

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 239/10  
5159955**

BETWEEN      ROBERT ALLISON  
                         Applicant  
  
AND              UNITED GROUP (NZ) LIMITED  
                         Respondent

Member of Authority:    Leon Robinson  
  
Representatives:        Michael Smyth, Counsel for Applicant  
                                 Anthony Drake, Counsel for Respondent  
  
Investigation Meeting:    December 2009  
                                 7 April 2010  
  
Further Information:      18 December 2009  
                                 23 December 2009  
  
Submissions Received:    18 December 2009  
                                 23 December 2009  
  
Determination:          24 May 2010

---

**DETERMINATION OF THE AUTHORITY**

---

**The problem**

[1] The applicant Mr Robert Allison (“Mr Allison”) claims his dismissal for redundancy is unjustifiable. He claims reimbursement and compensation. The respondent United Group (NZ) Ltd (“United”) denies the claim. The parties were unable to resolve the differences between them by mediation.

**The facts**

[2] Mr Allison was employed by United as its Nelson area manager from 18 June 2006. The terms of the employment were recorded in a written individual employment agreement. Mr Allison had worked for United and its predecessors for 25 years in three different positions.

[3] Mr Allison managed the various contracts United had in the south island. He reported to his manager Mr Kevin Normanton (“Mr Normanton”).

[4] United considered it necessary to restructure its operations by moving away from a geographic model to a delivery based model. It devised a restructure proposal in early March 2009.

[5] Mr Allison and other affected staff were invited to a meeting on 2 March 2009 where the proposed restructure was outlined to them. Those present included Mr Allison, Mr Keith Burns Wellington area manager island (“Mr Burns”), Mr Ian Clough Hawkes Bay area manager (“Mr Clough”), Mr Normanton, Mr John Thornton operations manager Power & Communications Division (“Mr Thornton”) and Ms Lisa Boag human resources manager (“Ms Boag”).

[6] The restructure proposal involved disestablishing the four existing area manager roles and the creation of three new roles. At that time the Waikato area manager role was vacant. The proposed new roles were Transmission & Distribution Manager (Lines), Power Systems Manager (Substations) and Operations Manager (Project Development). This situation was to be stage 1. Stage 2 related to administration.

[7] The employees were provided with a consultation document which included a presentation, proposed rationalisation discussion paper, proposed organisation charts, proposed position descriptions, and proposed timeline.

[8] The employees were invited to give their feedback on the proposal. The consultation outlined the selection criteria.

[9] United considered the feedback provided by the employees and prepared a confirmation document.

[10] On or about 9 March 2009, United held a feedback meeting by telephone conference at which those affected including Mr Allison, Mr Clough, Mr Burns and Mr Thornton attended.

[11] On or about 12 March 2009, United again invited all those affected by the restructure to a meeting. Mr Allison, Mr Clough, Mr Burns and Mr Thornton all attended. Mr Normanton explained that the three area manager roles were closed vacancies and were only open to those affected by the restructure.

[12] The following week the four candidates attended interviews for the three new roles.

[13] On 18 March 2009 Mr Allison was interviewed. He expressed interest in the Projects Manager role.

[14] United says that Mr Allison did not perform well at interview and he scored least favourably of the candidates.

[15] On 23 March 2009 Mr Allison was advised in person that his application was not successful and that his employment was terminated for redundancy.

[16] On 21 April 2009 Mr Allison raised a personal grievance challenging his dismissal for redundancy.

### **The merits**

[17] It is for United to justify its decision to terminate Mr Allison's role. The test of justification is set out at section 103A of the Employment Relations Act 2000.

[18] Mr Allison accepts that there was a commercial argument for the need to change from a regional model to a services delivery model and he supported that decision in the feedback he gave to United. The Authority therefore finds the restructure was a genuine commercial decision.

[19] Mr Allison says that there was no reason why he should have lost his job. He says that he believes United used the restructure to engineer his dismissal and advance Mr Thornton within the company despite his skills and experience not being commensurate with his when assessed against the job description and selection criteria.

[20] Mr Allison says that Ms Boag and Mr Normanton were biased against him. He says that United failed to disclose that Mr Thornton was eligible for one of the three new roles he did not appreciate this fact at all. He says that how United chose Mr Thornton over him evidences a clear picture of United engineering his dismissal. He says his redundancy was predetermined.

[21] Mr Allison did not challenge the proposed selection criteria. Neither did any other employee.

[22] I consider that Mr Allison's real complaint is that he ought to have been selected for one of the new positions. This proceeds on two points. Firstly that Mr Thornton was never disclosed as being a candidate in the pool for selection and secondly, that he was not scored correctly in terms of the selection criteria.

[23] I deal with the first point about the selection pool. I agree that it is most curious that Mr Thornton's position is not explicitly identified as one to be disestablished. Stage 1 on the Powerpoint presentation is this:-

*Stage 1*

*Disestablish Area Manager positions*

*Establish three new management positions which will support a delivery model approach*

- *Transmission & Distribution Manager (Lines)*
- *Power Systems Manager (Substations)*
- *Operations Manager (Project Delivery)*

[24] As such there is no hint that Mr Thornton's role was disestablished so that he would then be in the pool for one of the three new positions. This is unfortunate. I think Mr Allison is quite right to be critical in this regard.

[25] However, the *Asset Care – Proposed* slide does indicate that the role filled by Mr Thornton was subject to change.

[26] But on the basis of the evidence given by Mr Burns and Mr Clough, I am satisfied that while Mr Thornton was not explicitly identified as being a candidate for selection, Mr Allison appreciated that he was. I make that specific finding on the

basis of conversations Mr Allison had had with Mr Burns and Mr Clough as Mr Burns and Mr Clough give evidence of.

[27] Mr Thornton was present at all interviews and consultation meetings. I do not accept that it was reasonable for Mr Allison to simply assume that Mr Thornton was merely an observer or was assisting Mr Normanton.

[28] Weighing both the evidence that Mr Allison did actually appreciate Mr Thornton was involved as a candidate, together with Mr Thornton's attendance at all the various consultation meetings, on balance I conclude that Mr Allison could not reasonably believe that Mr Thornton was not involved and further, that the three area managers would simply succeed to any one of the new positions. I am satisfied that Mr Allison fully appreciated there was an element of risk in the exercise and he was submitting himself for selection and therefore, possibly unsuccessfully.

[29] I am further satisfied that United conducted a full and fair consultation process. I find that Mr Allison was consulted about the proposed restructure of his position and he did in fact participate in that process and offered feedback about the proposal. He took no issue with the criteria.

[30] United says Mr Allison did not score well. It says that Mr Allison did not interview well. He gave short answers and was unable to give examples demonstrating skills.

[31] I accept that at the time the decision was taken and in all the circumstances at the time, United's decision to terminate Mr Allison's employment for redundancy and how it acted were what a fair and reasonable employer would have done. The decision to terminate the employment meets the test of justification at section 103A of the Act.

[32] I do not accept that United's decision to dismiss Mr Allison for redundancy was a sham designed to engineer his dismissal or that it was carried out procedurally defectively.

### The determination

[33] I find that at the time the decision was taken and in all the circumstances United's decision to terminate Mr Allison's employment for redundancy and how it acted were what a fair and reasonable employer would have done. I find that Mr Allison does not have a personal grievance. I find that United did not breach its duty of good faith to Mr Allison. There will be no penalties. There will be no formal orders.

### The costs

[34] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr Drake is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Smyth is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination.

Leon Robinson  
**Member of Employment Relations Authority**