 2006*". This I find is the agreed end for the purposes of subsection 66(1). I find that the genuine reasons for the employment ending that way for the purposes of subsection 66(2)(a) was specified "*because of the expected return to normal workload for this department*".

[36] The agreed "end" specified at subsection 66(1) must be for the "genuine reasons" at subsection 66(2)(a). It is the genuine reasons that permit the end. If this were not so, section 66 would not offer protection of tenure that I regard it ultimately directed to. But I conclude that the agreed end and the specified genuine reason in this case are unconnected and do not correspond. The expected *return to normal workload* refers to the completion of the upgrade project. But there is no connection between that statement and the specified or advised end *on approximately 25 August 2006*.

[37] Nor do any of the subsequent extensions (whether or not there was consultation) alter my findings. None of them correspond or have any connection with the stated genuine reason. The real end actually being the completion of the upgrade project, never changed. The initial and subsequent extension dates never corresponded to the actual genuine reasons.

[38] The nominated end dates were completely at odds with the known life of the upgrade project as six months. I find that NZ Steel nominated the end date/s solely because it/they coincided with the stipulated duration constraints at clause 12.1 of the Collective. But I find that Mr Kolovos was not told that this was the reason for the specified end date of "*finish approximately 25th August 2006*" or for any of the subsequent extensions as the reason for why his employment would end on each of the expressed end dates. I therefore find that Mr Kolovos was not advised the actual reason for why his employment was to end on the various end dates over the course of his employment. I further find that his employment agreement, being the letter of offer and subsequent extension

letters, did not sufficiently and properly state the reasons for why his employment was to end on the dates variously specified.

[39] I do not accept the submission that such a nomination was required by the Collective and is a genuine reason for the agreed end. The submission is contrary to the evidence because the genuine reasons are to be taken as those NZ Steel explicitly stated in the letter of offer and subsequent extensions. The specified reason/s was/were not the actual reason/s for the specified end date/s.

[40] Accordingly, for these reasons, I conclude that there has not been compliance with section 66(4) of the Act inasmuch as the employment agreement did not properly state the reason for the initial and subsequent extensions of the end of the employment. Mr Kolovos now elects to challenge the cessation of his employment at NZ Steel, I regard him as electing to treat the fixed-term provision of his employment as ineffective pursuant to section 66(6). I consider he is entitled to do so. His employment was therefore indefinite and could only be terminated for cause. After 7 June 2007, Mr Kolovos had continuous employment. NZ Steel denies and resists Mr Kolovos election and in doing so, sends him away and dismisses him.

Was the dismissal justifiable?

[41] I have found that Mr Kolovos has been dismissed. I find no justification for his dismissal and for the purposes of section 103A of the Employment Relations Act 2000 I find that NZ Steel's actions and how it has acted, are not what a fair and reasonable employer would have done in all the circumstances at the material times. **I find that Mr Kolovos was unjustifiably dismissed. He is entitled to remedies in settlement of that grievance.**

[42] I do not consider that NZ Steel was obliged to consult with Mr Kolovos prior to the expiry of the temporary employment because there was no decision to terminate in that situation. The expiry of a legitimate fixed-term employment is not a dismissal. NZ Steel was not obliged to consult prior to the end of a fixed-term employment. It is only now that the employment is determined not to have been fixed-term.

[43] In concentrating on how best to resolve this employment relationship problem and if I am wrong in my conclusions to this point, I also consider that by operation of the Collective, Mr Kolovos was entitled to permanent employment as from 8 June 2007. I deal with that now.

The deeming provision

[44] Clause 12.7.1 provides that *"If Temporary Employees have accumulated 52 weeks employment with the company they shall be deemed to be a permanent employee unless agreed otherwise by the site committee."*

[45] There is nothing ambiguous about this clause and there is no reason to resort to extrinsic material to ascertain its meaning. I interpret the words according to their ordinary natural meaning.

[46] I calculate that at 7 June 2007, Mr Kolovos had accumulated 52 weeks employment with NZ Steel.

<i>8 June 2006 to 25 August 2006</i>	<i>11 weeks</i>
<i>26 August 2006 to 1 November 2006</i>	<i>10 weeks</i>
<i>2 November 2006 to 24 January 2007</i>	<i>12 weeks</i>
<i>25 January 2007 to 18 April 2007</i>	<i>12 weeks</i>
<i>19 April 2007 to 7 June 2007</i>	<i>7 weeks</i>
<i>Total</i>	<i>52 weeks</i>

[47] Mr McLeod gives evidence that under clause 12.7.1, *"an employee may not be engaged on a temporary basis for more than 12 months without the agreement of the Site Committee"*.

[48] He describes a process he says is custom and practice at NZ Steel that where a temporary employee is getting close to 12 months of employment on site, and the company wishes to retain the employee, the company reviews whether it is necessary or appropriate to seek the Site Committee's approval to extend the temporary employment contract, or whether the employee should be offered permanent employment. If NZ Steel decides that there is genuine reason to continue to employ the employee on a temporary basis, it seeks the Site Committee's approval for this. This is the process he says was followed with Mr Kolovos.

[49] Similarly, Mr Handsaker says the reason for the 8 June 2007 end date expressed in his letter to Mr Kolovos of 19 April 2007 was that *"this was the maximum amount of time under the Collective Agreement that Mr Kolovos could be employed as a temporary employee before the agreement of the [union] would be required for an additional period of fixed term employment"*. He also says that *"Given clause 12.7.1 of the Collective Agreement, NZ Steel was not able to offer Mr Kolovos a further period of fixed term employment without the agreement of the Site Committee"*. This was

the reason he wrote in the terms he did to Mr Kolovos in his letter of 9 May 2007 but this time with the end date of Thursday 7 June 2007.

[50] Mr Eason confirms that it is custom and practice at NZ Steel to apply to the Site Committee for extensions of temporary employment for more than 52 weeks. Mr Elsley says the Site Committee can look at extending a Temporary employee beyond 52 weeks and retain their status as a Temporary. He says this is what NZ Steel sought to do in respect of Mr Kolovos. Mr Elsley's evidence is that there have been between 24 - 36 such applications to the Site Committee. Apparently, only two, including Mr Kolovos, have been refused.

[51] I do not agree with what these witnesses, both for NZ Steel and the Union, say is the effect of clause 12.7.1. That clause says nothing about extending temporary engagements. It says nothing about preserving temporary status, or as Mr McLeod says, impliedly that an employee is not to be made permanent. The clause does not say what the witnesses say it does. There is nothing ambiguous about it and no reference to other sources is necessary to ascertain its meaning.

[52] And what of custom and practice? I have considered clause 8.5 of the Collective. I do not consider that any arrangement in the nature of custom and practice can be applied or enforced contrary to the express terms of the Collective, in this case clause 12.7.1. The effect of clause 12.7.1 is clear and I give effect to its terms.

[53] I find that clause 12.7.1 means exactly what it says, that a Temporary Employee who has accumulated 52 weeks employment with NZ Steel is deemed to be a permanent employee unless the Site Committee agrees otherwise. There is nothing complicated about that.

[54] Mr Kolovos had accumulated exactly 52 weeks service on his last day at work on 7 June 2007. I conclude that employment from 8 June 2006 to 7 June 2007 is 52 weeks precisely. The Site Committee did not give its agreement that Mr Kolovos should not be made permanent. The evidence is that it declined to agree to an extension of his temporary employment. I do not accept that it impliedly agreed in declining the same, that Mr Kolovos should not be permanent. The proposal to extend his temporary employment is an entirely different question from whether he should be permanent. I find that the Site Committee was never asked to agree that Mr Kolovos should not be made permanent. In the absence of such agreement, clause 12.7.1 of the Collective operates to deem him a permanent employee.

[55] I also do not accept the submission that as at 9 May 2007 when NZ Steel advised Mr Kolovos his employment would end on 7 June 2007, the deeming provision operating by default was rendered ineffective by express advice affirming the notified date of termination. Affirming the end date of a discrete period of Temporary employment has no effect on the ultimate accumulation of weeks of service. The advice of 9 May 2007 did not operate to terminate Mr Kolovos service before he would accumulate 52 weeks employment. All that clause 12.7.1 requires is the accumulation of 52 weeks service. The result I conclude, is that as from 8 June 2007 and notwithstanding any earlier purported notice of termination, Mr Kolovos was deemed a permanent employee.

[56] I find then, applying the terms of the Collective, that Mr Kolovos was from 8 June 2007 deemed a permanent employee. I further find, that there was no agreement otherwise by the site committee - there was no agreement by it that Mr Kolovos should not be a permanent employee. I find too, that NZ Steel did not seek that agreement. The result is that Mr Kolovos is from 8 June 2007 a permanent employee, that status being defined at clause 11 of the Collective.

[57] Consequent upon the effect of the deeming provision, Mr Kolovos is to be regarded as successfully securing permanent employment at the company and is entitled to the further deeming provision at clause 12.11.1 that his service is thereafter continuous running from the nominal start date of his first engagement as a temporary employee from 8 June 2006.

[58] In affirming an end date of 7 June 2007 by letter of 9 May 2007, NZ Steel denied Mr Kolovos the effect of the deeming provision, i.e his continuous employment. In affirming that end date contrary to his deemed continuous employment, NZ Steel dismissed Mr Kolovos. It was not entitled to do so and there is no justification for the dismissal.

The determination

[59] For the reasons set out above, I now determine that Mr Kolovos has been deprived of his continued employment at NZ Steel when he should not have been. **I determine the substantial merits of this employment relationship problem in his favour.**

What resolution is appropriate to settle the problem?

[60] Having made the above findings and in considering both the nature and the extent of the remedies to be provided, I am bound to consider the extent to which Mr Kolovos' actions (if any) contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find that Mr Kolovos did not contribute to the situation that led to his personal grievance and there is no basis to reduce the remedies to be awarded to him.

[61] Mr Kolovos wishes to return to employment at NZ Steel. I see no impediment to his return to employment at NZ Steel and his counsel advises he is willing to be flexible about which role he is reinstated to or placed in. I see no impracticability to his reinstatement. I am mindful that reinstatement is the primary remedy and I consider it appropriate in this instance to order the same. **I order New Zealand Steel Limited to immediately reinstate Steven Kolovos to either his former position or a position no less advantageous to Steven Kolovos that he may accept. This order is to take effect from Monday 27 August 2007.**

[62] I am satisfied that Mr Kolovos has lost wages as a result of this employment relationship problem and that he has taken steps to mitigate his loss. I find that he took sufficient steps to find other work although unsuccessfully. **I order New Zealand Steel Limited to reimburse Steven Kolovos his lost wages from 8 June 2007 to the 24 August 2007. If there is any dispute about quantum, I will determine the matter upon a request in writing from either party to do so, but not later than 28 days after the date this Determination.**

[63] Mr Kolovos says that he was devastated by the way in which his employment ended. He says he was shocked and stunned, that he was hurt and felt unfairly treated. He says he felt he has let his family down to some extent. His wife says he has suffered insomnia and anxiety, that he has been withdrawn emotionally and physically. She says he has become anxious, nervous and restless and is smoking more to stay calm. I am satisfied that Mr Kolovos has suffered hurt and humiliation as a result of his personal grievance. Having regard to his evidence, the nature of the grievance and the length of his service, **I order New Zealand Steel Limited to pay compensation to Steven Kolovos of \$5,000.00.**

Costs

[64] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr Kolovos' union is to lodge and serve a memorandum as to costs within 14

days of the date of this Determination. Mr Skelton is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination.

Leon Robinson
Member of Employment Relations Authority