

### **Redundancy Law Revisited: Employers Take Heed!**

A recent decision of the Employment Court, *Totara Hills Farm v Davidson* (April 2013), has confirmed that the courts are able to analyse the merits of an employer's business decision in redundancy situations.

The Employment Court found that it is not enough for an employer to simply say that the redundancy was a genuine business decision and they will need to prove this. The Employment Court or Employment Relations Authority is entitled to enquire into the merits of the business decision, regardless of whether or not it was genuine.

#### The Davidson Case Explained

The case concerned a unit manager of a farm, Mr Davidson, who was made redundant by Totara Hills Farm. After a process of consultation, his position was disestablished in favour of creating a lower position with less pay. Totara Hills Farm said that Mr Davidson was genuinely redundant and the restructuring would save them \$6,000 per year. Mr Davidson, on the other hand, believed that the redundancy was not genuine and there were ulterior motives.

The Court concluded "by a narrow margin" that the redundancy was motivated by ulterior motives. That was not, however, the end of the matter, and the Court went on to examine other aspects of the redundancy. It found that the evidence put forward by the employer to justify the redundancy was scant. There was no evidence to justify the alleged cost savings of \$6,000 or of the suggestions given by staff during consultation as to the potential cost savings or why the employer rejected them. There were also inconsistencies in the employer's evidence about the percentage versus the actual figure of cost savings that staff was advised would be achieved by the restructuring.

Furthermore the Court found that it was not enough for the employer to offer Mr Davidson an opportunity to apply for the new lower position. The position should have been offered to him, as he had the skills and experience for it. For these reasons Mr Davidson's redundancy was held to be unjustified.

The Court said that this is an "opportune moment" to explain what was intended by a previous Court decision, *Simpsons Farms v Aberhart*. Although that decision indicated that longstanding principles of redundancy law continued to apply in light of legislative changes, that did not mean that an employee simply had to persuade the Court that a redundancy was a genuine business decision in order to justify it substantively.

#### Effects of the Decision

The longstanding principle that the Court cannot substitute its own decision for that of the employer still remains good law and has not been altered by this decision.

However it is now clear that the Court is able to inquire into the business merits of a decision when assessing whether the redundancy was what a fair and reasonable employer could have done in all the circumstances at the time. So the standard is not the Court's own assessment of what they could have done, but rather the Court's assessment of what a fair and reasonable employer could have done.

This is a significant explanation of the law on redundancy, with potentially far-reaching consequences for employers. Employers should be prepared for the merits of their business case behind a restructuring or redundancy to be analysed by the Court or Authority.

At the end of the day, the onus resets with the employer to prove that the decision they reached, and how they reached it, were fair and reasonable.

It is likely that an effect of the decision will be an increased number of challenges to redundancy dismissals.

#### Practical Advice for Employers

When formulating a restructure employers will need to ensure they have carefully thought through the commercial rationale and that they have a sound business case for the restructuring.

They should be prepared to explain and justify their business case and to support factually all their assumptions and assertions.

Redeployment should also be fully considered as part of the restructure process and the employer should ensure that there are sound reasons for any existing or new roles not being offered to affected employees.

Most importantly, clear and comprehensive evidence should be kept so that employers can justify their decisions at all points in the process if the matter later ends up in Court.

*This advice is general in nature; please contact Catherine Stewart for specific advice in any given situation.*

Phone (09) 215 7564 or 021 500 768, email: [Catherine@catherinestewart.co.nz](mailto:Catherine@catherinestewart.co.nz)