

closely comparable to his supposedly previous position. Either way it says there is no entitlement to redundancy compensation.

[4] Mr Le Comte is an experienced insurance manager with some 38 years service working for Vero and its predecessor companies. Vero says he is a valued, well regarded employee and it wishes to retain his services.

[5] His present role has the title Rural Market Manager. He is employed under the terms of an individual employment agreement signed on 15 October 2002. Detailed terms regarding redundancy and redeployment provide for the payment of redundancy compensation where redeployment is not possible. Redundancy is defined in the agreement as:

... a situation where the employee's employment is terminated by the employer, the termination being attributable, wholly or mainly, to the fact that the position fill by the employee is, or will become, surplus to the needs of the employer, because of the cessation of the whole or any part of the employer's operation or whether the employee's job function is no longer required.

[6] Where there is the prospect of redundancy of a position, the terms give priority to considering redeployment of the affected employee to a "comparable position" which is defined as:

... a position with the employer of any Company in any way associated with the employer which is or will be bought, or taken over by, or merged with the employer which has at least the same salary range, salary and benefits which may be contained in a personal Attachment, and is in the same location or at another location within reasonable commuting distance of the employee's place of residence, and involves duties which would not be considered a change from the employee's existing duties, significant enough as to be unreasonable in the circumstance of that employee's skills and abilities or employment history, or the specialist nature of work for which the employee was employed.

Issues

[7] The issues for resolution following investigation are:

- (i) was Mr Le Comte properly consulted about the restructuring proposal; and
- (ii) was a newly created senior position of New Zealand Manager – Rural Insurance really the same role as already performed by Mr Le Comte such

- that he should have been offered that role; and
- (iii) if not, does his present role remain comparable to his role prior to the creation of the new senior position; and
 - (iv) if not, is he therefore entitled to be made redundant and receive redundancy compensation?

Investigation

[8] Written witness statements were lodged by Mr Le Comte, Vero's Executive General Manager Andrew Aitken and Retail Markets Manager Mike Dunning. At the investigation meeting each witness, under oath or affirmation, confirmed their written evidence and answered questions from the Authority and counsel. Counsel provided closing submissions.

Consultation

[9] Mr Le Comte makes a number of allegations about Vero's conduct and intentions in decisions made in April 2008 about its management structure.

[10] He says he was subject to a concerted strategy to make him resign and leave, was regarded as not "*on the bus*", and was targeted through comments made about the results in his area of work at a company conference.

[11] Vero's chief executive Roger Bell did make comments during a speech to a company conference along the lines of needing the right people in the right seats on the bus. However I do not accept that Mr Le Comte can fairly infer that this analogy was targeted specifically at him – particularly as in the subsequent restructuring his present position was identified as not needing to be changed. Neither do I accept any necessary negative inference may be drawn from discussion at that conference about business results in his area of work. The results belong to Vero and its senior managers were free to use whatever examples they wished.

[12] Based on the evidence from Mr Aitken and Mr Dunning I find that Vero followed a clear, open process of consultation when it developed a restructuring proposal in early 2008. From Mr Le Comte's own evidence it is clear that he chose

not to participate in the opportunities for feedback and comment provided in that process because he had already formed views about its likely outcome.

[13] Immediately prior to the April 2008 restructuring decisions Mr Le Comte was one of three managers reporting to Mr Dunning. Mr Dunning's role was to "*lead, direct and manage*" the Retail Markets team and he, in turn, reported to the Executive General Manager, Mr Aitken.

[14] The restructuring proposal developed in early 2008 included disestablishing the position held by Mr Dunning and an underwriting manager's position at the same level of the hierarchy as Mr Dunning's position. Some new roles were proposed, including three new "NZ Manager" positions for particular segments of the retail market, including one titled "NZ Manager – Vero Rural Insurance". Those new management roles would report directly to Mr Aitken. Mr Le Comte's existing role was to remain and report to the NZ Manager – Rural Insurance.

[15] Mr Dunning met with each of his direct reports to explain the proposal and provided a copy of a paper setting out the proposed changes. Mr Dunning explained that his own position would be disestablished, that Mr Le Comte's role was secure and that Mr Le Comte could also apply for the new role of NZ Manager Rural.

[16] Mr Le Comte provided no feedback on the proposal in the period of more than two weeks provided for by Vero and otherwise gave no real indication of any discontent with its contents.

[17] It was not until around 10 days after the restructuring proposal was confirmed that Mr Le Comte told Mr Dunning he was not happy with the outcome of the restructure and had consulted a lawyer who had written to the company.

[18] At that point Vero reiterated the opportunity for Mr Le Comte to apply for an NZ Manager role if he wished to do so. He did not apply.

[19] I find that Mr Le Comte was fairly consulted about the changes and has not provided sufficient evidence, direct or by inference, to substantiate any allegation of a concerted campaign against him.

The New Zealand Manager – Rural Insurance role

[20] Mr Le Comte argues that a new role of NZ Manager – Rural Insurance in the Vero management hierarchy is “*almost identical to my role, elevated one level up*”.

[21] He describes any differences as being such “*minor added accountabilities*” and “*cosmetic enhancements*” that he should have been offered and promoted to the new role. Where there were formal differences of accountability and responsibility, his evidence was that he, in practice, already carried out those higher level responsibilities.

[22] Close analysis of the job descriptions does not support Mr Le Comte’s contention. While there are areas of overlap between the two roles, the NZ Manager role has a higher level of ultimate accountability. For example the NZ Manager role is specifically required to “*lead*” or “*manage*” various key accountabilities while Mr Le Comte’s job descriptions required him to “*support*” or “*contribute*” to those areas. The NZ Manager also has some additional responsibilities for relationships with brokerage companies and for risk underwriting in his market segment. This additional “*end accountability*” for some risk underwriting previously rested with the underwriting management position that was also disestablished in the April 2008 restructuring.

[23] Neither does the evidence support Mr Le Comte’s contention that the NZ Manager position, to which a Christchurch colleague had since been promoted, “*completely undermined*” and “*supplanted*” his role to the extent that it “*effectively no longer exists*”.

[24] The evidence of Mr Aitken and Mr Dunning – which I accept – was that if Mr Le Comte resigned, the position he left would have to be filled. They also anticipate additional work for the role arising from a business opportunity being pursued by Vero which is expected to provide considerable growth in the particular market segment.

[25] I find that Mr Le Comte has not established that the NZ Manager position was

so similar to his present position or takes over so much of his existing role that he should have been promoted to the new position.

Comparability of present role

[26] Mr Le Comte says he has not been offered any other alternative comparable role to the one he currently holds. He says he has been left in the “*invidious position where I do not have a role*”.

[27] His argument depends largely on what Mr Le Comte calls “*the fact that the new role completely undermines my role*”. It is a proposition which has already been rejected in this determination for reasons given above. There are additional reasons.

[28] Objectively considered, the position Mr Le Comte continues to occupy remains comparable with what he regards as the previous and now undermined role. His job title, level of seniority, remuneration, place of work and job description all remain the same. All those factors fall within the scope of comparability defined in his employment agreement and set out earlier in this determination.

[29] However that definition also raises this question on comparability: would the duties required in what Vero says is a comparable role be considered a significant and unreasonable change from Mr Le Comte’s existing duties, based on his skills, abilities, employment history and the specialist nature of his work?

[30] On the available evidence the answer is no, or at least, not yet.

[31] It is possible that as the role of NZ Manager above him develops, some of Mr Le Comte’s existing duties might change. During questioning on his written evidence Mr Aitken accepted that, while Mr Le Comte’s present position remains unchanged “*at this stage*” in Vero’s new structure, he “*cannot say it would stay unchanged forever*”. With a new manager to report to, objectives and requirements set would not necessarily be identical.

[32] However I accept Vero’s submission that Mr Le Comte’s claim of a lack of a comparable position was, at the very least, prematurely advanced. It is just too early

to say if changes Mr Le Comte suspects, but cannot be sure, will occur would be so significant and unreasonable as to make his continued position no longer comparable with his previous one.

Determination

[33] For the reasons given above I find that:

- (i) Mr Le Comte's position at the time of the investigation meeting was not surplus to Vero's requirements and,
- (ii) even if the nature of the position had changed, the position he continues to hold remains within the scope of the comparability provision in his employment agreement.

[34] While Mr Le Comte may be upset by changes around his work, there has been no discernible fault in Vero deciding to create a new senior management position but not offering it to him.

[35] Mr Le Comte does not have a personal grievance and the remedies sought cannot be awarded.

Costs

[36] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are unable to do so, Vero may lodge a memorandum on costs by no later than 28 days after the date of this determination. Mr Le Comte will then have 14 days to lodge a reply memorandum before the Authority determines costs. No application will be considered outside this timetable without leave.

Robin Arthur
Member of the Employment Relations Authority