

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2016] NZERA Christchurch 173  
5607673

BETWEEN                      ROBERT SLOTEMAKER  
                                         Applicant

A N D                              THE NEW ZEALAND KING  
                                         SALMON CO. LIMITED  
                                         Respondent

Member of Authority:      Peter van Keulen

Representatives:              Luke Acland, Counsel for Applicant  
                                         Karen Radich, Counsel for Respondent

Investigation Meeting:      16 June 2016 at Nelson

Submissions Received:      Orally and in writing from both parties at the  
                                         investigation meeting  
                                         24 June 2016 in writing from the Applicant and the  
                                         Respondent

Date of Determination:      26 September 2016

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**DETERMINATION OF THE AUTHORITY**

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**A.      The applicant is entitled to a redundancy payment under the terms of his employment agreement with the respondent. The respondent must calculate and pay to the applicant redundancy compensation pursuant to clause 19.2 of the applicant's employment agreement, within 14 days of this determination.**

**B.      Costs are reserved.**

**Employment relationship problem**

[1]      The applicant, Mr Robert Slotemaker, says he is entitled to a redundancy compensation payment pursuant to the terms of his employment agreement with the respondent, The New Zealand King Salmon Co. Limited (NZKS). Mr Slotemaker's

role with NZKS was disestablished and he accepted and commenced work in a new role with NZKS. Mr Slotemaker says the disestablishment of his role is a redundancy situation and he is entitled to the contractual redundancy compensation.

[2] NZKS says there can be no redundancy situation for the purposes of the employment agreement and redundancy compensation. Put simply, there has been no termination of employment where NZKS continues to employ Mr Slotemaker, albeit in a new role.

[3] This determination, reserved at the conclusion of a one day Investigation Meeting, has been issued two days outside the statutory period of three months after receiving the last submissions from one of the parties. I record that when I advised the Chief of the Authority that this would likely occur he decided, as he was permitted by s174C(4) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s174C(3)(b) of the Act.

### **Relevant facts**

[4] NZKS employed Mr Slotemaker on 23 September 1996.

[5] In August 2008, Mr Slotemaker took on a new role within NZKS as Distribution Manager. Mr Slotemaker and NZKS negotiated the terms of a new employment agreement at this time. Mr Slotemaker was careful to ensure that an entitlement to redundancy compensation that was a term of his previous position was confirmed in the new employment agreement.

[6] The new employment agreement between NZKS and Mr Slotemaker was dated 29 August 2008 (the Employment Agreement). The Employment Agreement included the following:

19. **Redundancy**

- 19.1 Where any redundancy situation arises, the employee will be given not less than one (1) month notice period.
- 19.2 Payment will be made on the basis of six (6) weeks for the first full year of service and two (2) weeks for each complete year thereafter. No pro rata payment will be made for part of a year and no payment will be made in respect of less than twelve (12) months' service.
- 19.3 No redundancy situation will arise where the employee's division, unit or company is sold to another party and the

employee is offered employment with that party on the same or similar terms and conditions of employment.

[7] In October 2015, NZKS began a restructuring process with Mr Slotemaker and other employees.

[8] On 13 November 2015, NZKS gave Mr Slotemaker notice that his management position as Distribution Manager was superfluous to the company's requirements and was to be disestablished.

[9] In the course of consultation over the potential restructure, Mr Slotemaker applied for different roles within NZKS. The first role was a new position of Service Delivery Manager that NZKS created as part of the restructure.

[10] Another role Mr Slotemaker applied for arose out of his own volition. He became aware in November that there was an Aquaculture Technician role available. On 18 November 2015, he advised Mr Charles Park, the NZKS employee responsible for filling the role, that he might be interested in applying for that role depending upon the outcome of the restructure process.

[11] On 25 November 2015 Mr Slotemaker met with Mr Shaun Young, General Manager Supply Chain at NZKS and Ms Fiona Thomas, HR at NZKS. In that meeting Mr Slotemaker was told he had not been successful in his application for the Service Delivery Manager role. This was confirmed in a letter of 25 November 2015 that included:

Following discussions between yourself and the company in relation to the restructure of the supply chain leadership, and having considered all feedback given during the consultation regarding the proposed reorganisation, I am writing to confirm my decision delivered to you at the meeting on 13 November 2015, that your current role of Distribution Manager is to be disestablished.

Your subsequent application for the position of Service Delivery Manager has been unsuccessful, however as you are aware the company will now be recruiting roles in the despatch, orders and customer services areas and the company would like to see whether you may be interested in one of those positions. If so please advise me by 27 November 2015.

If you do not advise by Friday 27 November 2015 that you are interested in one of those roles, then the company will provide you with notice of termination for redundancy in accordance with your employment agreement.

[12] Mr Slotemaker then asked about the payment of redundancy compensation as NZKS had disestablished his current role. Mr Slotemaker was told that redundancy compensation would only be paid if he did not take another role with NZKS. NZKS confirmed this in a letter dated 25 November 2015:

I refer to our earlier conversation in relation to the disestablishment of your position of Distribution Manager.

Clause 19 of your employment agreement states that in a redundancy situation compensation will be payable, however as the company has not given notice of termination due to redundancy your employment presently continues and therefore there is currently no entitlement to compensation. Likewise, should you choose to accept another role within the company your employment with the company will continue and there will be no entitlement to compensation.

[13] Subsequently, on 26 November 2015, NZKS advised Mr Slotemaker that he could have one of the proposed team leader roles as of right or he could apply for an alternative role such as the Aquaculture Technician role if he desired.

[14] On 2 December 2015, NZKS sent Mr Slotemaker three individual employment agreements for him to consider. The positions were Orders Fulfilment Team Leader, Despatch Team Leader and Aquaculture Technician. NZKS then subsequently confirmed that the Aquaculture Technician role would be offered on the same total remuneration package as the Team Leader roles. All three roles, however, represented a significant reduction in the total remuneration package from Mr Slotemaker's disestablished role.

[15] Mr Slotemaker accepted the Aquaculture Technician role on 10 December 2015. Mr Slotemaker ceased working in his role as Distribution Manager on 24 December 2015. Mr Slotemaker was then paid holiday pay until Friday, 15 January 2016 including four days statutory holidays.

[16] NZKS implemented the restructure on 18 January 2016 and Mr Slotemaker was to commence his new role on 20 January 2016. NZKS says Mr Slotemaker took the break between 18 January and 20 January 2016 as unpaid leave.

[17] NZKS says it has preserved Mr Slotemaker's continuity of employment so that it will recognise his length of service for purposes such as leave, in particular long service leave.

[18] Although Mr Slotemaker's role as Aquaculture Technician was to commence on 20 January 2016 he did not start until 27 January 2016 because of the roster.

[19] The Aquaculture Technician role is a role away from Nelson based on a fish farm in the Marlborough Sounds. Work is done on a seven days on/seven days off roster and the total remuneration package is \$51,500.00 (salary plus meal allowance) compared with \$82,500.00 which Mr Slotemaker received as Distribution Manager.

### **The issues**

[20] This claim requires the Authority to consider whether NZKS should pay Mr Slotemaker the redundancy compensation provided for in the Employment Agreement. The answer to that consideration turns on whether the circumstances of the disestablishment of Mr Slotemaker's Distribution Manager role and his commencement in the Aquaculture Technician role amount to a "redundancy situation", thus triggering the redundancy compensation payment.

[21] Mr Slotemaker says a redundancy situation arises where there is a termination of employment because an employee's role has become superfluous. He says in his case there has been a termination of employment in fact and law, and thus a redundancy situation, because of the disestablishment of his role. He says this is so irrespective of whether NZKS gave notice of termination and he commenced another role such that there may not have been a physical ending of his employment and commencement of new employment.

[22] Mr Slotemaker also says, in any event, there has been a termination of employment in fact. He says his employment ended on either 24 December 2015 when he stopped working as a Distribution Manager or 18 January 2016 when the restructure took effect and the Distribution Manager role was disestablished. He was unemployed until 20 January 2016 or even 27 January 2016 when his new role commenced.

### **Discussion**

[23] Mr Slotemaker's case requires me to interpret and apply the redundancy compensation clause in the Employment Agreement.

[24] The redundancy compensation clause, clause 19 in the Employment Agreement, is poorly drafted. However, the parties agree that it provides for redundancy compensation to be paid based upon the formula if a “redundancy situation” arises.

[25] The Employment Agreement does not define what a redundancy situation is or when one arises. The commonly accepted definition of redundancy often referred to in redundancy cases is set out in *GN Hale & Son Ltd v Wellington Caretakers IUOW*<sup>1</sup> where the Court of Appeal said at p 852 :

It would be difficult to improve upon the definition of “redundancy” contained in s 184(5)(a) of the Labour Relations Act 1987, namely, a termination of employment attributable, wholly or mainly, to the fact that the position filled by the worker is, or will become, superfluous to the needs of the employer.

[26] Subsequently in *Wood v Christchurch Golf Club*<sup>2</sup> the Court of Appeal stated that a termination of employment was a prerequisite for a redundancy.

[27] I accept for there to be a redundancy situation for the purposes of the Employment Agreement, there must be a termination of Mr Slotemaker’s employment.

[28] Clause 19 provides that if a redundancy situation arises then NZKS will give Mr Slotemaker “not less than one (1) month notice period”. The one month notice period is, in my view, a reference to the notice required by clause 16 of the Employment Agreement, being notice of termination of the employee’s employment. This is consistent with a reference in clause 18 of the Employment Agreement, which provides:

**18. Employee Protection Provision**

18.1 Where any redundancy situation arises, the Employee will be given not less than one (1) months notice period, which is not in addition to any other notice period specified within this agreement. The Employer may choose to pay the Employee for all or part of the notice period in lieu of the Employee working such notice.

18.2 ....

[29] Clause 19 contemplates that notice of termination of employment will be given in a redundancy situation.

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<sup>1</sup> (1990) ERNZ Sel Cas 843

<sup>2</sup> [2000] 1 ERNZ 756

[30] However, it is not the case that notice of termination or the absence of such will be determinative of what is a redundancy situation.

[31] Put simply a termination of employment is not always effected by notice of termination being given by either the employer or employee. This point is obvious for constructive dismissal but it can also be the case in situations of redundancy. Mr Slotemaker's counsel, Mr Acland, referred me to two cases in which the Courts have held that there is a redundancy situation notwithstanding that the employer has not given notice of termination of employment.

[32] In *Auckland Regional Council v Sanson*<sup>3</sup> the Court of Appeal stated at [46]:

It does not lie in the mouth of the ARC to repudiate the application of the redundancy agreement on the basis that the union has not been consulted or that it has not yet formally terminated Mr Sanson's employment. ... Nor can the application of the redundancy agreement turn on the ARC's *decision* to terminate a position as distinct from the termination in fact of that position. In this regard, Mr Sanson's employment has been effectively terminated in that his position has been "disestablished". Moreover, cl 4(b), which defines the rights of redundant workers uses the phrase: "Where an employee is rendered redundant." This phrase would seem to confirm that an employee may be made redundant when the position he or she fills has become superfluous to the needs of the employer irrespective of whether the union has been consulted or the ARC has formally terminated the employee's employment.

[33] In *Wills v Goodman Fielder New Zealand Limited*<sup>4</sup> the Employment Court held that the employer did not fulfil its redundancy obligations, breaching duties it owed to the employee. These breaches arose in circumstances where the employer did not treat Mr Wills as being redundant notwithstanding that his role had become superfluous (as a result of change in business arising out of the Christchurch earthquakes). Rather the employer sought to redeploy Mr Wills in another role as it wished to retain his skills. Mr Wills agreed to stay and assist the employer but ultimately became frustrated at the lack of certainty around his role and underutilisation of his skills. Eventually, Mr Wills resigned and because he did so in response to the breaches this was a constructive dismissal.

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<sup>3</sup> [1999] 2 ERNZ 597

<sup>4</sup> [2014] NZEmpC 233

[34] The key point from *Wills* is that the Employment Court followed *Sanson* and said there was a redundancy situation notwithstanding that the employer did not give notice of termination for redundancy, because the role became superfluous.

[35] Based on *Sanson* and *Wills* Mr Acland submits that there has been a termination of employment because Mr Slotemaker's role has been disestablished. He says the giving of notice of termination by NZKS or otherwise is of no consequence.

[36] I accept that the absence of notice of termination from NZKS to Mr Slotemaker does not mean there is not a redundancy situation here.

[37] On the face of *Sanson* and *Wills* it is arguable that there is a termination of employment when a role has been disestablished and an employee commences a new role. However, in both *Sanson* and *Wills* there was a refusal by the employee to accept an alternative position offered by the employer and I believe this creates a fundamental difference.

[38] In *Sanson* this led to a claim being filed and declarations being made by the Employment Court<sup>5</sup> that Mr Sanson's position was superfluous<sup>6</sup>, Auckland Regional Council (ARC) could not require Mr Sanson to transfer to a proposed new position because it was not appropriate or suitable and the parties were to abide by the provisions of the redundancy agreement. The effect of this is, in my view, that there was no role for Mr Sanson – he did not want to work in the new role and ARC could not make him take the new role.

[39] In *Wills* there was a resignation that the Employment Court held amounted to a constructive dismissal.

[40] *Wills* and *Sanson* are not factually consistent with this matter because both Mr Sanson and Mr Wills did not want to continue working for their employer and, at least in the case of Mr Wills, did not continue working<sup>7</sup>. So, further analysis is required. The question in this matter is, has there been a termination of Mr Slotemaker's

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<sup>5</sup> [1999] 1 ERNZ 708

<sup>6</sup> The Employment Court held that Mr Sanson's position was "disestablished" but the Court of Appeal in upholding the Employment Court noted that this would be better expressed as "superfluous".

<sup>7</sup> It is not clear in *Sanson* if Mr Sanson ceased working for ADC.

employment where his role has disestablished and he willingly commences another role with NZKS?

[41] There are four things that have informed my decision on this point:

- a. The meaning of termination of employment;
- b. Cases concerning redeployment in a redundancy situation;
- c. The rationale for redundancy compensation; and
- d. The actual events that occurred in this matter.

### *Termination of employment*

[42] Termination means the end of something in time, the conclusion. Employment can mean various things – having paid work, the state of being employed; the action of giving work to someone, the act of employing; or a person's trade or profession, the work in which someone is engaged.

[43] Termination of employment can therefore mean:

- a. The end of having paid work;
- b. The end of an employer giving an employee work;
- c. The end of the work an employee is engaged in.

[44] The restructure and disestablishment of Mr Slotemaker's role meant the end of paid work for him as a Distribution Manager, the end of NZKS giving him work as a Distribution Manager and the end of the work Mr Slotemaker was engaged in.

[45] In contrast, Mr Slotemaker's acceptance of the Aquaculture Technician role meant he continued to have paid work with NZKS and NZKS continued to give him work.

[46] The key difference between these positions is the continuation of an employment relationship – NZKS continuing to pay Mr Slotemaker and NZKS continuing to provide work to him in his new role. However, in the context of redundancy, termination of employment does not require a conclusion of the

employment relationship; that an employee must leave the actual employment of the employer. This is because redundancy relates to the position not the person.

[47] In *NZ Fasteners Stainless v Thwaites*<sup>8</sup> the Court of Appeal stated at [22]:

The principles are clear enough. Redundancy is determined in relation to the position not the incumbent.

[48] In *Thwaites* the Court of Appeal was critical of an earlier decision of the Court of Appeal in *McKechnie Pacific (NZ) Ltd v Clemow*<sup>9</sup> where it was said that if there was another suitable position for an employee he could not be regarded as superfluous and there would not be a situation of redundancy<sup>10</sup>.

[49] In *McCain Foods (NZ) Ltd v Service & Food Workers Union Inc*<sup>11</sup> the Employment Court stated at [79]:

I do not accept the argument that if all people made surplus by the closing of part of the operation can be relocated then a redundancy situation does not exist. ... Like the employer in *Auckland Regional Council v Sanson* McCain has concluded that, because each of the employees possessed some skills which could be used in another part of the McCain operation, they were not surplus. In doing so it has inhibited itself from recognising that the positions those individuals had filled, and therefore the individuals themselves were superfluous. The Court of Appeal held in *Sanson* that the application of a redundancy agreement cannot turn on the employer's decision to terminate a position as distinct from the termination in fact of that position.

[50] Applying the principles set out by the Court of Appeal and the Employment Court; I conclude that the meaning of termination of employment must be the end of the work that the employee is engaged in i.e. the end of the position not the end of the person working for the employer. Therefore, there can be a "redundancy situation" where a position is disestablished and an employee proceeds to work in a new role with the same employer. And in this case there is a termination of employment because of the disestablishment of the Distribution Manager role.

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<sup>8</sup> [1999] 1 ERNZ 739

<sup>9</sup> [1998] 3 ERNZ 245

<sup>10</sup> That criticism is noted by the Employment Court in *Hansells (NZ) Ltd v Ma* [2007] ERNZ 637 at [57].

<sup>11</sup> [2004]

### *Redeployment*

[51] Recent cases have established that if an employer is going to disestablish an employee's role then it must consider redeployment in order to avoid any dismissal for redundancy being unjustified<sup>12</sup>.

[52] Ms Radich, for NZKS submits therefore that any redeployment means there is not a termination of employment. And, she says it is wrong for an employer to be obliged to try and avoid termination of employment by offering redeployment and yet still have to pay redundancy compensation.

[53] I do not accept these submissions:

- a. The cases on redeployment referenced deal with dismissal in a redundancy situation. A dismissal is a sending away by the employer<sup>13</sup>. It is a type of termination of employment but it is only a subset of termination. Redeployment will mean there is not a dismissal but it does not mean in all cases that there will not be a termination of employment for redundancy purposes;
- b. The redundancy compensation obligation imposed upon NZKS is a contractual obligation; the obligation to consider redeployment in order to avoid an unjustified dismissal arises from a statutory obligation<sup>14</sup>. The two obligations exist and are not conflicting. Whether it is fair or not from the NZKS perspective is immaterial to whether the obligations apply and must be complied with.

[54] I do accept however, that redeployment may mean, in some circumstances, that there is not a termination of employment for redundancy compensation purposes. This is particularly so where the terms of the redundancy compensation payment provide for that, but it may also apply as a matter of common law.

[55] Clause 19.3 of the Employment Agreement provides a contractual exception to a redundancy situation arising. That is where, in the context of a sale, Mr Slotemaker is offered employment on the same or similar terms and conditions of employment.

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<sup>12</sup> *Wang v Hamilton Multicultural Services Trust* [2010] NZEmpC 142, *Jinkinson v Oceana Gold (NZ) Limited* [2010] NZEmpC 102, *Totara Hills Farm v Davidson* [2013] NZEmpC 39,

<sup>13</sup> *Wellington Clerical IUOW v Greenwich* (1983) ERNZ Sel Cas 95

<sup>14</sup> Arising out of s 103 and 103A of the Employment relations Act 2000.

So, the parties contemplated that a redundancy situation would not apply if Mr Slotemaker was employed by a new owner and that employment was on the same or similar terms.

[56] Whilst this does not apply to redeployment within NZKS on same or similar terms of employment, as it only applies to a sale and therefore a new employer, it is support for the proposition that if the parties intended there to be a redeployment exception it would only apply to redeployment on the same or similar terms.

[57] The more obvious point however is there is not a contractual exception for redeployment of any kind and had the parties intended there to be one then they would have recorded that as they did with the exception applying to a sale of the business.

[58] Turning to the common law position on redeployment, in *Carter Holt Harvey v Wallis*<sup>15</sup> the Employment Court upheld a tribunal finding that an employee was superfluous to the company's needs and therefore redundant. The Court cited with approval the tribunal's summary of the then common law position on employees being superfluous and redundant stating at p 993:

The tribunal summarised the law as follows (decision, p 17):

“In other words where the employer is able to provide essentially a continuity of employment, both chronological continuity and continuity of its character, albeit with some limited changes, then it is not appropriate to expect the employer to pay out perhaps thousands of dollars on the termination of an employee it preferred to continue to employ. On the other hand, if the employer is not in a position to provide such a continuity of employment in those terms, but instead can only offer the employee a position that is sufficiently different so as to break the continuity and to effectively require the employee to switch to what amounts in important respects to a new type of employment then that is a situation in which redundancy compensation agreements are intended to apply.”

[59] I accept that in this case, my decision must turn on the application of the actual clause for redundancy compensation. The common law position as expressed by the tribunal in *Wallis* is however consistent with my conclusion that there can be a termination of employment for the purposes of redundancy compensation where a role is disestablished and there has been redeployment.

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<sup>15</sup> [1998] 3 ERNZ 984

[60] The key to the common law position expressed in *Wallis* is that the redeployment is to a role where there is no continuity of character of the previous role and this is clearly the case for Mr Slotemaker. There is no dispute that the Aquaculture Technician role is significantly different from Mr Slotemaker's Distribution Manager role in nearly every respect from hours worked, location and tasks, hierarchy of the role through to remuneration and benefits. This means there can be a termination of employment notwithstanding that Mr Slotemaker was redeployed, where that new role is sufficiently different to break the continuity of employment.

### ***Redundancy compensation***

[61] If I stand back from the specific circumstances of Mr Slotemaker and consider redundancy compensation more generally, I am satisfied that it is appropriate that redundancy compensation is paid in circumstances where there is redeployment.

[62] In *Re NZ Seafarers Union Retirement and Welfare Plan*<sup>16</sup> the High Court stated:

In principle redundancy payments are compensation for the loss of a job through its disestablishment as superfluous. ... Redundancy payments are due even if the employee finds new employment immediately. Redundancy is payable because the job – the opportunity to earn – disappears, and modern attitudes to industrial relations consider compensation is appropriate.

[63] In *Gibberd v Telecom New Zealand Ltd*<sup>17</sup> the Employment Court took this concept further stating:

[27] Redundancy compensation is for loss of employment with a view to sustaining an employee until further and equivalent employment can be obtained: see *Wellington etc Local Bodies Officers IUOW v Wellington Hospital Board* [1990] 1 NZILR 301, 307. In *Wellington etc Local Bodies etc IUOW v Wellington Hospital Board* [1983] ACJ 1047 (CA), at pp 1051- 1052, the Court of Appeal described redundancy compensation in the following terms:

We do not think it can ever have been intended to totally ignore the contingent risk of lost income as a proper component in a redundancy payment. Immediately prior to termination of the relevant contract of service the employee concerned will enjoy income and other benefits and so a measure of security which at once are to be replaced by

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<sup>16</sup> [1996] 1 ERNZ 259 (HC)

<sup>17</sup> [2002] 1 ERNZ 228

contingencies and risks that otherwise would be absent. So that the redundancy concept involves acceptance of the proposition that by reference to some balanced and socially acceptable formula an employee made redundant should be provided with a fair degree of cushioning in respect of those uncertainties and possible losses.

[28] So it follows that parties may be presumed to look forward to likely circumstances following termination of employment and for an indeterminate period until other employment or economic activity can replace that lost by redundancy. In these circumstances the financial responsibilities of an employer to an employee may be seen as having been intended to be catered for as well as can be known in the circumstances. That broad approach favours the appellant's position that the parties should be found to have intended an interpretation that allowed for, rather than ignored, an employee's immediate future circumstances.

[64] Redundancy compensation is for the loss of a job through its disestablishment. It is provided with a view to sustaining an employee until further *and equivalent* employment can be found. It is a payment made to cover the contingent risk of lost income and benefits that an employee enjoyed prior to termination – a form of cushioning in respect of the risk of future employment and possible losses.

[65] Whilst Mr Slotemaker was able to find new employment immediately thus eliminating the risk of future employment he did not find *equivalent* employment providing the same level of benefits and income. The broad approach to redundancy compensation in the past, that it should compensate and cushion an employee against potential losses, favours Mr Slotemaker's case that the parties intended to pay compensation in the circumstances he found himself in, where he did (and still does) suffer a loss of benefits and income. It is entirely appropriate that Mr Slotemaker receives redundancy compensation in the circumstances.

### ***Factual scenario***

[66] It is arguable that Mr Slotemaker's employment came to an end as a matter of fact on 24 December 2015. This was the last day he performed his Distribution Manager role. In some respects NZKS treated it as his last day – he had a farewell with his colleagues and he was paid out the balance of his holiday pay which meant he was paid until 15 January 2016.

[67] The restructure effecting the disestablishment of the Distribution Manager role took place on 18 January 2016. That is the role formally ceased as of that day and the new structure was implemented.

[68] Mr Slotemaker did not commence his new role until 27 January 2016 so was without paid employment for 11 days. On balance, I accept there was an actual break in Mr Slotemaker's employment and it is artificial for NZKS to treat the intervening period between roles as leave.

### ***Conclusion***

[69] Clause 19 of the Employment Agreement provides that NZKS shall pay redundancy compensation to Mr Slotemaker if there is a redundancy situation. A redundancy situation arises when there is a termination of employment arising out of a role being disestablished or becoming superfluous. Mr Slotemaker's role as Distribution Manager was disestablished and there is a redundancy situation. The fact that Mr Slotemaker was subsequently employed in another role within NZKS is of no consequence as it is not expressed in the Employment Agreement as an exception and, in any event, the new role is sufficiently different to break the continuity of employment.

[70] Generally, redundancy compensation is to provide compensation for the loss of a job and cushioning against the risk of, and in some cases the actual, losses until equivalent employment can be obtained. This general proposition supports the interpretation I have applied to clause 19 of the Employment Agreement.

[71] I am satisfied that Mr Slotemaker's circumstances give rise to a redundancy situation for the purposes of clause 19 of the Employment Agreement. Mr Slotemaker is entitled to a redundancy payment pursuant to clause 19.2 of the Employment Agreement.

### **Determination**

[72] Within 14 days of this determination NZKS must calculate and pay to Mr Slotemaker redundancy compensation pursuant to clause 19.2 of the Employment Agreement.

**Costs**

[73] Costs are reserved. The parties are encouraged to try to resolve any issue of costs between themselves.

[74] If a determination on costs is needed, then either party seeking costs may serve a memorandum within 28 days of this determination. The other party will then have 14 days from the date of service of that memorandum to lodge and serve any reply. I will not consider any application for costs outside this timetable unless leave is sought and granted.

Peter van Keulen  
Member of the Employment Relations Authority