

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Linda Bessie Marama Dawson (Applicant)

**AND** Te Wananga O Aotearoa (Respondent)

**REPRESENTATIVES** Linda Bessie Marama Dawson In person  
Mark Hammond, Counsel for Respondent

**MEMBER OF AUTHORITY** Janet Scott

**INVESTIGATION MEETING** 27 June 2006

**DATE OF DETERMINATION** 12 September 2006

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

Ms Dawson was made redundant from her role with Te Wananga O Aotearoa (the Wananga) on 18 March 2005. Ms Dawson submits she has a personal grievance (unjustified dismissal) because her redundancy was not genuine. To remedy her alleged grievance she seeks reinstatement, lost remuneration and compensation pursuant to s.123 (1)(c)(i).

The respondent denies the claim and submits the applicant's position was disestablished following a restructuring process that was fair and reasonable. The decision to disestablish Ms Dawson's position was driven solely by proper commercial reasons. There was consultation with all staff including Ms Dawson and genuine efforts were made to redeploy her. The respondent also submits there was no obligation to automatically place Ms Dawson into a similar role that was established and advertised four months after her termination.

Note: Ms Dawson's claim has been heard by the Authority following the determination of a 90-day challenge by the respondent that was decided by Member Ken Anderson in favour of the applicant (AA 121/06).

**Background**

Ms Dawson commenced employment with TWA on 19 April 2004. She was engaged as a Placement Liaison Co-ordination/Lecturer at the Tokoroa Campus. Broadly speaking Ms Dawson's role was to identify suitable agencies and to get students training as social workers into practical work placements as part of completing their diploma requirements. There were associated tasks of supporting and assessing students in their placements.

Towards the end of 2004 problems emerged with the number of students versus staffing levels on campus. Mr Mote, then Campus Director, raised the issue at a staff hui on 1 December 2004. Between then and February 2005 there were hui and written communications with staff concerning restructuring and the potential for disestablishment of positions on campus. There is disagreement between the parties as to the extent to which Ms Dawson was consulted regarding the disestablishment of her position but it is not in dispute that Mr Mote met with Ms Dawson on 16 and 17 February and that she was formally advised then that her position was being disestablished. As I understand the evidence the respondent's position was that course tutors would take over the placement duties that had been undertaken by Ms Dawson.

Ms Dawson was offered at least one alternative position, which she declined, and on the afternoon of 17 February Ms Dawson was given written notice of her termination due to redundancy. She accepted the offer made to her that she could leave immediately and use her notice period to search for an alternative position. Ms Dawson was given and paid a month's notice and she received compensation for redundancy. All this was in accordance with the collective agreement, which governed her employment.

The issue between the parties relates to the respondent's subsequent establishment and advertising of a similar role particularly in light of a commitment given to Ms Dawson at the time her employment was terminated.

On this, I note the relevant part of the letter of termination dated 17 February 2005 given to Ms Dawson read:

*We have discussed the opportunities for redeployment and you will be considered for any vacancies for which you have suitable qualifications and experience. This undertaking will be met for the next three months.*

The evidence discloses that by mid July 2005 the Wananga had identified a need for a role similar to that previously undertaken by Ms Dawson. This was because tutors were finding it difficult to undertake the placement role in addition to teaching duties. The position was proposed in mid July and was approved and advertised on the Wananga's intranet on 21 July where it was brought to Ms Dawson's attention by Wananga staff she knew.

Having obtained the advertisement and job description Ms Dawson formed the view that her job was being re-advertised and for her it called into question the genuineness of the decision to make her redundant in March 2005. Ms Dawson sought and held a meeting with a member of the HR team. Her position was that this was her position and she should automatically be placed in it. The Wananga disagreed that the position was identical – albeit it concedes it was similar – and it did not consider that Ms Dawson had an automatic right to placement in the position. It did, however, invite Ms Dawson to apply for the role.

Ms Dawson declined to apply for the position she considered hers by right and raised a personal grievance. On 27 July she wrote to the Wananga stating she was taking a personal grievance because "*her redundancy was not a true redundancy*" and "*my position has been re-advertised with cosmetic changes*".

The parties have not been able to resolve the matter between them in mediation or otherwise and it now falls to be determined by the Authority.

## Questions for Determination

- Was Ms Dawson's employment as Placement Liaison Coordinator/Lecturer terminated as a result of a genuine redundancy?
- Did Ms Dawson have the right to automatic placement in the role for Work base Assessor / Relief Lecturer?

## Findings

### Genuine Redundancy?

I have no difficulty finding, on the evidence before me that Ms Dawson's termination in March 2005 came about as a result of a restructuring driven by the commercial need to reduce staff consequent on a reduction in student numbers. In all 16 staff lost positions at the time and there was, I find, consultation relating to the need for job reductions and after positions affected were identified discussions were held by Mr Mote with affected staff including Ms Dawson and strenuous efforts were made to find alternatives to avoid her termination. I find Ms Dawson was treated fairly in the process and appropriate entitlements paid out in accordance with the collective.

The fact a similar role was established shortly thereafter does not automatically demonstrate that the original decision to disestablish the position was not genuine. The evidence shows that there was a genuine decision made that tutors would take on the placement functions carried out by Ms Dawson. Experience, however, showed this not to be feasible. Should this outcome have been foreseen? Possibly. However, the law is clear on the point that the quality of the business decision is not the issue but rather the good faith of the decision. The Wananga may have made the wrong decision at the time but nevertheless the decision was, I find, made for genuine commercial reasons *G N Hale & Sons v Wellington etc Caretakers etc IOUW* (1990) Sel Cas 843; *Mathews v Bay of Islands Building Co (t/a Pioneer Homes)* AEC 12/98.

### Right to Placement in new Position?

In essence Ms Dawson had no quarrel with the termination at the time. Her concern arises because a similar position was advertised and filled just 5 months after she was given notice of her redundancy.

Was Ms Dawson entitled to be placed in the new position automatically?

The answer to this question must be no, for a number of reasons.

Firstly, I find the position was not identical to Ms Dawson's former position. There was less emphasis on establishing a database of suitable agencies in which to place students albeit there was an ongoing relationship maintenance role with agencies. In addition the role placed greater emphasis on assessing the roles available and on student assessment during their placements and the associated reporting to Head of Department. That said, it is clear that Ms Dawson would have been well qualified for the role and may have been the successful appointee had she applied.

Secondly, I find that there was no requirement to simply place Ms Dawson in the role not only because the commitment given to her to consider her for future roles for which was qualified had

expired by the end of July 2005 when applications for the position closed<sup>1</sup> but also on account of the nature of the commitment itself. Ms Dawson was asked about the commitment that was given to her by John Mote on 17 March. She said they discussed the commitment and he told her “*if anything came up, he’d let me know and I’d be welcome to apply*”.

On her own evidence the commitment given to Ms Dawson to consider her for alternative positions for which she was qualified was contingent on her applying for suitable positions. The Wananga invited her to apply for the position of Work base Assessor/Relief Lecturer. That was appropriate albeit (strictly speaking) it went beyond the commitment given to her. Ms Dawson did not apply because she was “*mad at the time and stubborn*”. It is unfortunate because she may well have been successful with an application for the role.

## **Determination**

Ms Dawson’s application is declined and she is not entitled to the remedies she seeks.

## **Costs**

The parties are directed to attempt to resolve costs between them. If they are unsuccessful they may file and serve submissions and the matter will be determined.

Janet Scott  
Member of Employment Relations Authority

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<sup>1</sup> AEA 557/04 *McMillan and Inter Pacific Logistics Ltd.*