



Centre for Labour, Employment and Work

The NZ Meat Workers Union & AFFCO New Zealand Limited keep the Employment Court busy

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Subsequent to the judgment in *NZ Meat Workers & Others v AFFCO New Zealand Limited*¹, finding that the lockout of workers at AFFCO plants were unlawful, and that the company had failed to act in good faith during collective bargaining, further proceedings have been taken by the Union. The new court action relates to the way in which the locked out workers at the Wairoa plant are to return to work; as the lockout was found by the Court to be unlawful the workers should be returned to the position which should have pertained, but for that lockout. This has resulted in the reporting of a hearing in Chambers on 8 December 2015² in front of Chief Judge Colgan followed by a hearing on an application for interim injunction before the Court on 21 December 2015³. The interim injunction was denied, partly on the ground that a hearing on the substance of the claims was put down for the week beginning 25 January 2016. At the time of writing that judgment has not yet been reported.⁴

The case arises from AFFCO having offered the locked out workers a return to work on an afternoon shift, as opposed to the day shift. The normal practice, it is alleged, is for seniority to be applied, and those with seniority to be engaged on the day shift. The Union argues that if seniority were to be applied the locked out workers would return to the day shift. It is also contended that the offers of re-engagement on the afternoon shift are discriminatory and impose disadvantage on those workers. The disadvantage of the afternoon shift is alleged to be due to its shorter duration at the peak of the season, and because it requires workers to be available at times when they have never worked for AFFCO before.

AFFCO has asserted that it is entitled under the expired collective agreement to engage those Union members on an afternoon shift as opposed to a morning shift, on individual employment agreements based on the expired collective agreement. AFFCO, also argued that those who had not returned to work on the terms offered were either on strike, or had abandoned their employment. The argument that the workers were on strike was not developed in the case heard on 21 December, but the judge did reject it, and did not consider the circumstances to constitute a strike.

¹ [2015] NZEmpC 204 EMPC 152/2015 which was reported in CLEW'd In Issue 8 December 2015

² *New Zealand Meat Workers & Related Trades Union Inc, and Roberta Kerewai Ratu and Others v AFFCO New Zealand Limited* [2015] EmpC 219

³ *New Zealand Meat Workers & Related Trades Union Inc, and Roberta Kerewai Ratu and Others v AFFCO New Zealand Limited* [2015] EmpC 233

⁴ Update 12 Feb: The decision delivered yesterday (Feb 11) was in favour of the union claims. The full decision will be considered in subsequent issues of CLEW'd IN.

Evidence was led by both parties before the court in the week commencing 25 January 2016 to allow the Court to consider the interpretation of the collective agreement on which the individual employment agreements offered to the locked out workers were based. The judgment will be considered in full in CLEW'd in when it is reported. Additional cases relating to this dispute remain outstanding, including an application from AFFCO for a declaration that bargaining is at an end. The Union has counter-claimed with an application for facilitation, and a subsequent application under s50J of the Employment Relations Act to fix the terms and conditions of a collective agreement between the parties. These actions are all adjourned sine die. AFFCO's counsel has also indicated that they will apply to the Court of Appeal for leave to appeal the judgment of 18 November 2015.