

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 774  
3081634

BETWEEN SHANNON BERRIDGE  
Applicant

AND TRIPLE S MANAGEMENT  
LIMITED  
First Respondent

Member of Authority: Andrew Gane

Representatives: Simon Greening, counsel for the Applicant  
Jeremy Ansell, counsel for the Respondent

Investigation Meeting: 18 September 2024 at Auckland and by AVL

Submissions: 30 September 2024 from the Applicant and the  
Respondent

Date: 23 December 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Shannon Berridge was employed by Triple S Management (Triple S) as a service desk technician on 11 January 2019, until his dismissal by way of redundancy on 30 August 2019. His position was permanent and full time.

[2] Mr Berridge raised two personal grievances. Firstly, he claimed he was unjustifiably disadvantaged when Triple S decided to make his position redundant from 30 August 2019. Secondly, he also alleged he was unjustifiably dismissed on 30 August 2019 from this employment. Mr Berridge sought remedies for wage arrears and compensation.

[3] Triple S denied Mr Berridge's claims and stated the redundancy was genuine and it followed what it believed to be a fair process and that its actions were those a reasonable employer could have taken in all the circumstances.

### **The Authority's Investigation**

[4] There was an earlier issue raised by Triple S regarding time frames in which Mr Berridge progressed this matter. This was a process issue resolved in a minute issued on 30 March 2024.

[5] In the course of investigating this employment relationship problem the Authority heard evidence from Mr Berridge who answered questions under affirmation from me and the parties' representatives. The Authority also received written statements from Mr Berridge's associates Jodie Plaister, Jake Sarjeant, and Les and Jennifer Kaukas. Each of Mr Berridge's witnesses did not give evidence at the investigation meeting.

[6] For Triple S the Authority heard evidence from Duncan Cameron, managing director of Triple S and director of a related company Strata Networks Limited (Strata Networks). The Authority also heard evidence from James Comer, who was also a director of both Triple S and Strata Networks, and Les Aufiso, director of Strata Networks and another company Speedy Couriers Limited (Speedy Couriers)

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all the evidence and submissions received and fully considered during the Authority's investigation, but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

### **Issues**

[8] Whilst Mr Berridge raised two personal grievances they are essentially only one employment relationship problem; an unjustified dismissal arising out of a flawed restructuring process. The issues for determination and investigation were:

- (i) Whether Mr Berridge was unjustifiably dismissed by way of redundancy?
- (ii) If Triple S's actions were found to be unjustified, what remedies should be awarded considering:

- a) Reimbursement lost wages (subject to evidence of reasonable endeavours to mitigate this loss); and
  - b) compensation under s 123(1)(c)(i) of the Act?
- (iii) If any remedies are awarded, should they be reduced under s 124 of the Act for any blameworthy conduct by Mr Berridge that contributed to the situation giving rise to his grievance?
- (iv) Should either party contribute the cost of representation of the other party?

### **Background**

[9] Triple S is a management company set up to facilitate administrative functions across Strata Networks, Stratanet, Speedy Couriers. Triple S was responsible for the payment and maintenance of several functions across those companies, including phone connections, fuel cards and insurance. Triple S provides administrative staff to the other companies.

[10] Mr Berridge was initially employed by Speedy Couriers in different positions between 2012 and 2018. In 2015 Mr Berridge acquired an 11% shareholding in Speedy Couriers.

[11] In 2018, Mr Berridge's position with Speedy Couriers was disestablished and on 11 January 2019, Mr Berridge was employed by Triple S as a service desk technician. His primary role was to provide engineering and service desk support for Strata Networks and included responding to client service requests and installing IT equipment for clients.

### *Restructuring process*

[12] In 2019 Strata Networks' primary client (the client), a healthcare business which accounted for approximately 70% of Stata Network's business, decided to reduce the amount of support services required by Strata Networks over time. This included halting the majority of their support services from Strata Networks. By July 2019, Stata Networks' income from the client had substantially decreased. This had a significant financial impact on Strata Networks.

[13] Triple S management decided it was necessary to make a cost saving measures to mitigate the effect of the loss of the client business and help Strata Networks remain financially sustainable.

[14] In June 2019 Mr Cameron and Mr Comer began having discussions about the possibility of disestablishing positions within Triple S and Strata Networks. Mr Cameron stated that in August 2019, Strata Networks had the fastest and largest single negative quarter it had seen since it first commenced operations, resulting in a significant loss of revenue.

[15] After reviewing the structure, they decided that the best option for the business was to start at the bottom and work up. Mr Comer stated that although Strata Networks needed to save money, it was also important that it retained skills. At this time Triple S was working through a redundancy proposal with its telephonist employee which ultimately resulted in the position being disestablished.

*16 August 2019 meeting*

[16] On 16 August 2019 Mr Berridge was called into the office by Mr Comer for a meeting. Mr Berridge was given no forewarning of the meeting or the purpose of the meeting. The meeting was to discuss proposed redundancies at Strata Networks. It only lasted a couple of minutes before Mr Berridge left, upset by the discussion. As he left Mr Comer gave Mr Berridge a letter setting out the proposed potential redundancies at Triple S.

[17] The letter invited Mr Berridge to a meeting on 23 August 2019 to discuss the proposal and advised that he could bring a support person with him. The letter also included some limited financial information including graphs setting out the reduction in monthly revenue turn over.

*23 August meeting*

[18] At the meeting on 23 August 2019 Mr Comer stated that he explained to Mr Berridge the business reasons behind the restructuring proposal, including that the business was losing a significant amount of money each month and had just experienced the worst quarter of its history. Mr Comer advised Triple S was looking to reduce costs by at least \$20,000 per month and that Mr Cameron and he were personally contributing to help make up the shortfall.

[19] Mr Comer informed Mr Berridge Triple S was looking at making his role at Strata Networks redundant as a way of reducing costs. He said Triple S had looked at other options but decided not to go with them. He asked Mr Berridge for some possible

ideas how he believed Triple S could make savings, and said this led a discussion about Mr Berridge being made redundant. On 26 August 2019 Mr Comer sent Mr Berridge a letter summarising the discussion.

[20] Mr Berridge was given one week to review the proposal and provide feedback and possible redeployment options. Triple S then took an additional week to consider that feedback and explore any alternatives.

#### *30 August 2019 Meeting*

[21] Mr Comer met with Mr Berridge on 30 August 2019 and provided him a letter setting out Triple S's consideration of his feedback and the decision Triple S had made. Mr Comer said he discussed the feedback during the meeting and also advised that no other suitable positions within the business group were available. Mr Comer advised Mr Berridge of the decision to terminate his employment by way of redundancy.

#### **Relevant law**

##### *The test for justification*

[22] In considering a personal grievance for redundancy the Authority must apply the test for justification set out at s 103A of the Act. The Authority must assess the reasons given to the employee by the employer including the business reasons and decide, on an objective basis, whether the employer's actions were reasonable. If an employer can show the redundancy was genuine and that notice and consultation requirements have been met, the s 103A test may well be satisfied.<sup>1</sup>

[23] In reaching its decision on the scope of the application of s 103A of the Act to redundancy dismissals, the Court of Appeal placed emphasis on the Act's legislative context. In particular, the Court referred to the strengthening in 2004 of the provisions relating to the duty of good faith and to the requirement in the Act's objects of "acknowledging and addressing the inherent inequality of power in employment relationships".

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<sup>1</sup> *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [85].

### *The duty of good faith*

[24] A fair and reasonable employer is expected to comply with its statutory obligations which include the good faith obligations. Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action “because a fair and reasonable employer will comply with the law.”<sup>2</sup>

[25] To ensure that the redundancy process is procedurally fair, employers should ensure they comply with their good faith obligations when making selection decisions. In accordance with s 4(1A)(c) of the Act the proposed selection criteria should be consulted on. The final selection criteria should be applied fairly and consistently to make a redundancy decision and affected employees should have an opportunity to respond and discuss assessments.

### **Unjustified dismissal**

*Whether Triple S’s decision to dismiss Mr Berridge on the grounds of redundancy were predominantly motivated by genuine business reasons?*

[26] Both Mr Cameron and Mr Comer gave evidence regarding the loss of revenue for the business. The workload of Strata Networks had rapidly declined, and the business was under continued pressure to make savings. In these circumstances it is accepted that Strata Networks needed to look to reduce costs which might include staffing costs. Given the substantial loss of income caused by the loss of the client I find there were genuine business reasons for Strata Networks proposed restructure.

*Whether Mr Berridge was fairly consulted about the process for change ?*

[27] When considering whether redundancy decisions were justified, the Authority must determine whether the employer’s actions, and how the employer acted, met the objective statutory standard being what a fair and reasonable employer could have done in all the circumstances at the time.<sup>3</sup>

[28] In *Stellar Elements NZ Limited v Amesbury*<sup>4</sup> the Employment Court agreed with the following submissions of counsel, regarding selection criteria, noting:

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<sup>2</sup> *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 (EmpC) at 842 [65].

<sup>3</sup> Employment Relations Act 2000, s 103A.

<sup>4</sup> *Stellar Elements NZ Limited v Amesbury* [2024] NZEmpC 136 at paragraph [48].

Selection of an employee for redundancy must be carried out in good faith with reference to relevant criteria and without reference to irrelevant criteria.

[29] Mr Berridge states that Triple S failed to undertake a fair and reasonable process, including the failure to adequately consult with him over the proposal to make his role redundant.

[30] Consultation may be viewed as a continuum which has key components such as the provision of adequate and comprehensible information, and the allowance of sufficient time for employees to understand, consider and respond to what is being proposed by the employer regarding their jobs. The integrity of consultation depends on the key components of a composite process being present together. Inadequate information, or insufficient time, or consultation on only part of the employer's plans, will by themselves be defects tending to undermine the entire process.<sup>5</sup>

[31] There was some limited consultation with Mr Berridge, on the economic consequences of the loss of a major business client and how this had affected the business. The 16 August 2019 letter included some limited financial information including graphs setting out the reduction in monthly revenue and turn over.

[32] Mr Berridge submitted that although he was advised of the loss of the client was the financial basis for making his position redundant, the company did not provide sufficiently precise financial information for him to be able to genuinely engage with the proposal.

[33] Section 4(1A)(c) of the Act required Triple S to provide access to Mr Berridge to all information relevant to any decision that was likely to have an impact on the continuation of his employment and to provide him an opportunity to comment on the information prior to any decision being made. While the letter of 16 August 2019 addressed several concerns that Triple S had, the detail contained in that letter was minimal. No information was provided such as would have allowed, for example, Mr Berridge to provide meaningful feedback as to savings that might be made having regard to the stated cashflow or quality issues.

[34] I conclude that triple S's approach did not comply with s 4(1A)(c) of the Act.

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<sup>5</sup> *Unite Incorporated and Others v Hospitality Services Limited* [2021] NZERA 276.

*Whether Mr Berridge was fairly consulted about the selection criteria?*

[35] It was unclear what selection criteria Triple S used to identify Mr Berridge's position for redundancy. These matters were not clearly referred to in the letter given to Mr Berridge on 16 August meeting or made out to him at the 23 August meeting.

[36] While it was likely Triple S's intention was to communicate the basis for the redundancy and how Mr Berridge's position had been selected, allowing him an opportunity to comment, this is unable to be established on the evidence. The meeting of 23 August and letter of 26 August do not remedy these flaws.

[37] Mr Comer stated that at the time of the 16 August 2019 meeting, he had not decided who would be made redundant. However, when questioned during the investigation meeting, he said no other Triple S employees were given a redundancy proposal letter.

[38] At the time there were two service desk technicians working for Strata Networks, Eldrick Snyman and Mr Berridge. Both were employed on similar terms and conditions.

[39] In proposing to make Mr Berridge's role redundant, the two service desk technician positions were reduced to one service desk technician position. However, Triple S did not set out any selection criteria as part of its proposal to assess who should be made redundant, nor did it consult with Mr Berridge on any selection criteria.

[40] Mr Comer stated that although both Mr Snyman and Mr Berridge had the same job title, there was no need for any form of contestable process as the roles were differentiated by IT skill levels. However, this information was not provided to Mr Berridge at any time during the redundancy process and was conveyed for the first time by Triple S during the investigation meeting.

[41] As an alternative argument, Triple S submitted the failure to carry out a contestable process for the remaining service desk technician position was only a minor defect in its redundancy process and did not result in unfair treatment of Mr Berridge.

[42] Mr Berridge, as an employee had an expectation that in good faith Triple S would undertake a reasonable redundancy process, including a fair and transparent selection process.

[43] In *Jinkinson v Oceana Gold*, the Court held that the employer breached their obligations of good faith because it failed to inform Ms Jinkinson of the selection criteria it was using in a restructuring process.<sup>6</sup>

[44] The action taken by Triple S did not adequately or sufficiently meet the requirements of s 4(1A) of the Act. Compliance with those requirements was not to an extent that was reasonable in the circumstances and having regard to the objectives and purposes of consultation. I find that Mr Berridge was not adequately consulted on the selection criteria to make his role redundant.

*Whether alternatives to redundancy and for redeployment to other positions were fairly considered?*

[45] As part of Triple S's redundancy process, Mr Berridge was entitled to expect he would be adequately consulted on possible redeployment and any alternative proposal to make him redundant. In the 16 August 2019 letter, Triple S advised Mr Berridge that if the decision was made to proceed with the redundancy proposal it would:

explore all options within the Triple S group in all companies for potential redeployment.

[46] Although discussions were held between Mr Berridge and Mr Comer regarding potential redeployment within the group of companies, Triple S failed to propose any redeployment options to Mr Berridge. Instead, Triple S placed the onus on Mr Berridge to suggest possible redeployment options.

[47] Triple S submitted it consulted with Mr Berridge about the proposed redeployment options he put forward and genuinely considered all options. Mr Comer stated that several of the alternatives Mr Berridge suggested involved making another employee redundant so that he could take their roles, however Triple believed this would breach its legal obligations to those employees.

[48] Triple S submitted it undertook a two-week consultation process during which it consulted with the Mr Berridge about genuine redeployment options. Triple S submitted it was only after this consultation process was completed that it notified Mr Berridge that no suitable redeployment opportunities had been identified and his employment would come to an end by way of redundancy.

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<sup>6</sup> *Jinkinson v Oceana Gold* [2009] ERNZ 225.

[49] Although Triple S was clearly aware of its legal obligations to its employees, I find its dealings with Mr Berridge through the redundancy process were somewhat deficient as outlined above. I find Triple S did not fairly consider alternatives to redundancy for Mr Berridge.

*Conclusion on unjustified dismissal*

[50] In the circumstances I find that Mr Berridge, through no fault of his own was subjected to a truncated redundancy process where it had been predetermined that his position that was superfluous to the needs of Triple S. There was no real consultation, no selection criteria and no genuine appraisal of alternatives to redundancy. Triple S's failure to complete a fair process was not what a fair and reasonable employer could have done in the circumstances.

[51] The failings by Triple S in the restructuring process were more than minor procedural flaws. Clearly Triple S failed to meet the requirements of s 103A of the Act and s 4(1A) of the Act meaning its action was unjustified and breached Mr Berridge's employment agreement. Mr Berridge did not have a fair opportunity to address the process before the conclusion to terminate his position was reached.

[52] It is possible that even if Triple S had carried out a fair restructuring process Mr Berridge may still have been made redundant, however no such process was carried out.

[53] Triple S has not demonstrated that its actions and how it acted in the lead up to Mr Berridge's dismissal were what a fair and reasonable employer could have done in the circumstances at the time of the dismissal. Because of these various failures, the consultation process was not fair and therefore not justified, and it follows the dismissal was unjustified. I find Mr Berridge's dismissal for redundancy was unjustified and his personal grievance for unjustifiable dismissal succeeds.<sup>7</sup>

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<sup>7</sup> Employment Relations Act 2000, s 103A.

## **Remedies**

### *Reimbursement of wages*

[54] Mr Berridge seeks reimbursement for the earnings he has lost as a result of his unjustified dismissal pursuant to s 123(1)(b) and 128 of the Act.

[55] Following his dismissal Mr Berridge said he did not look for work opportunities as he believed he would be reemployed by Triple S. In the circumstances it is reasonable that Mr Berridge be reimbursed for only one months' wages, as he did not actively seek employment in an attempt to mitigate his losses.

### *Compensation for humiliation, loss of dignity and injury to feelings*

[56] Mr Berridge gave evidence about the effects on him of Triple S's decision to dismiss him and the process leading up to that decision. He stated the dismissal caused significant stress, both physical and mental. He said he found it hard to get over how he had been treated and it had damaged his confidence.

[57] I determine that an appropriate award to compensate for the effects on him, accepting his evidence, was \$15,000. Triple S is ordered to pay to Mr Berridge compensation of \$15,000.00.

### *Contribution*

[58] As I have awarded compensation to Mr Berridge, I must now consider whether Mr Berridge contributed to the situation that gave rise to his grievances.<sup>8</sup> Mr Berridge was dismissed by redundancy and by definition redundancy is a no-fault dismissal, therefore he did not contribute to his dismissal and warrants no reduction in remedy.

## **Summary of orders**

[59] Triple S Management Limited is ordered, within 28 days of the date of this determination, to make payment to Mr Berridge of:

(a) \$4,166 (gross) as reimbursement of lost wages of 1 months' salary; and<sup>9</sup>

(b) \$15,000 as compensation for hurt humiliation and injury to feelings.<sup>10</sup>

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<sup>8</sup> Employment Relations Act, s124.

<sup>9</sup> Employment Relations Act, ss 123(1)(b) and 128.

<sup>10</sup> Employment Relations Act, ss 123(1)(c).

## **Costs**

[60] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[61] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Berridge may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Triple S will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[62] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>11</sup>

Andrew Gane  
Member of the Employment Relations Authority

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<sup>11</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

