

**Negotiations:
Ontrack Infrastructure and Rail and Maritime Transport
Union Collective Agreement: Position Reached in
Negotiations as at 12 May 2006**

Union Claims

Clause 3 Contracting Out

The employer is not prepared to agree to require contractors to pay rates and conditions broadly in line with those of Ontrack. The employer is prepared to require contractors to meet Ontrack standard in health and safety matters.

Claim stands

Clause 4 Parties and coverage

The employer is not prepared to agree to a subsequent employer party clause and the union has indicated that this is an important claim already well accepted within the industry.

Claim stands

Clause 5 Definitions

- 5.3 The union seeks to redefine shift work as part of a comprehensive claim to introduce a full shift work code. However depending on an acceptable outcome in respect to clause 11 – Night Work – the union is prepared to withdraw this claim. Substantially progress has been made on the Night Work matter.

Matter in hand

- 5.4 The union seeks a weekly pay cycle. The company wishes to maintain the 80hour cycle. The union has indicated that subject to an acceptable outcome in respect to clause 11 – Night Work – it is prepared to withdraw this claim.

Matter in hand

- 5.7 The parties have agreed to redefine service to incorporate service with Transfield Services (NZ) Limited.

The following wording has been proposed by the employer and is under consideration by the union:

Current continuous service includes unbroken service with Transfield Services Ltd, Tranz Rail Ltd and its predecessors recognised by Tranz Rail Ltd. Unless

otherwise agreed by the Company, special leave without pay will not count as service, but will not break the continuity of service.

Matter substantially resolved

5.8 This relates to temporary/fixed term/casual employees.

The union position is currently:

Temporary/Fixed Term/Casual employee:

5.8.1 *A temporary/fixed term employee is a person who is employed for a period of not more than 6 months, which fact shall be recorded in a letter to the employee at the time of engagement. If employment continues past 6 months, without review the employee will be deemed to be a permanent employee.*

5.8.2 *For specific project work temporary employment may be extended for the life of the project by the agreement of the parties (employer and employee). At the end of a temporary/fixed term employment term, where there is ongoing work, the employee will be offered permanent employment.*

Casual definition (present agreement)

The following provisions do not apply to casual employees:

- *Clause 12.11*
- *Clauses 12.28 to 12.36 and 12.39 (the leave provisions of the Holidays Act 2003 apply instead).*
- *The Retirement Leave and Redeployment and Redundancy Schedule.*

The employer has asked whether the above exclusions would apply in the case of fixed term employees and the union is considering this aspect.

The employer position is:

Fixed Term

5.8.1 *Except in the case of project work, a fixed term employee is a person who is initially employed for a period of not more than six months, which fact shall be recorded in a letter to the employee at the time of engagement. Should it be necessary to continue to engage the employee beyond the six months, the employee shall be offered permanent employment unless there is a clear and compelling reason not to. Such clear and compelling reason will be documented and agreed at the time of extension.*

Casual

A casual employee is a person engaged for casual work. In a general sense, casual work means employment of a short term, irregular or on-call nature, which becomes available on an occasional basis. Casual work is regarded as being for a day or a few days at a time.

The following provisions will not apply to fixed term or casual employees:

- *Clause 12.11*
- *Clauses 12.28 to 12.36 and 12.39 (the leave provisions of the Holidays Act 2003 apply instead).*
- *The Retirement Leave and Redeployment and Redundancy Schedule.*

Matter remains unresolved

Clause 6 Consultation

6.3 This relates to the continuation of the industrial council and infrastructure focus group. The terms of settlement will contain a commitment to the ongoing use of these bodies but the actual wording has not yet been agreed:

The employer has proposed the following:

The parties support the concept and work of the industrial council and infrastructure focus group and have no intention to discontinue them.

The union proposes the following;

The parties support the concept and work of the industrial council and infrastructure focus group and these will continue.

The employer has asked the union to accept that although these forums fill a useful purpose currently, this might not always be the case necessitating wording that accommodates this.

Matter substantially resolved

Clause 7 Representation

The union seeks contractual recognition of the existence and rights of delegates, including leave and the provision of certain facilities. The company believes that its record to date demonstrates its commitment to representation and is not prepared to codify the status quo.

Matter unresolved

Clause 10 Expenses

The union seeks an increase in incidentals and meal allowances of 20%. The employer has offered 3.4% on allowances.

Matter unresolved

Clause 11 Hours of Work

As already discussed above (Clause 5 Definitions, paragraph 5.3) the parties have agreed to introduce a Infrastructure Night Work clause to address the need to conduct certain maintenance work during the night hours.

The union position is as follows:

Infrastructure Night Work

Night work may be worked by the agreement of the parties. Rosters, hours of work, breaks, the duration of the proposed night work system, and any other night work provisions will be consulted over under clause 6 (Consultation) of this agreement, prior to any such agreement being reached.

Due consideration will be given to the family responsibilities of the employee/s concerned.

Any agreement will be recorded in writing. This agreement will include the hours of work, duration of the agreement, maximum work periods, breaks and number of consecutive days that can be worked, and any other provisions the parties feel appropriate.

*Breaks – a meal break will be taken at or about the mid point of each work period. This meal break will be for at least 30 minutes and not more than 60 minutes and will be unpaid. Rest periods of 10 minutes will be taken at or about the quarter and three quarter points or the work period. **Where meal times are at fixed times they will be unpaid***

*In recognition of the fact that infrastructure work is ideally a day time occupation, and the company is requiring you to work outside for long periods at night in less than ideal circumstances, you will receive an allowance of **\$10.70 tax free for each shift worked on** infrastructure night work. This payment will be prorated where shifts are not worked due to annual and other approved paid leave being taken during any week.*

Night workers shall be entitled to an additional week’s annual leave, prorated if an employee is on shift for less than a year.

Night workers shall be entitled to an additional week’s annual leave, prorated if an employee is on shift for less than a year. Prorating shall comply with the following formulae:

<i>Weeks</i>	<i>Days</i>
<i>0 – 9</i>	<i>0</i>
<i>9 – 12</i>	<i>1</i>
<i>13 – 16</i>	<i>2</i>
<i>17 – 22</i>	<i>3</i>
<i>22 – 27</i>	<i>4</i>
<i>28+</i>	<i>5</i>

The allocation of overtime or penalty rate work among employee/s covered by this agreement shall be fair and equitable. The manager shall have no regard to the overtime or penal rate application applicable to individuals.

The employer position is as follows:

Infrastructure Night Work

Night work may be worked by the agreement of the parties. Rosters, hours of work, breaks, the duration of the proposed night work system, and any other night work provisions will be consulted over under clause 6 (Consultation) of this agreement, prior to any such agreement being reached.

Due consideration will be given to the family responsibilities of the employee/s concerned.

Any agreement will be recorded in writing. This agreement will include the hours of work, duration of the agreement, maximum work periods, breaks and number of consecutive days that can be worked, and any other provisions the parties feel appropriate.

Breaks – a meal break will be taken at or about the mid point of each work period. This meal break will be for at least 30 minutes and not more than 60 minutes and will be unpaid. Rest periods of 10 minutes will be taken at or about the quarter and three quarter points or the work period.

In recognition of the fact that infrastructure work is ideally a day time occupation, and the company is requiring you to work outside for long periods at night in less than ideal circumstances, you will receive an allowance of \$50 for each qualifying week worked on infrastructure night work. This payment will be prorated where shifts are not worked due to annual and other approved paid leave being taken during any week.

Night workers shall be entitled to an additional week's annual leave, prorated if an employee is on shift for less than a year.

Night workers shall be entitled to an additional week's annual leave, prorated if an employee is on shift for less than a year.

The allocation of overtime or penalty rate work among employee/s covered by this agreement shall be fair and equitable. The manager shall have no regard to the overtime or penal rate application applicable to individuals.

The essential differences relate to meal breaks (paid or unpaid), the quantum and nature of the payment. There is no issue in respect to additional leave but the employer does not accept the scale proposed by the union for prorating this and an alternative scale will be presented by the employer party for the consideration of the union.

Matter in hand

11.15 Call backs (11.11)

The union claims reads as follows:

- *Employee/s who work from home at a telephone or computer terminal will be paid a minimum of 3 hours pay at the appropriate rate on each occasion this occurs.*
- *Employee/s shall be entitled to a minimum 9 hour continuous break after a call out without loss of ordinary pay.*
- *Call backs shall not be taken into account for the purpose of determining the number of ordinary hours in any fortnight.*
- *Employee/s who agree to be called back to work will be paid a minimum of 3 hours pay at the appropriate rate.*
- *1 hour additional to time worked will be paid at the appropriate overtime rate for callouts.*
- *Employee/s who attend 25 or more call backs each calendar year shall qualify for an additional week's annual leave.*
- *Shift workers will not be called back during 10 hours breaks between work periods.*

The employer has indicated that while it believes the current call back provisions to be fair and reasonable, it is prepared to guarantee that call back time will be paid in addition to the normal 80 hour minimum fortnightly payment, i.e. not absorbed into make-up.

To achieve this the following sentence would be added to existing clause 11.16:

Call backs shall not be taken into account for the purpose of determining the number of ordinary hours worked in any fortnight.

The employer has also offered to amend the current Rest Period clause (11.17) to read as follows:

11.17 Broken sleep patterns are likely to affect your safe and effective performance during the next work period. Your manager may give you paid time off. In any event the following will apply:

Call backs – If there is a call back which breaks the period between 2300 and 0530 hours your manager will allow you time off from the next work period without loss of pay if it is due to start the following morning. Such time off will be the greater of equivalent time off in

lieu of the call back, or an unbroken rest period without loss of pay of 6 hours.

Other Work periods – if there are fewer than 10 consecutive hours off between work periods, your manager will allow you equivalent time off to make up the 10 hours without deduction from pay.

Note: the employer has made claims in respect to this matter, which will be covered later in this paper.

Matter remains unresolved

Clause 11.12 Parties have agreed to add the word “noon” after 12.00 hours in the first line of the first bullet, and to substitute “*work planning, employee/s are to advise*” in the first line of the last bullet for the current “*planning the work of employees, please advise*”.

Matter resolved.

Clause 12 Leave

Annual Leave

12.8 Union seeks five weeks annual leave after 5 years service. The employer rejects this claim.

Claim unresolved.

12.9 Union seeks the extension of this clause to all employees as opposed to the track maintenance gangs. This is agreed to on the basis of the current clause wording and also subject to the resolution of the shift working arrangements in Auckland.

Matter substantially resolved

Sick Leave

12.28 The union seeks an increase in sick leave entitlement from the current 6.5 to 8.5 days. The employer rejects this claim.

Matter unresolved

12.30 Union amended claim reads:

If an employee’s sick leave entitlement is exhausted, additional paid sick leave will be granted in cases of serious illness or fatigue or stress, unless there is a pattern of repeated absenteeism that has been brought to the attention of the employee.

Company makes no offer believing its current practice is equitable.

Matter unresolved

12.28 Union seeks increase in entitlement to 8.5 days. Employer rejects claim.

Matter unresolved

Clause 17 Term

Employer has offered a one-year term.

Matter not an issue

PAY SCHEDULE

Skilled Based Pay System

The parties agree to retain this.

Matter resolved

Higher Duties

Union amended claim reads as follows:

Please note that if employee/s work in a higher paid position, they will be paid the rate appropriate for that position while they are so doing. Payment for higher duties will not be payable in circumstances where the ganger or other supervisory person is available and performing their normal duties.

Track welders working unsupervised shall be paid the higher track welding rate while so employed.

Continuous periods of advanced capacity exceeding 3 months will be reviewed and any continuation will be subject to agreement between an employee and their manager. An employee may have union representation.

The employer offers the terms of the present agreement but with the automatic qualifying period reduced to 2 days.

Matter unresolved

Wage Scales

The union has tabled data in support of a wage increase based on relativity with the broader industry. The company having analysed the data believes that the comparisons are not valid. The company has offered an across the board increase on wages and allowances of 3.4% from date of expiry of the currently applying agreement for a term of one year.

Matter unresolved

Union seeks allowance for electrical tradesperson's holding "registration as an electrical inspector" of \$1.50 per hour. The parties have agreed to the following allowance:

Where an electrical tradesperson holding registration as an electrical inspector is requested to carry out inspection work, such employee will be paid \$1.50 per hour for each hour engaged on the actual inspection and the necessary documentation certification.

Matter resolved

ALLOWANCES SCHEDULE

Clause 1 Tea and Coffee

Union now seeks application of the finally agreed across the board increase.

Matter resolved

Union seeks a negotiated increase on all allowances.

Clause 2 Safety Footwear

Matter agreed as follows:

Where the work of employees requires the wearing of safety footwear to the approved New Zealand safety standard, the company will either:

*Provide you with safety footwear; or
Reimburse you to a maximum of \$200 (or such greater amount as your manager may agree having regard to durability and suitability).*

Safety footwear will be replaced on a fair wear and tear basis.

Matter agreed

Clause 3 Transport

Union seeks to increase the transport allowance to \$5 and to introduce a \$1 per kilometre option in the case of call backs. The Company is open to adjusting the current rate of \$4.01 in line with any general increase agreed. It is not agreeable to the per kilometre option, which is the IRD approved amount.

Matter unresolved

Clause 7 Environment

The union seeks to extend the application of this allowance to all field staff. Currently it applies to Signalling Technicians, Field Technicians and Senior Field Technicians. The employer makes no offer on this matter.

Matter unresolved

Clause 8 Tool Allowance

Union seeks an increase in tool allowance from 31 cents to 75 cents per hours.

Company believes present level, once adjusted by agreed wage increase is adequate and makes no offer.

Matter unresolved

Clause 9 First Aid

Union seeks reduction in qualifying threshold from 50 to 20. Company has yet to respond.

Matter unresolved

Clause 10 On Job Training

Claim withdrawn

Matter resolved

Employer Claims

Clause 3 Contracting Out

Employer believes that clause is inappropriately positioned at the beginning of the agreement and wished to reposition it at clause 16.

Employer will not insist on this as a term of settlement but would like the union to consider further.

Claim effectively withdrawn

Clause 4 Parties and Coverage

4.2 Limits on coverage

Employer seeks to confine coverage to the roles for which salaries are proscribed and remove coverage in respect to certain functions.

Union rejects claim

Matter unresolved

4.6 Transitional Provisions

Employer seeks totality clause clearly removing the possibility of “double dipping” where employees on individual agreements become union members.

Union rejects claim but has indicated that it will consider further.

Matter unresolved

Clause 5 Definitions

5.6 Part time employees – employer seeks to provide for prorating the weekly wage and the union has indicated support for this. Both parties agree it should be tidied up as part of the broader hours of work exercise.

Matter substantially resolved

Clause 11 Hours of Work

11.1 Relates to the ability to introduce shift work.

The parties have agreed that this will be addressed as part of a new Infrastructure Night Work clause which has been substantially agreed – see earlier discussion.

Matter in hand

11.15 Relates to employee obligations to go on call backs on a rostered basis.

Claim stands.

Matter unresolved

Clause 12 Leave

Employer has withdrawn claims relating to public holidays subject to an acceptable agreement being reached in respect to shift working arrangements (Auckland).

Matter substantially resolved

Clause 13 Health and Safety

13.6 This relates to conditions whereby drug testing may be carried out.

Matter resolved

Clause 14 Ending Employment

Employer proposal:

Insert before 14.12 the words:

This clause is inserted in compliance with section 69L of the Employment Relations Act 2000. Notwithstanding the provisions of clause 16 (currently clause 3), where the employer is proposing to sell, transfer, merger or contract out the whole or part of the employers business, the employer shall negotiate with the person who undertakes or proposes to undertake the employers business (or part of it) or to whom the employer's business (or part of it) is, or is to be, sold, transferred, merged or contracted out (the 'new employer') about the transfer of affected employees to the new employer.

The employer will enter into negotiations with the new employer in relation to whether the service of affected employees will be treated as continuous and whether they will transfer to the new employer on the same, or better, terms and conditions of employment. As part of these negotiations ONTRACK Infrastructure Limited will put a proposal to the new employer and consider any response received concerning the transfer of affected employees.

On the completion of negotiations, employees and their union will be advised as early as possible, but not later than one month prior to the anticipated handover date, the conditions under which the employees can elect to transfer to the new employer and the conditions under which their employment will end if they chose not to transfer or there is no option to transfer.

No redundancy compensation shall be payable in any situation where the termination arises(present clause 14.12).

Union will obtain legal advice prior to committing to proposed clause.

Matter substantially agreed

Commitment to Training (new clause)

The parties have agreed to the following new clause to be inserted in General Matters:

Joint Commitment to Training

It is agreed between the RMTU and ONTRACK that all employees should be encouraged to participate in, and accept training opportunities, i.e. NZQA, in-house and OJT to the fullest possible.

The parties agree that NZQF qualifications enhance the skills of the employees and the productivity of the company, and the parties record their belief that a highly skilled and trained workforce is in the best interests of all.

It is recognised that some employees may chose not to participate in the skill based pay system. These employees will retain their current rates of pay and conditions.

Matter Agreed

Benefits Schedule

The parties have agreed that travel privileges will be by way of expense claim and reimbursement.

Matter resolved

Other Matters

Backdating

The union sought a commitment to backdating. The employer indicated that it was not opposed to back dating the agreement but this was a matter for negotiation and agreement.

Next Meeting

The union proposes to consult with its membership before next meeting and at this stage no resumption date has been set.