

Treasury Report: TrackCo Participation in a Rail Multi-Employer Collective Agreement

Date:	25 May 2004	Treasury Priority:	Medium
Security Level:	IN-CONFIDENCE	Report No:	T2004/884

Action Sought

	Action Sought	Deadline
Minister of Finance	Sign the attached letter to Toll New Zealand	When practicable

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact

Enclosure: Yes

25 May 2004

SH-8-4-2

Treasury Report: TrackCo Participation in a Rail Multi-Employer Collective Agreement

Executive Summary

As part of establishment of the entity to manage the rail network infrastructure, the New Zealand Railways Corporation (NZRC) is about to make job offers to some Toll Rail (Toll) staff. Toll has indicated that it is unwilling to enter a multi-employer collective contract (MECA) with the NZRC. This unilateral decision removes the opportunity for NZRC to consider the desirability of a MECA for itself.

In addition, the decision by Toll could result in technical redundancy claims against Toll by TrackCo staff. We estimate that a successful technical redundancy case could result in redundancy costs in the order of \$10 million. Some TrackCo-related redundancy costs will be met by the Crown, but the Crown should not bear costs that arise from decisions by Toll. Toll needs to be made aware that it will be responsible for any costs that arise from its own decisions relating to a MECA.

Participation in a MECA is also an issue for the change of operator of the Auckland metro service. This may trigger media interest in the issue within the next few weeks.

Recommended Action

We recommend that you:

- a **sign** the attached letter to Toll New Zealand; and

Agree/disagree

- b **refer** this report to your media advisors.

Agree/disagree.

for Secretary to the Treasury

Hon Dr Michael Cullen
Minister of Finance

Treasury Report: **TrackCo Participation in a Rail MECA**

Analysis

1. The Crown is currently in the process of purchasing the national rail network and setting up an entity to operate the network on its behalf. As part of this process the NZRC will make employment offers to about 130 Toll staff. The Crown has agreed that these staff will be offered employment on terms that are “the same as, or more favourable than” their existing terms. As the employer, the actual details of the employment offers will be the responsibility of the NZRC.
2. The Rail and Maritime Transport Union (RMTU) is advocating a rail MECA covering Toll, TrackCo and the Auckland metro operator Connex. Further, the RMTU is suggesting that a MECA is a requirement of the “same or more favourable” condition in the Crown-Toll agreement.
3. Toll staff currently belong to a MECA with Tranz Scenic. However, we understand that Toll’s view is that membership of a MECA is not part of an individual’s conditions of employment and is therefore not a mandatory requirement for TrackCo staff contracts. We understand that Toll and the RMTU both have legal opinions in support of their respective (and opposing) positions. Legal advice provided to Treasury suggests that a declaratory judgement would be necessary to firmly establish the legal position.
4. Toll has indicated to officials that it is not willing to enter a MECA with the NZRC. While Toll is within its rights to make such a decision, that decision effectively precludes any opportunity for the NZRC board to reach its own decisions about the merits of a MECA.
5. In the absence of a declaratory judgement we expect that, if a MECA is not offered, TrackCo staff would be likely to accept new NZRC employment contracts and then take a case to the employment court for technical redundancy from Toll.
6. We are not in a position to estimate the chances of success of such an action. Any such assessment would be complicated by the recent acquisition of Tranz Scenic by Toll. This may provide Toll with the opportunity to dissolve the current MECA. If Toll took this action prior to TrackCo separation it might reduce its staff’s chances of success in any technical redundancy case.
7. We do not have exact figures for the total exposure to redundancy costs, but have some information on redundancy provisions for Toll Rail staff. Many staff have long service records and the applicable redundancy provisions appear to be at the generous end of the scale. We are aware of some staff with redundancy entitlements exceeding two years salary. Our “ballpark” estimate is that, in the event of a judgement of technical redundancy, costs in the order of \$10 million are possible.
8. The Crown and Toll’s joint agreement for purchase of the rail network has provisions that include Crown responsibility for redundancy payments arising out of a failure of the Crown to offer each TrackCo employee employment on terms “the same as, or more favourable...”. Technical redundancy arising from Toll’s refusal to enter a MECA would not be a failure of the Crown and therefore should not be a cost to the Crown. We consider that it would be useful for you to ensure that Toll is aware of its potential liabilities in this regard.

9. We understand that Connex is facing a similar issue with the transfer of Auckland Metro staff. As the transition date for Auckland Metro is scheduled for 27 June 2004, the Auckland issue is likely to escalate ahead of the national one. This would bring the issue to the attention of the media. We understand that the RMTU gave Toll Rail notice of a stop work meeting on 24 May. Fourteen days notice is required for the meeting. If held, the meeting and any consequent actions would result in disruption to Auckland commuter services.
10. It is important that any government comment on the issue have regard to:
 - the nature of the employment and accountability relationships, which are primarily with the NZRC;
 - the government's role as regulator of the labour market; and
 - government's role as employer in the state sector.
11. We therefore suggest that you refer this issue to your media advisors for consideration and preparation of a response. As the NZRC is not currently resourced to deal with intensive media enquiries it may be useful for your media advisors to contact the NZRC to determine whether it requires assistance to deal with any enquiries.

David Jackson
Toll Rail Ltd
Smales Farm
Private Bag 92138
Auckland Mail Centre

Dear David

MULTI-EMPLOYER COLLECTIVE AGREEMENT FOR TRACKCO STAFF

I understand that Toll Rail is still considering whether to enter a Multi-Employer Collective Agreement with the New Zealand Railways Corporation. The government recognises that Toll Rail is within its rights to make this decision but would encourage you to reflect carefully on the issue, and discuss the possibility with the New Zealand Railways Corporation and the Rail and Maritime Transport Union, before reaching a final decision.

I note that the Crown and Toll's joint agreement for purchase of the rail network has provisions that include Crown responsibility for redundancy payments arising out of a failure of the Crown to offer each TrackCo employee employment on terms "the same as, or more favourable than" the terms applicable to that employee immediately before transfer.

I wish to make it clear that a Toll decision not to enter a MECA would not be a failure of the Crown and the Crown would therefore not be responsible for any redundancy payments that are incurred as a result of that decision.

Yours sincerely

Hon Dr Michael Cullen
Minister of Finance

cc. Irene Lake (NZRC)