

PWUA says overtime is not compulsory under the Collective Agreement

Employment Court hears Delivery Agents' overtime "availability" case

The PWUA explained to the Employment Court in Auckland last month that if employees don't know their start and finish times then they cannot plan their personal and family lives because they do not know when NZ Post will require them to continue working beyond their rostered hours.

The PWUA stated that, in its view, a roster must tell employees not only the days they are working but also tell them their start and finish times.

However the company told the Court that the actual start and finish times on an employee's roster each day are provided to payroll only *after* the employee has finished work for the day. NZ Post said that a "roster" only tells employees which days they are scheduled to work on but does not tell them what *hours* they will be working on those days.

NZ Post told the Court that it wanted the ability to require Delivery Agents

to work overtime on the days they were rostered on.

In contrast the Court heard that, in the PWUA's opinion, the law prevented NZ Post from requiring employees to be available for overtime without compensation.

The PWUA is very aware that some Delivery Agents want to work overtime on their rostered days to increase their earnings. The Union is also aware that some Delivery Agents cannot work overtime because of personal, family or other commitments.

The PWUA has consistently proposed to NZ Post that those employees who want to work overtime should be given the overtime and those who cannot or do not want to work overtime should not be required to do so.

The PWUA is confident that the needs of all employees and the company can be met with the intelligent and appropriate allocation of work.

PWUA successfully opposed NZ Post's attempt to have the Court case abandoned

During the Employment Court hearing the PWUA strongly opposed a surprise manoeuvre by NZ Post when the company made a last minute application to have the Employment Court hearing abandoned.

NZ Post claimed that two words ("and finishing") had been inserted by them into the Collective Agreement (CA) by mistake in 2016 and those two words altered the whole meaning of the Collective Agreement as it applied to Delivery Agents. (The two words have been carried over into the current CA - clause O26 page 79.)

NZ Post wanted the Court hearing abandoned while the company initiated legal proceedings to "rectify" the CA by removing the two words.

The PWUA told the Court that the CA had the same meaning for Delivery Agents whether the two words "and finishing" in clause O26 were in or out because the definition of "roster" on page 17 of the CA already specifies "actual start *and* finish times".

The full bench of three Judges, who had cut their summer recess short in order to hear this important case, did not appear impressed with NZ Post's approach. NZ Post conceded under questioning that they had known about the alleged mistake for more than a year but had done nothing about it until the morning of the Court hearing last month.

The Court dismissed NZ Post's application to abandon the case and the hearing proceeded, but not without a lengthy delay and increased legal costs for the Union.

NZ Post tells Employment Court that Delivery Agents are salaried employees

NZ Post told the Employment Court that Delivery Agents were paid a salary and that Delivery Agents had agreed, as part of their salary, that they were already receiving compensation for being available for overtime, even though this was not recorded anywhere.

NZ Post presented no evidence to substantiate its claim that Delivery Agents were salaried employees, but instead relied on legal arguments of interpretation of the law.

However the PWUA produced documents written by NZ Post which showed that management knew that

Delivery Agents were hourly paid employees and not salaried employees.

The Union produced more documents showing that NZ Post had initiated discussion with the unions over the possibility of changing Delivery Agents over to become salaried employees. The company and unions had eventually together concluded that a change from wages to salaries would not work for Delivery Agents.

The PWUA is confident that NZ Post's submission that Delivery Agents are salaried employees will be dismissed by the Court.

Business NZ submission - posties and pilots

Business NZ claimed that pilots who were on stand-by at home could be entitled to availability compensation but not Delivery Agents who were simply staying on at work for required overtime.

The Union says that DAs are also disadvantaged by every working day having to keep personal time available to NZ Post for compulsory overtime without compensation for being available.

NZ Council of Trade Unions submission to the Employment Court - "the principle of reciprocity"

In making its written submission in support of the PWUA at the Employment Court the NZ Council of Trade Unions (NZCTU) pointed out "the primary principle is reciprocity" - that if an employer requires an employee to be available to accept work which is additional to guaranteed hours then the employer is required to make a payment in compensation for the worker being available to work overtime.

The NZCTU concentrated its submission to the Court on backgrounding Parliament's intentions behind the law change and in particular the legal meanings of sections 67D 67E and 67F of the Employment Relations Act - the employer's responsibilities when requiring its employees to be available to work compulsory overtime.

"s67D(1) defines "availability provision", essentially as a provision

under which an employer makes additional work available (above "guaranteed hours") and the employee is required to perform the work".

"There is also specific provision which entitles an employee to refuse to perform work in circumstances in which an availability provision does not provide for reasonable compensation for making him- or herself available (s67E)".

"An employee who refuses to perform the work is protected from adverse treatment (s67E)".

"Section 67E is itself consistent with the "mutuality of obligations" theme. An employee may refuse to work if the employment agreement does not provide compensation for being available for work"

In its support for the PWUA's case the NZCTU explained to the Court that

cost to itself.

E tū submits that the Employment Relations Act recognises that it is not lawful to expect employees, in any context, to be required to restrict themselves outside standard work hours unless there is a mechanism for compensation for being available."

In its submission E tū went on to ask the Court to declare the overtime clause O26 in the PWUA Collective Agreement (CA) to be illegal and for the Court to send the PWUA and NZ Post back into bargaining again on just

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this was the most important case to come before the Employment Court seeking the Court's ruling on availability.

(The PWUA is one of the 31 unions affiliated to the NZ Council of Trade Unions which represents the great majority of unionised workers in New Zealand - over 320,000 workers.)

E tū supports PWUA case in Employment Court

E tū told the Employment Court it supported everything set out in the PWUA case. (E tū also told the Court that although their membership coverage overlapped with the PWUA, E tū had a significantly smaller membership employed by NZ Post.)

In support of the PWUA case E tū stated in its submission:

"The failure to provide compensation to the employees for being available to work overtime is contrary to s67D(3). A Delivery Agent must keep this time available and NZP obtains this time at no

cost to itself.

E tū submits that the Employment Relations Act recognises that it is not lawful to expect employees, in any context, to be required to restrict themselves outside standard work hours unless there is a mechanism for compensation for being available."

In its submission E tū went on to ask the Court to declare the overtime clause O26 in the PWUA Collective Agreement (CA) to be illegal and for the Court to send the PWUA and NZ Post back into bargaining again on just

the overtime clause. (The E tū CA has the same wording.)

E tū told the Court that the PWUA could have the right to strike and equally NZ Post could lock out the PWUA members to try to force an agreement.

The PWUA emphasised to the Court that the PWUA was not seeking the renegotiation of the overtime clause, but simply a ruling by the Court on the rights of the Delivery Agents to refuse to work overtime.

The Court's written decision is expected in a few weeks' time.

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POSTAL WORKERS UNION OF AOTEAROA (NORTHERN)

6A Western Springs Road, Kingsland, Auckland, 1021

I hereby appoint the Postal Workers Union of Aotearoa incorporated to be my authorised representative under Sections 18 and 236 of the Employment Relations Act 2000. For the purpose of this authority any duly appointed representative of the PWUA is empowered to act on my behalf in any matters related to or arising out of the negotiation and application of any Employment Agreement or any other matter relating to my employment at my request. This authority shall continue in force until revoked by myself, giving two weeks notice.

Name (PLEASE PRINT)

Signed Date...../...../..... Appointment No.....

Employer Site.....

Department..... Position.....

Home Address.....

Suburb..... City..... Post code.....

Phone..... Email.....

Deduction Authority for Postal Workers Union of Aotearoa (Northern)

I authorise my employer to deduct:

- \$5.95 per week when I am employed for 30 or more hours per week, or
- \$2.95 per week when I am on-call, or employed for less than 30 hours per week from my pay and credit the Postal Workers Union of Aotearoa Northern District.
- Please stop any other deductions from my pay to any other union.