IN THE EMPLOYMENT COURT
WELLINGTON

WC 19/07
WRC 33/06

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	AFFCO NEW ZEALAND LIMITED Plaintiff
AND	TREVOR BEAMSLEY Defendant

Hearing: 7 and 8 May 2007
(Heard at Wanganui)

Appearances: Graeme Malone, Counsel for Plaintiff
E J Unsworth, Counsel for Defendant

Judgment: 8 August 2007

JUDGMENT OF CHIEF JUDGE GL COLGAN

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[1] The controversy at the heart of this case is whether the employer can reassign unilaterally, to a combination of production and union representation duties, an employee who has been paid until now by the employer as a full time union secretary.

[2] AFFCO has long operated a meat processing works at Imlay near Wanganui. It has employed, and continues to employ, persons who carry out various processing roles at the plant and many of whom are members of the Meatworkers' Union. The structure of the union includes the office of Imlay site secretary. That is an office held by a meatworker elected by his or her union colleagues. The site secretary is the conduit between union members at the plant and the union's head office and

performs a variety of functions that deal generally with employment issues at the plant.

[3] At times in the past, the Imlay plant has employed up to 600 meatworkers on three shifts. Now its workforce is around 450 and there are now two shifts of workers, all the union members of which may expect, and are entitled to, the secretary's assistance. No doubt recognising the value to it of a dedicated union representative at the plant, the wages of the secretary for the time being have for at least the last 40 years been paid by AFFCO. Although not widespread in New Zealand generally, this practice reflects that of some other employers in the meat industry, principally the older companies at larger plants. However, these arrangements are changing, at least at other plants owned and operated by AFFCO.

[4] AFFCO has about 11 meat processing plants of varying sizes and complexities, some larger and some smaller than Imlay. In recent decades the general trend has been towards smaller and more specialised meat works. Until very recently, there were two meatworkers' unions in New Zealand. Although the two unions have now combined, the arrangements at issue in this case, and the contractual provisions covering them, date from a time of a geographical division of the country. The Meat and Related Trades Workers Union of Aotearoa Incorporated covered employees at meat works in the northern part of the North Island, while the New Zealand Meat Workers and Related Trades Union Incorporated covered the rest of the country including Imlay. What I will describe as the Aotearoa union operated with a number of full time union officials who visited plants as and when required and liaised with elected employee delegates at those plants. The New Zealand union tended to have fewer "head office" staff but, rather, full time site secretaries such as Mr Beamsley elected by the workforce but many of whom were paid by their companies.

[5] Although there are now larger and more complex AFFCO plants, Imlay is the only AFFCO site still with a full time union secretary paid by the employer. There are no other AFFCO works in the immediate vicinity of Imlay in or around Wanganui, but there are plants owned by AFFCO's competitors in the region.

[6] Before the year 2000, Mr Beamsley was a meatworker and a union delegate in the part of the Imlay plant in which he worked. The terms and conditions of his employment were then governed by a collective employment contract between AFFCO, the union and named employees including Mr Beamsley. At about the time Mr Beamsley was elected to the position of Imlay site secretary in 1999, AFFCO's plant management made a decision that was recorded in a memorandum signed by the site manager, Bryan Goldsack, dated 7 February 2000 that is materially as follows:

> *To:* ***Trevor Beamsley***
> *Cc* *Stu Bell*
> *Pat Crawford*
> *Leon Roebuck*
> *Jim Collins*
>
> *From:* ***Bryan Goldsack***
>
> *Date:* *Monday, 7 February 2000*
>
> ---
>
> *Subject:* *Site Union Representation*
>
> ---
>
> *Further to our earlier discussions …*
>
> *I'll* [sic] *pleased to formally advise you that the Imlay Management Team have made the decision to provide you with the opportunity to undertake full time union representation of the Imlay site.*
>
> *We have made the decision to expand the time available to you because we feel that this will not only benefit the people we employ, but also it will allow us both to develop and grow what is already a very positive relationship between us both.*
>
> *Furthermore, we accept and support that due to the nature of the work at Imlay (ie triple shift patterns) it will be necessary for you to manage your time across all work activities.*
>
> *This arrangement is in place for the period of your tenure as Site Union Secretary and it should <u>not</u> be assumed that this position would be maintained should a person other than yourself have the role of Union Secretary.*
>
> *We look forward to working together for the betterment of the Imlay site and our employees.*

[7] This arrangement operated until mid June 2006 when AFFCO decided that, although Mr Beamsley was still the elected site secretary, he should be required henceforth to work in the plant's cutting room. This decision followed brief discussions between Mr Beamsley and management representatives in early June

2006. During these discussions AFFCO representative, Leon Roebuck, told Mr Beamsley that unless he agreed to the company's requirement that he engage in productive work in the cutting room, he would be paid for the equivalent of only 4 hours per week for union work. Imlay management told Mr Beamsley that it was conveying instructions from Richard McColl of AFFCO's head office.

[8] AFFCO set out its position with reasons in a letter dated 31 July 2006 signed by Graeme Cox, its employee relations manager, addressed to Mr Beamsley. After further discussions between the parties on 1 August, the company made a final decision on the following day. It confirmed this in a further letter to Mr Beamsley from Mr Cox. Mr Beamsley declined to agree to alter his existing arrangements.

[9] Very unfortunately for Mr Beamsley, his health is now such that he considers that he would be incapable of performing physically any processing jobs at the Imlay plant. So I infer that, unless the defendant is able to continue as the full time site secretary paid by AFFCO, he may have to retire without income, at least until such time as he is eligible for New Zealand Superannuation.

[10] Mr Beamsley took personal grievance proceedings to the Employment Relations Authority seeking a compliance order and reinstatement to his former full time site secretary role. Following an investigation meeting on 13 September 2006, the Authority, in a determination dated 11 October 2006, declared that Mr Beamsley was entitled to continue to be paid by AFFCO as a full time site secretary. It is unclear from the Authority's determination whether it found that Mr Beamsley had a personal grievance and, if so, the nature of the grievance. It also appears that the Authority did not make the reinstatement direction Mr Beamsley had sought, dealing with his complaint only by making a declaration of his entitlement. It added:

> *… I am hopeful that this decision will bring the matter to a conclusion and for the parties to make those arrangements permanent (but subject to the terms of the memorandum) and for that reason I do not need to make any further orders. Indeed I am prevented from doing so in terms of making any injunctive relief. However, I reserve leave for Mr Beamsley to apply for a compliance order should that become necessary.*

[11] Quite what the Authority meant by its enigmatic reference to being unable to do something by way of injunctive relief is puzzling. Mr Beamsley had claimed that

he had been disadvantaged unjustifiably in his employment, a personal grievance. The statutory remedy he sought was reinstatement. The case for Mr Beamsley has not been advanced as an unlawful discrimination grievance under s104(1) and so I say no more about that.

[12] The terms of the 7 February 2000 memorandum establish AFFCO's intentions at that time for Mr Beamsley's particular terms and conditions of employment. AFFCO offered to pay Mr Beamsley as if he were a full time production worker for the period of his tenure as site secretary but would not expect production work from him. That offer was made in the knowledge of the democratically elected nature of the site secretary role, that is that at some time in the future he might either resign from it or someone else might be elected in his place. Further, the offer made by AFFCO was personal to Mr Beamsley: it did not intend necessarily to extend that offer to any successor site secretary. There was no other express condition attached to the offer including for the ending of the arrangement.

[13] Although, as AFFCO accepted in 2000 when offering to pay Mr Beamsley for his full time role as site secretary, this had indirect value for the company, the position is nevertheless an employee-centred or union-centred one rather than a company-centred position. Put another way, Mr Beamsley was appointed to the site secretary role by other employees and was answerable to them and to the union for the day to day performance of his job and not to the company that nevertheless paid him.

Other relevant written agreements

[14] Because the defendant asserts that he was covered, and therefore that his terms and conditions of employment are set, by the current AFFCO New Zealand Core Employment Agreement (2003-2005)[1], it is necessary first to analyse the relevant provisions of this collective agreement. It covers all AFFCO plants and although individual sites may have their own particular agreements, the core collective must prevail in cases of conflict between the national and local agreements.

[1] Although this has clearly expired, it was supplied by counsel in a common bundle of documents and so I have assumed its contents are, or reflect those that are, current.

[15] Although entered into by two unions (Meat and Related Trades Workers Union of Aotearoa Incorporated and New Zealand Meat Workers and Related Trades Union Incorporated), these have now amalgamated so that the first named is a branch of the second. Nothing turns on this distinction.

[16] Clause 3 provides that the collective agreement binds and is enforceable by, among others, the employees who are employed by the plaintiff and *"whose work comes within the coverage clause of this agreement"*: clause 3(b)(ii).

[17] Clause 1 (*"COVERAGE"*) provides that the agreement covers employees of the plaintiff *"… carrying out processing and associated work at the Company meat and ancillary processing sites presently at, … Imlay … ."*

[18] Clause 8 provides at a): *"This agreement specifies the terms and conditions of employment common to all process workers employed by the Company."*

[19] The core agreement provides that, in addition to its contents, site employment agreements shall be negotiated for each site including Imlay, covering rates of pay and conditions of employment specific to that site, but shall not cover matters contained in the core collective agreement unless that is expressly provided for in the core collective agreement. Clause 8 e) provides that should any ambiguity occur between the provisions in the core collective agreement and a site agreement, the provisions of the core collective agreement will prevail.

[20] The core collective agreement contains a number of general but nevertheless important aspirational provisions. These both acknowledge and require an application of the agreement to achieve a balance of profitability and competitiveness for AFFCO. That is to be through such strategies as good management, a committed workforce, and a flexible and innovative approach to problem solving and industrial relations (on the one hand), and a recognition of the rights and responsibilities of employees and their union (on the other). So, for example, under clause 9 e) the parties agree that it is in their mutual interests to operate efficient, competitive and profitable plants and that consultation and worker

involvement are vital to the success of these operations. Clause 9 c) recognises AFFCO's right to manage and control its business operations.

[21] Clause 38 of the core collective agreement (*"UNION REPRESENTATIVES"*) provides at b): *"The Company may, at its discretion, allow Union representatives reasonable paid time off to represent workers."* The agreement distinguishes what it describes as *"site officials"* and *"delegates"* but both are *"Union representatives"*. Also acknowledged in clause 38 b) is a representative described as *"the senior site official"*. That was Mr Beamsley at Imlay.

[22] In addition to the discretionary paid time off to represent employees under clause 38 b), the core collective agreement also provides at e):

> *The Unions may request unpaid leave for site officials and or delegates to attend to union affairs. Although such leave shall not be unreasonably withheld, the Company shall take into consideration the ongoing operation and industrial needs of the site.*

[23] Appendix A to the core collective agreement addresses *"REDUNDANCY PROVISIONS"*. Redundancy is defined as being circumstances where: *"A workers [sic] employment is terminated by the Company due to the workers [sic] services becoming surplus to the needs of the Company; … "*

Legal tests

[24] Although not particularly focused upon by the Employment Relations Authority as a particular sort of case, I think Mr Beamsley's complaint that he took to the Authority can best be described as a disadvantage personal grievance under s103(1)(b) of the Employment Relations Act 2000 ("the Act"). Because, fortunately, the union and Mr Beamsley's solicitor were able to persuade AFFCO to stay its hand pending the Employment Relations Authority's determination and, subsequently, this Court's decision, Mr Beamsley has not lost his job as may have been the consequence of the positions that the parties took. Depending on the outcome of this judgment, that may or may not be the consequence to him, assuming that AFFCO and Mr Beamsley will act in accordance with its terms of judgment. So, under s103(1)(b) the question is whether Mr Beamsley's employment, or one or more conditions of that, have been affected to his disadvantage by unjustifiable action by

AFFCO. Section 103A defines justifiable action as being what a reasonable and fair employer would have done in all the circumstances in both substance and manner.

[25] There can be little doubt that Mr Beamsley's employment, or one or more conditions of that, have been affected to his disadvantage by AFFCO's actions just described. It concedes as much but says that the real question is whether it has acted justifiably in all the circumstances.

[26] Determining the rights and obligations of an employer that pays an employee who is not only answerable ultimately to other employees collectively, but may also in doing so, come into conflict with the employer and its interests, throws up unique challenges. That is so especially where, as here, concepts of control and redundancy are involved. Although there were and are mutual benefits for employees and AFFCO in having a full time union official on site, paid by the employer, such an arrangement has potential for disruptive conflict. Generally, an employer who pays an employee is entitled to determine, within contractual and other legal constraints, what the employee does and how it is done. Generally, also, unions are independent of employers because they do not wish to be, or appear to be, beholden to them. Decision of this case must balance those two potentially irreconcilable rights.

Decision of grievance – Procedural justification of disadvantage

[27] I deal with the manner in which AFFCO affected Mr Beamsley's employment to his disadvantage. I find that in its early dealings with him, AFFCO appeared to be intent upon treating him (as an employee of long standing, holding a sensitive and at times controversial position at Imlay), in a manner in which a fair and reasonable employer would not have so acted. But, as sometimes happens and fortunately for Mr Beamsley, he was able with the assistance of both the union and his solicitor to persuade AFFCO that it should at least delay putting its intention into effect. It then met its obligations in law to inform and consult about those proposals. It is to the company's credit that it agreed to do so and then approached that consultation exercise open-mindedly. No doubt it acted on professional advice in doing so. That it may eventually have been unpersuaded to Mr Beamsley's view does not mean that its decisions were ultimately unjustified. Indeed, the evidence shows that in some

important respects AFFCO was prepared to compromise significantly after considering representations from Mr Beamsley, his union and solicitor. For example, it was flexible on where in the Imlay plant Mr Beamsley might have been expected to have been transferred to perform productive work that might have suited both his personal health circumstances and best allowed for his periodic absences to attend to union business without affecting unduly the plant's production.

[28] So, I conclude that the manner in which Mr Beamsley was treated ultimately by AFFCO was the way in which a fair and reasonable employer would have treated him in all the circumstances. It follows that AFFCO's process was not so unfair and unreasonable as to cause the disadvantage to Mr Beamsley to have been unjustified.

Decision of grievance – Substantive justification of disadvantage

[29] The second consideration of equal importance in s103A is the fairness and reasonableness of the employer's actions. This is not so easy to determine because it involves both legal rights and obligations but also a complex and difficult industrial situation that is in many respects uncertain for the future.

[30] The parties appear to have assumed, at least until this question was raised by me in the course of the hearing, that the collective agreement covered Mr Beamsley. I had some doubts about that. Even if it does, this creates problems for him in enforcing what Mr Beamsley contends the Goldsack memorandum meant.

[31] Although, of course, Mr Beamsley is a member of the union and therefore meets the first of the two qualifying criteria for collective agreement coverage, it is arguable whether he is engaged in *"processing and associated work"* at the Imlay plant. The meaning of that phrase is complicated by the provisions of clause 8 a) of the collective agreement that specify its application to *"all process workers"*. Although he was one before 2000, I do not think it can be doubted that he is not now a process worker. Rather, it is a question whether his full time role as site secretary can be said to be processing associated work at the plant. The evidence tends to establish that, at Imlay at least, any employee at the plant who is a member of the union is covered by the collective agreement. Put another way, all jobs at the Imlay plant are regarded as processing associated work so that coverage depends in

practice upon union membership. So, for example, clerical staff, cleaners, maintenance staff, and other employees not engaged in actual processing work, are entitled to be both union members and are covered by the collective agreement if they wish to be so.

[32] If, as the defendant says, his terms and conditions of employment are set primarily by the core collective agreement, this would preclude the application of an inconsistent individual contractual term for Mr Beamsley. The core collective agreement contemplates the company allowing duly elected representatives of the union representing process workers at the Imlay site reasonable paid time off to represent employees, but at the company's discretion. All parties have rights and obligations under this provision. AFFCO is entitled to insist that Mr Beamsley undertakes production work subject to the collective agreement's provision that he may be released from time to time to represent employees but at the company's discretion. This is, in essence, the stance that it has maintained throughout the dispute, having only resorted to the ultimate fall-back of redundancy after Mr Beamsley's refusal to make any changes to his current work status.

[33] On the other hand, if Mr Beamsley is not covered by the collective agreement, then he has an entirely individual employment agreement with AFFCO, some of the terms of which are set by the Goldsack memorandum of 2000 upon which he is entitled to rely. In these circumstances, however, AFFCO may be entitled to seek to persuade Mr Beamsley to alter those terms and conditions of his employment because it says its circumstances and those of Mr Beamsley have changed. AFFCO cannot compel, by unilateral variation to its contract with Mr Beamsley, those new arrangements to take effect. However, it may be able to establish that in these circumstances the defendant will be redundant, that is that his role, or at least some aspects of it, are or will be surplus to the employer's requirements.

[34] Because both Mr Beamsley and his union have always considered that he is subject to the provisions of the core collective agreement as a union member, it is perhaps not surprising that the Employment Relations Authority did not address this coverage question and, subsequently, the effect of the collective agreement (if applicable) on the questions for decision. It may be that the issue was not

highlighted for the Authority because it appears to have been considered only after I raised with counsel in the course of the hearing whether the collective agreement indeed covered Mr Beamsley's situation. But the collective agreement is an essential ingredient in the decision of the case because Mr Beamsley's position is that he is covered by it.

[35] Having reflected upon the options, I am satisfied that Mr Beamsley's interpretation of the core collective agreement's coverage clause is correct. It includes him as an employee doing processing associated work. That accords with the way that the company and others at the plant performing non-processing work have applied this coverage clause in practice. Mr Beamsley's remuneration has been linked to that of other employees clearly covered by the core collective agreement. So I conclude that the terms and conditions of Mr Beamsley's employment contract with AFFCO included those in the core collective agreement and such other individual terms and conditions as might have been agreed or operate in practice and are not inconsistent with the collective.

[36] It is too simplistic to argue (as Mr Beamsley does) that, because the position and role of elected site secretary remains in existence, there can be no redundancy of that role or its holder for the time being. That is, first, because of the broader notion of redundancy, both generally and as defined in the core collective agreement in this case. It is that the position as held or the job as performed has become surplus to the employer's requirements. The emphasis is upon the business needs of the employer, not simply upon the existence of the role.

[37] The employer is entitled to investigate means by which the plant can operate more efficiently. Paying an employee the equivalent of a production worker's remuneration but for no production or direct contribution to production, would seem to be a valid concern on the part of the employer. The view of company managerial witnesses is that work as site secretary performed by Mr Beamsley that is beneficial to the company is only a small proportion of his full time role for which he is paid. AFFCO wishes to foster a workplace culture in which employment relationship issues are dealt with initially by those immediately affected, employees and their supervisors. It says that at present staff, both supervisory staff and production

employees, refer such matters almost automatically to Mr Beamsley whereas, with better training and experience, many relatively minor issues could be disposed of without the higher level of attention they receive at present. Those concerns are valid ones for AFFCO to have, and address.

[38] On the other hand, AFFCO cannot dictate to Mr Beamsley or to the union that he is no longer to be either the site secretary or even the full time site secretary. Those are questions to be determined by the union and its members. If AFFCO does not like how Mr Beamsley performs his role or how the union appears to it to be conducting industrial relations, the employer cannot lawfully seek to influence Mr Beamsley, or the union, or its unionised employees, by determining that there should no longer be a full time site secretary.

[39] But where the employer has a legitimate interest is in its payment to Mr Beamsley of an equivalent full time production worker's remuneration. If an employer pays an employee, it is axiomatic that the employer has an interest in, and a degree of control over, what the employee does and how the employee does it. The degree of that control may be subject to contract: here, for example, in the core collective agreement, AFFCO has relinquished some of its control over how elected union officials can fulfil their roles while still being paid by the employer. In appropriate cases, AFFCO must release those union officials from productive work to attend to legitimate union business but must still pay them as if they were working. Further, the employer cannot withhold unreasonably its consent to union officials doing so in cases where unpaid leave is sought. But that is very different to what Mr Beamsley asserts is his entitlement in this case, namely to be paid as if he were a full time production worker but without AFFCO having any element of control over what he does or how he does it except, of course, to the extent that he must undertake union work in relation to the Imlay plant.

[40] In these circumstances it is also artificial and wrong to assert, as the company does, that the position of full time site secretary is surplus to its requirements and therefore redundant. It is not for AFFCO to determine whether the position held by Mr Beamsley is "*redundant*" (as defined) because it is one elected by union

members and in which the defendant is answerable to the union and his colleagues and not to AFFCO.

[41] So neither of the extreme positions taken by the parties is correct.

[42] Section 61 of the Act provides difficulties for Mr Beamsley if, as he asserts and I have found, he is covered by the core collective agreement. Section 61(1) provides materially:

> *The terms and conditions of employment of an employee who is bound by an applicable collective agreement may include any additional terms and conditions that are—*
> *(a)* *mutually agreed to by the employee and the employer, whether before, on, or after the date on which the employee became bound by the collective agreement; and*
> *(b)* *not inconsistent with the terms and conditions in the collective agreement.*
> (my emphasis)

[43] In the event of inconsistency, the individual elements of the employment contract must yield.

[44] There is an inconsistency between Mr Beamsley's claimed right to be paid by AFFCO as a full time site secretary, and the core collective agreement's provisions allowing union officials (including site secretaries) to be released from productive duties at the discretion of AFFCO management to attend to representation of other employees or similar associated union duties. The application of s61(1)(b) means that in these circumstances the employer is entitled to the benefit of its rights and obligations under the collective agreement to the extent that these conflict with the terms of the Goldsack memorandum as I find they do.

[45] It follows that a fair and reasonable employer in the circumstances of AFFCO can have recourse to the negotiated and agreed collective agreement position and doing what it has announced it intends to do would be disadvantaging Mr Beamsley but justifiably.

[46] The employer's challenge must succeed on this ground and the Employment Relations Authority's determination in favour of Mr Beamsley must be set aside.

[47] I now address the argument if, contrary to the considered positions of both parties, I had concluded that Mr Beamsley was not covered by the collective agreement. In these circumstances the 2000 Goldsack memorandum, together with Mr Beamsley's acceptance of it by his subsequent conduct, would have established some of the terms and conditions of his employment with AFFCO. I would not have concluded that he was entitled to insist upon continuing to be paid full time earnings by AFFCO so long as he continued to be the elected site secretary irrespective of any other contingency.

[48] This was, in effect, an offer of fixed term employment as that is now defined in the Act, although made and accepted before the Act came into force. Section 66 has, since August 2000, provided that fixed term employment includes where an employer and employee agree that the employment of the employee will end *"at the close of a specified date or period"* (s66(1)(a)) or *"on the occurrence of a specified event"* (s66(1)(b)). The appointment was to be for the period of Mr Beamsley's tenure as site secretary. This is an elected position and elections are held periodically, Mr Beamsley having continued to be elected since 2000. The specified period of his employment would have ended had he not been so re-elected or, for whatever reason, had the position of site secretary ceased to exist at Imlay.

[49] But there must necessarily have been some implied restrictions on the permanency of Mr Beamsley's tenure. If, for example, all employees at the Imlay plant had ceased to be members of the union, then clearly he could not have continued to hold a position of secretary of a branch that had no members. If the union had reorganised its structure to do away with the position of branch secretaries, then Mr Beamsley could not have expected to continue to be paid as such to perform non-existent duties for the union. There may have been other circumstances in which the foundations of the role ceased or at least changed substantially. Mr Beamsley could not have insisted upon retention of his fully paid remuneration in any circumstances, even if he had continued to be site secretary.

[50] The general employment law of redundancy has been and remains that employers may justifiably dismiss employees (or take action to their disadvantage) if there is a genuine redundancy situation. That includes if the employer considers that

it can operate its business more efficiently without some employees or in a reorganised way[2]. That principle is subject to particular contractual arrangements but, if Mr Beamsley was employed under a partly written, partly oral individual employment agreement, there were no such redundancy specific provisions in his case.

[51] Contrary to the findings of the Employment Relations Authority, I conclude that Mr Beamsley could not have insisted upon being paid a full time employee's remuneration to perform the job of site secretary if AFFCO had considered genuinely that this was superfluous to its needs. Although it is correct that the position of site secretary may not have been surplus to the needs of the union or other employees, the written terms of the agreement under which Mr Beamsley was appointed (the Goldsack memorandum) clearly contemplated that there were some advantages to AFFCO in agreeing to pay Mr Beamsley for a full time union role. The employer had a legitimate interest in considering whether these continued and may justifiably have concluded that they did not. Although, as I have already found, AFFCO could not have compelled Mr Beamsley to give up the role of site secretary, it may have decided legitimately to cease paying at least a proportion of what amounted to a subsidy to the union in the form of his wages. So, irrespective of whether Mr Beamsley is covered by the core collective agreement, AFFCO would be justified in doing what it intended to do to his employment.

[52] The foregoing is the legal answer. However, as already outlined, there are practical and significant industrial implications for all parties of AFFCO's intended strategy. I have decided the employer is entitled in law to make changes to its expectations of the work for which Mr Beamsley is paid. But acting in reliance upon legal rights alone without corresponding consideration of the effects of such a course of action for the individual affected, other employees, the union, and for the long-term benefit of AFFCO itself, requires further consultation and negotiation.

[53] Mr Beamsley has now disclosed, frankly, his physical inability to undertake any processing work. This limits the parties' options in practice but does not

[2] *G N Hale & Sons Ltd v Wellington Caretakers IUOW* [1990] 2 NZILR 1079 (CA) followed recently under the current legislation in *Simpsons Farms Ltd v Aberhart* (2006) 7 NZELC 98,450

necessarily mean the total loss to the defendant of his work and income if there are still alternatives that may be negotiated. The case has raised a number of associated issues that I consider need to be addressed by the parties. These include a more durable delegate system among employees, better training and education of both delegates and company supervisors, and even perhaps a review by the union of the way in which it now provides services to its members at the Imlay plant if that is not to be by a full time site secretary paid by the employer. These are not matters for the Court to determine but do stand out as ones requiring consideration and decision by the parties themselves.

[54] So although I allow AFFCO's challenge to the Employment Relations Authority's determination and set that determination aside, I also direct the parties to further negotiation about these issues and, if necessary, further mediation before Mr Beamsley's position is changed. It is important for all parties, and not least for AFFCO if it wishes to have good industrial relations at Imlay, that any changes are effected in a way that preserves the dignity of persons affected. The core collective agreement contains admirable guidelines for the way in which these issues can now be dealt with, and I urge the parties to ensure that their conduct in resolving this dispute in a practical and fair way follows those aspirational guidelines.

[55] I reserve questions of costs.

GL Colgan
Chief Judge

Judgment signed at 9.30 am on Wednesday 8 August 2007