

1 of 1 DOCUMENT: Linxplus (NZ)

Case Name: **New Zealand Amalgamated Engineering Printing & Manufacturing Union Inc v Energex Ltd**

Judge(s): Judge Shaw

Court Name: Employment Court, Auckland

File Number: AC 48-06, ARC 118-05

Judgment Date: Aug 28, 2006

Reported: [2006] 1 ERNZ 749

Case Summary:

EMPLOYMENT LAW - challenge to ERA determination that bonding agreement not in breach of collective employment agreement (CEA) - defendant had programme for upskilling its line mechanics to work as glove and barrier live line mechanics - training programmes supplied by training provider for \$7,500 to \$16,000 - defendant lost productivity and revenue while employees attended courses - 28 months required until company broke even and recovered investment - under CEA employees agreed to undertake training as directed by defendant provided reasonably within their ability - defendant introduced requirement that employees who undertake the training will be bonded for 2 years - if employee resigned within 2 years they were required to repay outstanding proportion of training costs - employees felt had no choice but to sign bonding document - no negotiation between company and union about bonding issue - plaintiff claimed four conditions of the individual bonding agreement were inconsistent with CEA, including requirement that no annual leave be taken during training, non-payment of overtime or staying away allowances and bond payment - whether individual terms of bonding agreement inconsistent with terms of CEA - whether process by which defendant obtained employees' agreement to bonding agreement fair - whether bonding agreement "new matter" as defined in CEA and so should have been dealt with pursuant to variation clause in CEA

HELD: reference to holidays in bonding agreement not inconsistent with CEA - it did not exclude taking of holidays but merely provided reasonable basis on which employer could refuse consent to allow employee to take leave during training - payment of overtime not inconsistent with CEA - employee on training programme was not working overtime for company to meet its service obligations and CEA expressly absolved defendant from paying overtime for employees attending courses - non-payment of staying away or meal allowances not inconsistent because employees given meals and accommodation on training programmes - clause 31 comprehensive clause that codified provision of training and education by company - cl 31 governed by entire agreement clause - bonding arrangement was additional condition about terms of training - bonding requirement was unilateral attempt to add to conditions agreed between parties - bond was introduction of new term and significant change because forced employees to either refuse training they agreed to undergo under CEA, or sign bond without requirement to do so having been ratified - bond placed restraint on employees' ability to change jobs without financial penalty - unfavourable outcome for employees and therefore inconsistent with CEA - bonding agreements new matters because not part of entire agreement between union and employer as contained in CEA - bonds only valid if have been agreed between parties in accordance with CEA and Employment Relations Act 2000 - this required consultation and negotiation with union and ratification by union members - in respect of manner in which employees' agreement was obtained, while employees were not coerced against their will to the extent of undue influence, they may have signed reluctantly - employees had contractual obligation to agree to undertake training - employees given bonds to sign without proper advice which meant they had little option but to agree to sign - manner in which employer raised bonding issues and required signatures not in accordance with good faith obligations - requirement for employees undertaking training to be bonded was unenforceable - plaintiff succeeded

Location: Auckland Wellington Canterbury Library (Members only)

References to Legislation: Employment Relations Act 2000 s4(1A)(6), s51, s54(3)(iv)

s61, pt5, pt6

Holidays Act 2003 s18(1)

Labour Relations Act 1987 s174

References to Cases: New Zealand Meat Processors v Alliance Freezing Co (Southland) Ltd [1990] 2 NZILR 1071

---- End of Request ----

Download Request: Current Document: 1

Time Of Request: Thursday, August 11, 2016 10:02:34