

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Kerry Treymane (Applicant)
AND Canwest Radio NZ Limited (Respondent)
REPRESENTATIVES David Beck, Counsel for the Applicant
Raewyn Gibson, Advocate for the Respondent
MEMBER OF AUTHORITY Paul Montgomery
INVESTIGATION MEETING Christchurch 11 December 2006
DATE OF DETERMINATION 15 December 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Kerry Treymane, seeks interim reinstatement to his formerly held position as the 10am-2pm host on the respondent's radio station 92 More FM, pending an investigation of the substantive matter. The applicant's role, and that of a programme director, were declared redundant following the establishing of a new position of Operations Manager at the station. Mr Treymane applied for this position. However, he was unsuccessful. He worked out his notice on what appear to be mutually friendly terms.

[2] Mr Treymane has provided the required undertaking as to damages.

[3] The respondent denies the dismissal was unjustified as it arose from a genuine redundancy situation which was conducted in a thoroughly correct manner by the respondent. Further, the respondent says that it not only met its contractual obligations to the departing applicant but considerably exceeded them. Its position is that while the duties incorporated in the Operations Manager role have proved over-ambitious and has led to reducing the scope of that position, it has reformatted the 10-2 programme and is firmly of the view that the applicant's presentation style is incompatible with the new format.

Arguable case

[4] The applicant alleges that the redundancy was either engineered or that the restructuring of the duties at the station amalgamating them into the Operations Manager role was foreseeably untenable and thus not a genuine redundancy. Through counsel, he says *In a relatively short period after a supposedly careful restructuring, the applicant's job has been found not to be surplus.*

[5] The respondent submits that the applicant has not established that there is a serious question to be tried. It points to the fact that there is very substantial agreement between the parties on several critical issues, and in particular the genuine nature of the redundancy at the time the decision was made. Further, it points to the fact that throughout the process leading to the decision to terminate, Mr Treymane had legal advice and did not challenge any aspect of the termination.

[6] The respondent, in relation to the foreseeability of the failure of the appointee to the Operations Manager position to handle the duties vested in that role, submits that this was never raised by either the applicant or his redundant co-worker at the time. It points the Authority to the notes of a meeting held between the applicant and the Station Manager, Ben Harris, which record the applicant's perception that the concept of amalgamation of the roles was *a brilliant idea*. Subsequent to that meeting on 7 June 2006, the applicant was unsuccessful in his bid to secure the Operations Manager role and discussions around redeployment and later severance took place between the parties.

[7] Having considered the affidavit evidence and the respondent's contemporary documents, I find that Mr Treymane's case clears the relatively low threshold on this test by a slender margin. He deserves the right to put before the Authority tested evidence to substantiate his claims of an engineered redundancy.

Balance of convenience

[8] This test requires the Authority to consider the relative inconvenience to each party. I must weigh the relative hardship to the respondent in the event a grant of interim relief is made to the applicant if it was later determined that the respondent was justified in its actions, against any hardship Mr Treymane may suffer if interim relief is not granted to him and the Authority was later to find in his favour.

[9] The applicant has been employed for a considerable period since the dismissal and within the broadcasting industry. While the Authority understands he is keen to return to work in Christchurch, that issue does not weigh particularly heavily in the balance. The fact that he has enjoyed income over recent weeks and little was said to the Authority regarding any financial hardship should the application not be granted, are issues I have considered.

[10] The respondent submits that, having put in place a reformatted 10-2 programme, it would be severely inconvenienced if the application was granted. This is so, it submits, because both its target audience and its advertisers in that time slot would become confused with the likely loss of advertising revenue and listener ratings. Further, the respondent has consented to a prompt hearing of the substantive issue which is scheduled for late January 2007. In the meantime, it has given an undertaking to the applicant that it will not fill the 10-2 shift until the matter is resolved.

[11] Considering the matters I find that the balance of convenience favours the respondent.

[12] In this context, I must also consider the remedies available to Mr Treymane in the event he is not reinstated. Clearly, he is entitled, if successful, to lost salary, compensation and costs. At this point, it is my view that these remedies are adequate in the circumstances of this case.

Overall justice of the case

[13] Standing back and evaluating the case on the currently untested evidence before the Authority, I see a respondent's decision challenged some five months after the event. I see an applicant well treated in the course of termination on the ground of redundancy and I observe a respondent who, while believing it has done everything required of it under the law, has given the undertaking not to proceed in filling a vacancy until the Authority has determined the matter.

[14] I also need to consider the likelihood of the applicant succeeding when the substantive matter is heard. On the evidence currently before the Authority, Mr Treymane's case does not strike me as being particularly strong. That, however, may change when comprehensive evidence is put before the Authority and fully tested under investigation.

Determination

[15] The application is declined.

[16] I intend calling a telephone conference on Tuesday next to confirm the date for the Authority's investigation of the substantive matter.

Paul Montgomery
Member of Employment Relations Authority