IN THE EMPLOYMENT COURT
AUCKLAND

[2012] NZEmpC 209
ARC 80/12

IN THE MATTER OF	challenge to a determination of the Employment Relations Authority
BETWEEN	THE PULP & PAPER INDUSTRY COUNCIL OF THE MANUFACTURERS AND CONSTRUCTION WORKERS UNION Plaintiff
AND	NORSKE SKOG TASMAN LIMITED Defendant

Hearing:	4 December 2012 (Heard at Auckland)
Counsel:	Ms K Beck and Ms Kopu, counsel for plaintiff Ms K Dunn and Ms Hardacre, counsel for defendant
Judgment:	4 December 2012
Reasons:	7 December 2012

REASONS FOR JUDGMENT OF JUDGE B S TRAVIS

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[1] These are my reasons for allowing the plaintiff Union's (the Union) challenge on 4 December 2012[1] and replacing the determination of the Employment Relations Authority dated 19 November 2012,[2] in terms of s 183(2) of the Employment Relations Act 2000 (the Act), with the following declarations:

a) The defendant company is entitled to define the affected work areas having had discussion with the relevant Union in terms of cl 3 of the Redundancy and Redeployment Policy dated 21 August 2011 (the Policy).

[1] [2012] NZEmpC 205.
[2] [2012] NZERA Auckland 410.

b) That the redundancy of positions in the Paper Mill is as a result of asset closure in terms of cl 3.1(a) of the Policy.

c) The employees in redundant positions are those employed on Paper Machine 2 (PM2).

d) The processes set out in cl 3.12(a) and (i) of the Policy therefore apply to employees employed in the Paper Mill.

[2] On 21 November 2012 the Union filed a de novo challenge to the Authority's determination and, at the same time, applied for an interim injunction. The issue involved the interpretation of a collective agreement and an agreed redundancy policy and its effect on the decision of the defendant (the Company) to close one of the two remaining paper machines at its site in Kawerau known as the Tasman Mill.

[3] The Union sought an urgent interim injunction to preserve the status quo and to prevent the termination of the employment of a number of its employee members, pending a substantive decision of the Court on the challenge in relation to the lawfulness of the defendant's proposed processes.

[4] In the interim, the defendant reasonably agreed not to advertise any roles or implement any decisions regarding the selection criteria for redundancies, prior to the Court's substantive decision.

[5] As a result the parties were sensibly able to agree that, rather than proceed with a defended interim injunction, they would seek an urgent de novo hearing, a fixture for which was able to be provided some 12 days after the filing of the application for interim relief. The parties were also able to agree that the evidence would be by way of affidavits and neither sought the other's witnesses for cross-examination.

[6] The parties are to be congratulated on this expeditious means of disposing of what was clearly an urgent dispute.

Factual background

[7] The plaintiff union has approximately 70 of its members working on two paper machines at the defendant's Tasman mill. The plaintiff and the defendant are

parties to a collective agreement, described as the Paper Machines and Paper Day Services Kawerau Site Collective Employment Agreement (the Collective), the term of which is from 27 January 2012 until 26 January 2015.

[8] Clause 11 of the Collective states:

> **11. MANNING**
>
> **11.1** Subject to Clause 11.2, the manning for the term of this Agreement (27 January 2012 to 26 January 2015) will be as per Clause 11.3 (Paper Machines Manning) and Clause 11.4 (Paper Day Services Manning)
>
> **11.2** *Should there be a major change event, for example an asset closure, sale of part or all of the Company, the manning may be changed subject to Clause 7 (Consultation), Clause 18 (Redundancy) and Clause 19 (Employee Protection Provision), as applicable.*[3]
>
> **11.3 Paper Machines Manning**
>
> | | |
> |---|---|
> | Machine Tender | 10 |
> | Back Tender | 10 |
> | Winder Operator | 10 |
> | Winder Assistant | 20 |
> | Stock Preparation Operator | 6 |
> | Machine Utility Operator | 10 |
> | **Total** | **66** |
>
> **11.4 Paper Day Services Manning**
>
> | | |
> |---|---|
> | Paper Day Services Operator | 5* |
> | Total | 5 |
>
> * If it becomes apparent that clay mixing can be safely undertaken by one operator then we may review Paper Day Services manning.

[9] Clause 18 of the Collective provides:

> **18. REDUNDANCY AND REDEPLOYMENT**
>
> **18.1** The Company's Redundancy and Redeployment Policy (dated 31 August 2011) will apply in the event of any redundancies which may arise.

[3] Emphasis added.

18.2 *The Company commits to no forced redundancies during the term of this agreement with the exception of any redundancy which results from a major change event (for example, an asset closure or sale of part or all of the Company).*[4]

18.3 A major change event does not include contracting out. For the purposes of this Agreement contracting out is a situation where the company enters into a contract or arrangement under which part of its business is undertaken for it by another person or entity.

[10] It was common ground that the Collective is to be read in conjunction with the Company's Redundancy and Redeployment Policy (the Policy) which is dated 31 August 2011 (and not 21 August as in the oral judgment) and which outlines the process to be followed in the event of any redundancies. It was also agreed that the Policy is prescriptive in its terms and it stresses the need for consultation with the appropriate employees and the Union. It states in the introduction (cl 1) that the parties:

> … recognise that while there will always be a need for change and that demanning may be an outcome of such change, there is a shared interest in ensuring that employees are treated fairly in any change process, particularly in the event of demanning.

[11] The introduction then lists eight bullet points of "principles to be followed by the Company and Unions to maximise support of permanent employees" (the principles). The principles are an inclusive list. After providing for consultation in cl 2 in "the event of any potential change process/restructuring which may impact on employees", cl 3 of the Policy (insofar as it is relevant to the present dispute), states:[5]

3. REDUNDANCY AND REDEPLOYMENT PROCESS

After consultation with employees and Unions *in affected work areas (work areas as defined by the Company following discussion with the relevant Union)*, if a decision is made by the Company to reduce the number of positions in a work area, the Company will approach demanning as follows. This does not imply automatic acceptance of the decision by the employees and/or Union(s) or representatives but is a start to this stage of the process

3.1 The employees and Union(s) will be advised of the Company's decision.

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[4] Emphasis added.
[5] Emphasis added.

(a) If the redundancy of positions *is as a result of asset closure* or cessation of service, employees employed in positions identified by the Company as redundant will be advised that their positions are, or will become, redundant and clauses 3.2-3.13 will apply to those employees.

(b) If the redundancy of positions *is as a result of partial demanning* of a workgroup, clauses 3.2-3.13 will apply to all employees in that workgroup.

[12] Clauses 3.2 to 3.13 of the Policy outline the redundancy and redeployment processes and cl 3.9 states that "The Company is committed to achieving demanning using both redeployment and voluntary redundancy wherever possible." The processes differ in one critical respect for present purposes, depending on whether the demanning is as a result of an asset closure or partial demanning. Clause 3.12 states:[6]

3.12 If, after following the above process either:

(a) there are still employees in redundant positions, where the redundancy of positions *is as a result of asset closure* or cessation of service, who have not wanted to take voluntary redundancy, have not been redeployed and all other options for continuing their employment have been explored by the Company; or,

(b) where the redundancy of positions *is a result of the partial demanning of a workgroup*, there have not been sufficient employees in the workgroup wanting to take voluntary redundancy;

the Company will use the following processes:

(i) where the redundancy of positions *is as a result of an asset closure* or cessation of a service, it will be the employees in those positions which were identified as redundant that will be given notice of termination due to redundancy by the Company;

(ii) where the redundancy of positions *is as a result of partial demanning of a workgroup*, the Company will adopt a lawful selection methodology based on the views of the Union/employee representatives unless management genuinely considers that the skills, attributes and experience of a particular employee should be retained to determine those employees who would be given notice of termination due to redundancy by the Company.

[6] Emphasis added.

[13] The defendant announced on 10 September 2012 that it is closing one of its two paper machines – Paper Machine Number 2 (PM2) on 9 January 2013. There is no issue between the parties that the closure of PM2 is an "asset closure" for the purposes of cls 11.2 and 18.2 of the Collective and therefore a major change event.

[14] The issue between the parties was whether the defendant was entitled to define "the work area", as those words are used in cl 3 of the Policy as, "the Paper Mill", which, it is common ground, comprises PM2 and the other paper machine, PM3. By so doing the defendant intended to treat any redundancies on the paper machines as arising as a result of "partial demanning", as those words are used in cl 3.1(b) above.

[15] The defendant's position was that the redundancy of positions will not be as a result of asset closure, in terms of cl 3.1(a) but as a result of the defendant's definition of the "Paper Mill", incorporating both PM2 and PM3, as the affected work area and thus a partial demanning under the Collective and the Policy. It therefore denied that it is breaching either the Collective or the Policy or that it is unjustifiably putting the employees employed on PM3 at risk of forced redundancy.

[16] The defendant claimed that it is entitled, by virtue of the provisions in cl 3 of the Policy, to define "the work area" following discussion with the relevant union and has done so with the principles set out in the introduction to the Policy in mind, particularly the seventh principle:

> …
>
> - Commitment to ensure that people who remain with the Company have the appropriate skills to meet the future needs of the business.
>
> …

[17] The plaintiff union initially claimed that the redundancy of positions will be as a result of "asset closure" and that accordingly "the work area" for the purposes of the Policy in these circumstances is PM2 and that the redundant positions are those of the employees employed on PM2. It claimed that if the defendant undertakes demanning on the basis set out above, it will be in breach of both the Policy and

cl 18 of the Collective and will unjustifiably put the employees employed in positions on PM3 at risk of forced redundancy.

[18] The plaintiff relied on the affidavit of Tane Phillips who had worked for the defendant for some 25 years and was the senior site delegate for about seven years. He is now employed full time by the Union. He had previously worked as a Stock Preparation Operator on PM2 on what was described as the "B shift" (one of five shifts A to E on each machine). The paper machines operated 365 days a year and 24 hours a day.

[19] Mr Phillips deposes that on 5 September 2012 employees knew the Company was likely to be closing a Paper Machine, but not which one. The Union discussed the matter with its members, had a meeting and agreed that affected workers were those who worked on the asset that was closing. At the time, they used as an example PM3, but in the event they were told on 10 September that it was to be PM2. PM2 operators were in greater attendance at the meeting than PM3 operators, because PM2 operators were on a shut down and PM3 had to provide a skeleton crew. The consensus at the meeting, although there was no vote taken, was that the asset closure approach was fair.

[20] The Company relied on the affidavit of Peter McCarty, the Mill General Manager. As a result of a downturn in the demand for newsprint, because of the rapid adoption of mobile internet capable devices and changing consumer behaviours, there have been many paper machine closures globally in recent years and an ongoing oversupply of newsprint, which is keeping global prices at historically low levels. The defendant adopted alternatives to maintain production and these included the closure of its third paper machine (PM1) in 2006. On that occasion there were 127 redundancies of which 126 were voluntary and only one was a forced redundancy.

[21] Because of continual declining demand, the owners of the Mill directed the defendant to halve its manufacturing capacity. Mr McCarty consulted with the workforce regarding the possibility of closing one of the two remaining paper machines. He concluded that PM2 was the obvious machine to close as it was older

than PM3 and less productive. PM3 was also technologically more advanced and more productive at a lower cost.

[22] It is common ground that the defendant consulted with the Union and affected employees before making a decision on the work area. This is confirmed by the exchange of emails between the plaintiff and the defendant annexed to Mr Phillips's affidavit.

[23] The defendant wrote on 1 October 2012 advising the plaintiff of the defendant's view that under the Policy the "work area" would be defined as the "Paper Mill" and that the Company intended to follow "a partial demanning of the work area in line with the … Policy".

[24] In the present closure, from the submissions the defendant has received from operators on both PM2 and PM3 so far, it appears that the number of voluntary redundancies that will be confirmed is likely to be significantly less than the 35 out of 66 Paper Mill Operator positions to be disestablished and therefore there will be a number of forced redundancies.

Contractual interpretation

[25] Counsel were agreed that this case turns on the interpretation of the Collective and the Policy. They also agreed that the legal position regarding the interpretation of collective agreements is clear. In terms of *Vector Gas Ltd v Bay of Plenty Energy Ltd*,[7] the Court is required to apply a principled approach to the interpretation of employment agreements and any dispute as to meaning must be determined objectively. The Court of Appeal in *Silver Fern Farms Ltd v New Zealand Meat Workers and Related Trade Unions Inc*,[8] affirmed that the decision of the Supreme Court in *Vector Gas*, although applying to the construction of a commercial agreement, was applicable to the interpretation of employment agreements, including collective agreements. The effect of these decisions, as summarised by Judge Ford in *New Zealand Meat Workers Union of Aotearoa Inc v*

[7] [2010] NZSC 5, [2010] 2 NZLR 444.
[8] [2010] NZCA 317, [2010] ERNZ 317.

AFFCO New Zealand Ltd,[9] is that material extrinsic evidence can be used to clarify the meaning of a disputed provision, whether or not the terms used were ambiguous. The Court of Appeal in *Silver Fern Farms* recognised that it could be appropriate to examine the history of the parties' dealings and prior instruments.[10]

History of dealings

[26] In the present case, the evidence was that the relevant clauses in both the Collective and the Policy have not materially changed since 2004 when the Policy was developed through a working party with all the Unions on the site. The different treatment and processes for asset closures as against partial demanning was deliberate and the result of full discussions.

[27] The closure of PM1 in 2006 was treated by both the Company and the Union as an asset closure, and only those employees who worked on PM1 were considered "affected" employees and put through the consultation process. It appears that after the Company called for volunteers from PM1, and there were not enough, it also asked for volunteers from the rest of the site and a redeployment exercise then took place. When PM1 was closed it was accepted that if the PM1 crew could not be redeployed and had not accepted voluntary redundancy, they were the ones to be made redundant.

[28] Counsel for the Company submitted that after the consultation this year with employees and unions regarding its view of affected work areas following the proposed closure of PM2, no issue has been raised by the Union in relation to some eight different departments at the Tasman Mill. These were set out in Mr McCarty's affidavit in the following manner:

(b) Paper Day Services;

(c) Mechanical Pulp Mill;

(d) Site Services (Stores, Facility Cleaners and Mill Wide Services);

(e) Emergency Response and Security;

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[9] [2011] NZEmpC 32 at [28].
[10] *Silver Fern Farms* at [35].

(f) Order Fulfilment;

(g) Maintenance;

(h) Control systems;

(i) Staff and management throughout the Mill.

[29] The Union has only taken objection by way of these proceedings to the defining of the work area of the "Paper Mill" so as to include the positions on both PM2 and PM3. Counsel for the defendant submitted that I should take this into account in interpreting the disputed clauses.

[30] My difficulty with that submission is that the full circumstances of the definition of those eight types of positions and the alleged consequences for affected positions and employees were not clearly spelt out in the evidence. I was not provided, in contrast to the position of the Paper Mill, with the consultation pack for those workers in other affected areas. I shall return to this matter when dealing with the disputed interpretation.

Discussion of submissions

[31] Ms Beck, for the plaintiff, submitted that as it was common ground that the closure of PM2 was an asset closure, therefore the defendant was not entitled to define the work area as a partial demanning or to choose which process applied. She submitted that such an approach would allow the defendant to effectively "cherry pick" parts of the Policy to suit its needs in contravention of the intent and written words of the Policy and the Collective. She submitted that as the redundancy of positions will be as a result of an asset closure in the "Paper Mill", that must be limited to the employees on PM2.

[32] Ms Beck relied on cl 18.2 of the Collective under which the Company committed to no forced redundancies, with the exception of any redundancy which resulted from a major change event, such as an asset closure and observed that it is accepted by the defendant that there is likely to be forced redundancies as a result of this asset closure. She submitted that this prevented the defendant from terming the restructure a partial demanning so that it would have the ability under cl 3.12(ii) to

adopt "a lawful selection methodology" in terms of cl 3.12(ii), to determine those employees who would be given notice of termination due to redundancy.

[33] Ms Beck observed that the Policy is referred to in the same provision of the Collective that deals with asset closures and therefore in terms of that wording, the defendant was obliged to comply and operate the Policy on the basis that any redundancy of positions was as a result of an asset closure. She submitted that the fact that the partial demanning process was being used elsewhere on the site was irrelevant and it may well make good sense for that process to be used elsewhere.

[34] Ms Beck accepted that while the Policy does provide for the Company to define the affected work area, such definition must be reasonable and sustainable on the facts and consistent with the Company's commitments under the Collective and the Policy. She submitted that it was not sustainable therefore to define the work area as the whole of the Paper Mill so as to embrace both machines.

[35] Ms Beck submitted that the evidence established that PM2 and PM3 were very different assets and in those circumstances it was nonsensical to state that the affected work area was the whole of the Paper Mill embodying both machines. She submitted that the wording "positions identified by the Company as redundant", in cl 3.1(a) must be the positions of the employees on PM2 as the defendant proposes to reduce the Paper Mill operators down from 66 to 35 or the equivalent of one paper machine crew of 30 operators. She submitted that the employees on PM2 must be those in "redundant positions" as the jobs on PM3 will remain, as the defendant's proposal makes this clear. She contended that as the positions on PM3 will not be redundant, that asset is not closing and unless those employees volunteer, they should not be affected or forced into a redundancy.

[36] Ms Dunn for the defendant submitted that in terms of cl 3 of the Policy, once a redundancy situation is identified, the Company is to define the affected work areas and the only express requirement is that the Company must first discuss the matter with the relevant Union. She submitted that there was no evidence of bad faith or unfairness and therefore no basis to challenge the Company's decision. She relied on Mr McCarty's evidence that he considered the survival of a one machine site was

dependent on ensuring that the Company retained the best operators, which is one of the principles in cl 3 of the Policy.

[37] Ms Dunn submitted that, in terms of cl 3.1 of the Policy, once the Company had defined the affected work areas, it was then required to commence consultation with employees in those areas about the proposed demanning. She submitted that under cl 3.1, redundancies would then proceed as either the redundancy of all of the employees employed in positions identified as redundant, under cl 3.1(a), or a partial demanning of the work area, under cl 3.1(b). Which is the case, she submitted, depends upon how the Company has defined the work area. She submitted that the Company's decision to define the work area as the Paper Mill, rather than just PM2, has the necessary consequences for the application of the remainder of the Policy, and, if there are insufficient voluntary redundancies or redeployment, the Company will need to undertake some form of selection process.

[38] Ms Dunn submitted that a situation where redundancies are caused by the closure of an asset but are implemented by way of partial demanning of a work group is clearly contemplated by the Policy. In this context she referred to redundancies in all other areas of the site proceeding by way of partial demanning under cl 3.1(b). She submitted that accordingly, given the Company's definition of the work group, cl 3.2 to 3.13 will apply, and, notwithstanding that the redundancies are to occur as part of an asset closure, the provisions regarding partial demanning apply. Accordingly, she submitted, there has been no breach of the Policy.

[39] I did not accept Ms Beck's submission that the wording of either the Collective or the Policy impacted upon the Company's right under cl 3 to define the affected work areas following discussion with the relevant Union. Although it is accepted by both sides that redundancies are to occur as a result of an asset closure, (see, for example, the admission contained in the statement of defence) there is nothing in the Policy in cl 3 which requires the defendant to define the affected area to the specific asset that is being closed.

[40] Ms Beck, while being uncomfortable on behalf of the Union, using the description of an employer's right as "managerial prerogative", accepted that it is for

the Company to initially decide what areas may be affected by a proposed redundancy. That accords with the common law position expressed in cases such as *G N Hale & Sons Ltd v Wellington etc Caretakers etc IUOW*,[11] where Cooke P stated:

> A worker does not have a right to continued employment if the business can be run more efficiently without him.

[41] I consider that the first part of cl 3, following the consultation provision over potential changes or restructuring in cl 2 of the Policy, effectively mirrors the obligation of good faith on an employer imposed by s 4(1A)(c) of the Act which:

> … requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected –
>
> (i) access to information, relevant to the continuation of the employees' employment, about the decision; and
>
> (ii) an opportunity to comment on the information to their employer before the decision is made.

[42] As the wording of cl 3 contemplates, it is only after discussion with the relevant Union that the Company can define the work areas which will be affected. If it decides, after consultation, which is required by cl 2 of the Policy, to reduce the number of positions in a work area, it must approach demanning as set out in the remainder of the clause. This does not imply automatic acceptance of the decision by the employees or the Unions, but is seen as a start to this stage of the process. Other than the requirement of discussion, there is no other express restraint on the employer's right to decide which work areas are affected.

[43] Whilst I concede the force of Mr Phillips's evidence that there were good reasons, as there were in 2006, for limiting the redundant positions to the particular machine being closed, I am equally accepting of Mr McCarty's evidence that the Company had good reasons for defining the work area on a wider basis to include both machines in the Paper Mill. In this respect, I agree with the conclusion of the

[11] [1990] 2 NZILR 1079 (CA) at 1084.

Employment Relations Authority that the decision of the defendant was neither unfair nor arbitrary.

[44] The effect of defining the work area as the "Paper Mill" including both machines, meant that the provisions of clauses 3.2 to 3.11 would apply. This would, for example, allow for employees on PM3 to seek voluntary redundancy and for all of those employees affected to seek redeployment to any other positions including new positions with suitable training. When an employee is redeployed to a position with a lesser salary, an employee's existing salary can be maintained for an 18 month period (cl 3.11). Defining the work area widely allowed for considerable flexibility and maximised support for permanent employees as the Introduction to the Policy requires. It also met the Company's commitment to use redeployment opportunities and develop processes that maximise voluntary redundancies and/or redeployment.

[45] For these reasons, I concluded that the decision to define the work area as the Paper Mill was not made in breach of either the Collective or the Policy. It was a decision open to the Company in all the circumstances, notwithstanding that the major change event in this particular case, giving rise to the redundancies, was an asset closure.

[46] However, I did not accept the defendant's submissions that once it had defined the work area as the Paper Mill, this became a redundancy of positions as a result of a partial demanning of the workgroup in terms of cl 3.1(b), with the consequence that, if there were to be compulsory redundancies, cl 3.12(b) and (ii) would apply. This would allow the Company to adopt a lawful selection methodology in determining the positions to be made redundant. I considered that the defendant's submissions disregarded the plain wording in cls 3.1(a) and (b). Once a work area has been defined, resulting in a decision by the Company to reduce the number of positions in a work area and a demanning, it was required to approach demanning in a way which depended upon the factual situation set out in cl 3.1(a) or (b), whichever applied to the situation.

[47] On a plain reading of cl 3.1(a), the redundancy of positions in the Paper Mill was *as a result of asset closure*. The Company has identified PM2 as the machine

which would be shut down and it was the positions on that asset which would be redundant. It followed therefore, that the employees employed in positions on that machine had been identified as being redundant and must be advised that their positions, are or will become redundant after applying cls 3.2 to 3.13 (cl 3.1(a)).

[48] If the redundancy of positions is not as a result of asset closure or cessation of service, but as a result of partial demanning of a group, cl 3.1(b) would apply, with the Company having the eventual right to make compulsory redundancies using a lawful selection methodology.

[49] If, however, there are still employees in redundant positions where the redundancy of positions is as a result of asset closure, and voluntary redundancy and redeployment and all the other options have not assisted, it will be the employees in those positions which were identified as redundant that will then be given notice of termination in terms of cl 3.12(a) and (i). The Company cannot change the fact that this was an asset closure.

[50] Another example discussed which tests the operation of the two clauses, was the hypothetical event which would most likely be regarded as a major change event: where the defendant decided to sell all of the Company. That would not be a situation caught by either cl 3.1(a) or (b) and therefore cls 3.2 to 3.13 would not apply. Clearly it would be nonsensical to be looking at redeployment, retraining, or other such options if the Company was no longer involved in the operation of the Tasman Mill.

[51] Hypothetical examples were discussed during the hearing to test the operations of cls 3.1(a) and (b). If in order to achieve a halving of its production, the defendant, instead of closing one of its assets, chose to keep both machines but to reduce the five shifts so that the machines were not operating 365 days of the year, 24 hours a day but only for half that time, that would be a situation where the redundancy of positions would not be as a result of asset closure but would be as a result of partial demanning of a work group because so many permanent employees on shifts would not be needed.

[52] In conclusion, I found that the wording of the Policy permitted the Company to define the work area affected by redundancies, but, if as a matter of fact, as was the case here, the redundancy of the positions was as a result of asset closure, the Company was constrained by cl 3.1(a).

Remedies

[53] Because of the responsible attitude taken by the parties and the agreement of the defendant to hold its hand until this challenge had been decided, there has been no breach of either the Collective or the Policy. There is thus, no need for any injunction as sought by the plaintiff.

[54] After obtaining instructions, counsel were able to advise the Court, although without consenting, that declarations could be made in light of my indication of how I interpreted what I found to be the plain meaning of cl 3 in its entirety. Those are the declarations that appear at the commencement of my reasons for my judgment.

[55] I again record my appreciation for the parties' co-operation in bringing this matter to an urgent hearing and the able work of their legal representatives in presenting the case in such a succinct manner for their respective clients.

B S Travis
Judge

Reasons for judgment signed at 3.45pm on 7 December 2012