

tough economic conditions and the closing of the USA borders due to an exporter sending a shipment of plants with light brown apple moth eggs meant NZFHL experienced significant cashflow shortages.

[4] NZFHL says that the reason Ms Bern's employment was terminated was not due to a redundancy, but was due to the economic climate and lack of cash flow to pay for wages.

[5] The question for resolution in this matter is whether, as a matter of interpretation, Ms Bern's employment was terminated by reason of redundancy.

What was the reason for the termination of Ms Bern's employment?

[6] The starting point is the employment agreement between the parties. The two relevant clauses are clauses 11 and 13 which state:

11 Redundancy

11.1 Definition of Redundancy

Redundancy is a situation where the position of employment of an employee is or will become surplus to the requirements of the Employer's business.

11.2 Notice of Termination for redundant employment

In the event the Employee's employment is to be terminated by reason of redundancy, the Employee shall be provided with one month's notice in writing.

13 Termination of Employment

13.1 General Termination for Employer

The employer may terminate this agreement for due cause, by providing two weeks notice in writing to the Employee. The Employer may, at its discretion, pay remuneration in lieu of some or all of this notice period.

[7] The employment agreement defines redundancy clearly and without any ambiguity. In order for Ms Bern to be redundant under the agreement, her position must become surplus to the requirements of the employer's business.

[8] The underlying cause of Ms Bern's dismissal was the fact that NZFHL no longer had the money to pay for her to continue in her position. This affected a change in the needs of the business. Ms Bern's position was restructured to meet the economic needs of NZFHL which could no longer afford to keep her position available for her. The position was therefore surplus to NZFHL's business requirements.

[9] I have concluded therefore, the Ms Bern was redundant pursuant to the employment agreement and was entitled to receive four weeks notice of the termination of her employment.

New Zealand Flax Hybridisers Limited is ordered to pay to Ms Bern two weeks pay in the sum of \$1,068,76 gross within 28 days of the date of this determination.

Costs

[10] Ms Bern is entitled to be reimbursed for the costs associated with lodging this application in the Employment Relations Authority.

New Zealand Flax Hybridisers Limited is ordered to pay disbursements to Ms Bern in the sum of \$70.00.

Vicki Campbell
Member of Employment Relations Authority