Determination Number: WA 13/07
File Number: 5046200

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE

BETWEEN	Vaasa Seaso (Applicant)
AND	New Zealand Post Limited (Respondent)
REPRESENTATIVES	Peter Cranney and Anthea Hughes for Applicant Derek Broadmore and Melanie Brewer for Respondent
MEMBER OF AUTHORITY	P R Stapp
INVESTIGATION MEETING	Monday, 30 October 2006
SUBMISSIONS	14, 20 and 24 November 2006
DATE OF DETERMINATION	30 January 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. This is an employment relationship problem that involves Mrs Vaasa Seaso and New Zealand Post Limited ("the company" or "New Zealand Post") over changes to Mrs Seaso's start and finish times and entitlements under her employment agreement. The parties have an ongoing employment relationship. New Zealand Post Limited says that Mrs Seaso is refusing to work at the times she has been directed to work since 7 May 2006. New Zealand Post Limited says she is not entitled to redundancy compensation.

2. Mrs Seaso has sought declarations in regard to what she considers are her rights to be made voluntarily redundant or in the alternative to be made redundant.

3. The essence of the employment relationship problem relates to whether or not New Zealand Post had a requirement to consult Mrs Seaso over her start and finish times upon her providing a completed preference form with regard to arrangements arising out of a restructure at New Zealand Post.

4. Mrs Seaso says that she is being required to work new start and finish times on work rosters that she has not agreed to as a result of a restructure brought about by an upgrade of the business's sorting technology. New Zealand Post says it consulted the applicant when it tried to reach agreement with her when it required that she complete the Preference Form and indicate what shifts she could and could not work. This

represented a paper based consultation that New Zealand Post says it consulted the EPMU on.

5. The issue can be encapsulated in the following question. Has there been consultation to impose new start and finish times on Mrs Seaso, and is the company's process affected by any provisions in the collective employment agreement when it consulted the EPMU on the restructuring.

The facts

6. Vaasa Seaso is employed as a postal worker at New Zealand Post Limited's Te Puni Mail Centre in Petone. She has been employed at the Te Puni Mail Centre since 2 November 1988. She was a member of the Engineering, Printing and Manufacturing Union (EPMU), which was a party to a collective employment agreement. Mrs Seaso was, and continues, working rostered hours 5pm to 10pm Monday to Friday.

7. The terms of the CEA for "*Roster Changes – operations/delivery"*-read as follows:

> *"7. Where the company wishes to change the rosters for employees in the Operations and Delivery Occupational Groupings, the company must consult to:*
>
> - *Ensure that any proposed change to the roster falls within the specific conditions for each Occupational Group.*
> - *Give the appropriate employee representatives (e.g. the Union Work Site Committee) and employee(s) adequate time to consider the proposed roster.*
> - *Give due regard to the employee's personal circumstances.*
> - *Give careful consideration to their views.*
> - *Try to reach agreement with the employee(s) on the proposed roster.*
>
> *8. If agreement cannot be reached, the company will decide whether to proceed with the proposed changes to the roster.*
>
> *9. The company will not change the days to be worked under the roster unless such changes are necessary to meet business or delivery requirements."*

8. In early 2006, a major restructuring of the Te Puni Mail Centre occurred. The consultation in regard to this restructuring commenced on 25 January 2006 and included the EPMU. The consultation was completed by 22 February 2006.

9. Employees were provided with an information pack. This contained a variety of information including key dates for the employee transition process, proposed shift structures and preference forms for employees to complete so that the company could

match them to the proposed new shifts and terms. Meetings were held where employees were informed that the information pack would require completion of a preference form. The company says that even if there was a preference for voluntary redundancy, employees were also required to advise the company of the shifts they were prepared to work in the event that their application for voluntary redundancy was unsuccessful. Individual meetings involved Dave Pedersen, the human resources consultant, who gave the information out. New Zealand Post says that the meetings attended by Mr Pedersen were not to record employees' preferences but to assist or facilitate the process of completing the preference forms. The meeting with Mrs Seaso occurred on 13 February 2006. Her meeting lasted approximately 30 minutes where Mr Pedersen went through the information pack with her.

10. Mrs Seaso completed her preference form on 20 February 2006 with assistance from her daughter. She only indicated one preference, for voluntary redundancy. She also completed a separate application for voluntary redundancy on the same day. The documentation shows that Mrs Seaso informed New Zealand Post Limited that she was not able to work the new roster times due to childcare commitments. The company says that since the forms were completed Mrs Seaso has raised another reason that she cannot work the new shift. This is she moved from Porirua to Lower Hutt to live.

11. In assessing the preference forms, the company undertook a project of matching employees to particular shifts. During the process, it met with the EPMU. The EPMU and the company agreed on a case-by-case basis on who should get voluntary redundancy. The company says that the applicant's application for voluntary redundancy was considered but declined on the basis of the information that she had provided.

12. On 14 March 2006, New Zealand Post Limited declined Mrs Seaso's request for voluntary redundancy. The company wrote to her informing her she had been placed as a mail officer in team 7E and that her hours of work would change. The purported change to her rostered hours was to start at 4.25pm and end at 9.25pm Monday to Friday.

13. Mrs Seaso says she then told the company that she was not able to start work at the new rostered time of 4.25pm due to the need to care for her children and ill mother. Her position has caused the company concern because of the impact of her action on the changes it says it made to the rosters, following consultation.

14. Mrs Seaso subsequently became a member of the Postal Workers' Union ("the union"). That union has taken the matter up on her behalf.

15. On 22 May 2006, the company, in a letter, stated that Mrs Seaso's arrival at work at 5pm instead of the rostered start time of 4.25pm meant that she was failing to comply with the direction of the company. The company told her that this could constitute minor misconduct which could lead to her being dismissed. Again she informed the company that she was not able to start work at the new time due to childcare and family commitments. She was issued with a written warning dated 21 July 2006 for failure to comply with the direction from the company. Mrs Seaso has also been threatened with further disciplinary action and informed that her employment could be in jeopardy. On 24 July 2006, Mrs Seaso was issued with a final written warning for failing to comply with the direction.

16. The parties attended mediation (on 27 June 2006) but the employment relationship problem was not resolved. It now falls on the Authority to make a determination of the matter.

Discussion

17. Under the terms of the Collective Employment Agreement, the company *"must"* consult to:

- Give due regard to an employee's personal circumstances;
- Give careful consideration of the employee's views;
- Attempt to reach agreement with an employee on a proposed roster;

(Clause 7 of the CEA).

18. The company is obliged to consult *"as much as possible"* with the people *"directly affected by the proposed changes"*. I was not provided with any evidence of any agreement to formally vary the CEA at all for any decisions made as a result of consultation directly with the EPMU on individual terms. What is clear is that there was an arrangement put in place for consultation in the process to involve the EPMU, and quite correctly so given the EPMU and the company are parties to the CEA. Consultation occurred on the restructure between New Zealand Post and the EPMU. There is no issue on that. However, the CEA contains nothing which would permit the company to avoid a contractual consultation obligation in respect of an employee, in this case Mrs Seaso. In other words, it requires consultation with *"the people likely to be affected by any change"*. The likely change related to Mrs Seaso's start and finish times. The applicant's length of service and because she did not elect any other options would also require such consultation. There was no evidence that the EPMU was assuming a role on Mrs Seasos' behalf in regard to her individual terms.

19. The evidence given during the Authority's investigation meeting by the company's representatives was that it did not consult prior to making a final decision with the EPMU on Mrs Seaso's circumstances relating to her start and finish times and roster.

20. It is common ground that Mrs Seaso's preference form and voluntary redundancy application were considered together (Mr Pedersen's evidence at para.26). Mrs Seaso's reasons why she was unable to work a new shift, or any shifts, were set out in the voluntary redundancy application and she says were stated at the one-on-one meeting although Mr Pedersen says he was not at that stage focused on any reasoning.

21. The company's witnesses accepted that no attempt was made to reach an agreement with Mrs Seaso. Furthermore, Mr Pedersen cannot recall what he said to Mrs Seaso at the one-on-one meeting.

22. The company's relevant statutory and contractual obligations are summarised as follows:

- It has a general obligation to deal with the applicant in good faith – s.4(1)(a) of the Act.
- It has an obligation to be active and constructive in establishing and maintaining a productive employment relationship – s.4 (1A) of the Act.
- It has an obligation to be communicative and responsive – s.4 (1A) (b) of the Act.
- It has an obligation to provide access to information relevant to the continuation of an employment relationship about any decision and an opportunity to comment on the information to an employer before a decision is made – s.4 (1A) (c) (ii) of the Act.

23. There are a number of general obligations imposed by section A of the CEA. They include (amongst a number of others):

- To meet social obligations;
- To be a great place to work;
- To harness a broad range of capabilities;
- To provide employees with a framework to focus their effort to make decisions so that the company remains successful;

- To improve the workplace through consultation, good management and leadership practices;

- To be honest and show mutual respect and trust;

- To strive for common goals;

- To give honest feedback;

- To build on its relationship with its employees and to have a commitment to people in expectations of support in return;

- To be a good employer;

- To have open communication with employees and to actively support employees – clause 11;

- To treat people fairly and with respect to consult about important issues and to keep people informed – clause 12, clause 15 first bullet point;

- To be fair and non-discriminatory;

- To act in a procedurally fair manner when taking any action that affects a person's employment or role at New Zealand Post (including, inter alia, *"assessing …, structural or role process changes, and redeploying"*) and to have *"A range of policies and procedures … to ensure employees' rights and views are given proper consideration"*;

- To keep people informed;

- To listen to people and to give them feedback;

- To consult "***as much as possible***", management will consult with people "***directly affected by proposed changes***" – clause 24 (emphasis added);

- To make sure that any proposed change *"recognises everyone's rights under the agreement"* – clause 25;

- To give careful thought to comment and suggestions about proposed changes – clause 25; and

- To *"try to reach an agreement"* about a proposed change and *"how it will be put in place"* and *"do this in a way that meets* [the] *commitment to treat people fairly and with respect"* – clause 26.

24. The CEA also deals with changes to the roster. *"Rostered duty"* or *"roster"* is defined in the CEA as being the actual start and finish times, the break times, the days of the week on which the employee is scheduled to work and the number of days per week over which an employee's standard hours are scheduled to be worked. There are a mandatory number of requirements the company must meet before any changes to the roster are made. I have referred to these earlier.

25. If agreement cannot be reached, the company may then decide whether to proceed with the proposed changes to the roster, notwithstanding that there is no agreement. Clearly there is some discretion.

26. Once the company had consulted the EPMU over the restructure and its process and decided to decline Mrs Seaso for voluntary redundancy it had an obligation to consult her over its plans for her to work new start and finish times because of her length of service and the lack of any other clear options in regard to Mrs Seaso's terms. This step was missed and the evidence was quite unsatisfactory that the EPMU had adequate input on her behalf.

27. It is my conclusion that the company cannot arrive at the point of sorting out Mrs Seaso's circumstances on the options available to her without properly consulting with her on new start and finish times that have an affect on her role.

28. It may be that no issue arises where there is no disagreement arising out of the changes involving other employees who have made an election to work the changed rosters, including start and finish times, but in Mrs Seaso's case, she only asked to be made voluntarily redundant. This was declined under the process for matching and selecting. But in declining Mrs Seaso for voluntary redundancy, the company then had an obligation under the terms of its employment agreement, to consult her directly at least as a good employer.

29. The evidence is that there was no consultation involving the applicant directly in regard to any changes impacting on her once voluntarily redundancy had been declined. Mrs Seaso says she took the opportunity on 13 February 2006 to raise with the company her concerns she had about the new shift. It would appear the company did not listen or carefully consider her concerns because it could not change its decision (Dave Pederson and Allen Lang). There were no notes or minutes taken of the discussion. There were no other meetings with Mrs Seaso.

30. The provisions of the employment agreement place the duty on the company to consult and not, as suggested, to rely on the EPMU to have raised Mrs Seaso's matters. Without any evidence that the EPMU was actually acting for Mrs Seaso on her concerns a process needed to be arranged. There was no step in place. There is no evidence of the company trying *"to reach an agreement"* with Mrs Seaso about the proposed change and *"how it will be put in place"* and to *"do this in a way that meets* [the] *commitment to treat people fairly and with respect"* – (clause A26 of the CEA) - when she stated that she could not work any shifts and gave no accepotable reasons why.

31. There is in fact no evidence of any attempt by the company to reach agreement with her before it assigned her to the new shift. It made its decision unilaterally.

32. Having not taken the matter up directly with Mrs Seaso once the decision had been made not to make her voluntarily redundant and where she had not included any other preferences and stated the shift was not suitable because of childcare arrangements, the company had an obligation to meet with her directly or engage the union representing her in the process on her individual circumstances. There is no evidence of either occurring at the time. By the time Mrs Seaso had engaged the Postal Workers Union the company had decided it could not change its decision and the issue moved to a disciplinary process.

33. The company has some concerns about how genuine Mrs Seaso's reasons were for not being available to work the new times. For this reason it should have dealt with her directly or alternatively have raised any concerns it had with her or about her with the EPMU. If the company had any concerns about Mrs Seaso's reasons for not putting forward a preference the time to deal with that was during a consultation. Mrs Seaso should note that she reasonably might have to address any concerns about her reasons and satisfy the company that they are genuine if there was any likelihood of her being made redundant.

34. It follows that there are outstanding matters that the parties will need to focus on as the next steps in this matter.

35. I note that the applicant's statement of problem sought declarations in regard to her employment circumstances. Indeed there are underlying issues about New Zealand Post's decision to decline voluntary redundancy to Mrs Seaso and not to exercise the option for redundancy. However, it seems to me that in resolving this employment relationship problem a decision needed first to be made as to whether or not there was a requirement to consult the applicant in a better way than the way in which it was done.

36. In having found that such a direct consultation with her was necessary, it now seems more than appropriate for the parties to resume mediation or direct discussions to try to resolve the problem and endeavour to reach agreement with the applicant on the change to her start and finish times or to consider the options that may be available under the terms of the Collective Employment Agreement.

37. I can and do determine that New Zealand Post Limited is not entitled to change the applicant's start and finish times without consultating her given the circumstances. In other words it should not have acted unilaterally until it had attempted to get agreement with Mrs Seaso by directly consulting her given her circumstances.

38. Leave is reserved for the parties to return to the Authority if this matter cannot now be resolved.

Costs

39. Costs are reserved.

P R Stapp
Member of the Employment Relations Authority