

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA274/2022
[2022] NZCA 429**

BETWEEN NEW ZEALAND TRAMWAYS & PUBLIC
 PASSENGER TRANSPORT EMPLOYEES
 UNION WELLINGTON INCORPORATED
 Applicant

AND TRANZURBAN HUTT VALLEY
 LIMITED
 Respondent

Court: Courtney and Katz JJ

Counsel: P Cranney for Applicant
 D D Vincent and R J Bayer for Respondent

Judgment: 12 September 2022 at 10 am
(On the papers)

JUDGMENT OF THE COURT

Leave to appeal is granted in respect of the question set out in [4] (*Tranzurban Hutt Valley Ltd v New Zealand Tramways & Public Passenger Transport Employees Union Wellington Inc* [2022] NZEmpC 75).

REASONS OF THE COURT

(Given by Courtney J)

[1] The New Zealand Tramways and Public Passenger Transport Employees Union Wellington Inc (the Union) applies for leave to appeal a decision of the

Employment Court.¹ This Court may grant leave if satisfied that the application for leave raises a question of law of general or public importance.²

[2] The issue before the Employment Court was the correct interpretation of the term “work period” in s 69ZC of the Employment Relations Act 2000 in relation to workers working split shifts, specifically whether, for the purposes of determining an employee’s entitlement to rest and meal breaks, each split shift constitutes a separate “work period”. The Employment Relations Authority held that it did.³ The Employment Court allowed Tranzurban Hutt Valley Ltd’s appeal against the Authority’s decision.⁴ It held that rest and meal breaks were to be calculated by reference to hours when an employee has work responsibilities.⁵ This calculation would not include periods when the employee is not engaged for work.⁶ Thus, it was possible for separate shifts to constitute separate “work periods”.⁷ The Employment Court held that whether distinct shifts were separate “work periods” was a question of fact, to be calculated by reference to the actual hours an employee is required to perform work duties, and the terms of their employment agreement.⁸

[3] We are satisfied that the threshold for leave in s 214(3) of the Employment Relations Act is met.

[4] Leave is granted on the question:

Did the Employment Court err in its interpretation of s 69ZC of the Employment Relations Act 2000?

Solicitors:

Oakley Moran, Wellington for Applicant
CS Law, Wellington for Respondent

¹ *Tranzurban Hutt Valley Ltd v New Zealand Tramways & Public Passenger Transport Employees Union Wellington Inc* [2022] NZEmpC 75 [Employment Court decision].

² Employment Relations Act 2000, s 214(3).

³ *New Zealand Tramways and Public Passenger Transport Employees Union v Tranzurban Hutt Valley Ltd* [2021] NZERA 342.

⁴ Employment Court decision, above n 1, at [66].

⁵ At [62].

⁶ At [45]–[46].

⁷ At [63].

⁸ At [64].