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Edkins v Transfield Services (New Zealand) AA466/10 (Auckland) [2010] NZERA 817 (29 October 2010)

Last Updated: 19 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 466/10 5292851

BETWEEN

AND

RICHARD DARREL EDKINS Applicant

TRANSFIELD SERVICES (NEW ZEALAND) Respondent

Member of Authority: Representatives:

Investigation Meeting: Submissions Received

Rachel Larmer

Leann de Vries and Allan Silberstein, Applicants for Applicant
Gillian Service and Emily Moore, Counsel for Respondent

23 September 2010 at Auckland

from Applicant from Respondent

Determination:

29 October 2010

DETERMINATION OF THE AUTHORITY

A. Mr Edkins' personal grievance claim for unjustified dismissal is not upheld.

B Mr Edkins is ordered to pay Transfield Services (New Zealand) Limited \$2,000 towards its legal costs.

Employment relationship problem

[1] In August 2009 Transfield Services (New Zealand) Limited (Transfield) proposed a nationwide restructure of its telecommunications division which resulted in 155 staff being made redundant, and 15 of the 89 technician positions being disestablished. Mr Edkins was one of the technicians selected for redundancy and one of the 25 staff in Rotorua who were made redundant.

[2] Mr Edkins claims his dismissal was unjustified because he should not have been selected for redundancy. He says he had had some issues with his Manager, which he believes resulted in him being unfairly assessed against Transfield's selection criteria.

[3] Mr Edkins did not challenge the substantive justification for the restructure or (except for his actual selection) the process it followed, including the reasonableness of its selection criteria. The only procedural defect he raised was what he says was

his unfair assessment and therefore unjustified selection for redundancy.

[4] Transfield says Mr Edkins' selection for redundancy was the result of a fair process, that the selection criteria were properly applied, and that he was fairly assessed against the criteria. It says that it used a comprehensive and objective assessment and selection process which was specifically designed to eliminate any potential bias.

[5] Transfield does not accept that there were problems between Mr Edkins and his Manager, but says that even if there were, redundancy selection was based on the outcome of an interview, which Mr Edkins' Manager was not involved in.

Selection criteria

[6] Mr Edkins was employed as a technician pursuant to a collective employment agreement between Transfield and NZ Engineering, Printing and Manufacturing Union Inc ("EPMU") dated 1 July 2009. Clause 46 of the collective agreement dealt with redundancy, with clause 46.6 stating:

The company reserves the right to select employees for redundancy on the basis that it retains employees who by reason of skills and attributes are, in the company's opinion, necessary for continuing operations.

[7] On 30 June 2009, Transfield signed a new contract with Telecom to perform telecommunication services. This required Transfield to operate more efficiently under a new business model, which meant its staff needed to be more flexible and multi-skilled to ensure the Telecom contract KPIs were met. As a result, Transfield embarked on a nationwide restructure.

[8] Transfield recognised that all of its technicians were technically able, and/or could be readily trained, so it decided to focus on ensuring that those retained in the business had the appropriate non-technical (i.e. soft) skills such as agility and adaptability. It drafted the proposed selection criteria to match the needs of the new Telecom contract. Transfield sought feedback on the proposed selection process and selection criteria before it adopted them. No feedback was received from the Rotorua technicians, who included Mr Edkins.

Selection process

[9] The selection process for technicians based in Rotorua comprised of three separate stages. The first two stages related to the creation of a review pool of technicians who would be subject to the selection criteria, with the third stage being the actual selection for redundancy.

[10] The first stage involved updating the Sonar 6 performance reviews to reflect any improvements to, or deterioration in, performance which had occurred since the last review. This exercise was undertaken by Mr Beck and Mr Passier together and they agreed on any changes that were made to a technician's Sonar 6 performance review outcome. All technicians were then given points based on their performance scores, with 1 being the lowest and 89 being the highest and were ranked in order. I refer to this as the Sonar score.

[11] The next step was for the technicians' Sonar score to be adjusted by deducting two points for a live warning. After this had occurred, the 25 lowest scoring technicians were placed into a review pool and advised that they were at risk of redundancy. These technicians were given the opportunity to meet with Mr Beck to discuss their inclusion into the review pool. Technicians who were not placed in the review pool were not at risk of redundancy.

[12] The use of the review pool was to minimise the pain within the business, both financially and emotionally. The size of the review pool was almost 75% bigger (i.e. 25) than the number of positions that were to be made redundant (i.e. 15). This meant the review pool of 25 technicians included those who were considered to be on the borderline of selection, which allowed Transfield to observe whether the results of the Sonar scoring was as accurate as they expected it to have been.

[13] The technicians in the review pool then undertook an online competency assessment which required the technicians to answer practical questions online. These questions had been customised to reflect Transfield's four global competencies of conscientiousness, safety attitude, learning ability and customer focus which had in turn been specifically aligned to the success factors of the technician role.

[14] The aim of the online assessment was to validate the updated Sonar score by cross checking the performance conclusions that the management review had resulted in. For example, if a technician had been marked poorly in a particular performance area, whilst the online competency assessment showed the technician had high skills in that area, then that is something that would have resulted in follow up to determine the reason for the difference. As it turned out no anomalies were identified.

[15] The main purpose of the online competency assessment was to validate the Sonar score independently to eliminate any potential bias but it was also used, in some cases, to highlight particular areas to focus on during the interview stage. The online competency assessment was used as an indicator of potential issues, rather than as a means of selecting technicians for redundancy.

[16] The third stage was the interview, and it was the outcome of the interviews which determined who would be selected for redundancy, with the lowest scoring 15 technicians being made redundant.

[17] All technicians in the review pool were individually interviewed. Interviews were conducted by a member of the Transfield human resources team together with the technician's Area Manager. In Mr Edkins' case, his interview was conducted by his Area Manager, Mr Beck, and Roy Crisostomo from HR.

[18] The interviewers received at least two hours of training on behavioural interviewing. All of the questions were designed so that the technician had to discuss a situation that they had been in, the action(s) they had taken in that situation, and the eventual outcome. The interview questions were based on specific competencies or key dimensions for the technician role, namely; *agility and adaptability; establishing relationships with others; planning and organising; and Transfield values.*

Issues

[19] During a telephone conference with the parties on 16 September 2010, the issues to be determined were clarified and it was agreed that the following issues were to be determined:

- (a) Was Mr Edkins' inclusion into the review pool justified?
- (b) Was Mr Edkins' selection for redundancy justified?
- (c) Was Mr Edkins' dismissal on the grounds of redundancy justified?
- (d) If not, what remedies should be awarded. **Mr Edkins' scores/ranking**

[20] A score of 1 signified the lowest scoring employee and a score of 89, or in the case of those in the review pool 25, indicated the highest scoring employee.

[21] Mr Edkins was ranked the 16th lowest scoring employee out of 89 employees as a result of the Sonar score. However, once the scores had been adjusted to take account of warnings, (of which Mr Edkins had none) he moved up to rank 21 out of 89 employees. This meant he was included in the review pool, which consisted of the 25 lowest ranked employees.

[22] In terms of the cross check, Mr Edkins was ranked 6 out of 25 employees in the online competency assessment.

[23] As a result of the interview, Mr Edkins had the same score as 8 other technicians (they were all ranked bottom). 17 of the 25 technicians scored higher than him, and of the 15 technicians who were made redundant, 7 of those scored higher than Mr Edkins in the interview.

Sonar 6

[24] In or around October 2008, Transfield began work on the introduction of a new employment review system which consisted of a number of *success factors*, which were behavioural descriptors that had been identified as important to the organisation's operational and financial success.

[25] These success factors had been identified by conducting an in-depth job and competency analysis on how certain behaviours contributed to the success of the organisation's strategy implementation. The success factors were then loaded into an electronic tool called Sonar 6, which was used by Managers and employees to assess their performance, and in particular to identify training needs.

[26] The Sonar 6 tool was introduced in the Rotorua area on 27 May 2009. Staff were told that it represented a new achievement management tool and would replace the existing work development review ("WDR"). Although staff were invited to provide feedback on the proposed success factors before Sonar 6 was introduced, no-one did.

[27] The Sonar 6 review comprised a self-assessment component and an assessment by each technician's field Manager. The field Manager's scores for every technician were peer reviewed by the relevant Area Manager. The process of peer reviewing was intended to eliminate any potential bias.

[28] Mr Edkins was unhappy with his assessment and met with his Manager, John Passier who was the acting field Manager, to discuss his scores. Mr Edkins advised Mr Passier that he rejected his results and wanted them reviewed. Mr Passier raised that with his own Manager Steve Beck, who was the Area Manager. Mr Beck reviewed Mr Edkins' self-assessment and Mr Passier's assessment of him and concluded that the Sonar 6 outcome he had been given was an accurate reflection of his performance.

The law

[29] The justification test in [section 103A](#) of the [Employment Relations Act 2000](#) ("the Act") requires me to determine, on an objective basis, whether Transfield's dismissal of Mr Edkins on the grounds of redundancy was justified. This involves consideration of whether Transfield's actions, and how it acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred.

[30] The [section 4\(1A\)](#) good faith obligations in the [Act](#) also apply to this matter which require Transfield to have provided Mr Edkins with information relevant to his ongoing employment and an opportunity to comment on that.

[31] The Court of Appeal in *Coutts Cars Ltd v. Baguley* [\[2001\] NZCA 382](#); [\[2001\] ERNZ 660](#) stated:

If criteria are properly formulated and applied according to the standard of a reasonable employer acting fairly and in good faith towards the employee, subsequent challenge is unlikely to be fruitful.

[32] This case is analogous to that of *Building Trades Union v. Hawke's Bay AHB* [\[1992\] 2 ERNZ 897](#) which also involved an employee who accepted there had been a genuine redundancy, and that in most respects the procedure had been fair, with the exception of his selection for redundancy. The Employment Court in that case stated:

... despite Mr Boyce's seniority, he ranked below others within the department in an assessment of the skills and other abilities required by the Board for the performance of an altered role by a restructure of the maintenance department. Such decisions are those to be made by an employer through its responsible Managerial personnel and will not generally be interfered with by a tribunal on an appeal such as this. That is except to the extent that they may not have been made in good faith, without reference to relevant criteria, by reference to irrelevant criteria or the like.

[33] The onus is on Transfield to establish that its actions were justified. Although the application of selection criteria falls within an employer's exclusive management prerogative, it is proper for the Authority to investigate whether Transfield applied its selection criteria in a fair and accurate manner and whether its assessment of Mr Edkins was done in good faith, and without reference to irrelevant criteria.

[34] This requires me to determine whether there was a good faith assessment of Mr Edkins which had regard to the relevant assessment criteria and which did not take into account any irrelevant considerations. This will require me to form a view on whether Transfield had material available to it which could support its assessment, whether it closed its eyes to relevant facts, or was influenced by wrong or improper motives.

[35] There is no complaint that the selection criteria had not been properly formulated, what is in issue is whether these criteria had been applied according to the standard of a reasonable employer acting fairly and in good faith. I recognise that the process used by Transfield should not be subjected to minute or pedantic scrutiny, and that my assessment needs to be on whether the overall principles of fairness, including natural justice and good faith, have been properly complied with.

Determination

Inclusion into the review pool

[36] Mr Edkins' inclusion in the potential selection pool was based on his original Sonar 6 performance review, which was then adjusted by Mr Beck and Mr Passier who sat down together and discussed whether Mr Edkins' performance had improved or deteriorated since his last review. This exercise placed him in the review pool, which required him to undertake an online competency assessment which was used as a cross-check to ensure that it was appropriate for him to have been included in the review pool.

[37] Mr Edkins believes that his Sonar 6 performance review was inaccurate. [Original Sonar 6 performance review](#)

[38] In May/June 2009 the Rotorua technicians undertook their first Sonar 6 performance review. The Sonar performance review consisted of four success factors which related to performance (a-d below) and four success factors which related to potential (e-h below).

[39] The success factors were;

- a. Health, safety and environment (3);
- b. Planning & organising (5);
- c. Customer focus (4);
- d. Job productivity (3);
- e. Functional/technical competence (4);
- f. Establishing relationships with others (5);
- g. Work standards & results (5);
- h. Transfield values (10).

[40] Each success factor was broken up into separate competencies, which were then assessed. The number of competencies which were assessed under each success factor is listed in brackets beside the above success factors. This meant that technicians were assessed against 39 individual criteria. Potential scores ranged from a low of 1 to a high of 4. A score of 2 was rated as *some development required* and a score of three was rated as *on track*.

[41] The first step of the Sonar 6 review involved a self assessment. Mr Edkins scored himself 4 (the top score) in all 39 criteria. During the investigation meeting he initially denied this, saying it was not something he would do. Mr Passier then produced Mr Edkins' original self assessment which made it clear that was exactly what he had done. When I asked Mr Edkins if, upon reflection, he wanted to change any of his self assessments he declined, saying a 4 *was about right*.

[42] Mr Passier conducted the first Sonar 6 review. He had Mr Edkins' self-assessment in front of him whilst he completed his own management assessment. The Sonar 6 review tool gave examples for the criteria listed under each success factor of behaviours that had to be demonstrated in order to receive a 1, 2, 3 or 4. In order to score the technician, the Manager selected the one out of the four stated behaviours that the technician was demonstrating.

[43] Mr Passier's assessment of Mr Edkins resulted in a score of 2 for 18 out of the 39 criteria. Mr Edkins' lowest score against each individual criteria within the various success factors was a 2 and his highest was a 4. He only challenged the 2 scores he had been given.

[44] During the investigation meeting, I took Mr Passier through every criteria against which he had scored Mr Edkins with a 2 and asked him to explain his reason for doing so. As a result of that exercise I am more than satisfied that Mr Passier had genuine reasons, based on reasonable grounds, for scoring Mr Edkins in the way that he did.

[45] I find that Mr Passier did not take into account any irrelevant or improper factors when assessing Mr Edkins, nor was he motivated by wrong or improper motives. He had material available to him which supported his assessment and he took relevant information into account.

[46] I do not intend to go through every explanation Mr Passier provided in respect of all 18 scores, but I can indicate that a consistent theme became evident. This can be conveniently summarised, by stating that there were three main issues which appeared to let Mr Edkins down, namely:

(a) Unwillingness to do overtime or to take on extra work;

(b) Refusal to take on jobs which despatch had been trying to allocate to him;

(c) Complaints or concerns raised by others about the way Mr Edkins related to them.

[47] Mr Edkins strongly refuted each of these matters, and outright denied that any of the instances relied on by Mr Passier had ever occurred.

[48] This left me with a conflict of evidence to be resolved. I have favoured Mr Passier's evidence over Mr Edkins' denials because I consider on the balance of probabilities that his version of events is likely to be the most reliable. I have formed this view because:

(a) During the investigation meeting, Mr Passier referred to his original diary which recorded the instances on which Mr Edkins had refused to work overtime or had not attended a call out or had not accepted work allocated from despatch. This was a contemporaneous note made almost 18 months before the investigation meeting. It was before the Sonar 6 review and before any issue had been raised by Mr Edkins. I accept that Mr Passier's diary entries are accurate;

(b) Mr Passier gave detailed and credible evidence about the instances he was relying on and he was able to answer my questions with specific information which satisfied me that he had detailed knowledge of them;

(c) Mr Passier's evidence was supported by the evidence given by Mr Beck, who had personally observed Mr Edkins not accepting work from despatch and being involved in relationship issues with others;

(d) The instances on which Mr Passier was relying created great difficulty for him from a management perspective. When Mr Edkins would not accept work or was unable to work overtime, it fell to Mr Passier to find additional resource. On a number of occasions this was an extremely difficult exercise for him, which resulted in additional cost to the business, and considerable inconvenience to Mr Edkins' colleagues, who had to take over the work he would not do;

(e) I consider that the inconvenience to Mr Passier and the arrangements he had to make meant that these events stuck in his mind. As opposed to that, I consider these events had little, if any, significance for Mr Edkins so it is understandable he could not recall them;

(f) Mr Passier also gave evidence of having to discuss in weekly telephone conferences with other Managers why certain jobs had not been completed within the allocated timeframe, which is another factor which would have resulted in him being so clear about the examples he gave me;

(g) Bearing in mind these examples had no adverse consequences for Mr Edkins, and did not result in any difficulty or inconvenience to him, it is understandable that 18 months later he may not have been able to recall the events which Mr Passier gave clear evidence about.

[49] I find that the original Sonar 6 results Mr Passier gave to Mr Edkins were justified.

Meeting to discuss Sonar 6 results

[50] The Sonar 6 results were shared with each technician in a one to one meeting. I find that this opportunity meant that Transfield did not rely on information during the redundancy selection process which had not previously been shared with Mr Edkins.

[51] Mr Passier met with Mr Edkins on 25 June 2009 to discuss his Sonar 6 review results. Mr Passier described the meeting as tense and said that every time he tried to explain Mr Edkins' results he cut him off and said he did not want to talk about it. Mr Edkins rejected his results because he had scored better in his previous WDR than in the Sonar 6 review. Mr Passier told him only Mr Beck, the Area Manager, could change his scores.

Review of original Sonar 6 results

[52] Mr Passier advised Mr Beck of Mr Edkins' objections to his Sonar 6 results, so Mr Beck reviewed them and concluded that the results were an accurate reflection of Mr Edkins' performance so would not be adjusted.

[53] Mr Beck's evidence, which was supported by Monica Cheung, was that the WDR and Sonar 6 review were significantly different. WDR focused mainly on technical skills whilst the Sonar 6 review looked more at soft skills such as employees' attitudes, which Transfield considered gave a more comprehensive and overall assessment of the person. Mr Beck said this meant that someone with a good WDR score could get a low Sonar 6 review score, because the two systems were assessing different things.

Management update of Sonar 6 review

[54] In August 2009, as the first step in the redundancy selection process, Mr Passier and Mr Beck sat down together and reviewed the May/June Sonar 6 review results to determine whether any adjustments had to be made to accurately reflect each technician's current performance.

[55] Mr Edkins's overall score was adjusted downwards to reflect the deterioration in his performance which Mr Passier and Mr Beck considered had occurred subsequent to the May/June review. In terms of specific changes;

- a. His overall score for planning and organising reduced from 2.66 to 2.15,
- b. His overall score functional/technical competence reduced from 2.66 to 2;
- c. His overall score for establishing relationships with others reduced from 1.8 to 1.6;
- d. His overall score for Transfield values increased from 1.69 to 1.81.

[56] Mr Passier said the reduced scores reflected a change in Mr Edkins' performance and attitude. He said Mr Edkins had been taking extended breaks, was unwilling to help as needed, was refusing to co-operate and do the work, and was refusing to do overtime, even when a task only required a short amount of overtime beyond his normal 8 hour day. He described Mr Edkins as refusing to go out to a fault if he felt he may not complete it before the end of his 8 hour day.

[57] Mr Edkins denied all of this.

[58] During the investigation meeting, Mr Beck and Mr Passier explained in detail the basis for the adjustments they made to Mr Edkins' scores. In terms of the specific criteria:

- (a) Planning and organising - Mr Passier said that Mr Edkins' performance had deteriorated because he was continuing to refuse to do overtime which meant that jobs had to be reallocated to his already busy colleagues. Mr Edkins would hand jobs back in the later stages of the day which again required them to be re-allocated, and he was refusing any jobs that he might have to work overtime on in order to get finished within the allocated timeframe. Mr Beck's evidence was that between June and August, Mr Edkins' performance had deteriorated because he was no longer flexible with his work patterns and was refusing to do overtime. He referred to Mr Edkins refusing to take jobs from despatch early in the afternoon because he said he would not have time to complete them, when in Mr Beck's view that was not the case. Mr Beck personally observed this occurring;
- (b) Functional/technical competence - Mr Passier stated that Mr Edkins' score was reduced because he did not apply his skills over a range of work and distanced himself from the team by his reluctance to take on more than business faults tasks. Mr Beck stated that Mr Edkins refused to carry out any work type other than that of business faults, and that Mr Edkins had announced that in front of all staff at a meeting on 27 May 2009. He said this counted against Mr Edkins because the business was looking for staff to be more flexible and to carry out multiple work types. Mr Edkins' stated reluctance to do so meant that the business was unable to benefit from his technical

know-how outside of his specialist area of business faults;

(c) Establishing relationships with others - Mr Passier says that he observed Mr Edkins airing his emotions/frustrations inappropriately. For example, he gave a negative public response to the company's stated need for technicians to have a more adaptable/versatile range of skills. Mr Beck said that he observed that Mr Edkins' interactions with others and his ability to address conflicts before they escalated was poor. He described Mr Edkins as only being able to see his side of any issue and as someone who struggled to receive feedback on issues. Mr Beck referred to specific issues with the administration staff which had created a very strained relationship.

[59] Mr Edkins strongly refuted all of these examples and observations. However, I have concluded that it is more likely than not that the evidence given by Mr Passier and Mr Beck is reliable. Mr Edkins admitted that there had been an incident with one of the administration staff, who he said was to blame, despite Mr Edkins having received a warning about it. Mr Edkins also accepted that he had made critical comments during the meeting in May 2009. Mr Passier and Mr Beck were both able to give me different and specific examples of Mr Edkins refusing to do overtime and demonstrating a lack of flexibility around accepting work scheduled for the afternoon.

[60] I am satisfied that the management update of Mr Edkins' Sonar 6 review was justified.

Selection into review pool

[61] Technicians were advised of their selection into the review pool by letter dated 22 September 2009 and they were offered an opportunity to meet with Mr Beck to discuss their results and their selection. This resulted in a meeting between Mr Edkins, his EPMU representative Robin Foley, Craig Trapski the Rotorua Field Manager, and Mr Beck, Area Manager on 24 September 2009. The meeting lasted about ten minutes.

[62] Mr Beck said Mr Edkins was visibly upset during this meeting and struggled to get his thoughts out, often breaking in mid-sentence for long periods. Mr Beck said he referred to the success factors which had been provided to Mr Edkins as part of the consultation process but that when he tried to go through them in detail, Mr Edkins became extremely upset. It was therefore agreed that the meeting would be adjourned on the basis that Mr Edkins would come back to a further meeting when he felt more settled.

[63] Mr Edkins disputes that he was upset and described himself as being merely frustrated because Mr Beck would not give him the answers he was looking for. I prefer Mr Beck's account of the meeting because he was so concerned about Mr Edkins' state of mind that he emphasised that there was EAP support available to him, and he also took Mr Foley aside to ensure that the union was doing all it could to support Mr Edkins through the process. He was unlikely to have taken such steps had Mr Edkins merely been expressing frustration.

[64] I also consider it unlikely that Mr Beck would have been evasive or noncommittal in that meeting because the whole purpose of the meeting was to explain why Mr Edkins had been selected into the review pool. Mr Beck also had the criteria ready and he attempted to take Mr Edkins through them, which resulted in Mr Edkins becoming distressed.

[65] Mr Edkins agrees that he did not request another meeting.

[66] Mr Edkins also wrote two letters regarding his inclusion into the potential redundancy selection pool. The first was dated 23 September 2009 and it was responded to by Ms Cheung on 29 September 2009. Mr Edkins wrote a further letter dated 20 September 2009 which was responded to on 12 October 2009. Mr Edkins accepted that these responses had addressed all of the points that he had raised, although he noted that he did not agree with the content of the response.

Online competency assessment

[67] The purpose of this exercise was to validate an employee's inclusion into the review pool. The online competency assessment required Mr Edkins to answer behavioural type questions which asked him how he would respond to certain incidents that may arise in the course of his employment.

[68] He was ranked 6 out of 25 employees and received a score of 3 out of a possible 100. This indicated to me that his inclusion into the review pool was correct. It also strongly refuted Mr Edkins' allegations that he had been personally targeted for redundancy by Mr Passier because it showed a ranking which was far lower than what he had been given by Mr Beck and Mr Passier.

[69] I find that the inclusion of Mr Edkins into the review pool was justified. Interviews

[70] Individual interviews were held on 29 September 2009. Mr Edkins was interviewed by Mr Beck and Mr Crisostomo (workforce planning associate) who was there as the HR representative. These two individuals would have conducted 400-500 interviews over the restructuring period. Mr Beck had also attended a two day intensive course on behavioural interviewing techniques.

[71] Mr Edkins' interview assessed the following criteria:

- (a) Agility and adaptability;
- (b) Establishing relationships with others;
- (c) Planning and organising; and
- (d) Transfield values.

[72] Each of these criteria were formulated to match the needs of the business under the new commercial contract, to ensure that Transfield retained the right skills and attributes after the restructuring exercise.

[73] The interview process required both interviewers to agree on a score for each employee interviewed. In the case of Mr Edkins, both interviewers gave him a 2 for each question so did not need to discuss or adjust their scores. Transfield produced the handwritten notes taken by each interviewer as well as the overall score sheets.

[74] In the interview the interviewers were looking for the technician to provide specific examples in response to each question which would involve the technician outlining their work situation, the action they had taken, the outcome they achieved, and its relevance to their work. Questions included;

- a. Recall a time when you were affected by a significant change in the company's policies or procedures. Tell us how you took this change?;
- b. Tell me about a situation when you were assigned to work with someone else for the first time. What did you do to be able to work effectively with that other person?;
- c. Tell us about the work you did last week. How did you plan and organise for the work that you had to do for the week?;
- d. What do you do to ensure that you and the people around you are working safely?;

[75] Mr Beck gave evidence about Mr Edkins' answers and compared these to the types of answers the interviewers were looking for. It was obvious to me that Mr Edkins' answers were not on point, and I could immediately understand why he had been scored in the way he had, although I note that Mr Edkins remained unable to accept there was anything lacking in the responses he gave.

[76] Mr Beck gave clear and compelling evidence about why Mr Edkins had been given a 2 out of a possible score of 5 in respect of each question. He identified the gaps in the responses which were given and explained why Mr Edkins' answers did not cover the key elements that they were looking for.

[77] Mr Silberstein made the following criticisms of the interview process, which he submitted made the score Mr Edkins was given unfair:

- (a) The questions were unclear;
- (b) Mr Edkins may have misunderstood the questions;
- (c) No allowance was made for the fact that Mr Edkins may have been inarticulate;
- (d) Mr Edkins was under stress and pressure during the interview which may have affected his ability to answer the questions fully;
- (e) Mr Edkins was not given the interview questions in advance of the interview.

[78] I do not accept these criticisms of the process. Transfield was entitled to set the questions and as is evident from paragraph 74 the questions were clear. Mr Beck said that Mr Edkins did not appear to have a problem understanding the questions, but his answers were insufficient. All technicians were likely to have been under at least some stress and pressure during their interview. The purpose of the interview was to select between technicians, which would have ended up in a memory test if the questions had been provided in advance.

Justification

[79] I find that Mr Edkins' selection for redundancy was justified. Despite Mr Edkins holding a sincere view that he was only made redundant due to a management bias against him, I find that the evidence does not support that view.

[80] Mr Edkins' Sonar scores were justified, as was his selection into the review pool. This was supported by the online competency assessment which showed that Mr Edkins was in the lowest 6 of 89 technicians.

[81] I find that the scores given to Mr Edkins during the interview process were justified. Mr Beck gave detailed evidence, with reference to the handwritten notes taken by each interviewer, explaining why each score had been given. I am satisfied that irrelevant information was not taken into account and that improper or inappropriate matters played no part in Mr Edkins' selection for redundancy.

[82] The evidence that has been presented has demonstrated that there were several checks and balances built into the redundancy process to ensure that any potential bias was removed. In particular:

(a) The initial assessment relied on the Sonar 6 performance assessment tool which had been developed by the workforce planning team in conjunction with external providers to ensure that performance was linked to the business KPIs;

(b) The redundancy process consisted of three separate elements - the Sonar 6 score, the online competency tool and the interview;

(c) During the interview stage, each interviewer had to individually assess each employee, and then later agree on scores. Despite being independently recorded, the interview scores attributed to Mr Edkins by each interviewer were identical. Mr Crisostomo had no prior involvement or knowledge of Mr Edkins and he had travelled down to Rotorua from Auckland for the purpose of conducting the restructuring interviews;

(d) The selection process involved input from the field Manager, the Area Manager, the workforce planning team, the online assessment tool, and

HR.

[83] Mr Edkins' main complaint seemed to be that because he had been employed for 44 years and he had good technical skills he should not have been selected for redundancy. However, Transfield was entitled under the provisions of the collective employment agreement to develop selection criteria which ensured that it retained the skills and attributes necessary for its continuing operation. Length of service and technical skills did not form part of the criteria.

[84] I find that the selection process was fair, balanced and involved objective assessments based on relevant information. I specifically reject Mr Edkins' allegations that there was a management bias against him.

[85] Accordingly, Mr Edkins' personal grievance is not upheld.

Costs

[86] The respondent has been successful and is entitled to a reasonable contribution towards its costs.

[87] This matter involved a one day investigation meeting, so I have adopted a nominal starting point of \$3,000 per day. However, I consider it appropriate to adjust that upwards to reflect the additional expense that Transfield was put to as a result of Mr Edkins raising allegations about migrant workers and the coffee group which he only decided not to pursue immediately before the investigation meeting started.

[88] At the investigation meeting, Mr Edkins also withdrew his allegation that Mr Passier had manipulated data in the Sonar 6 assessment, on the basis that he had no evidence of that. Transfield was required to address these issues and it was put to unnecessary time and expense in doing so. That should be reflected in a costs award.

[89] Transfield also incurred further expense because Mr Edkins filed a witness statement which the named individual said he had not cooperated in preparing. That issue was resolved prior to the investigation meeting, but I recognise that Transfield incurred costs in order to address that issue.

[90] For these reasons, I have decided to exercise my discretion to adjust the nominal daily tariff up to \$4,000. However, because costs are discretionary, I have also had regard to two factors which I consider support an award of costs less than the \$4,000 nominal starting point I have indicated.

[91] First, Mr Edkins was not provided with the detailed assessment information until the morning of the investigation meeting. This resulted in a 2% hour delay in starting the investigation meeting to give Mr Edkins time to review this information. I note that he was offered, but declined, an adjournment.

[92] I also note Mr Edkins' comments in the course of the investigation meeting that if he had previously been provided with the assessment information which was not made available to him until the day of the investigation meeting, then he would not have pursued his claim, although he nevertheless still considered that he had been unjustifiably dismissed.

[93] I have to seriously question the benefit to the parties of attending mediation if Mr Edkins did not have his assessment information available to him. Given the nature of his complaint, that should have been provided to him at the earliest opportunity and I consider that the failure to do so may have resulted in both parties attending an investigation meeting which could possibly have been avoided. Whilst such an outcome was by no means certain, I consider it appropriate to exercise my discretion to allow for that possibility when awarding costs.

[94] Accordingly, I consider that Mr Edkins should contribute \$2,000 towards Transfield's actual legal costs, which I note are far in excess of the amount claimed.

Rachel Larmer

Member of the Employment Relations Authority
