"Not Open For Instruction": When are Secondary School Teachers Entitled to Reimbursement of Costs Associated With Work Done Outside of School Hours?

Since 1996, the Secondary Teachers' Collective Agreement (SCTA) has contained a provision stating that where teachers are required to attend school or elsewhere when the school is "not open for instruction", they are to be reimbursed for any actual or reasonable costs incurred.[1] 26 years on, the Employment Court has determined what these words truly mean in *New Zealand Post Primary Teachers' Association v Board of Trustees for Rodney College* [2022] NZEmpC 118.

The Court found in favour of the NZ Post Primary Teachers' Association (NZPPTA), who successfully argued that a school is "not open for instruction" during weekends, public holidays, vacations, and outside of 8:30am-4:30pm on school days. This means that secondary school teachers are entitled to reimbursement for time spent on professional development and administration tasks during those times.

The dispute

The proceedings first arose in 2012 following a dispute over reimbursement of various expenses incurred by teachers when they were required to attend school after 3 pm during the school term for parent-teacher conferences, prize giving, and open school evenings.

The focus of the challenge solely came down to the interpretation of "not open for instruction" in clause 5.4 of the 2019 STCA. The NZPPTA argued that it means periods other than the "half-day" periods of two hours or more as defined in s 60 of the Education Act 1989 (**the Act**).[2] The Secretary for Education on behalf of the Ministry argued that it means vacation or school holiday periods only.

To resolve the dispute, the Court considered:

1. The factual background;
2. The statutory context;
3. The principles of contractual interpretation; and
4. The application of those principles to clause 5.4.

The Court's determination

The factual background

Prior to clause 5.4's introduction in 1996, bargaining was protracted and difficult, and there was a greater focus on wider issues of remuneration. Negotiation around clause 5.4 was "down to the wire", and the final wording was not settled until the last minute.

When bargaining took place three years later in 1999, the context was the same. Wider issues were the main focus of bargaining, and the scope of clause 5.4 remained unclear. Outside of bargaining, the Minister

[1] Clause 5.4.3 of the 2019 SCTA.

[2] Since replaced by the Education and Training Act 2020.

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wrote to the NZPPTA to advise it was of the view that "open for instruction" is defined in related to the number of "half-days" a school is required to be open for instruction, and that report evenings and other activities that take place on days which a school is open for instruction would not fall within the parameters of clause 5.4. At a later stage, the NZPPTA wrote to the Ministry asserting that report evenings and other school events occurred outside of half-day periods which the school was open for instruction and thus were covered by clause 5.4.

The Court found that the parties never reached an agreement on the meaning of clause 5.4, and the matter was not taken further before the present proceedings arose.

The statutory context

Like the written discussions between the Ministry and the NZPPTA, the statutory context suggested that the term "open for instruction" is strongly linked to the concept of "half-days". Based on the statutory definition of "half-days", a secondary school is "open for instruction" for two-half days per day, 10 half-days per week, and 380 half-days per year, as required under ss 65A and 65B of the Act. From this, the Court stated that a school is not open for instruction on weekends, vacations, public holidays and school holidays.

What was not so clear was whether a school would be considered "open for instruction" for the entirety of any day which a half-day occurred. This was important to determine because it is on such days that parent teacher conferences and the like typically occur.

Both parties advanced arguments which the Court found to be commercially absurd. The Ministry's argument suggested that once a school has been open for one half-day, then that whole day is rendered "open for instruction". The problem with this argument is it suggests that a school which is open for any half-day is "open for instruction" from 12am until midnight – an interpretation that is not only absurd, but also inconsistent with the SCTA's definition of overtime. The NZPPTA's argument was that "not open for instruction" has a consequential meaning from "open for instruction", suggesting that a school is "not open for instruction" outside of the two two-hour, half-day periods on a day that a school is open for instruction (equating to 20 hours per week). The Court again rejected this suggestion, as it was inconsistent with the SCTA's timetabling policy, which requires teachers to have 25 hours of timetabled class time per week.

The Court proceeded to carry out its own interpretation exercise of clause 5.4. This required the court to ascertain the ordinary and natural meaning of clause 5.4 in its contractual context, and then consider whether the structure of the bargain, any specialised meaning, the history of the clause, or considerations of commercial absurdity affected that assessment.[3]

The Court held that Part 5 of the SCTA, within which clause 5.4 is contained, is clearly intended to retain flexibility for both schools and teachers in how they manage the delivery of the curriculum and meet the pastoral needs of students. Clause 5.1.2 of the SCTA specifically acknowledges and accepts that the hours of opening of schools are designed to meet the curriculum and pastoral need of students. This indicated to the Court that there is an expectation that school is "open for instruction" not solely for the purpose of meeting the statutory half-day requirements. Further, the Court again stated that the SCTA requires every employer to have a timetabling policy where timetabled class time of at least 25 hours is required. This presumes that a teacher is at school and working for more than the four hours per day, 20 hours per week, that an interpretation solely based on the statutory half-day requirements

[3] *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60]-[63].

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would allow. Additionally, unchallenged evidence from the NZPPTA provided that while formal school instruction typically begins at 9 am and finishes at 3-3:15 pm, a teacher's working day will generally be from approximately 8:30 am to 4:30 pm.

Taking into account clause 5.1.2, timetabling requirements, and the NZPPTA's evidence, the Court ruled that a school is "open for instruction" between 8:30 am and 4:30 pm. It followed that the natural and ordinary meaning of the words "not open for instruction" in clause 5.4 were taken to mean any time outside of those hours on any school day, in addition to weekends, vacations, and public holidays.

This interpretation was also said to be consistent with the purpose of clause 5.4 itself, which is to enable the employer to require teachers to be at school or elsewhere for professional development or administrative purposes at times when they would not generally be required to be at work.

The Court concluded its judgment by making clear that the Court's interpretation does not inhibit school activities like prize giving, quiz nights or report evenings:

> *There is nothing to prevent a school scheduling courses or events and requiring attendance by the teacher at times during the school week but when the school is not open for instruction. It simply means that the time should be credited towards either their professional development or administration days and if reasonable costs were actually incurred as a result, they be reimbursed.*[4]

Implications

Employers of secondary school teachers should take careful note of this decision and put in place systems for determining whether reimbursement of costs is required in association with events and training that occur when their school is "not open for instruction".

Want to know more?

If you have any questions about the Employment Court's decision, please contact our specialist Employment Team.

[4] At [141].

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