

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 225
5629523

BETWEEN PAUL EDLEY
 Applicant

A N D Lenco Sport NZ Limited
 Respondent

Member of Authority: T G Tetitaha

Representatives: A Cook, Counsel for Applicant
 G West, Respondent director

Investigation Meeting: 8 June 2017 at Auckland

Submissions Received: 9 June 2017 from Applicant
 12 June 2017 from Respondent

Date of Determination: 31 July 2017

DETERMINATION OF THE AUTHORITY

- A. Paul Edley was justifiably dismissed for redundancy by Lenco Sport NZ Limited.**
- B. Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.**

Employment relationship problem

[1] Paul Edley alleges he was unjustifiably dismissed for redundancy by Lenco Sport NZ Limited. He also seeks payment of wage arrears arising from annual leave. The wage arrears are the subject of a separate determination.¹

¹ *Paul Edley v Lenco Sport NZ Limited* [2017] NZERA 216.

Relevant facts

[2] Lenco Sport NZ Limited (Lenco) is a clothing manufacturing and retail business based in Henderson, Auckland. Paul Edley was employed by Lenco on 8 May 2006 as a Key Account Manager (Sales). In 2011 he was promoted to Production Manager.

[3] Mr Edley reported to his wife and a respondent company director, Julie Edley. Julie Edley resigned in April 2015. She brought proceedings against Lenco in the Authority determined earlier this year.²

Redundancy

[4] On 7 March 2016 Mr Edley received a letter from Tracy Heaven, Merchandise and Business Development Manager. Ms Heaven sought a meeting to discuss the possibility of a restructure. He was told that the restructure could directly affect his position and result in redundancy.

[5] Unsurprisingly, Mr Edley was upset and angered by this proposal at the time.

[6] On 9 March 2016, Mr Edley attended a meeting with Ms Heaven. He was given a document headed “*Lenco Sport New Zealand Limited proposal to restructure*”. The document set out the basis for the proposed restructure. Mr Edley subsequently fell ill.

[7] A further meeting was unable to be arranged until 4 April 2016. Mr Edley attended with his lawyer. Ms Heaven attended with Mark Kamphorst of the Employers and Manufacturers Association (EMA).

[8] The next day Mr Edley received a letter, which amongst other things, confirmed his position would be disestablished and that his current duties would be split over a number of other employees. He was invited to a further meeting.

[9] On 7 April 2017 he attended a meeting on his own with Ms Heaven and John Rehman. Mr Rehman had purchased all of the Lenco shares including Julie Edley’s stock options in 2014. At the conclusion of the meeting Mr Edley was advised he would be made redundant.

² *Julie Ann Edley v Lenco Sport NZ Limited* [2017] NZERA Auckland 170.

[10] Mr Edley was handed a letter on 8 April 2016 confirming his employment was terminated by way of redundancy.

Issues

[11] The issues for determination are:

- (a) Were there genuine reasons for redundancy?
- (b) Was the process leading to termination fair and reasonable in all the circumstances?

Were there genuine reasons for redundancy?

[12] It is accepted by the parties that Lenco had been suffering significant financial problems in 2014. It was for those reasons the company was purchased by Mr Rehman and an injection of \$3m capital was made into the business.

[13] There was evidence Mr Rehman began changing the focus of Lenco's business from domestic to overseas manufacturing. This was to reduce production costs and the sale prices of their clothing products. There was evidence this was making some difference to Lenco's profitability.

[14] Mr Edley's job as production manager was to oversee the domestic manufacturing business. He had no international production experience. Ms Heaven had been contracted to provide this expertise.

[15] Despite the above changes, Mr Edley believed Lenco still required a production manager to oversee its manufacturing plant. He alleged there was a significant increase in the value of orders to be produced compared with the previous two years, additional staff being hired and new customers acquired.

[16] He provided Lenco with a comparison between the last two years' sales figures and a summary of the production figures for the second week of March for the last three years. This comparison did not show any increase in sales. Rather the evidence showed a marked decrease in sales. His information did not give a complete picture of the production figures for the entire year or any range of years. It was limited to changes in production figures for one week in March over 3 years.

[17] He denied the decrease in machinists impacted upon his job. This cannot be correct. Lenco's shift to overseas manufacturing was the reason for reducing machinists from twenty to three at the time of his termination. This reduction in staff must have impacted upon his job.

[18] His reference to three new staff members being hired was answered at the time by Ms Heaven and confirmed in her evidence at hearing. No new permanent staff were employed. There were casual staff vacancies as a result of his redundancy. Those positions were offered to Mr Edley but he declined.

[19] Mr Edley alleged Lenco had been advertising and interviewing people for an assistant in the Printing /Artwork Room. He believed this was a matter that he could have been involved in. Ms Heaven pointed out he had been offered that casual position advertised but declined.

[20] Although he also doubted Lenco had lost business of up to \$500,000, he accepted there were losses but of \$100,000 to \$150,000. In either case Lenco was running at a loss – even if the parties disagreed how large the loss was. Mr Edley also believed the loss making situation did not take account of such factors as stock-on-hand. Given there was a loss, the stock-on-hand makes little difference.

[21] He criticised Lenco's decision to give up sponsorship. He pointed to other suppliers picking up those contracts indicating they were profitable. Ms Heaven explained there was significant competition for the sponsorship from other firms which were better equipped to do domestic manufacturing. Those company's bids far outweighed what Lenco could match. There was little or no profit in the sales generated. There was little evidence to suggest Ms Heaven's assessment was wrong.

[22] Mr Edley believed the new Lenco customers more than compensated financially for any loss of business. Ms Heaven disagreed. Given the company was running at a loss, I prefer Ms Heaven's evidence.

[23] Mr Edley could not see how his production manager job could be split up amongst a number of staff when he was told elements of his position were still present. Ms Heaven gave evidence it was working well.

[24] The evidence showed there were genuine reasons for the redundancy. Mr Edley's position had become superfluous due to the change to manufacturing Lenco product overseas.

Was the process leading to dismissal fair and reasonable?

[25] There is no doubt Mr Edley was given opportunities to be heard at three meetings and to obtain legal advice. He alleges this was insufficient because he was not given the requested financial information about production and sales figures.

[26] Ms Heaven stated Mr Edley, as the production manager, had access to the production and sales figures via the internal computer system. It was accepted Lenco's precarious financial position was discussed between himself, John Rehman and Julie Edley in 2014. His personal knowledge and the available information he had should have allowed him to adequately assess Lenco's reasons for redundancy. The figures he produced did not support retention of his job.

[27] Mr Edley gave no alternative options to his redundancy. He accepted Lenco offered to redeploy him to other positions which he refused. At hearing he alleged he could have retrained. He did not make this offer at the time. There was no evidence of any job he could have retrained into within Lenco.

[28] There was an allegation Lenco acted with bad motive to dismiss him because it was dealing with proceedings filed in the Authority by Julie Edley. Ms Heaven was the decision maker. She denied knowing much about Julie Edley's employment relationship problems. She had been hired after Julie Edley had left and had little to do with her. She stated she did not take Julie Edley's matters into consideration when making Paul Edley redundant. I have no reason to reject that evidence.

[29] Ms Heaven appeared genuinely interested in preserving Mr Edley's job if possible. She gave examples of further restructuring where employees made reasonable offers to preserve their jobs which were accepted. I have no basis to believe Ms Heaven did not genuinely consider Mr Edley's responses.

[30] Taking into account the above evidence, Paul Edley was justifiably dismissed for redundancy by Lenco Sport NZ Limited.

Costs

[31] Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

T G Tetitaha
Member of the Employment Relations Authority