

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 108/08  
5037663

BETWEEN                      NEW ZEALAND MEAT  
                                         WORKERS' UNION  
                                         Applicant

AND                                PPCS LIMITED  
                                         Respondent

Member of Authority:        Alastair Dumbleton

Representatives:              Simon Mitchell, counsel for Applicant  
                                         Geoff Carter and Victoria Donaghy, counsel for  
                                         Respondent

Investigation Meeting:       28 August 2007 and 17 January 2008

Memoranda Received        28 and 30 July 2008

Determination:                21 August 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     By letter of 10 October 2005 sent to the manager of the PPCS Limited meat processing plant at Waitotara, the Meat and Related Trades Workers' Union of Aotearoa Inc invoked the disputes provisions of the PPCS Limited Waitotara Plant Collective Employment Agreement.

[2]     The plant agreement is expressed to apply to members of either of the Meat and Related Trades Workers Union of Aotearoa Incorporated or the New Zealand Meatworkers and Related Trades Union Incorporated, who are employed at the plant to undertake any of the work specified in the agreement.

[3]     In its letter to the plant manager Mr Dave Baillie, the union asserted that a redundancy situation existed "*for the three day night boning shift that has not*

*commenced work for well over a year.*” The letter stated that the last period of work for the employees on that particular shift had ended in February 2004. The union contended in its letter that the workers had become redundant within the definition of redundancy at clause 27 of the collective agreement and that consequently they were entitled to compensation.

[4] When no resolution of the dispute was reached in mediation the New Zealand Meat Workers’ Union lodged an application in the Authority in December 2006. The union sought a declaration that the redundancy provisions of the collective employment agreement were applicable to those employees who had been working on the three night boning shift (“3NB”) up to February 2004, when work on that particular shift had stopped after the Waitotara Plant became flooded.

[5] Although the employer later expressed to the union its intention to operate that shift again, it has not been resumed.

[6] The union accepts that a redundancy situation was not created by the early closure of the 3NB shift during the 2003/04 season, as the employment of meat workers at the plant is seasonal. The union contends that the night boners who had been on the 3NB shift became redundant when they were not called back to work after their seasonal lay off. The union in its application to the Authority also noted that for PPCS to avoid a redundancy situation by offering alternative work, under the provisions of the agreement its employees needed to be redeployed formally.

[7] The union’s application refers to clause 27.3(b) of the collective agreement, which defines redundancy as a situation where:

*In the case of a seasonal employee, that employee’s usual seasonal employment is made unavailable by the Employer, the unavailability being attributable wholly or mainly to the fact that the employee’s position or usual position is, or will become, superfluous to the needs of the Employer.*

[8] In responding to the claim PPCS accepted that the flood occurring in February 2004 had caused the closure of the 3NB shift for the 2003/04 season earlier than expected. The employer contended that workers on that shift had been employed in the position of “*meat workers*” rather than “*three day night boning shift workers,*” and that as they had been offered the same or similar work for the 2004/05 season there was not a redundancy situation.

[9] At the investigation meeting in August 2007 the Authority received an agreed statement of facts from the union and PPCS.

[10] The parties agreed that at relevant times PPCS had been operating four boning shifts and that the 3NB had not been called back in the 2004/05 season after the Waitotara works had been flooded.

[11] The parties agreed (paragraph 9 of Agreed Statement of Facts) that all employees who had worked the 3NB shift were offered work on the three day boning shift ("3DB") in the 2004/05 season, and that some had accepted the offer while others had declined it.

[12] After the August investigation meeting the issue was refined down to one of whether day work offered to workers previously employed on the 3NB shift was permanent or casual in nature.

[13] This essentially factual matter became the subject of a further investigation meeting, held in January 2008. Evidence was then given by a number of workers who had been on the 3NB shift at material times, and also by management employees of PPCS.

[14] That evidence satisfies the Authority that the employees were offered work that was accepted in some cases but was declined in others, either because alternative work had been found or workers could not take up any employment for some reason.

[15] I accept the evidence of Mr Kent Reynolds, a plant supervisor at Waitotara, that before the end of the 2003/04 season, in mid 2004 he had offered work on the 3DB shift, in order of seniority, to the workers listed as having been on the 3NB shift. It was casual not permanent work. Many declined the offer because they wanted night work.

[16] I also accept the evidence of Mr Brent Firman another plant supervisor, that in order of their seniority he had offered 3DB positions for the 2004/05 season to those workers on the 3NB list, to fill vacancies on the 3DB. I accept that all of those on the 3NB list were spoken to by Mr Firman and offered positions, or messages were left for them about the availability of those positions. At that time due to the labour market, PPCS had vacancies it wanted to fill. I accept that the positions offered by Mr Firman for the 2004/05 season were permanent and not casual.

[17] Further, I accept the evidence of management that PPCS had advised the union it was contacting 3NB workers about the vacancies to ascertain their availability for that work in the 2005/06 season.

[18] A number of 3NB workers accepted the 3DB positions, which PPCS continued to offer to 3NB employees based on their list seniority.

[19] I accept that in June 2006 employees who had been on 3NB were again contacted in respect of the 2006/07 season and offered positions on the 3DB shift. A number of those employees said that they were not interested in the work unless the 3NB shift started up again. Ultimately that shift was not called back by PPCS, but there is no suggestion that the employer had earlier misled the workers as to its intentions in this regard.

[20] I am satisfied that at material times PPCS did wish to re-employ the applicants represented by the union in this case and made all reasonable efforts to contact them with that offer. It seems to me likely that workers who did not hear about the offer directly from Mr Firman heard of it through messages left at their home or with their union, but declined the opportunity for personal reasons including having found other employment.

[21] The Summary attached to the Agreed Statement of Facts shows that 5 workers were *“offered work but did not accept.”*

[22] I find that Mr Andrew Dyke accepted a permanent position on the 4NB shift for the 2006/07 season, after being a casual on that shift for the 2005/06 season. In the case of Mr Michael Tamakehu, he accepted a position on the 3DB shift in late 2004 and then, for the 2005/06 season, worked on the 4NB shift until resigning in 2007.

[23] I therefore find that the 3NB workers were offered permanent positions on the more highly rated day boning shift for the 2004/05 season. Many of those workers also accepted the positions for the 2005/06 season. I note however the apparent agreement of the parties that all the material facts relating to this dispute occurred prior to the 2005/06 season.

**The Alliance case**

[24] In submitting that there was no redundancy in the circumstances of this case, PPCS relied on the reasoning of the Employment Court in the *Alliance* case; *NZ Meat Processor's etc IUOW v Alliance freezing Co (Southland) Ltd* [1991] 1 ERNZ 1213.

[25] The definition of redundancy considered in that case by the Court, also in relation to meat workers, was the same in material respects as that applying to the 3NB shift workers employed at Waitotara. The Court noted an apparent differentiation made in the employment agreement between “*position*” and “*employment*” but found that loss of the former did not necessarily connote loss of the latter. It held that reasonable flexibility is required on the part of the employee and that if a “*position*” has disappeared but the worker has been offered another position, it is a matter of fact and degree whether that new position is within the employment agreement or is so fundamentally different at core that the employment relationship has been severed.

[26] The Court found that although the differences between the Alliance workers' former position lost and new position offered included lower rates of pay and work at night instead of day, those changes did not amount to an essential difference in the context of work in a seasonal type industry such as meat works. The employer was found to have continued to make available to the workers their usual seasonal employment and they were not therefore redundant.

[27] I find that the *Alliance* case is not distinguishable to any significant degree. I uphold the submission made on behalf of PPCS that any worker who had been on the 3NB shift and who was offered permanent work on the 3DB shift for the 2004/05 season, was not redundant with the meaning of clause 27 of the collective agreement.

[28] In the particular seasonal industry of PPCS, although the position offered by it was different, because work on the 3DB shift was during the daytime whereas the 3NB position had been night work, the former was suitable alternative employment to the latter. Such a difference in the time of day when the work was to be performed had been present in the *Alliance* case but was held not to give rise to a situation of loss of employment.

[29] As a matter of fact and degree, I find that although there was loss of position there was no loss of employment, as the workers were not superfluous to the

employers needs. Their “*usual seasonal employment*,” as that expression is used in clause 27.3 of the collective agreement, was made available to them in the 2004/05 and in subsequent seasons. The core functions of the work remained the same as before.

### **Determination**

[30] I therefore find that the shift workers concerned in this case were not redundant for the purposes of clause 27 of the collective agreement after the 2003/04 season. Consequently no redundancy compensation is due to them.

### **Costs**

[31] If there is any question as to costs, the Authority expects the parties to try and resolve it themselves. If application must be made, memoranda may be filed in the Authority in the usual way.