

[3] Libor point to the fact that Mr Balashov was paid the lower rate from 9 May 2009 until he terminated his employment on 18 November 2009 and that Mr Balashov's personal grievance was only raised contemporaneously with the receipt of Mr Balashov's resignation. Furthermore, Libor say that three witnesses saw Mr Balashov agree to the lower rate of pay and they note that the resignation was not occasioned by the pay reduction.

[4] Libor also allege that Mr Balashov's personal grievance is out of time, having been first raised with the employer on 4 November 2009, more than 90 days after the pay reduction was effected on 9 May 2009.

Issues

[5] The Authority needs to resolve the following questions:

- (a) Was Mr Balashov's personal grievance raised within time?
- (b) Did Mr Balashov agree to the pay reduction?
- (c) Has Mr Balashov been treated fairly?

Has Mr Balashov raised his personal grievance within time?

[6] I am satisfied on the evidence before that Mr Balashov has not raised his personal grievance within time. It is clear that the payments at the reduced wage rate commenced on 9 May 2009 and his personal grievance was not raised until 4 November 2009. If, as he says, he was aggrieved at the hourly rate change (and that is disputed on the evidence) then he ought to have raised his complaint at the time. The fact he says that he did not sign the new employment agreement is certainly not sufficient to enable an employer to deduce that he was raising a personal grievance because of unhappiness about the change.

Did Mr Balashov agree with the rate change?

[7] I am satisfied on the evidence before me that Mr Balashov did in fact agree to the wage reduction. I accept Mr Lasek's evidence that workers were given the opportunity of either accepting the new arrangement or resigning to seek better paid work elsewhere and Mr Balashov was one of the vast majority who accepted.

[8] Written statements were put into evidence from co-workers who were aware of Mr Balashov's acceptance of the lower wage rate proposal, and I accept those statements at face value. Furthermore, I accept Libor's argument that except for his failure to sign the new employment agreement, there was no indication whatever from Mr Balashov that he did not accept the new arrangement and he was perfectly happy to be paid at the lower rate from 9 May 2009 down to 4 November 2009. I also accept Libor's evidence that the only occasion on which Mr Balashov raised his objection to the lower rate was in his personal grievance letter which was received on 4 November 2009. I am satisfied on the evidence before me that Mr Balashov made no effort whatever to object to the lower rate of pay before that date.

Was Mr Balashov treated fairly?

[9] I am satisfied Mr Balashov was treated fairly and in particular was treated in exactly the same way as other workers in the same position. Mr Lasek gave evidence that everybody took the same pay cut except for the management who took a 25% pay cut.

[10] Further, Mr Lasek told me that nobody had received any of the deducted remuneration back. I am satisfied Mr Balashov became convinced that some of his former work mates had in fact been paid back some of the money they lost. That conviction on Mr Balashov's part is simply erroneous. I accept Mr Lasek's evidence that he promised to **review** the wages situation once the company's position changed. No such review has resulted in any change to the remuneration of any individual who was affected by this arrangement in regard to wages. There has been some ability to pay bonuses that were not paid in the depths of the recession, but none of the wages cut from former co-workers of Mr Balashov have received a benefit in relation to those wages lost which Mr Balashov did not receive.

Determination

[11] It follows that I am satisfied that Mr Balashov has no cause for complaint. In a recession it is not uncommon for employers to seek the cooperation of their staff in reducing their remuneration to save their jobs. Libor Limited would be one of a number of entities that has been forced to take that step in order to preserve the greater good. Where workers agree, as I am satisfied Mr Balashov did in this case,

then the payment of the lower rate subsequent to the agreement is not a unilateral and therefore illegal change, but a bilateral and therefore perfectly proper one.

[12] I am satisfied that Mr Balashov did agree to the change and therefore cannot complain about being paid at a lesser rate. I am also satisfied that Mr Balashov has not been denied benefits that his former co-workers have received by way of getting back some of the wages previously lost in this arrangement. On the evidence before the Authority, Libor Limited treated all their staff in exactly the same fashion.

[13] Mr Balashov's claim is accordingly dismissed.

Costs

[14] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority