

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 280/07
5081873

BETWEEN POSTAL WORKERS'
ASSOCIATION
Applicant

AND NEW ZEALAND POST
LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Simon Mitchell for the Applicant
Penny Swarbrick for the Respondent

Investigation Meeting: 27 August 2007 at Auckland

Determination: 10 September 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The parties seek help interpreting a provision in their collective employment agreement about payment of an allowance to postal delivery workers ("Posties") who agree to use their motor vehicles on the Respondents' business. The particular issue relates to payment of an allowance to Posties who have delivery routes ("rounds") that the Respondent designates as requiring a motor vehicle to get to the starting point or other parts of the round.

[2] In investigating and determining the dispute, the Authority had the assistance of an agreed statement of facts; statements of problem and reply; a witness statement from the Applicant's Chairman and working Postie, Garth McCullough; and oral evidence from Michael Hunt, who is also an officer of the Applicant and a working Postie, and Rowena O'Neil, the Respondent's Auckland Delivery Business Manager. Further background on developments in the organisation of rounds and the payment

of motor vehicle allowances was available through an earlier determination of the Authority – *Postal Workers Union v New Zealand Post Limited* (WA 18/04, 17 February 2004) – and an internal briefing memo prepared by one of the Respondent’s managers and dated 28 February 2007. Counsel spoke to written submissions.

The facts

[3] Posties’ rounds are completed either on foot or on bicycles. Some rounds – usually where the first delivery point is at such a distance from the branch office that it is sensible for the Postie to travel to the first delivery point by motor vehicle – are designated as “C-motor rounds”. Rounds of this type were introduced around 15 years ago and their numbers have increased as the Respondent has, over the years, reorganised its business into larger branches with rounds over a wider geographical area.

[4] The collective agreement between the parties has the following clause which applies to workers who use their own motor vehicles for Post business, including those on C-motor rounds:

Employees authorised and who agree to use their own motor vehicle for New Zealand Post business will be paid a motor vehicle allowance in accordance with the following rates:

Cars: \$0.62 per km

Motorcycles: \$0.31 per km

Note: The rates expressed in this clause will be as published by the IRD and may change accordingly. Current IRD rates will apply.

[5] Agreement by a Postie to use her or his own vehicle for a C-motor round is recorded in a Vehicle User Agreement (“VUA”). Posties using their own cars on a C-motor round have a bike rack installed to carry their NZ Post-issued delivery bike to and from the beginning and end points of the round.

[6] The VUA sets out various requirements of Posties – such as holding a valid licence and other matters not relevant to the immediate issue. What is relevant is that the VUA identifies three elements of travel incurred on a C-round for which the Respondent will pay the per kilometre allowance:

- (i) the distance between the delivery branch and the start of the delivery round; and

- (ii) the distance travelled between delivery sections as part of the delivery round, and
- (iii) up to the recognised finishing point of the round, a point determined by the company.

[7] This recognised finishing point is called “the acquittance point” by the parties. It is usually a post box on the street or at a Post Shop. At the designated acquittance point the Postie puts any undelivered mail into a satchel provided for the purpose and posts that satchel in the post box. That procedure removes the need for the Postie to return to his or her delivery branch to drop off undelivered mail at the end of the round.

[8] Occasionally, after finishing their round, Posties are required by their supervisor to return to the delivery branch office where they have started their working day by picking up and sorting mail for delivery. I was told that was usually when a Postie was going on leave and needed to leave his or her equipment – such as mail bags and bike – for the use of another Postie while they were away. On such days, the branch is the “acquittance point” for the particular day.

The issue

[9] At issue between the parties is the meaning of the phrase “for New Zealand Post business” in the motor vehicle allowance clause of the collective agreement. The meaning, in turn, affects whether the three elements set out in the present form of the VUA fully meet the requirements of that clause.

[10] The Applicant seeks declarations that:

- (i) where Posties use their own vehicles to travel from the acquittance point to home, this trip may be for the business use of the Respondent; and
- (ii) in circumstances where the particular Postie’s journey from the acquittance point to home is longer than it would be to their delivery branch, the Postie is entitled to be paid the relevant motor vehicle allowance for the distance between the acquittance point and the delivery branch.

Applicant's argument

[11] The Applicant says the Respondent correctly recognises its responsibility under the collective agreement to pay for the outward journey of Posties heading off from their branch office to undertake mail deliveries, but wrongly refuses to pay for a return journey from the acquittance point at the end of the delivery round.

[12] It says Posties are entitled – if the collective agreement is read correctly – to be paid the allowance for a return journey from the acquittance point in some, but not all, circumstances. It says the relevant kilometre rate should be paid for the part of a return journey equivalent to the distance between the acquittance point and the delivery branch. In effect it says that the Postie should be left to meet only the cost of the kilometres additional to those that would be required to get back to the delivery branch, as it is only that additional distance which amounts to a personal journey from work to home.

[13] I refer to 'equivalent' distances of travel because Posties do not necessarily travel past their delivery branch on their journey home. Some in fact may be heading to homes (or other personal activities) which are in a direction different from that to the branch.

[14] The Applicant concedes there is no entitlement to the allowance where the distance to the Postie's home from the acquittance point is shorter than it would be to return to the delivery branch. However in the situation of the longer distance to home, the Applicant says the Posties' vehicles remain in use "*for New Zealand Post business*", in terms of the phrase in the collective agreement, and the Postie is entitled to be paid the allowance for the kilometres equivalent to those that would be travelled from the acquittance point to the delivery branch.

[15] Further the Applicant says the Posties remain on Post business until they have secured their mail bags and bicycle, either at the branch or at home. It accepts this requirement is not immediate and that the Postie may attend to personal business along the route home – such as stopping to shop, pick up children from school or visit

friends and family – but says at least part of the purpose of the use of the vehicle remains, throughout, for the business use of Post.

The Respondent's argument

[16] The Respondent's argument is that the Posties' working day – and hence the use of their motor vehicle for New Zealand Post business – ends at the acquittance point. At that time, once the Postie has deposited his or her satchel of undelivered mail into the post box designated as the acquittance point for that round, the worker is free to attend to his or her own business and New Zealand Post's business is at an end.

[17] It says Posties using their own vehicles for C-motor rounds are in no really different position than as a Postie doing only a walking or cycle round or postal workers who are remain at the delivery branch all day. At the end of the working day, they leave the workplace and are free to do whatever they chose so no further remuneration accrues to them. For the C-motor round Posties and the cycling or walking Posties, the 'boundary' (my term) of that workplace and working day is the acquittance point rather than the delivery depot but the workers are no less free – and on their own business rather than the Respondent's – at that point.

[18] It says the requirement to secure the bicycle and mail bags once reaching home after finishing delivery duties is an obligation on the worker, and in the interest of the Respondent, but does not amount to New Zealand Post business.

Discussion

[19] The phrase “for New Zealand Post business” is to be interpreted objectively, not as the parties might subsequently and subjectively say they intended the words to mean. The words should be taken to mean what a reasonable person in the field, knowing all the background, would take them to mean.¹

[20] Having considered the agreed facts, additional evidence given and submissions of the parties, I am satisfied that the present matter is to be properly resolved by simply applying the plain meaning of the words to the facts.

[21] The clause of the agreement in contention is about the use of a Postie's personal motor vehicle. It is a question of fact as to whether the motor vehicle – at the relevant time – is in use for the Respondent's business and that is what must be determined in applying the clause.

[22] It is not a question of whether the Posties themselves are on "New Zealand Post business" at the time when the vehicle is in use.

[23] That is a practical distinction required by the wording of the clause. It is also disposes of one of the potential indicators of whether New Zealand Post business is in fact being conducted – that is whether the Posties are on pay at the relevant time. That is not a helpful indicator in the particular circumstances because Posties do their rounds on a "task and finish" basis. If they can get the mail delivered on their round within the time allocated they are, after despositing the satchel of any undeliverable mail in the acquittance point, free to go home but are still paid for their full rostered hours. However, because of the task and finish arrangement, they are at that point not on New Zealand Post business.

[24] In circumstances where delivery is not completed within the rostered hours, a Postie is paid overtime for the time required to complete the work up to the time of reaching the acquittance point.

[25] Consequently the Postie who is travelling home from the acquittance point may be on 'paid' time if they have completed the round within rostered hours, or no longer on paid time if they finished the round on or after the number of rostered hours (and any necessary overtime). So there are a mix of possible circumstances at the time travel occurs but, as noted above, that is not the relevant question.

[26] Rather the issue is whether the use of the motor vehicle at the relevant time is for New Zealand Post business.

[27] Broadly the use of the word "business" in this context must be taken to mean – in a phrase given in the Concise Oxford English Dictionary (11th edition) definition – "work to be done or matters to be attended to" for the purposes of the Respondent.

¹ *Association of Staff in Tertiary Education Inc v Hampton* [2002] 1 ERNZ 491, 499 (EC)

[28] However that cannot extend to every task or activity done by a Postie that might benefit the Respondent. Otherwise it could include the use of the motor vehicle to get the Postie from home to the delivery branch at the start of each delivery day.

[29] Such activity would be attending to the matter of getting staff and their bikes and bags into position to begin work. However the Applicant accepts that such travel from home to work is excluded, as is travel from the acquittance point to a home closer than the distance back to the delivery branch – yet both journeys, on my analysis, would be included in the broadest definition of business as a matter being attended to for the purposes of the Respondent. And I accept, as the Respondent submitted, that the Applicant’s reasoning about the journey from home to work at the beginning of the work day applies equally to those homeward journeys at the end of the working day that are longer than the distance from the acquittance point to the delivery branch.

[30] The Respondent concedes there is a task that is required of the Posties once they return home – that is to secure their bikes somewhere on their home property. The Posties are required – as I understood the evidence – to take their bike off the vehicle’s carrying rack and lock it up somewhere overnight.

[31] However I accept that this task cannot be elevated to the level of being deemed work which is required to be done. Rather it is a fulfilment of an obligation to secure equipment after a working shift, and no different than for those Posties who do cycle-only rounds who then ride their work bike home. In the latter example, that Postie is carrying out a personal journey and not one for the purposes of the Respondent’s business.

[32] Consequently the Postie’s use of his or her own car to transport the bike and mail bags does not make that activity one for the Respondent’s business. Rather, the journey is for a personal purpose, whether it be returning home or going elsewhere to attend to personal matters and the motor vehicle cannot, therefore, be said to be in use for New Zealand Post business.

[33] I have come to this view by first considering the words used in the employment agreement clause and then considering the surrounding circumstances – that is, the factual context – to “cross check” whether the circumstances require modification of the most natural meaning of the words.² I am satisfied they do not.

[34] I had some evidence of (i) how transport arrangements are made for Posties to do C-motor rounds if they do not agree to use their own motor vehicles and (ii) the reasons that a Postie may agree to sign a VUA for use of their own vehicle to get to and from the area of the round. However I have not taken any account of that in the conclusion reached but note that if I had, it would not alter that conclusion.

[35] Under the terms of the collective agreement a Postie may not be compelled to use his or her own car for the Respondent’s business. It is an arrangement reached only by agreement – as the Motor Vehicle allowance clause states. If a Postie assigned to a C-motor round does not sign a VUA, the Respondent is responsible for the means and cost of transport to and from the round. Usually that involves such Posties being taken in a New Zealand Post van or truck to the start of the round and then being authorised to call a taxi or the delivery branch in order to be picked up and returned to the branch at the end of the round. There is, I take it, a downside to such transport arrangements for a Postie who has a set number of rostered hours to do the round but can finish work earlier under the “task and finish” arrangement. The time taken up travelling in the Respondent’s vehicles (or taxis it pays for) out from and then back to the delivery branch at the beginning and end of the working day must be regarded by Posties as wasted time if they could use their own motor vehicles to get that part of the working day over quicker. And that is, plainly, the attraction to at least some Posties of the arrangement for use of their own vehicle and the reason for the provision in the employment agreement. No doubt there is some benefit to the Respondent from Posties using their own vehicles. That benefit may be lower capital and operational costs which would otherwise be required to get Posties to and from the start and finish of C-motor rounds. A corresponding benefit to the Postie is the convenience of not having to travel back to the delivery branch at the end of the working day and being free to get on with his or her own affairs from the time of leaving the acquittance point. It is a convenience protected by a requirement of

² Ibid at 499.

agreement and not compulsion in the use of their own vehicles. That, I find, was the mutual intention of the parties.

[36] Accordingly, for the reasons given, the declarations sought by the Applicant cannot be made. Rather I accept the Respondent's submission that – for the purpose of interpretation of the clause on the motor vehicle allowance – New Zealand Post's business is concluded when the Postie leaves her or his designated acquittance point.

Costs

[37] Because the statement in reply and the Respondent's outline of submissions made no reference to costs, I take it that the Respondent will be content for costs to lie where they fall. If it is not, the parties should attempt to agree any issue of costs. Failing that, leave is reserved for the Respondent to lodge within 28 days of the date of this determination an application for the Authority to determine costs. The Applicant may then lodge a reply within 14 days of the date of lodging of the application. Costs will not be considered outside that timeframe.

Robin Arthur
Member of the Employment Relations Authority