IN THE EMPLOYMENT COURT
WELLINGTON

WC 8/07
WRC 23/06

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	SERVICE AND FOOD WORKERS UNION NGA RINGA TOTA Plaintiff
AND	OCS LIMITED Defendant

Hearing: 7 December 2006 and memoranda of counsel received 19 and 20 December 2006
(Heard at Wellington)

Appearances: Peter Cranney, Counsel for the Plaintiff
Paul McBride, Counsel for the Defendant

Judgment: 1 March 2007

JUDGMENT OF JUDGE C M SHAW

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[1] This case is about payments under the collective employment agreement (CEA) to members of the plaintiff union who are employed as cleaners by OCS to work in hospitals in the Wellington region and who have worked on public holidays.

[2] Those who had worked on Anzac Day and Queen's Birthday in 2005 were paid the penal rates under the CEA for the hours they had worked. The union requested that in addition to these payments they be paid their usual weekly wage. The parties could not reach agreement and, after invoking a dispute, in September 2005 the union made application to the Employment Relations Authority to resolve the problem.

The Authority's determination

[3] At the investigation meeting, the union principally argued that its members had fixed weekly hours of work and therefore their wages could not be reduced without their agreement.

[4] Apart from some jurisdictional issues, OCS argued that it has a discretion to employ staff on public holidays and when it does it complies fully with the holiday payment regime in the CEA.

[5] The Authority found that the CEA lists the maximum ordinary hours of work in 1 week to be done by domestics but does not provide for any minimum or ordinary hours of weekly work. In the Authority's view the CEA does not prevent OCS from varying the employees' hours of work. It therefore found against the union's claim.

The challenge

[6] At the hearing of the challenge, the union was represented by different counsel in Court and the case was presented somewhat differently from that in the Authority although the parties relied on a very similar summary of facts, the relevant parts of which are reproduced in full in the form presented to the Court:

> ***Employment history and CEA***
>
> *1.* *Prior to 1 April 2005 members of the Plaintiff working as domestics (cleaners) at Wellington, Kenepuru, Porirua and Paraparaumu Hospitals were employed by the Defendant's competitor, Spotless Services (NZ) Limited. An expired collective employment agreement set out the terms and conditions of employment of the domestics who were Union Members: the* "Spotless Services (NZ) Ltd Capital and Coast Health Domestic Employees Collective Employment Agreement" *14 January 2003 – 13 January 2005 ("the Spotless CEA").*
>
> *2.* *Domestics were engaged variously on a part time or full time basis. Subject to any provisions of the CEA, domestics employed in either capacity had regular days and hours of work.*
>
> *3.* *Following a competitive tender process, the Defendant secured the cleaning contract at the Hospitals. From 1 April 2005 the Defendant employed some domestics who were members of the Plaintiff ("the domestics").*
>
> *4.* *Employment was offered to the domestics* "on the same terms and conditions as applied immediately before …" *their engagement by the Defendant. The expired Spotless CEA therefore continued to apply to the domestics.*

5. *The Defendant took on the then current permit hours for part-time employees from 1 April 2005: clause 14(b) Spotless CEA.*

Work patterns of sample domestics

6. *A sample of the domestics selected by the Plaintiff indicates the following work patterns:*

Name	***Day of the week (hours ordinarily worked)***						
	Mon	***Tue***	***Wed***	***Thurs***	***Fri***	***Sat***	***Sun***
Lalopua Sanele	*8*	*8*	*8*	*8*	*8*	*8*	
Suifaga Apolo	*8*	*8*	*8*	*8*	*8*		*4*
Tusa Gasaloga	*8*	*8*	*8*	*8*	*8*		
Meki Sagele	*8*	*9*	*9*	*9*	*8*	*4*	
Simalu Feleti	*7.5*	*7.5*	*7.5*	*7.5*	*7.5*		
Kolopa Uiese	*8*	*8*	*8*	*8*	*8*		*8*
Brian Randall	*8*	*8*	*8*	*8*	*8*		

Hours of work on public holidays

7. *Prior to Anzac Day (Monday 25 April 2005) and Queens Birthday (Monday 6 June 2005) no consultation was entered into by the Defendant with the Plaintiff about changing the ordinary hours of work for employees on those two public holidays. The Defendant denies that such consultation was required.*

8. *Apart from any provisions of the CEA, no agreement was reached to vary the ordinary hours of work of any of the employees on the two public holidays.*

9. *On Anzac Day and Queens Birthday 2005, the same sample of domestics worked the following hours which can be contrasted with their ordinary hours of work:*

Name	***Ordinary hours of work***	***Anzac Day***	***Queens Birthday***
Lalopua Sanele	*8*	*7*	*7*
Suifaga Apolo	*8*	*6*	*3*
Tusa Gasaloga	*8*	*7*	*8*
Meki Sagele	*8*	*6.5*	*7*
Simalu Feleti	*7.5*	*5*	*5*
Kolopa Uiese	*8*	*8*	*8*
Brian Randall	*8*	*8*	*8*

10. *The sample of domestics worked in the following areas or departments.*

Name	***Areas/Departments ordinarily worked in***	***Areas/Departments closed on Anzac Day***	***Areas/Departments closed on Queens Birthday***
Lalopua Sanele	*Cardiology, oncology theatres*	*Cardiology, oncology*	*Cardiology, oncology*
Suifaga Apolo	*Level E, nuclear medicine, ENT, eye department*	*Nuclear medicine, ENT,eye department*	*Nuclear medicine, ENT, eye department*
Tusa Gasaloga	*Ward 2, ATR LD*	*ATR LD*	*ATR LD*
Meki Sagele	*Cardiology, oncology, theatres, Grace Neill Block*	*Cardiology, oncology*	*Cardiology, oncology*

Kolopa Uiese	*Emergency Department*		
Simalu Feleti	*Bedding, finance, neo-natal, Supply Emergency*	*Finance, Supply*	*Finance, Supply*
Brian Randall	*Public Areas*		

Payment of hours on public holidays

11. The sample of domestics were paid the following for work on Anzac Day and Queens Birthday -

Name	***Ordinary Hours of Work***	***Anzac Day***		***Queens Birthday***	
		T1	*T2*	*T1*	*T2*
Lalopua Sanele	*8*		*7*		*7*
Suifaga Apolo	*8*		*6*		*4*
Tusa Gasaloga	*8*		*7*		*8*
Meki Sagele	*8*		*6.5*		*7*
Simalu Feleti	*7.5*		*5*		*5*
Kolopa Uiese	*8*		*8*		*8*
Brian Randall	*8*		*8*		*8*

12. In addition, each domestic who worked received an alternative holiday.

13. The Defendant disputes that any money is owing at all. However, if the Court determines that T1 must be paid for all hours ordinarily worked (in addition to T2 previously paid for all hours actually worked and the alternative holiday), then all issues as to quantum should be able to be resolved between the parties, with leave to revert to the Court in the event of difficulty.

…

New collective employment agreement

16. By the time of the hearing in the Authority, bargaining in respect of a CEA between the Plaintiff and the Defendant had concluded in similar terms to the Spotless CEA ("the 2005 CEA"). The 2005 CEA was itself expressed to be in force until the earlier of a specified event (the Plaintiff giving notice of cancellation of the 2005 CEA), or 30 June 2007.

17. With effect from 21 May 2006, the plaintiff gave notice cancelling the 2005 CEA, and the 2005 CEA thereby expired. Subsequent to that expiry, the Plaintiff initiated bargaining for substantially different terms in a replacement collective employment agreement.

Further evidence

[7] In addition to these agreed facts, the evidence is that payment for work on public holidays under the CEA exceeds the minimum requirements of the Holidays Act 2003.

[8] A comparison of the ordinary hours of work of the employees and the work they were required to do on public holidays shows that the hours they worked on

public holidays was less than the usual working hours for five out of the seven affected employees.

The issues

[9] From submissions made at the hearing and in subsequent memoranda of counsel, it is apparent that there is no consensus between the parties about the issues before the Court. The case for each of the parties based on their interpretations of the CEA are, in summary:

- The employees are only entitled to be paid penal rates stipulated in the CEA for each of the hours actually worked on the holiday (OCS).

- The employees are entitled to a minimum weekly payment and where a public holiday falls during the working week they are also entitled to penal rates for any hours worked on the public holiday (the union).

[10] The essential difference between the parties is whether the employees are entitled to a minimum weekly wage. OCS argues that clause 10 of the CEA contains a code for payments on public holidays which puts such payments on a different footing from work on ordinary working days. The union's position is that its members are weekly employees who are entitled to the specified weekly wage whether or not they are called on to work full time and regardless of public holidays and that clause 10 entitles them to additional payments for work on public holidays.

[11] I find that the first question to be decided is what recompense a full time employee is entitled to receive for working on a public holiday which falls on a day on which that employee would normally be working.

[12] The second question is what wages are payable to part time employees for work done on a day that is a public holiday and whether the defendant can reduce the minimum paid hours of part timers employed on public holidays.

[13] In addition to these questions, Mr McBride also queried whether the Court has jurisdiction to determine the claim for arrears of wages in the statement of claim and whether the union has standing in light of an expired collective agreement.

[14] There are therefore five issues to be determined:

1. Does the Court have jurisdiction to hear an application for arrears of wages?

2. Does the union have standing to be heard in these proceedings?

3. Are full time employees covered by the CEA weekly employees who are entitled to a minimum weekly wage and, if so;

4. Is clause 10 of the CEA a code which provides an exception to this weekly entitlement when a working week contains a public holiday?

5. Can the defendant reduce the minimum paid hours of part timers employed on public holidays?

[15] These issues differ from those before the Employment Relations Authority. The union is no longer arguing that the full time employees have an entitlement to actually work 8 hours on public holidays. Instead, the union's position is now focused on the payment of a weekly wage regardless of public holiday entitlements.

[16] The parties are agreed on two matters. The employees are receiving their correct entitlement to an alternative holiday and there is nothing in the CEA which is inconsistent with the Holidays Act 2003 so this case concerns the interpretation and operation of the CEA rather than the Holidays Act 2003.

The collective employment agreement

[17] The following are the relevant clauses of the CEA.

[18] Clause 3 sets the term of the agreement. It is in force until 30 June 2007 unless the union gives notice initiating bargaining after 1 April 2006. In that case, the agreement expires on the sixth day of the notice. Because the union has given such notice, the agreement has now expired.

[19] Clause 6 covers hours of work:

> *(a)(i) The ordinary hours of work shall not exceed 40 in any one week without payment of overtime, and shall be made up of five shifts, not exceeding eight hours each without payment of overtime. …*
>
> *…*
>
> *(f) A timetable setting out the correct working hours of each employee shall be affixed and maintained one week in advance in some conspicuous place in each department and shall be accessible to the employees employed therein and to the accredited representative of the employee's union. Rosters once posted shall not be changed without prior consultation with the employee(s) concerned.*

[20] Clause 7 provides for overtime rates and clause 8 sets penal allowances for weekend and night work. Clause 8(a) states that the penal allowances are in addition to the weekly wage for employees who are required to perform ordinary hours of work on a Saturday or Sunday.

[21] Clause 9 allows for 2 days' holiday within each week and payment at overtime rates if work is required to be done on these holidays.

[22] Clause 10 lists the public holidays to be observed and provides for the transfer of a public holiday which falls on a Saturday or Sunday on which an employee normally does not work.

[23] Clause 10(b) provides:

> *Notwithstanding the foregoing, an employee required to work on a public holiday shall be paid at the rate of double his/her relevant rate of pay for the hours so worked on that day plus an alternative holiday at a later date at a mutually agreeable time.*

[24] Clause 10(d) provides:

> *Should any special department of the hospital close on the day of a public holiday, employees employed therein who are not required for duty may be rostered off duty in addition to their ordinary weekly holidays, in which case the employees shall be paid their relevant daily pay for that day.*

[25] Clause 13 covers wages and allowances for domestic employees. It says "*The following rates of pay shall apply*." Weekly rates of pay are set out in clause 13(a)(i). At July 2006 the rate was $460.40. Employees who supervise other employees on a relieving basis are paid an extra hourly rate in addition to their normal weekly rate set out in clause 13(a)(i).

[26] Clause 14(a)(ii) defines casual and part time employees. Only the latter are relevant to this case:

> *(ii) A part-time employee is an employee who is employed in a regular basis for less than 40 hours per week in accordance with the provisions of paragraph (b) of this clause and shall be paid the appropriate rate as set out in paragraph (c) of this clause.*

[27] Clause 14(c) sets the hourly rates for part time employees.

[28] Clause 14(b) also provides for a "permit" system which enables the union to consent to the employment of part time workers for specified weekly and daily minimum hours. Once these hours are set there can be no reduction in the permit hours of work of an individual without the prior consent of the union. Clause 14(b)(ii) then materially provides:

> *No response shall be deemed to indicate consent. Once issued the consent shall remain in force unless or until circumstances change.*
>
> …
>
> *Every 12 months, the employer shall supply to the union a complete list of part-time employees, stating each employee's daily and weekly minimum hours of work and work classification. No reduction in the permit hours of work of an individual employee or position shall become operative without the prior consent of the union. If no consent to the variation is given the permit hours shall be treated as the employees' minimum entitlement for pay purposes.*
>
> *Notwithstanding the foregoing where the Union's consent is required to either engage part-time employees or vary the permit hours or position the Union shall not unreasonably withhold such consent. Should a dispute arise in connection with this clause (Clause 14) in the first instance the employer shall refer the matter to the office of the Union office* [sic] *prior to invoking formal disputes procedures.*

[29] Clause 25 is entitled Terms of Employment. Relevant to this case are subclauses 25(a), 25(c), and 25(i):

> *(a) Except as otherwise specially provided in this Agreement, the employment shall be a weekly one, whether the employee shall or shall not be called upon to work full-time, and no employee shall be engaged at less then the weekly wages provided for the particular classes of employees in this Agreement.*

> *(c) Except as otherwise specially provided in this Agreement, no deduction shall be made from the weekly wages except for time lost through default of an employee. At the termination of the employment all wages and other payments due under this Agreement shall be paid without delay.*
>
> *(i) When computing wages and broken time, the usual weekly wage shall be divided by the number of days or hours usually worked.*

The issues

[30] Before dealing with the substantive questions, it is necessary to decide the preliminary jurisdictional and standing questions raised on behalf of the defendant.

1. Jurisdiction to hear arrears of wages

[31] Mr McBride submitted that the union is purporting to bring a claim for arrears of wages in its own name when s131(1) of the Employment Relations Act 2000 provides that such wages may be recovered by the employee. He submits that the union has not established that it has authority under s18(3) of the Act to represent the employees in relation to their individual rights.

[32] That objection may be shortly answered. First it was not referred to in the statement of defence and therefore the union has not had an opportunity to rebut it. Commonsense dictates that, had it done so, the union would have obtained formal authority from the individual employees affected by this matter.

[33] Second, this proceeding is first and foremost a dispute over the interpretation and operation of the CEA. An application for arrears of wages is contingent upon the wages payable being settled. The question of any arrears of wages which may arise from the Court's interpretation of the CEA can be dealt with in a formulaic way leaving individuals to authorise proceedings for arrears of wages if that becomes necessary. Indeed, the parties have agreed that should the union be successful in this proceeding, the calculation of any arrears of wages can be dealt with by the Court if they cannot agree.

[34] In any event the question of wages owing to union members is an ancillary issue which is dependent on the resolution of the dispute between the parties which is the issue before the Court.

2. Standing of union

[35] In April 2005, OCS employed previous Spotless Services (NZ) Ltd employees in a subsequent contracting situation. The employees were on individual agreements based on an expired collective agreement to which the union was a party. The dispute between the parties was dealt with by the Authority on the basis of that. In Mr McBride's submission, the union is not a party to the individual agreement once the CEA has expired and, because the union had terminated the 2005 CEA by initiating bargaining, it has no standing in its own right in relation to individual employment agreements.

[36] Mr Cranney submitted that the CEA was not terminated in the usual sense by expiry as contemplated under the Act but because bargaining had been initiated.

[37] Section 52(3) of the Employment Relations Act 2000 provides for the expiry of a collective agreement either on the date on which the agreement expires or on a date specified by the agreement as the result of an occurrence. A current collective agreement which would otherwise expire continues in force if the union has initiated collective bargaining before the collective expired and for the purpose of replacing it.

[38] I find that the union members who were transferred to OCS were covered by individual employment agreements based on a collective agreement to which the union was a party. The parties require a ruling on the operation of those terms not only to establish the parties' rights and obligations in relation to a previous dispute, but also to assist in negotiating a new collective.

[39] Because the union was at all times the representative and agent of the employees and continues to represent them collectively in bargaining, I hold that the union does have standing for the purpose of this dispute.

3. Do weekly employees have a minimum wage entitlement in the CEA?

[40] Mr Cranney submitted that there are three classes of employees: weekly (clause 25(a)), part time (clause 14(a)(ii)), and casual (clause 14(a)(i)). He summarised the position in the following way:

- Employees are generally weekly employees, and are paid the full weekly wage for their work (in the absence of a default by an employee).

- There is also provision for part timers who have minimum hours which cannot be reduced without agreement.

- Although there is no hourly rate for weekly employees, clause 25(a) provides for a mechanism to calculate a nominal rate used to calculate additional payments such as overtime or working on public holidays.

[41] There are a number of different formulations in the CEA for payments additional to the weekly wage or part time wage. Others are payments made without reference to the weekly wage. Mr Cranney submitted that as a matter of contract clause 25(a) means the full weekly wage must be paid whether or not the employee is called on to work full time and clause 10(b) does not oust the weekly wage but can be read consistently with it so that holiday pay is received in addition to the weekly pay.

[42] He argues that the words "*the rate of double his/her relevant rate of pay*" is a reference to double the notional hourly amount contemplated and established by clause 25(i) and the words "*the hours so worked*" in clause 10(b) is a description of the time in respect of which the additional payment applies.

[43] It is the union's case that the result of this interpretation is sensible and consistent with the rest of the CEA. Mr Cranney gave the example of Suifaga Apolo. She would normally have worked 8 hours but because of Queen's Birthday she only worked 3. This meant that if she were paid like the other cleaners who

worked on that day for a 5-day week she would have received 32 ordinary hours' pay and 3 at double time, making 38 hours. This equates to less pay than she would have received had she taken the day off and less than the weekly wage based on the minimum 40-hour week.

[44] The defendant seemed to recognise the contradiction of this because it paid her for 4 hours for Queen's Birthday not 3. She therefore received the equivalent of the weekly wage, no more and no less. What she should have received in the union's submission was the weekly wage plus 3 extra hours under clause 10(b) which provides for "*double his/her relevant rate of pay for the hours so worked*". The effect of the employer's position is she gets no penalty payment.

[45] The case for OCS is that clause 25 provides general terms of employment only and is subject to specific provisions elsewhere. This is because of the words "*Except as otherwise especially provided in this Agreement*".

[46] Mr McBride submitted that the CEA provides for maximum but not minimum hours of work and it is up to the employer to fix the working hours of each employee.

[47] I find that the affected full time employees are employed on a weekly rate of pay. This is evident from clause 13 which refers to a normal weekly rate of pay and particularly from clause 25(a) which expressly states that the employment shall be a weekly one. Clause 25(i) refers to a usual weekly wage.

[48] This means that full time employees are entitled to their full weekly pay each week even where a public holiday occurs during a working week and the employer does not require its employees to work on that day. Clause 10(d) provides that in such cases the employees are to be paid their relevant daily pay for the public holiday.

[49] The weekly wage as set in the CEA is a minimum and the only deduction which can be made is through a default by an employee. This reinforces the finding that the weekly wages are not able to be reduced. Although it is correct that the

employer may fix the working hours of each employee, the CEA nevertheless provides for payment for 40 hours in normal circumstances.

4. Effect of clause 10 on weekly wages

[50] Because he anticipated that the union would continue to argue as it had in the Authority that OCS was not entitled to reduce the hours of work of employees on public holidays, Mr McBride submitted that whether or not an employee is required to work on a public holiday and the length of that work is entirely a matter for OCS. I accept that argument and by implication so did the union. Clause 25 contemplates situations where OCS may require no work at all on a public holiday. However, the argument for the union was on a different footing. Mr Cranney submitted, that because the minimum weekly wage had to be paid regardless of whether an employee worked on a public holiday, clause 10 required any work done on a public holiday to be recompensed on the basis of the usual daily rate plus an additional hourly rate of pay for each hour actually worked to comply with clause 25.

[51] In response to that, Mr McBride submitted that clause 10 is a specific code for work on a public holiday and that payment of double time for hours worked satisfies OCS's entire obligation under the CEA to its employees for work on a public holiday. Because the public holidays provision is specific, he submitted it must yield to the general requirements of the CEA.

[52] Mr McBride also pointed out that in Ms Sanele's case she worked only 7 hours on each of the two 2005 public holidays and was paid for 14 hours which exceeded her usual daily and weekly wage and that she was not disadvantaged by the arrangement.

[53] Mr McBride also relied on the clause 10(b) words "*Notwithstanding the foregoing*" to support his contention that clause 10 is a code for payment on public holidays which stands apart from the provisions for normal weekly pay.

[54] I do not accept that submission. Clause 10 is not to be read in isolation from the rest of the CEA. I find that the clause 10(b) words "*Notwithstanding the*

foregoing" refer to clause 10(a) which specifies the public holidays to be observed. Clause 10(b) means that although the public holidays shall be observed under clause 10(a) there is an agreement that an employee may be required to work but will receive special rates of pay. While it does not specify that these special rates are in addition to the usual daily rate, that can be reasonably implied from the rest of the CEA including clause 10(d) which requires the employees to be paid their usual weekly wage on a public holiday even if they do not work.

[55] I therefore accept the case for the union that clause 10(d) does not oust the weekly wage and replace it with a code but can be read consistently with the weekly wage requirement. Clause 25(c) prohibits deduction from the weekly wage which reinforces the position that it is to be paid regardless of the hours worked. Substituting the clause 10 payments for the relevant day's pay means that the latter is effectively deducted.

[56] This interpretation is consistent with the policy of the Holidays Act 2003 which contemplates that a person who is required to work on a public holiday receives more compensation for that work than they would get for working on a normal working day. In the present case the parties have agreed on a more generous allowance than the time and a half allowed for in the Holidays Act 2003 but that numerical difference does not mean that the employee's other contractual entitlements such as receipt of a minimum weekly wage regardless of a public holiday should be abrogated.

[57] The effect is that OCS may exercise its managerial prerogative as to whether or not its full time employees will work on a public holiday and the hours of such work. If it decides not to employ them on a public holiday they will be paid their normal daily rate. If it decides they will work, then they are to be paid their normal daily rate plus an additional hourly rate for each hour they actually work meaning that they receive double time for the hours worked on a public holiday. There is no contest that they also receive an alternative day.

5. Part time employees

[58] Employees who are employed on part time rates also were required to work reduced hours on the two public holidays in 2005.

[59] It is the case for the union that under the CEA these employees are entitled to payment for a minimum number of hours per day which must be paid whether or not the day is a public holiday.

[60] Mr Cranney submitted that, although full time employees have maximum weekly hours set by the CEA, part timers have minimum daily hours which pursuant to clause 14(b)(ii) cannot be reduced. If they are, then there can be no corresponding reduction of wages. The hours of work are protected for pay purposes.

[61] In response, Mr McBride submitted that clause 10 does not differentiate between part and full time workers and the same argument presented for the full time workers should apply.

[62] I find that paragraph (ii) of clause 14(b) is determinative of this question. Once the minimum hours of work for part time employees have been determined, those employees are to be paid that minimum entitlement whether weekly or daily unless there has been an agreement reached with the union to vary it. The agreed facts stipulate that no agreement had been reached to vary the ordinary hours of any of the employees on the two public holidays in question.

[63] The part time employees are therefore entitled to be paid their usual daily rate for work on a public holiday regardless of the hours worked plus an extra hour's payment of the CEA's penal rate for each of the hours actually worked and those hours must be a minimum of those agreed under the permit arrangement in clause 14.

Conclusion

[64] The plaintiff sought declarations that the defendant is in breach of the collective agreement in respect of the payment of full time and part time employees who work on public holidays. For the reasons given those declarations are made but are limited to the public holidays which were the subject of these proceedings, Anzac Day and Queen's Birthday 2005 as there was no evidence about any other holidays.

[65] It follows, however, that the employees covered by the terms of the CEA are entitled to be paid according to the findings in this judgment for work done on other public holidays.

[66] The effect of the breaches of the CEA is that members of the union who worked as cleaners for OCS and who worked reduced hours on public holidays in 2005 are entitled to be paid the ordinary pay for the hours they would normally have worked on that public holiday and in addition receive an additional hourly payment for those hours actually worked on that holiday as well as an alternative holiday.

Quantum

[67] This can be left to the parties to resolve but leave is reserved for either party to apply to the Court if necessary.

Costs

[68] By agreement the question of costs was reserved for submissions. If the parties cannot agree, counsel for the plaintiff is to file a memorandum by 16 March 2007. The defendant will have 14 days following that to submit a memorandum in response.

C M Shaw
JUDGE

Judgment signed at 12.30pm on 1 March 2007