



RAIL ACTIVIST ALERT

Annual Leave Dispute – KiwiRail’s Article on Pay Slips in 2 May “The Express” Tells Only Half the Story

You may have read on page 5 of KiwiRail’s newsletter, *The Express*, an article “*Proposed Adjustment to Pay Slips – Leave Entitlement Balances*”. Unfortunately, KiwiRail has only told half the story.

What the company omitted to tell you was the following:

1. For many years the pay slips of our members have used the figure “*Annual Leave Days Due*”. That figure has reflected the **actual and earned** annual leave that you have earned by reaching the end of your leave year. That is consistent with the Collective Agreement with the company, and the Holidays Act.
2. Without any consultation whatsoever with the RMTU, the company unilaterally changed this approach in November 2012 and started using a new figure of “*Annual Leave days available*”. They did so on the basis of **combining** the annual leave you have actually earned, with part year accruals during the current year.
3. The RMTU learned about this unilateral change, and was extremely concerned about it. There are many disadvantages to workers in using this misleading combined figure, including exposing workers to the risk of a manager directing a worker to take this leave on 14 days’ notice, and a manager declining additional paid sick leave based on this artificial “total” balance.
4. We were contacted by members who were concerned about this change, given that, by combining these two figures, into one “total” annual leave balance, this created a misleading and deceptive figure. The “available” figure is **not** what you are entitled to under the law and under the MECA – annual leave days only become an entitlement at the end of the leave year. That is why the pay slips had, for years, used the “due” figure.
5. These are just some of the concerns we had about the company’s unilateral change, and the RMTU wrote to David Walsh, GM Corporate and Finance, on **12 February 2013**, requesting that this unilateral change be removed. In that letter I stated the following:

"Accordingly, I request urgent confirmation that KiwiRail will desist from this approach forthwith, and will treat annual leave as part of the employee's balance only once it is earned at the end of the leave year. Please confirm this within 7 days. If we do not receive this confirmation, we will be challenging this action, and the breach of good faith evident in the company's failure to address this with the RMTU prior to this point, in the Employment Relations Authority."

6. After receiving a holding letter on 20 February, KiwiRail then responded on 26 February and stated that the issues we had raised were not "relevant".
7. We wrote back to KiwiRail on 5 March reiterating our concerns, and requesting that KiwiRail stop its unlawful conduct. We received a response that same day from the company which said:

"Your letter of 5 March. KiwiRail disagrees with your assertions and I see no value in responding to your letter."
8. RMTU instructed its lawyers to file proceedings and these have been filed in the Employment Relations Authority challenging the unlawful actions of KiwiRail. Since then, KiwiRail has said in letters from its lawyers, and in its newsletter to you on 2 May, that it has "decided" to go back to using the "due" figure.
9. This change of mind only happened **after** proceedings were filed in the Employment Relations Authority, and **after** we were told by KiwiRail that our concerns were not relevant.
10. At no point, however, has KiwiRail acknowledged that its actions in the first place were unlawful, or that it should have discussed these issues with the RMTU before it made this change in November last year.

As you will see, none of the above story is mentioned anywhere in the company's article in its newsletter. One might ask how it is that the company forgot to tell you that its decision to revert back to annual leave days due, only happened after proceedings were filed in the Employment Relations Authority by the RMTU. I will leave you to draw your own conclusions.

The RMTU is also extremely concerned about the company's statement on 2 May that it will be using a separate annual leave days accruing figure. In our view, that also does not reflect the legislation and the MECA and this will form part of our dispute.

We are in mediation with the company on these issues on 22 May, and if those issues are not solved at mediation, then they will go to a hearing in the Employment Relations Authority - Wellington. We will keep you posted.

Yours in unity



Wayne Butson
General Secretary