

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 151

File Number: 5318308

BETWEEN TOM POHIO & 12 OTHERS
Applicants

AND PROGRESSIVE MEATS
LIMITED
Respondent

Member of Authority: Denis Asher

Representatives: Simon Mitchell for the Applicants
Tim Cleary for the Company

Investigation Meeting Napier, 4 August 2011

Submissions Received 11 August 2011

Determination: 30 September 2011

DETERMINATION OF THE AUTHORITY

The Problem

[1] Were the applicants (whose names are set out in a schedule attached) laid off August 2010 in a manner that breached clause 22.1.1. of their collective employment agreement? If they were, what if any remedies are appropriate, including compensation for lost wages and humiliation?

[2] Or, as the Company claims, were the applicants laid off in accordance with their collective agreement?

[3] Mediation did not resolve the parties' employment relationship problem.

The Investigation

[4] During a telephone conference on 8 April 2011 the parties agreed to a one-day investigation of their problem in Napier on 4 August 2011 and to a timeline for the provision of witness statements.

[5] The parties agreed to a closing submissions timetable during the investigation.

Background

[6] The Company operates an ovine and venison meat export plant in Hastings. The plant has two departments: slaughter and boning. All applicants are employed in the boning department and all but one in the boning room.

[7] Their terms and conditions of employment were set out in the Progressive Meats Limited Collective Employment Agreement (the Agreement) the term of which was December 2008 until December 2010.

[8] Clause 22.1.1. of the Agreement provides as follows:

In a lay off situation, a system of ranking employees (within the department remaining operating) according to skill levels will be operated to ensure that sufficient people are retained to operate each department at its most efficient level of productivity. When skills are equal then length of service will determine ranking. Temporary employees shall be laid off before permanent employees.

[9] The applicants says their lay off in August 2010 did not take place on the basis of skill and other, less skilled staff were retained (pars 2. d. & g. of the Statement of Problem); the Company disagrees.

[10] The applicants say "skill levels" (above) should be interpreted as referring to the holding of modules obtained through the Company's skill based training system

(per the provisions of clause 10 of the Agreement and detailed in respect of each of the applicants in a spread sheet attached by the Company to its Statement in Reply).

[11] Rather than selecting employees it assesses as quickest and providing the highest yield, the applicants say the Company should be held to using instead an objective assessment based on employees having achieved or passed training system modules.

[12] The Company rejects that approach and says instead that – in respect of boners, and as was done in 2009 – it laid them off on the basis of its computerised system, the “*Marel System*”. An individual’s results are tabulated based on an equal weighting of speed (how many carcasses are processed) and yield (the quantity of product from each carcass) (refer to the productivity spreadsheet, document 1, attachment to the Statement in Reply).

[13] It says that system properly and objectively assessed each individual’s productivity.

[14] Because the Marel System is not used in respect of packers, they were selected on recorded results from their training (pars 3.2.1 & 3.2.2 of the statement in reply).

[15] The Company says its approach meets the requirements of clause 22.1.1. as staff were laid off according to skill levels so that each department operated at its “*most efficient level of productivity*” (above). Any other approach, including the applicants’, would result in less efficient levels of productivity.

Discussion and Findings

[16] The issue between the parties is the interpretation of Clause 22.1.1. of the Agreement. The parties have differing views as to the meaning of the word “*skill*”.

[17] “*Skill*” is defined as “*Expertness, practised ability, facility in an action or in doing or to do something*” (Oxford Concise Dictionary 6th Edition).

[18] In this instance, the skill required is that of ensuring there are sufficient people to operate a department at “... *its most efficient level of productivity*” (above).

[19] The applicants say the Company should use an objective assessment based on employees having achieved or past Company training system modules. The Company says instead that it is appropriate to lay off staff on the basis of its computerised system, which measures the number and quantity of product generated from each carcass.

[20] I am satisfied, in this instance, that both parties are equally mistaken in adopting a too restrictive approach to the meaning of the disputed words. Instead, a reasonable person would conclude that the objective meaning of the words agreed by the parties, set against the relevant background, requires the respondent – on a case by case basis – to assess modules held by each individual, where relevant, as much as any other objective measure – including its computerised system – and thereby determine the difficult business of who should stay and who has to go.

[21] A case by case approach is reinforced by the fact that the performance of one of the applicant’s, Ms Sonya Wallace, is not measured by its computerised system as she is a packer and not a boner.

[22] An objective observer reasonably informed about all relevant information would conclude that the Company would have regard to all matters relevant to determining skill in the context of ensuring sufficient people are retained to operate each department at its most efficient level of productivity.

Recommendation

[23] In light of this finding, and the absence of evidence sufficient to determine whether the applicants were or were not unjustifiably disadvantaged by their lay offs in August 2010, a case-by-case assessment is required. In the first instance the Company should undertake this exercise.

Determination

[24] Neither party succeeds with its competing position. A case-by-case evaluation must follow in light of my finding that the disputed clause 22.1.1. requires the respondent to take account of all matters relevant to determining skill in the context of ensuring sufficient people are retained to operate each department at its most efficient level of productivity.

[25] Costs are reserved.

Denis Asher

Member of the Employment Relations Authority

Schedule of Applicants' Names

Tom Pohio

Eru Te Rito

Carl Berg

Kevin Blane

Wayne Gerbes

Paul Cooke

Hamish Waldon

James Campbell

Robert Aird

David Blue Brown

Shane Stephens

Sonya Wallace

Riki Hilton