

Onus on employers to redeploy employees

Two recent cases in the Employment Court will have a significant impact on the restructuring process and, in particular, an employer's obligation to carefully look at redeploying existing employees before considering external candidates for new positions.

The message: Employers must take extra care over the process adopted around selecting which employees are to be made redundant and those who are to be redeployed into available roles. This can sometimes be "glossed over" when restructuring.

Gone are the days where companies might try and restructure their "dead wood" out of the business and advertise new but substantially similar roles externally. If an employee has the necessary skills to carry out a role that has been created as a result of a restructure, even if some upskilling is required, two recent Employment Court cases suggest that there is an obligation to appoint them to that role.

These cases highlight two key considerations when looking at redeployment following a restructure:

1. Is a role created by the restructure actually different to the role which has been disestablished? And if so,
2. Do any of the affected employees have the necessary skills to carry out those new functions?

The cases also highlight the importance of consultation around selection and redeployment and the provision of relevant information as a crucial part of a fair restructuring process.

The onus is clearly on employers to actively look for redeployment opportunities and to go as far as offering them to employees who might otherwise be made redundant in preference over advertising the new positions externally.

CASE 1 - *Jinkinson v Oceana Gold*

Ms Jinkinson was employed as a grade controller in the employer's gold mine. A restructure resulted in all grade controller and ore technician positions being



disestablished and new "mine technician" positions being created.

Seven staff were affected but there were only six new positions. Those affected were interviewed for the new positions. External candidates and an employee from another part of the business were also interviewed. Curiously, the selection criteria for the appointments was only established after the interviews had taken place and never communicated to employees.

Ms Jinkinson, whose grading following her interview meant that she was ranked fifth among the affected staff members, was not appointed to one of the six new mine technician roles and was made redundant.

In holding Ms Jinkinson to have been unjustifiably dismissed, the Employment Court made the following findings:

- The new "mine technician" role was almost identical to her "grade controller" role and therefore the redundancy situation was not genuine.

- The process adopted by Oceana Gold to select candidates for the mine technician roles was deficient and failed to meet the "good faith" requirements under the Employment Relations Act 2000.
- The failure to appoint Ms Jinkinson to one of the new roles was also unfair and based on a perception, never communicated to Ms Jinkinson, that she was not a team player.

Outcome: Ms Jinkinson was reinstated to a mine technician position, awarded nearly three years' lost wages and \$4,000 compensation for distress and injury to feelings.

CASE 2 - Wang v Hamilton Multicultural Services Trust

Mr Wang was employed as a Financial Administrator but his position was disestablished when the Trust restructured. As part of the restructure, a new Finance Manager position was created.

The Trust accepted that Mr Wang was qualified to carry out the new role of Finance Manager and capable of doing so, with some up skilling. It advertised the position externally and encouraged Mr Wang to apply. He decided not to apply because he (wrongly) believed this would adversely affect the legal claims he had already raised against the Trust.

The Trust considered whether any other opportunities existed for Mr Wang within the organisation, but could not identify any. Mr Wang was, therefore, given notice of dismissal by reason of redundancy.








The Employment Court held that:

- While the redundancy situation was genuine, the failure to redeploy Mr Wang into the new Finance Manager position meant that his dismissal was unjustified.
- There was an obligation on the Trust to consider alternatives to making Mr Wang redundant.
- Because Mr Wang had the necessary skills, he should have been offered the position of Finance Manager, rather than have his position terminated and be required to reapply for the new position when it was advertised. It was not enough to simply encourage Mr Wang to apply for the role.

Outcome: Mr Wang was not reinstated, but he was reimbursed for six months' lost salary, KiwiSaver contributions and awarded \$5000 compensation for distress and injury to feelings.

Employers are advised to take their time and seek advice in restructuring situations. Please call us if you need assistance.

YOUR EMPLOYMENT CONTACTS

						
Scott Wilson	Raewyn Lovett	Ken Brotherson	Mark Lawlor	Aaron Dearden	Sarah Townsend	Kirsty Marshall
Partner	Partner	Partner	Partner	Partner	Associate	Associate
s.wilson@ DuncanCotterill.com	r.lovet@ DuncanCotterill.com	k.brotherson@ DuncanCotterill.com	m.lawlor@ DuncanCotterill.com	a.dearden@ DuncanCotterill.com	s.townsend@ DuncanCotterill.com	k.marshall@ DuncanCotterill.com

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