

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 23/2025
[2025] NZSC 69

BETWEEN	NEW ZEALAND TRAMWAYS AND PUBLIC PASSENGER TRANSPORT EMPLOYEES' UNION WELLINGTON BRANCH INCORPORATED Applicant
AND	TRANZURBAN HUTT VALLEY LIMITED Respondent

Court: Williams, Kós and Miller JJ

Counsel: P Cranney for Applicant
D D Vincent for Respondent

Judgment: 2 July 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

[1] New Zealand Tramways and Public Passenger Transport Employees' Union Wellington Branch Inc (the Union) seeks leave to appeal a judgment of the Court of Appeal.¹ The Union's application is opposed by Tranzurban Hutt Valley Ltd (Tranzurban).

¹ *New Zealand Tramways and Public Passenger Transport Employees' Union Wellington Branch Inc v Tranzurban Hutt Valley Ltd* [2025] NZCA 1, [2025] 2 NZLR 229 (Katz, Mallon and Ellis JJ) [CA judgment].

Background

[2] The Union represents bus drivers employed by Tranzurban. Many of these bus drivers are rostered on a single work day to work for a period in the morning and a period in the afternoon, with extended time in between where they are not rostered to work. This arrangement is known as a “split shift”, reflecting the periods of the day where demand for buses is high.

[3] The Union and Tranzurban disagree on whether each split shift constitutes one “work period” or two for the purposes of the Employment Relations Act 2000 (the Act). Broadly speaking, the question is whether a “work period” is the same as a shift—even if it is a split shift.

[4] The Act defines “work period” for the purposes of Part 6D in s 69ZC:

Part 6D **Rest breaks and meal breaks**

69ZC Interpretation

In this Part, unless the context otherwise requires, **work period**—

- (a) means the period—
 - (i) beginning with the time at which, in accordance with an employee’s terms and conditions of employment, an employee starts work; and
 - (ii) ending with the time at which, in accordance with an employee’s terms and conditions of employment, an employee finishes work; and
- (b) includes all authorised breaks (whether paid or not) provided to an employee or to which an employee is entitled during the period specified in paragraph (a).

[5] Tranzurban has treated the morning and afternoon shifts as separate work periods when the period between shifts exceeds two hours. The Union disputes this approach. It says split shifts constitute one work period, commencing at the start of the morning shift and finishing at the end of the afternoon shift; the period between the morning and afternoon shifts is still part of the work period.

[6] Which meaning of “work period” is correct affects matters such as the length, number and default timing of rest and meal breaks. Sections 69ZD and 69ZE set out these break entitlements (and obligations). These are based on the length of the work period.

[7] The Union and Tranzurban have a Collective Agreement. The key provisions for present purposes are cls 8 and 11:²

8. DAYS AND HOURS OF WORK

Roster

A plan outlining the employee’s shifts to be worked, including days and hours of work and rostered days off.

Shift

A workplan for the day detailing duties to be completed. An employee may be allocated multiple shifts during a workday. A shift may include multiple work periods.

...

...

11. MEAL BREAKS AND REST PERIOD

11.1 Rest and meal breaks will be scheduled in accordance with the employee’s entitlement within relevant legislation. The employee agrees to take their rest and meal breaks at the times scheduled within their work period as set out in the shifts provided to the employee by the Company. In providing agreement the employee recognises that:

11.1.1 Break times will change from shift to shift. The Company will endeavour to schedule breaks at regular portions throughout each shift or work period; however, the timing of breaks will be subject to any industry principles that the company has accepted, following facilitated meetings commissioned by NZTA. Where this is not possible, breaks may be scheduled at the outset or at the end of a work period as the operational requirements of a scheduled and semi-scheduled bus driving operations allows.

11.2 The Company will provide tea, coffee, milk and sugar at all Tranzurban depots. Where the employee is required to have a break away from the depot, provisions will be supplied.

² As quoted at [25] (emphasis added).

- 11.3 If an unpaid meal break is required to be taken away from the employee's home depot, the employee will be paid a meal allowance in accordance with Schedule 2.

[8] According to the Union, the dispute comes down, in practical terms, to whether drivers are entitled to an additional paid rest break in certain circumstances. According to the evidence in the Court of Appeal, the Union's approach would cost Tranzurban about \$57,000 (presumably per annum).³

Proceedings below

[9] The Employment Relations Authority found in favour of the Union, determining that split shifts constitute one work period.⁴ The Employment Court, on a de novo challenge by Tranzurban, overturned the Authority's finding.⁵ The Employment Court considered the Act did not preclude parties agreeing to more than one work period in a given day and that, in this case, each split shift constituted more than one work period. The Union appealed, but the Court of Appeal agreed with the Employment Court's approach.⁶

Submissions

The Union

[10] The Union says there are interpretive ambiguities in the s 69ZC definition of "work period". Specifically, the definition requires identification of a work period's "beginning" and "ending".⁷ It also requires consideration of what the phrase "all authorised breaks (whether paid or not)" means as these breaks are included in each work period.⁸ The Union argues that the touchstone for these issues is a day; it says s 69ZD sets out a daily work schedule and uses the eight-hour workday as the standard. It also says that if a day could contain multiple work periods, employers could structure employees' schedules cynically to avoid providing paid breaks.

³ At [38].

⁴ *New Zealand Tramways and Public Passenger Transport Employees Union v Tranzurban Hutt Valley Ltd* [2021] NZERA 342.

⁵ *Tranzurban Hutt Valley Ltd v New Zealand Tramways & Public Passenger Transport Employees Union Wellington Inc* [2022] NZEmpC 75, (2022) 18 NZELR 732 (Judge Corkill).

⁶ CA judgment, above n 1.

⁷ Employment Relations Act 2000, s 69ZC(a).

⁸ Section 69ZC(b).

[11] Based on this interpretation of the Act, the Union says even split shifts can have only one “beginning” and “ending”, with any period between parts of a split shift constituting an “authorised break”. Therefore, each split shift comprises one and not multiple work periods. The Union says leave should be granted as its intended appeal raises matters of general and public importance, as well as general commercial significance, affecting thousands of workers and raising economy-wide questions.

Tranzurban

[12] Tranzurban disagrees that a work period begins when an employee starts work for the first time on a given day and ends when that employee finishes for the last time that day, regardless of how long the period between parts of a split shift may be. When a work period begins and ends is a factual question informed by the terms and conditions of the relevant employment agreement. Tranzurban says the plain wording of s 69ZC and the terms of the Collective Agreement support its view that each split shift comprises more than one work period. It adds its practices align with the purpose of break provisions, that the Union’s approach would produce absurd outcomes, and that the Union’s concern about cynical approaches to scheduling does not arise in this case.

[13] More generally, Tranzurban says the Union has failed to identify any error of law by the Courts below. In addition, Tranzurban emphasises the uncontested evidence that the Union’s approach could cost Tranzurban an additional \$57,000—whereas there has not been any evidence of a wider impact on bus drivers or any other sector. Therefore, leave should not be granted.

Analysis

[14] Perhaps unsurprisingly given the nature of Tranzurban’s business, cl 8 of the Collective Agreement contemplates the possibility of there being multiple work periods in a given day, or within a given shift. This does not appear to be inconsistent with the terms of s 69ZC(a). While in a future case the effect of s 69ZC in a particular employment context may raise a matter of general or public importance, or general

commercial significance,⁹ the outcome in this case very much turns on its distinctive facts. It is not necessary in the interests of justice for this Court to hear and determine the Union's proposed appeal.¹⁰

Result

[15] The application for leave to appeal is dismissed.

[16] The applicant must pay the respondent costs of \$2,500.

Solicitors:
Oakley Moran, Wellington for Applicant
Cullinane Steele Ltd, Levin for Respondent

⁹ Senior Courts Act 2016, s 74(2)(a) and (c).

¹⁰ Section 74(1).