

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 382
5330744

BETWEEN	WILLIAM RAGG Applicant
AND	HOWARD TRADING AUCKLAND LIMITED First Respondent
AND	HOWARD TMG LIMITED Second Respondent

Member of Authority: Alastair Dumbleton

Representatives: Jim Ragg, advocate for Applicant
Jenine Canterbury, advocate for Respondents

Investigation Meeting: 22 August 2011

Determination: 5 September 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The matter investigated and to be determined by the Authority is the justification at law for the dismissal, on the grounds of redundancy, of the applicant Mr William Ragg by one or other of the respondents Howard Trading Auckland Ltd and Howard TMG Ltd.

[2] The employment agreement produced to the Authority gives the name of the first respondent as the employer party but Ms Canterbury, the respondents' advocate, advised the employment had been transferred at some stage before Mr Ragg's dismissal to the second respondent.

[3] Mr Ragg and Howard Trading Auckland Ltd signed an employment agreement on 8 June 2010 under which Mr Ragg worked as a motorcycle Technician until November 2010 when he was dismissed.

[4] There is no dispute that on 11 November he was called to a meeting with Ms Canterbury and Mr Howard, a director of both respondents, and was told by them he was being made redundant. Mr Ragg was offered four weeks' pay in lieu of the contractual period of notice expressed to apply in a redundancy situation, a reference and assistance from an outplacement consultant.

[5] There is no issue in this case between the parties that prior to his dismissal Mr Ragg was not consulted according to the meaning of that term in employment law, or according to the requirements of consultation as have been long and well established from many cases heard and decided under the Employment Relations Act 2000.

[6] In its statement in reply the employer presented its view that the grounds of redundancy were justifiable and substantial and that the process used to achieve the outcome had been "reasonable given the circumstances."

[7] In her statement of evidence Ms Canterbury said that the procedure followed was due to the urgency of the situation, the alternative being to close the employer's business down. She acknowledged that the procedure "was not ideal under normal circumstances."

[8] Mr Ragg sought to resolve his problem by having the Authority determine that his employment had been terminated without any fair process, leaving him as a result with financial insecurity prior to the holiday period. His claim is that if the employer had followed a fair and open consultative process he would have remained in employment until February 2011 at least. For his loss he seeks remuneration, from the date of termination through to February 2011, of eight weeks' pay or approximately \$8,000.

[9] Justification for any dismissal is to be determined by the Authority under the test provided at s 103A of the Employment Relations Act (as it was in 2010). The law as it related to justification for redundancy dismissals was comprehensively examined by the Employment Court in its decision in the case of *Simpsons Farms Ltd v. Aberhart* [2006] ERNZ 825. In relation to consultation the Court held that s 4 of the

Act made the obligations of good faith dealing, including consultation, mandatory in all cases.

[10] Unfortunately, because Mr Ragg was not consulted before he was notified of his dismissal, the possibility of his hours being reduced for a period was not able to be properly considered with him by the employer before it decided on dismissal. What might have come out of consultation cannot now be known with any certainty, but even if there had not been an extension of the employment on reduced hours or redeployment, Mr Ragg at least would have felt that he had been part of the decision making and might have had a better understanding of the need for the redundancy as a necessary measure to be taken by the employer to meet the downturn in work.

Determination

[11] I must find in accordance with the Court's *Aberhart* decision that the dismissal of Mr Ragg was unjustified in circumstances where there was no consultation with him. A fair and reasonable employer would have consulted him to meet its good faith obligations. By any conduct of his Mr Ragg did not contribute in any way towards his personal grievance and he is to be awarded remedies without deduction for fault.

[12] This was a genuine redundancy situation. If Mr Ragg had been consulted the employer could still have lawfully dismissed him when it did with only payment to be made in lieu of notice. There is therefore no entitlement to lost wages, as any loss was not a result of Mr Ragg's grievance which was the employer's failure to consult him.

[13] During the investigation meeting the parties were apparently close to resolving this matter themselves. They accepted that the appropriate remedy was compensation for hurt feelings, distress and humiliation suffered by Mr Ragg from the lack of consultation and as established by his evidence, although they could not finally agree on the amount.

[14] I fix compensation at \$3,750.

Determination

[15] Howard Trading Auckland Limited and Howard TMG Limited are ordered to pay Mr Ragg compensation of \$3,750, pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

A Dumbleton
Member of the Employment Relations Authority