

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 16A/08
ARC 65/07**

IN THE MATTER OF a de novo challenge to a determination of
the Employment Relations Authority

BETWEEN POSTAL WORKERS ASSOCIATION
Plaintiff

AND NEW ZEALAND POST LIMITED
Defendant

Hearing: 20 May 2008
(Heard at Auckland)

Appearances: Simon Mitchell, Counsel for Plaintiff
Penny Swarbrick, Counsel for Defendant

Judgment: 20 May 2008

Reasons: 23 June 2008

REASONS FOR JUDGMENT OF JUDGE B S TRAVIS

[1] On 20 May 2008 I issued a judgment dismissing the challenge. The following are my reasons for that judgment.

[2] The issue between the parties was the plaintiff Association's claim for a motor vehicle allowance for postal delivery workers ("posties") who use their motor vehicles to travel from their delivery branch to the commencement of their postal round and back. At present the defendant ("NZ Post") provides the allowance only for travel to the round and not back.

Background facts

[3] The parties filed an agreed statement of facts and briefs of evidence from two witnesses which were admitted by consent without cross-examination. The following background facts are taken from that material.

[4] The Association and NZ Post are parties to a document described as the New Zealand Post Collective Agreement which is in force from 2006 to 2008 (the “CA”).

[5] Posties are assigned to particular delivery rounds as part of their normal duties. Delivery duties are undertaken by either walking or cycling. Some rounds are designated as “*C-Motor*” rounds. These are rounds where the postie needs to use a motor vehicle to get to the start of the round, or to move to different points within the round and to travel at the conclusion of the round.

[6] C-Motor rounds have existed within NZ Post’s operations since about 1995. More rounds have been designated as C-Motor rounds over the years as a consequence of increased branch sizes and the corresponding expansion of the number of rounds undertaken by each delivery branch within its catchment area. Posties are assigned to C-Motor rounds. If they sign a Vehicle User Agreement (VUA) they use their own motor vehicles and are paid a per kilometre amount for their use, in accordance with the rates set out in the CA.

[7] Before NZ Post will make any vehicle reimbursement payment to a postie that postie must be a party to the VUA, the form of which has evolved somewhat over the years. Matters covered by the VUA include the circumstances for reimbursement for the use of the vehicle, the conditions for the use of the vehicle, insurance and accidents. The relevant terms of the VUA are as follows:

Section 2. – Application of this Agreement

When driving my private vehicle under this agreement I will be paid the agreed kilometre rate specified in the New Zealand Post Collective Employment Agreement as a fuel / vehicle depreciation / vehicle maintenance allowance for:

- *The distance travelled from my Delivery Branch to the start of the delivery route, as determined and established by New Zealand Post.*
- *The distance travelled between delivery sections as part of the delivery round and to the recognised finishing point as determined and established by New Zealand Post.*
- *The distance travelled from the end of my delivery route back to my Branch when I am authorised by my Delivery Leader to return to the Branch immediately following the completion of my delivery round that day.*

[8] Every round, including C-Motor rounds, has been measured by NZ Post in accordance with its work measure system, introduced in 1992. Each round has a commencement point and an “*acquittance*” point, the latter being the place at which the postie can deposit any undelivered mail. In the case of C-Motor rounds the acquittance points are either a street receiver or a Post Shop.

[9] Once a postie has reached the acquittance point for the round, his or her duties have finished and the postie is free to go home, taking the bike and mailbag. As part of undertaking the C-Motor round, posties are expected to secure these items.

[10] In some circumstances, for example to attend a meeting as required by NZ Post or if they are about to go on leave, the postie may be required to return to the branch on the particular day, in which case the acquittance point will be the branch for that day. In such cases the postie is reimbursed for the journey from the end of the round to the branch.

[11] It has been the practice of NZ Post to pay the per kilometre amount for a) the distance between the delivery branch and the start of the delivery route, and b) the distance travelled between delivery sections as part of the delivery round, and c) only as far as the recognised finishing point of the round – the acquittance point. These arrangements have been provided to all posties that currently undertake C-Motor rounds and who have signed the VUA, irrespective of whether they are members of the Association, any other union or are non-union members.

[12] The Association considers that, pursuant to clause L50 of the CA, payment should also be made for the distance from the acquittance point back to the branch. NZ Post disagrees. Clause L50 of the CA reads as follows:

Motor Vehicle – All

50. *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.*

Construction of the documents

[13] Counsel were agreed on the principles of interpretation that should apply. The words used are the starting point. Consideration must be given to the whole document and to the surrounding circumstances to ensure that nothing in these requires the modification of the natural and ordinary meaning of the words used. The Court must adopt an objective approach, based not on what the parties say they actually intended the words to mean, but what a reasonable person in the field, knowing all the background, would take them to mean. The interpretation should not be narrowly literal but should be in accordance with business commonsense: see *Pyne Gould Guinness Ltd v Montgomery Watson (NZ) Ltd* [2001] NZAR 789 (CA); *Lowe Walker Paeroa v Bennett* [1998] 2 ERNZ 558; and *Association of Staff and Tertiary Education Inc v Hampton* [2002] 1 ERNZ 491, 499.

[14] In appropriate cases subsequent practice may also be relevant *Gibbons Holdings Ltd v Wholesale Distributors Ltd* [2008] 1 NZLR 277 (SCNZ).

The Association's submissions

[15] Mr Mitchell for the Association submitted that by purporting to exclude the motor vehicle allowance to cover the distance from the completion of the round to the delivery branch, NZ Post was failing to compensate the posties for using their own motor vehicles “for NZ Post business” and thus the VUA was in conflict with L50 of the CA. He submitted that the issue was to be determined by considering the dominant purpose of the trip. He accepted that in the usual course an employee is not considered to be on a business trip between the place of work and home. Thus when a postie drives between his or her home and the depot they are on a private

trip. He accepted that there may be a small element of business assistance to NZ Post because their vehicles may be carrying their bikes to the delivery branch and were then available later for transporting the postie and the bicycle and the mail to the commencement of the round. No claim, however, was being made by the Association for this, as it was recognised that the dominant purpose of the journey was private, rather than NZ Post's business.

[16] Mr Mitchell submitted that an entirely different scenario arose at the end of the day for the C-Motor postie. He observed that many posties will be making a journey then that is significantly longer than the journey between their depot and their home. He submitted that the journey was not being made for any private benefit but instead posties were returning from where they had been sent on their delivery round. He submitted that the journey undertaken was not a one way trip from the depot to the delivery point, but part of a round trip from the depot, the acquittance point and back to the depot even though, in most cases, there was in fact no journey back to the depot at the end of the day. He accepted that many posties travel further and pass the depot in order to complete their journey home. Others will in effect make the return journey by travelling to the depot the following day. Where there is extra travel involved he contended that there is no personal benefit for the posties but accepted that the payment should be limited to the distance between the end of the delivery round and the distance to the depot because that was clearly identifiable as a journey for NZ Post's business. The effect of NZ Post's position, according to Mr Mitchell, was that many posties will need to meet their own costs of travel to the depot, when they have made the trip purely for the benefit of NZ Post.

[17] Mr Mitchell accepted that posties are entitled to go their own way from the time they leave the acquittance point but that did not mean that they were still not using their vehicles for the purpose of NZ Post business. Were it not for the agreement to use their vehicle it might not be conducted by car, and they would instead be travelling first at NZ Post's expense to the depot, then from the depot to their car or some other place at their own expense.

[18] Mr Mitchell observed that because NZ Post accepted the cost of the trip for other employees who are not parties to a VUA and therefore not providing their own

motor vehicle, that should be a proper basis for compensating those who are driving their own vehicle. The question he submitted was who should bear the expense. Because it is the posties' obligation to get their cars to the depot before the following morning, and this is an expense which NZ Post would meet if they were not using their vehicles, NZ Post should compensate them on the basis of the mileage that would have been incurred had they completed their round back at the delivery branch.

NZ Post's submissions

[19] Ms Swarbrick submitted that under clause L50 the posties may agree to use their own vehicles. When they do so that agreement is recorded in the VUA, which although not part of the CA nevertheless forms part of the terms and conditions of employment and there is no inconsistency between the two. She submitted that section 2 of the VUA expressly provides what will be paid for and, for present purposes, it is for the distance travelled "*to the recognised finishing point as determined and established by New Zealand Post*". The parties have therefore, on NZ Post's submission, agreed that NZ Post business ends at the acquittance point or, in circumstances where the employees are required to go back to the branch, at the branch. She submitted that this practice is clearly set out in the VUA and the plaintiff Association is now asking the Court to institute a new practice which is contrary to the plain wording of the VUA. She submitted that clause would contradict the established role of the Court as set out in *Association of Staff in Tertiary Education Inc: ASTE Te Hau Takitini O Aotearoa v Hampton, Chief Executive Of The Bay Of Plenty Polytechnic* [2002] 1 ERNZ 491 at 500 where it was held that if the words were clear and could only have one possible meaning that would generally determine the matter and it is not the Court's task to rewrite an agreement.

[20] As an alternative, Ms Swarbrick submitted that if the Court considered that closer examination of the words was required then the phrase "*NZ Post business*" in its context is dealing with reimbursing allowances when the vehicles are actually used for NZ Post business. She referred to the Concise Oxford English Dictionary 11 ed, which provides that "*business*" is "*work to be done or matters to be attended*

to” which accords, she submitted, with the commonly understood use of the word. Applying this to the current facts, she submitted it was clear that the aspect of NZ Post’s business that the posties were responsible for, concludes when they reach the finish point, the acquittance point, and their delivery duties for the day are then complete. It is at that point the parties have agreed in the statement of facts that the posties’ delivery duties will have finished. The VUA, which was drafted in consultation with the Association, determines the acquittance point. When the postie is authorised to return to the branch, this is expressly provided for in the VUA because the postie would still be “*on business*”. Outside of the arrangements that were concluded in the VUA she submitted there are no agreed circumstances for which the allowance needs to be paid.

[21] Ms Swarbrick also referred to the advantage of a postie reaching the acquittance point of being free, thereafter, to attend to his or her own business. She submitted that once that had occurred it could not be said that the postie continued to be on NZ Post business. That situation was to be contrasted with posties who reach the acquittance point without their own vehicles and then had to await the arrival of the NZ Post vehicle to take them back to the branch if they were on C-Motor rounds. Such posties were unable to leave immediately on reaching their acquittance points and could be required to wait for a considerable time before being returned to the branch and then discharged.

[22] Ms Swarbrick submitted there was no difference in principle between a postie on a C-Motor round reaching the acquittance point and a postie on a walking or cycling round reaching the acquittance point. Whatever the means by which the postie had travelled to the delivery round, the duties were concluded at that time and because their duties had finished they were not eligible to receive reimbursing allowances beyond that point. Reaching the acquittance point was the same in principle, as employees based at the branch reaching the end of their working day. Once they had left the workplace they were free to do whatever they chose.

[23] Ms Swarbrick submitted that the wording of the VUA also assisted NZ Post. The VUA provides a clear agreement as to when the allowances would be paid. The allowance would be paid “*to the recognised finishing points as determined and*

established by New Zealand Post". An objective interpretation means until that point is reached. She submitted that a finding for the Association would make the wording "*and to the recognised finishing point*" entirely redundant. Further, it is for New Zealand Post to determine and establish the finish point, not the Association. The provision also allows NZ Post to require a postie to return to the branch when required. Again she submitted finding for the Association would make these words otiose and would in effect mean that the finishing point had been determined by the plaintiff Association.

[24] Finally, Ms Swarbrick submitted that there was no inconsistency between the VUA and the CA, and the arguments raised by the Association would be better raised in bargaining than in interpreting the plain meaning of a clause which had already been negotiated between the parties.

Discussion

[25] Clause L50 of the CA provides for payment of a motor vehicle allowance to employees authorised and who agree to use their own motor vehicles for NZ Post business. I accept Ms Swarbrick's submission that "business" in this context in its plain meaning is work to be done or matters attended to for NZ Post. What posties have actually been authorised and have agreed to perform for NZ Post is set out in the relevant VUA which has been drafted in consultation with the Association. It is not for the Court to direct reimbursement for what has not been authorised or agreed.

[26] The parties could well have agreed in the VUA that reimbursement would extend to the travel between the postie's place of residence and the branch from where the C-Motor round commences, but they did not. If they had so agreed, that would be consistent with the claim now being made by the Association. The claim is for a payment for what will usually be a hypothetical journey, that is between the acquittance point and the branch. Posties are not required to return to the branch from the acquittance point. When they are so required by NZ Post, the VUA provides for reimbursement for the journey actually undertaken.

[27] If clause L50 had simply read that employees who use their own motor vehicles for NZ Post business would be reimbursed, the Association would be on stronger grounds in contending that the use of the motor vehicle to the branch from the posties' residence and from the acquittance point to home was part of NZ Post's business. This is because C-Motor rounds make it necessary to have the vehicle at the branch for the performance of the particular round. That, however, is not what clause L50 of the CA provides. It requires both authorisation and agreement for the use of private vehicles.

[28] I accept Ms Swarbrick's submission that for the Court to determine for whose benefit the journey is made is to substitute a subjective test for an objective test as to whether or not the vehicle is authorised and agreed to be used for NZ Post business. Where there is no express agreement, and it is not possible to imply an agreement to reimburse for a hypothetical journey which will not usually take place, no reimbursement is required. It is not an issue as to who meets the cost of any particular journey, as Mr Mitchell asserted, but what has been authorised and agreed by the parties to constitute NZ Post's business for the purpose of the reimbursement allowances.

[29] The plain wording of both the CA and the VUA were not inconsistent and for present purposes NZ Post's business was concluded when the postie reached the recognised finishing point. For these reasons I dismissed the Association's challenge.

[30] The defendant sought costs. If these cannot be agreed, a memorandum should be filed and served within 60 days, with 30 days to reply.

BS Travis
Judge

Judgment signed at noon on Monday 23 June 2008