

Ms Diane Brough, Human Resources Advisor, Mr John Cameron, Director, Facilities Management, and Mr Trevor Harris, Buildings Maintenance Manager.

Background

[4] Mr Hobson was one of four carpenters employed by the University. He had been employed since March 1997.

[5] On 30th March 2009, in a memorandum to facilities management staff, Mr Cameron informed that due to the University experiencing a shortfall in revenue, among other measures, he was proposing to reduce the number of full-time carpenters from four to three. On 17th April, Mr Cameron confirmed that the consultation process had been completed and that it was intended to proceed with the disestablishment of one carpentry position. Mr Hobson was informed that the four incumbent carpenters would be interviewed on 20th April as part of the process of deciding which position would be made redundant.

[6] Mr Hobson was further informed that: *The criteria for the selection will be based on the contents of the Position Description, with particular emphasis on the experience, skills and attributes specified in the Person Specification.*

[7] Twenty minutes was allocated for each interview and the four employees were each asked eight identical questions and scored in relation to their response to the questions.

[8] Unfortunately, following the interview process, on 21st April, Mr Hobson was informed that his position was to be disestablished from 1 May 2009, being the last day of his employment with the University.

The selection criteria

[9] The attention of the Authority has been drawn to the eight essential training, skills and knowledge requirements set out in the person specification that were used as the substantial basis for selecting the candidates for the three available positions.

Mr Hobson's argument is that the University did not ensure that all four candidates held or met the essential requirements.

[10] In his evidence to the Authority, Mr Hobson says that he believes that the University did not fairly or accurately apply the Position Description and/or the Person Specification in regard to the selection of whom would lose or retain their position. Mr Hobson pointed to one of the essential criteria in the Person Specification: "*Expertise in the installation and repair of commercial hardware.*" Mr Hobson says that one of the successful candidates (Tom Reidy) does not have the ability to be able to repair a particular type of lock and is not on the on call roster because of this. Mr Hobson also says that Mr Reidy spent his time mainly in the workshop and didn't get sufficient exposure to commercial hardware. Finally, Mr Hobson alluded to a health and safety issue regarding the use of an air hose by Mr Reidy as it relates to the essential knowledge of health and safety requirements.

[11] The evidence of Mr Harris, as Mr Hobson's Line Manager, was that he knew all four carpenters equally well and that they were all qualified carpenters who had the necessary level of technical expertise to perform the roles and that: "... *there was no question that they all had the requisite skills and qualifications ...*" Upon being questioned by Mr Scott, the evidence of Mr Harris was that it was "*a given*" that the four candidates had the carpentry skills and knowledge.

[12] A submission for Mr Hobson is that the University: "...*relied on the assumption that all four candidates were deemed to hold the eight requirements. Had they made further enquiries, the candidates may have been on an uneven basis going into the interviews.*"

[13] The difficulty with this submission is that apart from the assertions of Mr Hobson in regard to Mr Reidy, there is no substantial evidence that any of the candidates did, or even *may have*, gone into the interview process without having an appropriate skill and/or knowledge base. Rather, it appears that it was the interview process and the compounded scores of the answers to the eight questions asked of each candidate, which led, by a narrow margin, to the selection of the position held by Mr Hobson to be made redundant.

[14] The evidence of Ms Brough is that: “*All employees scored very well.*” However, her further evidence, along with that of Mr Harris and Mr Cameron, is that Mr Hobson fell short in regard to the essential area of communication skills. Mr Harris also gave evidence that he had occasion to speak to Mr Hobson earlier this year about the need for Mr Hobson to improve his communication with his supervisor and to “*get on better*” with the other members of the carpentry team.

Determination

[15] As with any dismissal, the test the Authority must apply is whether the decision to dismiss Mr Hobson on the ground of redundancy was what a fair and reasonable employer would have done in the circumstances.¹

[16] Submissions for Mr Hobson refer to *McEnaney v Telecom New Zealand Ltd*² and the requirement of the employer to ensure that any comparison of the abilities of candidates is done in a fair and reasonable manner so that a complete and accurate assessment of their abilities can be made. It is submitted that the University did not have sufficient knowledge of the skills and abilities of each of the candidates to make a fair and reasonable decision that it should be the position held by Mr Hobson that was made redundant.

[17] Apart from the fact that the circumstances in *McEnaney* were different to those of Mr Hobson, given the overall evidence for the University, I conclude that it did have sufficient knowledge of the general skills and abilities of each candidate to fairly and reasonably arrive at what was no doubt, a difficult but essential decision. Furthermore, as was held by the Employment Court (Colgan CJ) in *Simpsons Farms Ltd v Aberhart* [2006] 825:

So long as an employer acts genuinely and not out of ulterior motives, a business decision to make positions or employees redundant is for the employer to make and not for the Authority or the Court, even under s103A.

[18] I find that the University applied a genuine and fair selection criteria in regard to its decision to make the position of Mr Hobson redundant and that its overall actions were those of a fair and reasonable employer in all the circumstances, hence

¹ Section 103A, Employment Relations Act 2000.

² (Unreported) CT 172/94, J M Goldstein, Member, 10 October 1994.

the dismissal of Mr Hobson was justified. I conclude that Mr Hobson does not have a personal grievance and the remedies he seeks cannot be granted.

Costs

[19] The parties are invited to resolve the matter of costs if they can. In the event they cannot, the Respondent has 28 days from the date of this determination to file and serve submissions with the Authority. The Applicant has a further 14 days to file and serve submissions.

K J Anderson
Member of the Employment Relations Authority