

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 34/09  
5128011**

BETWEEN      RAMIL TRANQUILINO  
                         Applicant  
  
AND              WAITEMATA DISTRICT HEALTH  
                         BOARD  
                         Respondent

Member of Authority:    Leon Robinson  
  
Representatives:        Applicant In Person  
                                 Anthony Russell for Respondent  
  
Investigation Meeting:    3 October 2008  
  
Submissions Received:    17 October 2008  
                                 24 October 2008  
  
Determination:            5 February 2009

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**DETERMINATION OF THE AUTHORITY**

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**The problem**

[1] The applicant Mr Ramil Tranquilino (“Mr Tranquilino”) claims unrelieved meal breaks between 1997 to 2005 from his former employer the Waitemata District Health Board (“the Board”). The Board resists Mr Tranquilino's claim and says there has been an accord and satisfaction and there is a limitation period.

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

**The facts**

[3] Mr Tranquilino was employed by the Board from July 1997 as a registered nurse in the surgical unit at Waitakere Hospital. He was employed under successive collective employment agreements. He resigned on 1 June 2008.

[4] The collective employment agreements ending 31 July 1999, 31 January 2001 and 30 November 2001 included this provision as clause 6.2:-

*An employee unable to be relieved from work for a meal break shall be allowed to have a meal on duty and this period shall be regarded as working time.*

[5] The 2001-2004 collective employment agreement between the parties provided at clause 6.2:-

*An employee unable to be relieved from work for a meal break shall be allowed to have a meal on duty and this period shall be regarded as working time.*

[6] The 2004-2007 collective employment agreement between the parties provided at clause 7.2:-

*An employee unable to be relieved from work for a meal break shall be entitled to have a meal while on duty and this period shall be regarded as working time.*

[7] The 2007-2010 collective employment agreement between the parties provided at clause 7.2:-

*An employee unable to be relieved from the workplace for a meal break (as defined in 7.1) shall be entitled to have a meal while on duty and this period shall be regarded as working time paid at the appropriate rate (the rate payable at that time).*

[8] In June 2005 employees began claiming payment for unrelieved meal breaks on their timesheets. This payment had not been claimed previously.

[9] The Board's surgical unit manager Ms Ngaire Sharp ("Ms Sharp") wrote by email dated 30 June 2005 that employees were not to continue to claim for such a payment. Mr Tranquilino did not accept Ms Sharp's advice. The nurses organisation became involved and pursued the matter on the employees' behalf with the Board.

[10] Ms Sharp wrote this email to all surgical unit staff on 22 August 2005:-

*Issues of Unrelieved Meal Breaks*

*This issue has been clarified and the outcome is that staff working out of hours are entitled to receive this payment.*

- *Staff working on a morning shift Mon-Fri are to be relieved by the 8-4 OR staff. If you wish to leave to the dept for your meal break you must communicate with the person in charge for safety reasons of fire and also to clarify who is covering for Obstetrics at this time. Morning shift (0700-153) staff meal breaks must be commenced between 1100-1200hrs.*
- *Custom & Practice at the weekends is that staff change over shift at 3pm, this can continue but you will not be entitled to claim for an unrelieved meal break as being paid from 14.30-1500hrs/1500-1530hrs when not at work. If you wish to commence your shift at 14.30 or finish at 1530, you must get your shift start/finish time signed off by the Duty Manager to validate your timesheet.*

*Relieved meal break*

*We are currently trying to work out a way to allow staff to receive a relieved/undisturbed meal break.*

*Backpay*

*It has been agreed that the unrelieved meal break will be back paid to the 1st July.*

[11] By letter dated 4 March 2008 Mr Tranquilino lodged with the Board an arrears claim for all unrelieved meal breaks prior to July 2005.

[12] By letter dated 14 April 2008 the Board's service manager perioperative and elective services Ms Beth Cooper wrote to Mr Tranquilino:-

*I am writing in response to your formal claim seeking payment for historical unrelieved meal breaks prior to 01 July 2005.*

*I understand the issue of unrelieved meal breaks for surgical unit staff working after hours was first raised in 2005. In investigating this issue I have spoken to individuals who were involved in the discussions that took place at the time and I have read through the correspondence in relation to the issue when it first arose.*

*It is clear in that 2005 the organisation worked together with the NZNO and it's members to resolve the matter and that an agreement was made in good faith at that time. Given this, it seems inappropriate and beyond the bounds of good faith to re-open an issue on which an agreement was previously reached.*

## The merits

[13] The Authority finds there was no agreement entered into between the Board and the New Zealand Nurses Organisation that there would be no claims for unrelieved meal breaks prior to 1 July 2005.

[14] Mr Tranquilino is not prevented from making claims for unrelieved meal breaks prior to 1 July 2005. However, the limitation period applies. He may claim his entitlements for the period from 24 June 2002 until 30 June 2005.

### **The determination**

[15] Mr Tranquilino is entitled to pursue an arrears of wages claim for unrelieved meal breaks in respect of the period before 1 July 2005. His claim is limited as from 22 June 2002.

[16] I am not in a position to quantify or make any findings as to Mr Tranquilino's actual entitlements. His claim is not presently quantified. He must now pursue any such arrears of wages claim with diligence. In the first instance, he should pursue the matter with his employer and both parties should attempt to resolve such claim in good faith. In the event that the parties cannot resolve the matter informally between within 28 days hereafter, I grant leave to Mr Tranquilino to seek the Authority's further intervention to have his wage claim quantified and determined. For limitation purposes, any such wage claim was commenced by this present application.

### **Costs**

[17] As Mr Tranquilino was not represented by professional advocate there will be no orders on costs.

Leon Robinson  
**Member of Employment Relations Authority**