IN THE EMPLOYMENT COURT
AUCKLAND

AC 44/06
ARC 27/06

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	SPOTLESS SERVICES (NZ) LTD Plaintiff
AND	SERVICE & FOOD WORKERS UNION NGA RINGA TOTA INC Defendant

Hearing: 26 July 2006

Appearances: Mr R Harrison, Counsel for Plaintiff
Mr P Cranney and Mr T Oldfield, Counsel for Defendant

Judgment: 10 August 2006

JUDGMENT OF JUDGE M E PERKINS

Introduction

[1] The parties seek an interpretation from the Court as to the effect of clauses contained in their current collective employment agreement. The agreement covers the period 21 April 2005 to 20 June 2006 or until varied or renewed. The parties to the agreement are the parties to this proceeding. The agreement in question is the Spotless Services (NZ) Limited & Service and Food Workers Union, South Auckland Health Employees, Collective Employment Agreement (the "agreement"). The clauses relate to penal payments for employees who work weekend and night work and penal payments for employees who work on public holidays (referred to in the agreement as special holidays).

[2] The clauses overlap in their application and effect. The interpretation is sought as to whether the employer is bound to pay an accumulation of the penal rates, in

total amounting to triple time, when a public holiday also falls to be observed on a Saturday or Sunday. This in practice will only apply to Waitangi Day or Anzac Day. I raised with counsel whether there may be an issue when Christmas Day (which under the Holidays Act is observed on the following "*working day*") falls on a Saturday or Sunday in view of its nature as a sacred day. The parties advise that this is not an issue requiring any special consideration for the purposes of the present dispute.

The Provisions of the Collective Agreement

[3] The ordinary hours of work are provided in clause 3 of the agreement. Generally employees work five eight hour shifts in any one week. In each seven day period employees are required to take two days "*weekly holidays*", which I perceive are to be taken consecutively.

[4] For the purposes of dealing with the dispute currently existing between the parties I set out in their entirety clauses 4, 5, 6 and 7 of the agreement**.** It is the application of clauses 5.1 and 7.2, and the relationship between them, which gives rise to the matter now before the Court. However as an aid to explaining my decision on the matter, I set out the surrounding provisions for contextual purposes.

[5] Clauses 4, 5, 6 and 7 of the agreement read as follows:

> ***4. OVERTIME***
>
> *4.1 Overtime shall be paid at the rate of time and a half for the first three hours and double time thereafter. Provided that all overtime worked between midday Saturday and midnight Sunday shall be paid at double time. All overtime shall be calculated and paid for on a daily basis. Payment for overtime shall be made to the employee not later than the next succeeding pay day after such overtime has been worked.*
>
> *4.2 Particulars of any overtime worked shall be furnished in writing to the employer by the employee concerned within 24 hours after the completion of the week's service in which overtime occurs. Employers shall provide time sheets or other means for this purpose. Failure to comply with the requirements of this clause shall constitute a breach of this Agreement.*
>
> *4.3 Where a employee is required to work overtime for more than one hour after completing the usual shift or usual day's work and such overtime extends over the employee's usual meal time, the employer shall provide a meal voucher that*

will provide the employee with a main meal, 2 vegetables and a dessert, redeemable at the Aviary Café, Middlemore Hospital.

5. PENAL PAYMENTS FOR WEEKEND AND NIGHT WORK

5.1 An employee who is required to perform ordinary hours of work on a Saturday or Sunday shall, in addition to the weekly wage, receive the following penal payments:

(i) For work between midnight Friday and midday Saturday – half ordinary time rate extra (T1/2) for the first three hours and ordinary time rate extra (T1) thereafter.

(ii) For work between midday Saturday and midnight Sunday ordinary time rate extra (T1).

5.2 An employee who is required to perform ordinary hours of work between the hours of 8pm and 6am on any day shall, in addition to the weekly wage, receive a penal night rate payment at the rate of quarter ordinary time extra (T1/4)

5.3 The night rate payment prescribed in subclause 5.2 above shall be paid for a minimum of two hours per shift, notwithstanding that less than two hours of the shift may fall between the hours of 8pm and 6am, and it shall be payable in addition to the weekend penal payments prescribed in subclause 5.1 above.

5.4 The penal payments prescribed in this clause are not payable for work which attracts payments of overtime.

6. WEEKLY HOLIDAYS

6.1 Two day's holiday within each week shall be allowed to each employee covered by this Agreement, and any employee who is required to work on one or both of his/her weekly holidays shall be paid overtime rates in accordance with clause 4.1 of this Agreement whilst so employed.

An employee called back to work on any of his/her weekly holidays shall be paid for a minimum of four hours' work: Provided that this minimum may be reduced to fewer hours by agreement with the union.

6.2 Change of holidays - Before any change is made to the weekly holiday of an employee the employer shall so far as practicable consider the wishes of the employee. The employer shall be given seven days' notice in writing to each employee of any change in the respective days fixed for his/her weekly holidays, otherwise the holidays shall be deemed not to have been given.

7. SPECIAL HOLIDAYS

7.1 Employees who are required to work on Christmas Day, Boxing Day, New Year's Day, 2 January, Waitangi Day, Good Friday, Easter Monday, Anzac

Day, the birthday of the reigning Sovereign, Labour Day and Anniversary Day (or a day in lieu thereof) shall be paid double their ordinary rate of wages and shall receive a day off in lieu at a mutually acceptable time.

Should any of the above mentioned holidays, except Waitangi Day or Anzac Day, fall on a Saturday or Sunday, such holidays shall be observed on the next succeeding working day or days.

7.2 Notwithstanding the foregoing, an employee required to work on a special holiday shall be granted:

Penal rates of pay at T1 in addition to his/her ordinary time for the hours worked, plus equivalent time off at a later date convenient to the employer.

Except that:

(a) A rostered employee required to work on a special holiday which would otherwise have been his/her normal day off (i.e. he/she is required to work a sixth shift), or is required to work any overtime, shall be paid at the overtime rate of twice his/her ordinary hourly rate of pay (T2) for the hours worked and in addition is to be granted a day's leave on pay at a later date convenient to the employer.

(b) Where any special holiday referred to in subclause 7.1 of this clause falls on the day of an employee's weekly holiday, such employee shall have the option of an extra day's pay in addition to the weekly wage in respect of that special holiday, or a day off in lieu at a later date mutually acceptable to the employer and the employee.

Where any special holiday referred to in subclause 7.1 of this clause falls on the day of an employee's annual holiday, such employee shall have his/her annual holiday extended by one working day on full pay in respect of that special holiday.

7.3 Should any special department of the hospital close on the day of a special 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 ordinary rate of wages only for that day.

The Findings of the Employment Relations Authority

[6] Authority Member Dumbleton found in favour of the defendants and accepted its argument as to the correct interpretation of the relationship between clauses 5.1 and 7.2. He held that where there is a coincidence of a public holiday on a weekend

both rates apply in addition to ordinary pay and one clause does not subsume the other. The effect is that the employer is bound to pay triple time.

[7] The reason for the Authority's ruling is contained in the following four paragraphs from the decision:

> *[9] In my view SFWU has correctly interpreted the CEA to mean that where work is performed on, say, a Sunday that is also a public holiday, in addition to ordinary time (T1) a worker is to receive the aggregation of payments due under clause 5.1 (T1) and under clause 7.2 (T1). In that case the combined pay entitlements will amount to triple time (T3).*
>
> *[10] It may reasonably be assumed that the payments provided under clause 5.1 and clause 7.2 were intended by the parties to the CEA to be for separate purposes to do with the subject covered by each clause. One particular day may be a Sunday (for example) and it may also be Waitangi Day (for example), but the fact that the weekend day and the public holiday begin and end in the same period of 24 hours in my view does not mean as a consequence that the payments due under each provision are to be combined in only one payment of TI to be made in addition to ordinary time. There is no justification for amalgamating the purpose of the two clauses to produce a total payment of T1 in addition to ordinary time.*
>
> *[11] Neither can it reasonably be claimed that the higher level of payment is unearned, as payment at T3 acknowledges the fact that work is being performed on a Sunday (for example), which most of us are able to observe as a special day of the week, and is also being performed on a public holiday, which most of us are able to observe as a special day of the year. Payment provided under only one clause does not in my view absorb or extinguish payment required under the other for the imposition arising out of working on a weekend or on a public holiday.*
>
> *[12] While clause 5.1 expressly provides for night work penal payments to be payable "in addition" to weekend payments, the absence of such a provision in relation to public holiday payments does not in my view lead to the conclusion that these were not intended to be paid "in addition" to weekend payments. The "in addition" provision can only be read as words intended to make abundantly clear the relationship between two parts of the same clause dealing with the same subject. The relationship between two separate clauses is a different thing and cannot be assumed to exist in some particular way because of the internal clause structure of one of them alone.*

[8] Despite the slight anachronism in the sentiments expressed towards weekend days being special days there is some force in my view to the finding that each of the penal rates would be earned for totally separate reasons. There is further force in the view that whereas in clause 5, for example, there are provisions including or excluding the penal rates, eg in addition to night rates or in exclusion of overtime, that does not mean that there would necessarily have been different drafting as between the clauses if the intention was to include or exclude one with or from the other.

[9] Authority Member Dumbleton obviously heard similar evidence to that presented before me. He regarded it as unnecessary to consider that evidence as an aid to interpretation as, in his view, the meaning could be ascertained from the clear wording of the provisions. He indicated that "*on occasion*" the plaintiff had paid triple time entitlements when there was a coincidence of a public holiday with weekend work. That is strictly so but on the evidence before me such payments of triple time were invariably, not merely on occasion, paid until the change in company policy in November 2004. I agree with Mr Dumbleton that it may not be necessary to consider such evidence. However, in the context of the principles to be applied, the evidence provides strong corroboration of the parties' intentions as to the inclusion in the agreement of the provisions involved. In view of the statement of Colgan J in *Association of Staff in Tertiary Education Inc: ASTE Te Hau Takitini o Aotearoa v Hampton, Chief Executive of the Bay of Plenty Polytechnic* [2002] 1 ERNZ 491 as to post contractual conduct one does not have to be too precious about referring to and relying upon such evidence as an aid. I shall refer to that in more detail shortly.

Evidence

[10] I heard evidence from two witnesses. Both counsel agreed that in view of the principles applying to an interpretation of a collective employment agreement such evidence is necessarily by way of background only and may be of marginal relevance. Nevertheless in view of what was said in *Hampton* as to the subsequent conduct of the parties the evidence has been helpful.

[11] The witness called by the plaintiff was Christine Gibbons. She is currently employed by the plaintiff as clerical support, personal assistant to the Area Manager, at Middlemore Hospital. She produced a bundle of documents, which included the current collective employment agreement, some predecessor documents and payroll records showing how the plaintiff has previously treated this issue when Waitangi Day or Anzac Day fell to be celebrated on a Saturday or Sunday.

[12] Ms Gibbons explained that prior to November 2004 the company paid triple time as a combination of the ordinary pay, weekend and public holiday penal rates when either Waitangi Day or Anzac Day fell on a weekend day. Apparently the company came to the conclusion this was mistaken. At an internal briefing in

November 2004, to discuss changes arising from pending amendments to the Holidays Act, payroll staff were directed that public holiday penal rates were not to be paid in addition to the weekend or rostered day off penal rates.

[13] There was some discussion with counsel as to the curious decision of the company to pay the weekend penal rates in preference to the public holiday rates when they coincided. Mr Harrison conceded that the effect was that occasionally the total weekend rates would fall short of the total public holiday rates. Mr Harrison indicated that when this occurred the company simply made up the difference.

[14] The witness called by the defendant was Wayne Johnson. He is employed by the plaintiff as an orderly at Middlemore Hospital. He has been a union member since 1985 and is currently a delegate for the defendant. He has represented the union in collective bargaining since 1995. He has been employed on a fixed roster working weekends since 1988. He has taken Tuesdays and Wednesdays off as part of his weekly roster since 1995. He was a good example of how the company treated the penal rates when they coincided. In the payroll records produced by Ms Gibbons, Mr Johnson is shown as an example of how employees are paid in such circumstances. He stated that similar penal rate clauses have been included in collective contracts and agreements for as long as he can remember. He recalls the change in treatment of the rates adopted in November 2000 and was able to explain, using the bundle of documents, the diminution in his rate of pay once that change was made.

Respective arguments

[15] Mr Harrison set out the submissions for the plaintiff in a combination of documents: Summary of Plaintiff's Arguments filed prior to the hearing; Synopsis of Plaintiff's Submissions as an opening; Synopsis of Plaintiff's Closing Submissions. Mr Cranney filed and spoke to a closing submission for the defendant.

[16] Both counsel referred to the surrounding provisions to support their respective positions on interpretation. I shall deal with those in turn.

[17] The plaintiff's argument is effectively summarised by the proposition expressed in various ways throughout the submissions that the penal rates provided for public holiday work are already provided for in the equivalent or nearly

equivalent rates for weekend work. That if the intention of the parties was to aggregate the rates the agreement would have specifically provided this. That the interpretation argued by the defendant and accepted by the Authority leads to inconsistency with other provisions in the agreement. That nowhere else in the agreement are there provisions for triple time payments.

[18] Mr Harrison also pointed to clause 5.3 specifically providing that night rate penal payments will be payable in addition to the weekend penal rates. This, he says, logically means that if the public holiday penal rates were payable in addition to the weekend rates the agreement would have said so in the same way as that is expressed for night rates in clause 5.3.

[19] I am not sure that that specific inclusion assists too much in interpretation as, in the next succeeding clause 5.4, as pointed out by Mr Cranney, there is a provision for specific exclusion of the penal rates being added to overtime. Both clauses obviously point to instances where the parties to the agreement have turned their minds to circumstances where penal rates are excluded or paid in addition. This may be of assistance for interpretation purposes. But I think that the net effect is neutral in deciding upon the substantial issue of whether the weekend penal rates subsume the public holiday rates as submitted for the plaintiff or are to be paid in addition as argued by the defendant.

[20] Mr Cranney in his written submissions (paragraph 5) states that:

> *The question* [is] *whether the penalty payments for weekend work are payable on a public holiday that falls on a weekend.*

That seems a reversal of the way it was put by Mr Harrison in his submissions (although not in the pleadings). Mr Harrison's emphasis was on whether the public holiday rate was payable when the employee was "*already receiving*" the weekend penal rates. It may amount to the same thing and simply be a difference in emphasis. However, it does raise the point as to why in this case the employer argues priority for the weekend penal rates over the public holiday rates. Mr Harrison conceded that it is possible for an employee to receive less under the weekend rates than the full entitlement under the public holiday clause. If that occurred, as I said earlier, the employer would simply make up the difference to comply fully with clause 7.2.

[21] Mr Cranney made some point of the words "*already receiving*" used in the plaintiffs submissions as indicating a flaw in Mr Harrison's arguments. However, I think the words used simply reflect a convenience in language. I surmise that what is really meant is "already entitled to receive" or words to that effect.

[22] Nevertheless, I am of the view that, in preferring the weekend rates in clause 5 to the public holiday rates in clause 7 and the fact that payment under the former may result in less than the latter, uncovers some flaw in the argument that both amount to the same rate and one subsumes the other. It is true that usually both clauses will result in double time or put another way time T1 in addition to ordinary time. The fact that that may not invariably be so indicates that a proper interpretation of the clauses may be as found by Mr Dumbleton.

[23] Essentially Mr Cranney submitted that on the basis of principle the current interpretation and application of the clause was found by the Authority.

Legal principles

[24] Counsel in their submissions referred to the caution expressed by the Court of Appeal as to reference to past decisions in the construction of a contract: *Radio New Zealand Ltd v Clark* [1993] 1 ERNZ 270, 271:

> *The question arising is one of construction of contractual documents. Reference to past decisions in such a case is seldom of much help. It generally tends more to confuse and unnecessarily lengthen the discussion. The key point is to determine the intention of the parties involved. This must be done from the words they have used in the context of their contractual document (here documents) read as a whole against the relevant factual background. The only circumstances in which previous cases may be of help are first when they are directly in point and second when the words used are said to have been used in a technical or specialised sense based on previous authority. Neither situation applies in this case.*

[25] That may be so but some assistance can nevertheless be gained from previous decisions in establishing general principles. In *Association of Staff in Tertiary Education Inc: ASTE Te Hau Takitini o Aotearoa v Hampton* (supra) Judge Colgan considered the law of interpretation of employment contracts in the light of the Employment Relations Act 2000. The principles he established throughout the decision are neatly summarised in the head note as follows:

> *…the law of interpretation of employment agreements remained unchanged by the Employment Relations Act 2000. Agreements were to be interpreted with reference to their factual matrix. This included matters such as the background to the transaction and to industry practice. The law had moved on so that such reference was possible and even desirable. The Court was also required to adopt an objective approach to interpretation, so that evidence of what either party thought the words meant was inadmissible. The interpretation of an agreement was not to be narrowly literal, but in accord with business common sense. Nevertheless, if the words were clear and could only have one possible meaning that would generally determine the matter.*

[26] Also of value in the context of the present dispute is the statement contained in the body of the judgment as follows:

> *[22] There has also been movement in the area of subsequent conduct of the parties after the contract came into existence. This was once regarded as irrelevant for the purposes of interpreting it. That was because all that was said to matter was the intention of the parties at the time of entry into the contract and not later. There are now a number of dicta, including of the Court of Appeal, indicating that change to this former rule is close:* A-G v Dreux Holdings Ltd *(1996) 7 TCLR 617 (CA) and Raptorial* Holdings Ltd (in Rec) v Elders Pastoral Holdings Ltd *[2001] 1 NZLR 178; (2001) 7 NZBLC 103,219 (CA).*

[27] In *New Zealand Merchant Service Guild IOUW Inc v Interisland Line a Division of Tranz Rail Ltd* [2003] 1 ERNZ 510 Judge Shaw, when referring to principles to be applied, stated as follows:

> *[18] These are well-settled and not in dispute in this case. An objective approach is required and in addition to ascertaining the plain meaning of the words to be interpreted the Court may construe these against the setting in which the agreement was reached provided this does not contradict, vary, or add to the plain meaning of the contract.*
>
> *[19] To these general rules of contract interpretation is added the recognition that employment agreements are often the product of a history of instruments of varying sorts by which the parties have attempted to define their relationship. The result may be a document which is a mix of new provisions designed to meet changing statutory or industrial requirements grafted onto existing and long standing provisions. The agreement in this case is such a document.*

[28] Those statements appear particularly apt when dealing with the clauses under question in the present case. The same principles have more recently been reconfirmed in *Godfrey Hirst New Zealand Ltd v National Distribution Union Inc* unreported, Colgan J, 27 October 2004, AC 62/04 and *Air New Zealand Ltd v New Zealand Amalgamated Engineering Printing and Manufacturing Union Inc* unreported, Travis J, 5 December 2005, AC 72/05.

Findings

[29] At the conclusion of submissions it became clear, as it should have been to me earlier, that this particular problem probably only arises under clauses 5 and 7 of the agreement when Waitangi Day or Anzac Day, not the other public holidays, coincide with a Saturday or Sunday. That explains the relative paucity of payroll evidence as to when the duplication has occurred. The fact overall is that the times when the particular issue arising in this case occurs as a problem between the parties is apparently relatively rare.

[30] That does not mean, however, that the plaintiff's argument is weaker as a result. Clearly the provisions are poorly drafted in the context of their relationship with each other therefore and the intention of the parties are not expressed as clearly as they should be. I might say this applies not only to other parts of clauses 5 and 7 not specifically under consideration now but also other clauses throughout the collective employment agreement as well. I shall mention some of those shortly. I am also sure there are similar ambiguities and difficult drafting issues arising in other provisions of this agreement, which I have not located.

[31] While the plaintiff's argument is possible on the wording of the clauses in question I consider that applying the proper principles referred to above it is difficult to come to a conclusion different from the Authority. While this is a challenge de novo it is in fact only in that form to comply with the procedures now specified under the Employment Relations Act 2000. The dispute is in effect a traditional dispute of rights as it used to be termed. While I have reconsidered the matter afresh it is impossible not to be swayed by the logic contained in Mr Dumbleton's determination. In a true appeal context, as I perceive the present dispute to be, it is appropriate to carefully consider the reasoning of the very experienced Authority Member. I note as a matter of interest that the Act reserves first instance jurisdiction

to make determinations on disputes about the interpretation, application, or operation of an employment contract to the Authority (section 161(1)(a)). The Court only has derivative jurisdiction to do so.

[32] Obviously the drafters of these clauses have not had adequate regard for the effect of each on the other so far as penal rate provisions are concerned. It is possible that the clauses, which are clearly of some antiquity, were added to predecessor industrial documents on a piecemeal basis and simply carried forward into later agreements. However, I do not think it insignificant that the parties operated on the basis for many years that where the circumstances coincide the rates are applied on a cumulative rather than a concurrent basis.

[33] Applying the standard principles, each of the clauses per se are clear in their language. Indeed apart from some ambiguity in clause 7.1 each considered separately could only have one possible meaning. If one clause is to apply in place of the other then this would require clear language and could not depend on a somewhat arguable reference to other privative clauses or deference to tautology. Commercially there is expense to the plaintiff in triple rates being payable. But that does not mean the clauses under that interpretation offend against business common sense.

[34] Taking an objective approach to what the parties intended by these clauses I to come to the same conclusion as the Authority. Certainly the language is such that I could not assume an intention that where the effect of the provisions coincides, weekend penal rates subsume the public holiday rates.

Disposition

[35] Reverting to the question for declaration in the relief sought in the statement of claim a number of alternatives are offered. In view of my findings I declare that clauses 5.1 and 7.2 require an aggregation of the penal rates provided. To be clear, however, this must necessarily be subject to the other provisions contained in clauses 5 and 7, for example those that I have mentioned where other penal rates or overtime rates are either included or excluded.

Comment

[36] I indicated that I would highlight some other difficulties arising from the drafting of the agreement. I have discovered these while reading through the provisions for the purposes of this decision. Obviously counsel and the parties will have considered most of these and indeed others, which I have not been able to discover. My list is by no means exhaustive but may be of some help as I understand the parties are soon to embark on re-negotiating the agreement.

[37] Mr Cranney indicated that there are several other difficulties arising out of the wording of clauses 5 and 7 not subject of the present dispute. The obvious example in clause 7 is of course that 7.1 and 7.2 when analysed probably amount to the same thing and one appears to be a duplication in effect of the other. I say probably because if read literally, regardless of the deferring of the observance of all the public holidays except Waitangi and Anzac Day to the next succeeding working day, it would be possible for an employee to argue for triple time where any of the other named days actually fall on a Saturday or Sunday. The argument would be difficult as such an interpretation might then call into question the need to include the second paragraph which "Mondayises" or "Tuesdayises" what are effectively the Christmas, Boxing Day and New Year holidays. In addition, such a literal interpretation would also then be in conflict and inconsistent with clauses 7.2(a) and (b). Mr Cranney hinted at such further difficulties with these clauses. Clearly there is no evidence of such a literal approach being adopted and a common sense approach has prevailed. However, it would be preferable to clarify this if redrafting is to occur.

[38] The use of the words "*working day or days*" in the second clause in 7.1 may need some thought. With the rostered shifts working under this agreement and with the way weekly holidays operate merely "Mondayising" or "Tuesdayising" the public holidays as might be implied may not meet the employees' entitlements. Sections 12 and 45 of the Holidays Act 2003 provide assistance in this regard. It seems to me there should be consistency of language between the agreement and that Act.

[39] Clause 7 is headed "*Special Holidays*" which is a misnomer for the public holidays contained in the Holidays Act 2003. The expression is also used in the body of the clause. However, the same words but in a totally different context,

application and with a totally different meaning are used in clause 8.3. Obviously there should be some variation in language.

[40] Clause 9.1(b) refers to "*Health Service*". It is difficult to ascertain what this means. I cannot find any other reference to it in the agreement. No doubt the parties know what it means. I suspect that there may have been other subclauses in 9.1(b) which have been deleted over time as there is remaining only one subclause attached by a roman numeral.

[41] If there is to be clarification of clauses 5 and 7 in view of this decision then similar attention should be paid to clause 11.4 dealing with casual or part time employees. The reference to clause 6 in that clause should clearly be a reference to clause 7. I note that there are other erroneous references to clauses in the agreement for example the reference to clause 9 in 11.1 (ii).

[42] Clause 22.7 contains some ambiguity. It is also unclear as to how long the state of affairs contemplated by that clause would continue. Again the parties may be clear as to its meaning and effect but if left it could give rise to interpretation disputes as time elapses.

[43] I trust that these comments are of assistance.

Costs

[44] Counsel referred to but did not specifically address me on the issue of costs. Mr Cranney suggested that costs be reserved and that seems to be a sensible suggestion. If costs become an issue and the parties are unable to resolve it between themselves then leave is reserved to make an application to the Court on the usual basis that it will be dealt with by an exchange of submissions.

M E Perkins
Judge

Judgment signed at 11.30am on Thursday, 10 August 2006

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