

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Richard Woolley (Applicant)  
**AND** ANZ National Bank Limited (Respondent)  
**REPRESENTATIVES** Shane Robinson for Applicant  
Hamish Kynaston for Respondent  
**MEMBER OF AUTHORITY** G J Wood  
**INVESTIGATION  
MEETING** Wellington, 10 November 2006  
**SUBMISSIONS RECEIVED** 23 November 2006  
**DATE OF  
DETERMINATION** 15 December 2006

DETERMINATION OF THE AUTHORITY

**Introduction**

1. The applicant, Mr Richard Woolley, claims that he has a personal grievance because the respondent, the ANZ National Bank, has failed to calculate his pay in accordance with his employment agreement (specifically by wrongly taking into account his superannuation arrangements when determining his total remuneration). The ANZ National Bank denies these claims.

**The Facts**

2. Mr Woolley started work as a senior IT professional in July 1997 with the National Bank of New Zealand Limited. In 1997, the National Bank decided to change its remuneration policy to pay managerial staff a salary under what was known as a Total Employment Remuneration (TER) basis. This meant that previous benefits such as banking discounts, loans and bank fees etc were “cashed out”, i.e. employees’ salaries were increased by the assessed monetary equivalent of each

benefit. What was not “cashed out” were benefits under the National Bank staff superannuation fund and associated life and medical insurances.

3. The National Bank brought in TER because of a concern over inequities in the remuneration system that arose from different levels of eligibility for and uptake of benefits, and as it was a simpler way of remunerating staff. It informed staff that in future the bank would be reviewing salaries on that basis and if an employee declined to change to a TER package they could be the worse off for it as a result. Mr Woolley subsequently agreed to a TER package.
4. In 1999 Mr Woolley was offered and accepted an increased TER on new terms and conditions of employment. On 17 August 2000 he was transferred to a more senior position.
5. On 22 March 2002, Mr Woolley again agreed to new terms and conditions of employment and an increase in his TER. In October 2002 and 2003 respectively his TER was increased again.
6. Mr Woolley’s employment agreement provided the following in terms of TER:

*“Your total employment remuneration (superable salary) is \$67,545 pa.  
Your superable salary shall be paid fortnightly in arrears not later than Wednesday for the period up to and including the previous Tuesday by direct credit to your bank account and is subject to such tax deductions as may be prescribed by the appropriate authority in New Zealand from time to time. Total employment remuneration is reviewed on or about 1 April each year.”*
7. The employment agreement also stated that any term may be varied by agreement and shall be recorded in writing and signed by both parties and that the contract, its schedules, the managers’ booklet and the bank’s personnel guide (as amended from time to time) contained the entire agreement between Mr Woolley and the bank.
8. Each TER was assessed within a salary range. These ranges were set by the National Bank in its discretion, after it had conducted a general review of pay rates with the assistance of the Hay Group. The parties’ employment agreement did not require employees to be placed at a certain point within any range or that any particular employee would be given a salary increase in any particular year.

9. National Bank human resources published a pamphlet entitled “Our Approach to Pay Managerial Roles”. In the introduction, it is noted that the set of key principles provide the guiding framework for the bank. Under the heading “Policies and Principles” it states:

*“The bank maintains a remuneration approach that ensures the staff remuneration packages:*

- *are internally fair and equitable relative to others within the Bank*
- *are externally competitive, in terms of the relevant external market for similar roles*
- *are linked to performance; individual, business units and the Bank.*

*To establish the remuneration packages for all roles in the Bank we consider: internal relativity, market competitiveness and individual/Bank performance.”*

10. There was also a section entitled “Your Annual TER Review”. It states:

***“Your Annual TER Review***

*In conjunction with our review of TER ranges, Managers review individual TER levels on an annual basis. This will usually occur around October.*

*Managers base their decisions on a variety of factors including:*

***Current TER ranges***

*These are reviewed annually to maintain market relativity for roles. Individual TER is positioned within the range, based on performance and competence in the role.*

***Individual performance***

*Individual TER is adjusted to recognise growth and performance in the role, based on the accountabilities and competencies as they relate to the role requirements.*

***Internal relativity***

*TER adjustments take into account the relativity between other team members in similar roles across the Bank.”*

11. Clearly, relativities between team members in similar roles within the bank are important factors for the bank to take into account.
12. The pamphlet makes it clear that total remuneration includes TER, plus incentives, plus benefits (including superannuation).
13. Mr Woolley is a member of the Defined Benefits Superannuation Scheme, which both the National Bank and the ANZ National Bank consider is very expensive for the employer and very attractive to Mr Woolley. The defined benefits scheme is now closed to new members.

14. The Bank's actuarial advice was that it was on average contributing 20% of managerial staff salaries as a separate superannuation contribution. Clearly this was an average and Mr Woolley believed that in his own particular circumstances that in fact the employer "subsidy" was much less in his case. On that point, he may well be correct.
15. I accept the evidence of Mr Shane Deegan, ANZ National Bank's Manager Workplace Relations, who was previously employed in an equivalent position with the National Bank, that the National Bank took into account the potential benefits of super schemes in determining overall remuneration for all managerial staff. This is consistent with the fact that the level of any individual's TER was clearly subject to the bank's discretion, provided it did not exercise it arbitrarily.
16. On 1 December 2003, the ANZ Group purchased the National Bank and in June 2004 ANZ New Zealand and the National Bank were officially amalgamated into the present respondent, the ANZ National Bank Limited. Throughout 2004 a great deal of work was done in trying to match the terms and conditions of employment for staff coming from two completely different banks. This involved some complications for employees such as Mr Woolley.
17. The approach the ANZ National Bank decided to apply in respect of managerial employment was what was called a principled "one organisation" approach. Because of significantly different approaches to pay and benefits between the National Bank and the ANZ Bank, it was decided that the TER approach of the National Bank and the TEC approach of the ANZ Bank (which included superannuation, unlike that National Bank), would be discontinued and replaced by a Total Target Remuneration (TTR) approach. This was said to combine pay and the financial costs of all other benefits into a total package. Thus TTR was made up of Total Employment Costs (TEC) plus Target Incentives (TI).
18. The TTR approach was based on job zones, as opposed to the National Bank's approach of looking at remuneration role by role. These zones were determined following Hay job evaluations. Clearly the intent of this approach was to try and ensure that staff in comparable positions were remunerated in the same way.

19. In introducing the TTR system, staff were told that no one would be worse off. Staff were informed that annual reviews would take place that year following what were described as the heritage systems, i.e. under their old system. They would then be told of salary review outcomes in mid-November for the previous financial year.
20. The ANZ National Bank decided to implement the new remuneration strategy by way of an offer of a new employment agreement to all managerial staff, based on a letter of offer and the managerial staff booklet. The key change in issue here related to the clause entitled “remuneration”. In Mr Woolley’s case the new offer of employment stated:

*“The remuneration of your position is based on a Total Employment Cost (TEC) structure. Your TEC level is: \$94,027 per annum. TEC is based on full time employment and will be proportional if you work part time.*

*Your TEC is made up of your cash salary and any benefits such as employer superannuation contributions, private use of a Bank provided motor vehicle and/or private use of a car park. Salary for the purposes of calculation of superannuation contributions and benefits is 10/11ths of TEC for staff in the Cash Accumulation Scheme (or the corresponding proportion if you currently contribute less than 5%) and 10/12ths of TEC for staff in the Defined Benefits Scheme.*

...

*Please note that any other Bank provided benefits not currently included in your TEC, such as Banking Products, may be added or addressed at a later date.*

*The Bank conducts an annual market review of remuneration. The date this review is based upon is 1 October, although we reserve the right to change this if business needs require. This review includes all components of your TEC such as salary and the cost of any benefits provided by the Bank. The Bank may, following consultation with affected staff, amend your TEC to include any increase in the cost of benefits provided, however, if this occurs it will not result in any decrease in the cash salary component of your TEC. The value ascribed by the Bank to a TEC benefit (as amended from time to time) is conclusive for all aspects of the employment relationship.*

*Attached is a Total Target Remuneration (TTR) statement that includes your reviewed TER or TEC and sets out the components that will now be included in your TEC.*

*Your TTR statement also has provision for a Target Incentive (TI) amount. Your TI is the amount that you may be entitled to receive should you meet the requirements of the incentive scheme developed by your business unit. Your business unit will advise you of your potential TI when the incentive scheme is communicated.”*

21. Attached to the letter of offer was a TTR statement prepared for Mr Woolley dated 9 December 2004. It states that Mr Woolley’s reviewed TER was \$78,356, which constituted his cash salary. His TEC was assessed as \$94,027, the difference of \$15,671 being the average employer superannuation contribution at 20%. Given that

there was no issue between the parties in relation to the TI, this difference between TER and TTR is in the main the key issue between the parties.

22. Mr Woolley declined to accept the new agreement and asked the ANZ National Bank to conduct a salary review without including any TEC component. He was advised that in future salary reviews would be on a TEC basis, also taking into account performance, position in the salary range and relativity to peers.

23. The Bank took the following view:

*“Mr Woolley’s employment agreement simply states that his remuneration will be reviewed annually in October. There is no requirement for the salary to be increased. There are also no requirements as to how the remuneration review must be conducted and in fact the bank’s process and policy regarding remuneration reviews changes from time to time. That, indeed, is what happened here.”*

24. Mr Woolley was informed that he could either remain on his existing salary and terms and conditions or accept the offer made to him on the new terms and conditions and under the new remuneration system. From Mr Woolley’s perspective, that constituted the unilateral imposition of new terms and conditions of the annual review process (ie TTR). He also claims that the ANZ National Bank has deliberately withheld the remuneration adjustment awarded to him as a result of the October 2004 review.

25. On 18 October and 9 November 2005, the ANZ National Bank again offered Mr Woolley a new set of terms and conditions of employment, based on the TTR system, together with a pay rise. Because the underlying dispute had not been resolved, Mr Woolley declined these offers. There was no explicit TER review completed for the year ended October 2005.

26. The parties have entered into mediation and extensive discussions between them to try and resolve the problem. Unfortunately no resolution has occurred and therefore it falls to the Authority to make a determination.

### **Determination**

27. The existing employment agreement between Mr Woolley and the ANZ National Bank, which was inherited from the National Bank, is the key to how the bank may

set Mr Woolley's salary. It is clear that TER is the same as superable salary in Mr Woolley's case. His employment agreement requires the bank to review the level of his superable salary annually, on or about 1 October. Any fair and reasonable employer who failed to remunerate an employee in accordance with the results of the review would disadvantage an employee in their employment. Such a disadvantage could only be justified in unusual circumstances because, having committed itself contractually to a review, a fair and reasonable employer would ordinarily implement the results of that review.

28. In conducting the review, the ANZ National Bank was bound by the policies adopted by the National Bank, except insofar that it was able to change those policies from time to time. In this regard it is important to note that managers such as Mr Woolley have no right to pay increases, but merely pay reviews. It was clear from the ANZ National Bank's own timeline that the October 2000 reviews were to be conducted under heritage systems. In other words, the bank informed staff such as Mr Woolley that the assessments would be made under the National Bank's old system. This is consistent with the new employment agreements only being offered in November 2004. It was at that point, I find, that the bank intended to implement its new remuneration policies, which followed the review subsequent to the merger of the two banks.
29. In Mr Woolley's case, his reviewed TER was \$78,356. Because Mr Woolley declined to agree to a new employment agreement, with different terms and conditions, he was refused that pay increase. I find that this constituted a breach of his employment agreement. He was entitled to a review; the review was conducted and found that he was due a pay rise. There would be no point to having the review if any pay rise that followed the review was to be made conditional on an employee's agreement to a whole new set of terms and conditions of employment. Yet this is exactly what the ANZ National Bank has imposed on Mr Woolley.
30. Under the National Bank policy, there is no reference to the need to agree a new or amended employment agreement as part of its remuneration setting policy. This is not referred to as a key principle in the ANZ National Bank's approach to pay and can not be linked to internal or external relativity or the bank's performance.

31. I do accept, however, that superannuation was taken into account in setting the TER by the National Bank at the time (even if only indirectly) as otherwise the Hay job evaluation methodology would have had no efficacy and internal relativities would not have been able to be calculated properly.
32. It therefore follows that Mr Woolley was entitled to have his remuneration increased from \$76,356 to \$78,356 with effect from 1 October 2004.
33. I also accept, however, that for the following years, the ANZ National Bank is entitled to set Mr Woolley's remuneration by explicitly taking into account superannuation, because it has changed its policies to ensure that internal relativities are more fully taken into account. It has done so through a process of consultation and on notice. Mr Woolley can have no legitimate expectation that his superannuation would still not be taken into account, because it is an important factor in internal relativities and because the bank in any event is only required to review his remuneration, not increase it. He could only have had a reasonable expectation that his remuneration would be reviewed annually and fairly, which did take place in 2005 and is taking place or has taken place in 2006. In this sense, Mr Woolley must be taken to know that it was open to the bank to change its policies and how specific levels of remuneration would be set from time to time.
34. I therefore determine that the respondent, the ANZ National Bank Limited pay to the applicant, Mr Richard Woolley, a salary increase of \$2,000 per annum with effect from 1 October 2004, plus interest calculated on a simple basis at the rate of 7.5% per annum with effect from 1 October 2004 until paid.

### **Costs**

35. Costs are reserved.