

THE ACTIVIST



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KIWI RAIL MEDICAL QUESTIONNAIRE – RMTU ADVICE

RMTU advises that members do not consent to doing their medical questionnaire until the preamble is changed to exclude HR managers and other managers from having access to private medical information.

The process for gathering and maintaining confidentiality around medical information within the 'Predict' programme was discussed by the Freight industrial council in 2010. It says,

1. Your Manager will receive an email via the Predict medical assessment system
2. Manager will make an appointment for you to see RMO
3. You complete a confidential health assessment questionnaire
4. RMO advises you and manager of your fitness for work (rules about disclosing personal medical information apply)

In addition Slide 15 of the presentation made to the KiwiRail Freight industry council (KIC) says, PREDICT was developed to replicate the paper based medical assessment system and address issues such as:

- Breaches of employee personal medical information by doctors
- Unauthorised disclosure to managers
- Appropriate consent by employees
- Consistency of medical assessment decisions

- Ability for RMO to review historical medical assessments to ensure informed decisions are made
- Central depository of information
- Data security (encrypted and stored off KiwiRail servers)
- Ability for KiwiRail approved doctors nationally and internationally to conduct medical assessments
- Accessibility by employees electronically

The RMTU understanding has always been that HR managers and or other management staff are not to have any access to the medical questionnaire information or the predict data. They are only to be advised of an employee either being fit or unfit for work and any restrictions.



TOLL NETWORKS (TRANZ LINK) CA PAY INCREASE UPDATE

The Union has been advised by Toll's GM HR Christina Desbonnets that;

"The increases and back pay will be processed and paid in the next pay run which is Thursday 6th September 2012."

Thank you to all members who engaged in the process which enabled the successful renegotiation of this Collective Agreement.

WORSENING FORECASTS DON'T HELP THOSE OUT OF WORK

New Ministry of Business, Innovation and Employment forecasts out today are that New Zealand's jobless rate won't fall below 6 percent before 2014. CTU Economist Bill Rosenberg says "these contrast strongly

This is for the information and guidance of RMTU members only!

with forecasts used by the Government in the Budget where Treasury was forecasting 5.7% unemployment in March 2013 and 5.2% in March 2014. MoBIE is forecasting a much higher 6.2% for 2013 and 5.9% for 2014."

"Treasury forecasts of falling unemployment have already been made redundant by the current rate of 6.8 percent. Forecasts of lower unemployment, job creation and economic growth are nothing new, and won't happen without government actions to help bring them about. MoBIE's new forecasts show a lack of belief that current policies are improving the unemployment situation."

There are now over 160,000 New Zealanders unemployed, these figures continue to be alarmingly high, and will remain too high even if this forecast proves correct. We need the government to have a plan to generate jobs-led growth for our economy.

"We need the government to focus on job creation, and support New Zealand jobs through government procurement and investment.

We need to boost training for workers to prepare for the Christchurch rebuild, but not rely solely on this to create jobs. We should build trains in New Zealand, retain good Government jobs, increase infrastructure projects, reinstate tertiary spending cuts and stop hoping the market will fix this."

KIWI RAIL MECA UPDATE

The RMTU KiwiRail MECA Steering Committee and KiwiRail representatives continued the work toward reaching agreement around the renewal of the expired MECA in Wellington on 5 and 6 September of this week. Discussion and negotiation around the remaining unresolved RMTU claims and KiwiRail's issues. The RMTU and KiwiRail saw the meeting as being constructive and positive.

During the two days Interisland Line GM Thomas Davis gave an overview presentation of the ferry business and painted which set the scene for that division

of the company and backgrounded the Company claim in this area.

At the conclusion of the 2 day meeting, KiwiRail indicated it needed to undertake further work on the remaining claims/issues. The parties are hopeful that the next meeting will conclude the discussions with either a proposed settlement being achieved or other options will need to be explored to further the negotiation process.

KiwiRail and the RMTU Steering Committee are next scheduled to meet on 12 September 2012 in Wellington.

ENTERPRISE SIZE IN NZ

You often hear it said that we are a nation of small firms. That is true. But actually so are all countries. The reality is that we are just small. We have a small number of small firms, a small number of medium firms and a small number of large firms compared with much bigger countries. So in Europe out of 19.3 million enterprises, 18 million of those enterprises (94%) employ fewer than 10 people.

In other words our firm size distribution is not unique. It is a common situation.

In fact when you hear people say 97% of our enterprises are small and medium enterprises (SMEs defined here as fewer than 20 workers) what is not mentioned is that:

1. 69% of those enterprises employ no-one.
2. SMEs of under 20 workers comprise 31% of the labour force (580,680 workers) whereas enterprises with 20 or more workers comprise 69% of the labour force (1,318,530 workers).

See

<http://www.med.govt.nz/business/business-growth-internationalisation/pdf-docs-library/structure-and-dynamics-2011.pdf>

Why is this important?

Because when it comes to debate about compliance, regulation, standards, pay rates, training, health and safety – we hear



constantly that 97% of 'firms' are tiny and cannot manage (we would disagree with that anyway) and that also implies that the vast majority of workers are employed by these small firms – whereas that is not true. No-one is saying that 20 workers is a large organisation – it is just that the reality is different than what is often portrayed.

The vast majority of NZ workers (about 70%) are in enterprises of 20 people or more.

KIWI RAIL ANNUAL REPORT HIGHLIGHTS UNREALISTIC EXPECTATIONS

Financial independence for KiwiRail should not come off the back of large staffing cuts and putting safety standards at risk, the Rail and Maritime Transport Union said today.

KiwiRail today released its annual report. It is in its third year of a ten year 'Turnaround Plan' established under the National government which expects it to be self sustainable by 2020.

"The loss of 181 skilled rail workers is a significant blow for the network, and the government should explain to the public why it has put KiwiRail in this position," Wayne Butson, RMTU General Secretary said.

"We are hearing weekly from our members about the impact these cuts are going to have on safety, especially in areas of the network where there are already skeleton staff to cover maintenance and repairs call-outs. We haven't been satisfactorily assured that the staff cuts will mean KiwiRail can still maintain the network safely."

"What rubs salt into the wound for rail workers is that these staffing changes are not being made to support any strategic decision for the future of rail. They are the direct result of the faulty Turnaround Plan the government has required of KiwiRail, and are nothing more than an accounting exercise to reduce costs."

Wayne Butson said today's billion dollar announcement of road funding exposed the double standards that operate for road transport and rail.

"Trucking companies make profits and operating growth like KiwiRail does, but they

don't have to fully fund roads or reserve money for natural disasters and network repairs like KiwiRail does."

"The Turnaround Plan is based on the faulty premise that KiwiRail should become self-sufficient and compete in an open market with a road transport industry subsidised to the tune of billions of dollars."

"In order to achieve this plan, KiwiRail wants to lay off 181 skilled rail staff. Something's not right here," Wayne Butson said.

COST OF LIVING PRESSURES FORCE AUCKLAND BUS DRIVERS TO STEP UP INDUSTRIAL ACTION

An inability to convince their employers to properly value their work has prompted Auckland bus drivers to step up their industrial action.

Mediation has just concluded without agreement between unions representing 900 Auckland bus drivers, and their employer, Infratil-owned NZ Bus.

From September 17, bus drivers will take strike action every Monday for nine weeks, in an effort to convince NZ Bus to take their wage claim seriously.

At issue was the drivers' claim for a pay rate of \$20 per hour to commence sooner than the company was prepared to offer, Tramways Union president Gary Froggatt said.

"Drivers have submitted during bargaining that this should be in place by July next year, whereas the company wants to delay it until April 2014," he said.

"Bus drivers are routinely away from home for 14 hour days to earn an 8 hour wage, due to their split shifts for peak services."

"It is not at all easy to support themselves and their families in Auckland on the wages that NZ Bus pay."

"This is a very profitable company, who can comfortably afford a better deal for Auckland's bus drivers."

"NZ Bus' owner Infratil posted a 6 per cent profit increase last month. Company directors have recently been voted a 3.7% increase."



"Yet the workers who carry the travelling public day to day are being asked to wait until 2014 to reach a decent wage of \$20 an hour."

Gary Froggatt said that also at issue were pay rates covering shifts when drivers are required to come into work on their rostered day off. NZ Bus pays them time and a quarter, whereas others in the company are paid time and a half.

NZ Bus was out of step with other bus companies, he said. FIRST Union has been able to conclude bargaining with other major Auckland bus companies within a much shorter time period and for higher rates, showing bargaining can be reached without the need for industrial action if the company was willing to pay a decent wage, said Gary Froggatt.

UPDATE ON THE PORTS OF AUCKLAND DISPUTE - MUNZ

You may be wondering what is happening with the Ports of Auckland dispute as things have been very quiet since the return to work of our members in early April. You may even think that the dispute is resolved. Sadly, despite our of desire and best efforts, this is not the case.

Since returning to work the Maritime Union and the Ports of Auckland Ltd have been bargaining under a process of Facilitation which is confidential to the parties. This involves the Chief Facilitator of the Employment Relations Authority assisting the parties. He has the right to ultimately issue non-binding recommendations to try to settle the dispute. We have met x times. There is still no settlement of our collective agreement

Meanwhile our members have been working professionally on the port and achieving productivity bonuses every month since they have returned to work. This is against a backdrop of tension on the port and a strong sense felt by our members that they are treated differently than non-union workers.

We include with this letter a copy of a booklet 'The Wharfies Story' which outlines events around this long standing dispute.

We are determined that the full story of this dispute is told and in particular that there is

greater accountability and transparency. Ports of Auckland is a publicly owned port. It is owned and managed on behalf of Auckland Council (on behalf of Aucklanders) by the Council Controlled Organisation - Auckland Council Investments Ltd (ACIL). The costs of the dispute and the legal and reputational risks of the dispute are very high and yet there has been little apparent scrutiny of these matters.

We are committed to achieving an outcome that ensures we have a successful, productive and profitable port where workers are employed on a fair collective employment agreement. Such an outcome is important to us all and we would appreciate your assistance and are happy to answer any questions you may have and would welcome an opportunity to meet with you if you would find that helpful.

THE SHOCKING FACTS SHOW LIVING WAGE IS NEEDED NOW

"The shocking facts about what is really happening in New Zealand revealed in a key report show the desperate need for a living wage," said Service and Food Workers Union National Secretary John Ryall today.

"Inequality and poverty are growing at a truly alarming rate and while the top earners are doing better than ever, those on low and even "middle" incomes struggle to survive.

The Ministry of Social Development's Household Incomes in New Zealand: Trends in Indicators of Inequality and Hardship 1982 to 2011 shows increasing numbers of children and families in poverty and of those children in poverty, 60 per cent are in severe poverty.

"Members of our union, many of whom are employed in the very lowest paid jobs in New Zealand, increasingly tell us they can no longer afford the basic necessities and struggle to provide school uniforms for their children or afford decent food," said John Ryall.

"With inequality at its highest level ever, and the child poverty rate over 20 per cent, the report clearly backs what an increasing number of New Zealanders are saying: low household incomes are the problem."



John Ryall said Living Wage Aotearoa New Zealand, which unites over 75 community and faith-based organisations and unions, committed to addressing poverty and inequality through lifting low pay, was clearly a movement whose time has come.

"It is timely that the Wellington launch of Living Wage Aotearoa New Zealand is planned for next week. Momentum is building around the call for a living wage and this report is further evidence of the urgent need."

MINERS' UNION WILL CHALLENGE SOLID ENERGY CUTS

Solid Energy's proposal to suspend the Spring Creek mine and cut jobs at Huntly East is not yet a done deal, says the Engineering, Printing and Manufacturing Union.

The miners were told of the proposed job cuts at meetings this afternoon in Huntly and Dunollie.

EPMU assistant national secretary Ged O'Connell says miners will now meet to plan their response to Solid Energy's proposal.

"This is a drastic decision that will have a huge impact not just on miners and their families but also the communities that rely on these jobs and the income they bring in.

"Under this proposal anyone who wants to stay in underground mining would have little option but to move to Australia, and once they're gone it'll be very hard to get them back.

"The loss of so many skilled, experienced miners would have a real impact on productivity and safety in New Zealand mines for years to come.

"Our priority now is to get together with our members, look at Solid Energy's business case and see whether there are any alternatives that don't involve such drastic cuts."

Mr O'Connell says the timing is particularly concerning as Solid Energy is currently on the block as part of the government's asset sales programme.

"We need to be sure that these proposals are driven by genuine business reasons, and not simply to prepare the company for sale."

Under the union's collective employment agreement Solid Energy must now engage in meaningful consultation with staff, and any union members made redundant will be entitled to notice and compensation.

AIR NEW ZEALAND V FOA'I

In *Air New Zealand v Foa'i* [2012] NZ Employment Court 57, 4 April 2012, the employee, Mr Foa'i, had been overpaid around \$70,000 by his employer, Air New Zealand. Mr Foa'i had made efforts to confirm whether or not his increased salary payments were correct, including questioning the company's payroll department about it. Having done so and not having been corrected, he assumed that he was entitled to the extra money and started spending it. In the Employment Court, Judge Ford held that Mr Foa'i had not exhibited any bad faith and had altered his position in reliance on the validity of the payments. It would be unjust, therefore, to order that he repay the money to the company and he got to keep it. This was confirmed by the Court of Appeal earlier this month.

So how can employers lawfully recover overpayments?

Employers who have overpaid employees are able, in some circumstances, to deduct those overpayments under the Wages Protection Act 1983 (s 6). This is possible only when an employee has been absent from work without authorisation, or is on strike, or locked out, or if the employee has been suspended. If an employer has paid the employee his or her full pay and it wasn't reasonably practicable to avoid doing so (e.g. if an automated pay system couldn't be changed in time) then the employer can deduct the overpayment from the employee's wages. They first have to give the employee notice and the deduction has to happen within 2 months.

In other circumstances, employers can make deductions or recover overpayments by getting their employees' consent.

Finally, if an employer overpaid an employee due to a mistake of law or fact, it may be

possible to recover the overpayment under section 94A of the Judicature Act 1908. This is what Air New Zealand tried to do when it found out it had overpaid Mr Foa'i. But this option is limited by section 94B of the Act, which provides that if an employee received a payment in good faith and has substantially altered his or her position on reliance on it, then he or she may be entitled to keep the money. And that is exactly what the Employment Court and Court of Appeal held had happened to Mr Foa'a – he had not acted in bad faith and he'd changed his position in reliance on the extra money, so he was able to keep the \$70,000 he had been overpaid.

How can employees recover under or non-payments?

Employees can recover unauthorised deductions from their wages under the Wages Protection Act 1983 by applying to the Employment Relations Authority (s 11). In addition, section 131 of the Employment Relations Act 2000 provides for employees to apply to the Employment Relations Authority for arrears of wages if there has been a default in payment or an underpayment of wages. The Employment Relations Authority may also be asked to make an order for unpaid wages as part of a personal grievance, for example for unjustified summary dismissal where the claim includes unpaid notice.

Other methods employees can sue to recover unpaid wages include, for example, in High Court liquidation proceedings where payments owed to employees take priority over creditors. Also, in the special case of wage claims by employees of foreign-owned fishing vessels, unpaid wages can be recovered through the High Court in its admiralty jurisdiction.

For holiday pay, if an employer underpays an employee, the employee has two options to recover his or her money. The employee can enlist the aid of a Labour Inspector under the Holidays Act 2003 (s 77). Alternatively, the employee can make an application to the Employment Relations Authority for unpaid wages under section 131. Finally, employees can recover unpaid first week ACC payments from an employer under s 99 of the Accident Compensation Act 2001.

HAVE YOU MOVED RECENTLY?

To ensure members who fall within the coverage of Collective Agreements etc receive their ballot papers We MUST know your current postal address. Please let National Office know your current mailing address or update your details online www.rmtunion.org.nz

SUBSIDISING MONSTER TRUCKS COMES AT COST TO SAFETY

The National Government's \$45 million plan to open up more routes to 53-tonne trucks comes at the same time it is cutting spending on road safety and rail, Green Party transport spokesperson Julie Anne Genter said today.

The National Land Transport Programme (NLTP) announced today contains \$45 million to allow new, more dangerous 53-tonne trucks on to more routes. It also cuts spending on road policing by \$8 million from \$308 million in 2011/12 to \$300 million in the coming years and cuts road safety promotion by \$9 million from \$41 million in 2011/12 to \$32 million in the outyears. Funding for rail and sea freight disappears entirely, negating an alternative option to get freight off the roads.

The trucking lobby, the Road Transport Forum, has been a significant donor to the National Party.

"The National Government is subsidising the trucking industry and making our roads more dangerous while cutting spending on road safety," said Ms Genter.

"\$17 million a year has been cut from road policing and safety, yet \$45 million can be found for the trucking lobby.

"Large trucks cause more danger on our roads and cause exponentially more damage to road surfaces than lighter vehicles.

"The government-owned Kiwirail is currently running a campaign pointing out the safety benefits of moving by rail rather than truck, and yet here is the Government subsidising large trucks while under-investing in rail.

"It would be a far better use of public money to find \$4 million to repair the Gisborne-

Napier rail line and get dozens of trucks off a narrow, winding route each week.

"While public transport service funding has increased and that is welcome, it is only a reflection of increased demand from New Zealanders for alternatives to commuting by car.

"Spending on public transport infrastructure is needed to increase capacity to cope with burgeoning demand for travel by bus and train, yet National has cut \$31 million over three years from public transport infrastructure in the new NLTP compared to the previous one.

"A smart, green approach to transport investment means putting money into improving safety, better buses and trains, walking, and cycling – not subsidising the trucking industry.

"Smart, green transport investment is better for safety, the economy, and New Zealand families," said Ms Genter.

LEAKED MEMO SHOWS "KIWI RAIL ROTTEN"

New Zealand First has obtained a leaked KiwiRail document which paints a bleak picture of our national railway infrastructure which is rotting from the ground up.

Transport spokesperson Brendan Horan says Transport Minister Gerry Brownlee has tried to gloss over serious maintenance issues affecting the safety of our rail network.

"This leaked document shows an inappropriate response to replacing thousands of Peruvian wooden sleepers which were imported with fungi that caused them to rot.

"Instead of replacing them with solid hardwood sleepers, KiwiRail has used the dodgy Peruvian variety so long as they are deemed 'visually sound'. That sounds like a recipe for disaster."

Mr Horan says the Minister should reveal the true extent of our railway's infrastructure crisis which hasn't been addressed in the Government's KiwiRail Turnaround Plan.

"Our rail network is falling apart and creating all manner of dangers. Mr Brownlee must acknowledge that and agree to scrap

this ridiculous and ineffective Turnaround Plan.

"The Government today announced an increase in taxes to pay for its \$12 billion road upgrade programme while it sits by watching our rail network fall apart. It is shameful," says Mr Horan.

BANKS BACK TO PRE-CRISIS PROFITS BUT THE REST OF US STILL MISSING OUT

Our big banks are back to pre financial crisis profits but staff and customers are still missing out, says the union representing bank workers.

The PwC report released today showed that the big five banks had a combined profit of nearly \$2.5 billion in the first half of this financial year.

FIRST Union Finance Secretary Andrew Casidy said that our banks are some of the most profitable in the world but are not sharing enough of their profit. "The banks can afford some cost relief for customers and good pay rises for staff but instead they are scrimping."

"When it comes to their staff, some banks are coming up with less for a pay rise for a couple of thousand workers than they pay just one person, their CEO," said Casidy.

"At the same time they keep the acid on staff with unfair targets and unbelievable pressure to sell, sell, sell. Customers have said time and time again that they don't want the 'hard' sell but the banks are failing to respond."

"Our banking sector is characterised by poor pay increases, pushing debt onto customers and lack of accountability for their profit margins," said Casidy. "Their profits may be good, but we're still waiting for good news for customers and staff."

PSA RAISES CONCERNS ABOUT STATE SECTOR REFORM DIRECTLY WITH THE GOVERNMENT

The Public Service Association has raised concerns directly with the government over



aspects of the State Sector Reform (Public Finance) Bill which it believes threatens the employment rights of state sector workers.

The Bill represents the first substantive change to the State Sector Act since 1988.

The PSA has been working with the States Services Commission on the legislation and some changes have been made but there are still a number of unresolved issues.

"We met with the States Services Minister Jonathan Coleman yesterday as soon as the legislation was tabled in parliament to raise our concerns," says PSA National Secretary Brenda Pilott.

"There are some positive aspects of the legislation in terms of the way the state sector is managed which will encourage departments to work more closely together and share information. However overall it sends some very worrying signals about how the government intends managing the state sector workforce."

The Bill will tip the balance in favour of the government in terms of setting the parameters around the collective bargaining process.

"Essentially it gives the government the ability to put constraints on the pay and conditions of state sector employees through an Order of Council which will make it very difficult for unions and employers to negotiate fair agreements."

The Bill also attacks redundancy provisions by stating that state sector employees will lose their entitlement to redundancy compensation if they get another job in the state sector.

Brenda Pilott says "all this will do is encourage people to take the money and either move to the private sector or come back on a contract basis".

The government is also using the legislation to promote its privatisation agenda by widening the scope for departments to contract out statutory functions to non-government agencies.

The PSA will continue to work with the States Services Commission to try and resolve some of these issues but will be making a strong submission on behalf of its members when the Bill goes before select committee.

LET'S BE SAFE OUT THERE & REMEMBER.....

- Maintain situational awareness at all times;
- Ensure all are aware of the work to be performed;
- Make safety your first priority;
- Make sure you will go home safe and sound at the end of your shift;
- Make sure your workmate will go home safe and sound at the end of their shift;
- Do not allow yourself to be distracted.
- Do not make assumptions

We're Stronger Together!

