

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 449/09
5282737

BETWEEN NING (NEIL) WANG
 Applicant

AND HAMILTON
 MULTICULTURAL
 SERVICES TRUST
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Mr Wang in person
 Rebecca Fraser for Respondent

Investigation Meeting: 19 November 2009

Submissions received: 20 November 2009 from Applicant

Determination: 14 December 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Wang was first employed by the respondent (the Trust) in 2003 as Interpreting Service Co-ordinator. Over time his duties and job title changed, first to Administrator and then to Financial Administrator. On 15 June 2009 he was given four weeks notice that his employment was being terminated on the basis that his position was surplus due to restructuring. He was invited to apply for the newly created position of Finance Manager but opted not to do so. He finished work on 6 July 2009.

[2] Mr Wang's case is that his purported redundancy was a sham and that the position of Finance Manager was his old job by another name. He also says that the procedure that the Trust adopted in the course of the restructuring process was

defective. Mr Wang believes the real reasons for the dismissal can be traced back to problems in his relationship with the Director, Rebecca Fraser, and the fact that he had made formal complaints about her behaviour towards him¹. He also noted that he had declined to accept unilateral changes to his job description and believed this too had been a factor in the decision to disestablish the position he held.

[3] Mr Wang lodged this matter, with an application for interim reinstatement, on 7 October 2009. After attending mediation and with the agreement of the respondent Mr Wang opted to proceed directly to an early investigation of the substantive matter. In keeping with the urgent nature of the original application I have prioritised the determination.

Issues

[4] The issues for determination are whether the redundancy was carried out in a procedurally fair manner, and whether it was genuine. If not, then the issue of remedies also falls to be determined.

(i) The redundancy: reasons and process

[5] During late 2008 and early 2009 issues arose around Mr Wang's workload and ability to meet deadlines. He considered his workload at that time to be heavy and found it difficult to produce vital reports in a timely fashion. Financial reports for December, January and February were delayed with the result that the annual audit also had to be put back. As a result of this, the Trust Board (the Board) asked its Treasurer to review the accounting processes of the Trust. This was done in consultation with Mr Wang. The Treasurer's report was presented to the Board on 23 April 2009.

[6] The report identified a number of problems which it appeared had resulted from the rapid expansion, in a relatively short period, of the Trust's activities. Key points included that:

- i. problems existed in other areas besides reporting, for example processing of invoices and internal recharging of services;

¹ These matters are the subject of separate proceedings in the Authority.

- ii. processes and procedures had developed in an ad hoc fashion as the organisation's work and activities expanded over the years;
- iii. procedures had not been formalised and timetabled or set out in writing;
- iv. data was not captured in a timely and accurate way;
- v. not enough responsibility was delegated to staff, and
- vi. staff lacked supervision;

[7] The Report recommended that steps be taken to address these issues but did not set out a detailed proposal as to how this would be achieved. The recommendations were accepted by the Board, which tasked Ms Fraser with developing ways to implement the necessary changes.

[8] Mr Wang did not see this report until it was provided at the Authority's request as part of the investigation into the employment relationship problem. Once he had the opportunity to consider it, he was able to confirm that he disagreed with very little in it. He agreed with the Treasurer's assessment of the problems as summarised above. He told me he considered his workload to be too great to be completed in the thirty seven and a half hours for which he was paid and that he sometimes found that circumstances beyond his control prevented him from reporting in a timely way. Delays often resulted when other staff were slow in providing him with the information he required.

[9] Some of the same issues which informed the discussion about the accounting processes had come up in another context: the revision of Mr Wang's job description. Although Mr Wang's job title and duties had been successfully renegotiated at several stages of his employment there was still a mismatch between Mr Wang's job description and what he actually did. At his most recent performance review both parties had agreed that this needed to be addressed.

[10] In the early part of 2009, the Trust employed the following staff (most of whom were part-time) as well as Mr Wang and Ms Fraser:

- i. Centre Co-ordinator;
- ii. Migrant Internship Co-ordinator;
- iii. Settlement Support Co-ordinator;
- iv. Support staff including a finance assistant, and
- v. Interpreting Service Co-ordinator (this service was semi-autonomous and had two support staff of its own.)

[11] In addition the Trust was at any given time managing various projects, some short and some longer term, with co-ordinators of their own. As things stood, the co-ordinators had some financial responsibilities, such as creating invoices, providing receipts for reimbursement and giving information about project expenditure to the Financial Administrator. Some, but not all, reported against their budgets.

[12] On March 31 Ms Fraser presented a revised job description to Mr Wang for comment. Ms Fraser's position is that most of the revisions reflected changes that had already occurred in practice; others were designed to address some of the same issues which were soon to be outlined in the review report. In particular, she wanted to make it a formal part of Mr Wang's job description that he would have the power, and responsibility, to supervise staff in relation to financial matters.

[13] On 9 April Mr Wang emailed Ms Fraser rejecting the draft and setting out his reasons for that. He felt that new content had been added in the areas of administration, key tasks, performance outcomes, banking, and audit. He told me he did not agree that the changes proposed to his job description would solve the problems with the accounting services: he said all they did was set unachievable targets for him and make his workload even greater. He did not see his role as including the management of other staff.

[14] Mr Wang and Ms Fraser met for further discussions on 6 May. Agreement could not be reached. For the first time, the question of restructuring came up, with Ms Fraser suggesting that, because there were such significant differences between what the Board wanted and what Mr Wang was prepared to agree to, the financial functions might have to be restructured. On 13 May Mr Wang emailed Ms Fraser some further views on the job description and on 18 May they met in mediation, to discuss this and other issues between them. They found they were at an impasse.

[15] On 20 May 2009 Ms Fraser presented the Board with a restructuring proposal. Its principal features were that:

- i. Responsibility for setting and keeping to budgets, data capture and entry, and daily reconciliations would be devolved to co-ordinator level;
- ii. The Financial Administrator's role would be disestablished;
- iii. A new role of Finance Manager, to whom co-ordinators would report on financial matters, would be created, and
- iv. Financial decision-making would be devolved from the Director to the Finance Manager.

[16] Ms Fraser told me the restructure was intended to make it possible to implement the Treasurer's recommendations but said it also took into account Mr Wang's feedback that the proposed new job description was unachievable. She told me she had come to the view that unless functions were devolved to co-ordinators, the workload of the financial administrator and the finance assistant would continue to be too much for them. Ms Fraser anticipated that there might need to be some increase in the hours of co-ordinators, but hoped these would be modest as she hoped to see significant efficiency gains in the new system. She said there would be far less duplication once the people who spent the money took responsibility for budget setting, record keeping and financial reporting.

[17] The Board adopted the proposal with only minor changes to clarify it. On 22 May it was presented to Mr Wang and the rest of the staff. They were given until 5 June to provide feedback on the proposal, and told that the Board would make a final decision by 9 June. Staff would be notified of the final structure on 10 June.

[18] The process went according to timetable, with responses provided by Mr Wang and other staff by the due date. The feedback from other staff was supportive although, as expected, some coordinators noted that they would need a small increase in their hours of work.

[19] Mr Wang's response was by email on 4 June. He expressed his disappointment and a belief that the restructure was not necessary. He said he believed that the negotiations on the job description could have been resumed as an alternative to the restructuring. He also noted that the responsibilities of the proposed Finance Manager role were "*almost the same*" as his current role (as it existed in practice, if not in his formal job description.)

[20] Ms Fraser presented the staff feedback, feedback summary and potential changes to the proposal to a special Board meeting. The Board considered it and accepted it with minor changes. It decided, further, that the new manager's role was significantly different from Mr Wang's old job, having additional responsibilities and attracting a higher salary. It was decided Mr Wang could not simply be offered redeployment into the new role.

[21] Other options for redeployment within the organisation were considered. Work was potentially available for a further Mandarin interpreter however it was decided that Mr Wang's English was not adequate to that role. The Board concluded that there were no potential redeployment options although Mr Wang would be encouraged to apply for the new Manager's role. On the morning of 15 June the Board Chair presented all staff with a letter to confirm that it had agreed to the new structure; that afternoon Mr Wang was given a letter advising him that his position was surplus due to restructuring and his employment would cease on 13 July. Access to EAP was made available should he need it.

[22] Mr Wang took the view that he should have had input into the restructure proposal from a much earlier stage. He believed he should have seen at least key parts of the review report, and been included in discussions about the need for and shape of any proposed restructure, before any proposal was put out for consultation to all staff. He also told me he felt there should have been a follow-up meeting with him after the proposal was accepted at the special Board meeting, and that he should have been able to participate in consideration of redeployment opportunities. He agreed that the interpreter's role would not have been suitable but believed that he should have been redeployed into the Finance Manager's job.

[23] The new position was advertised in the Waikato Times on 20 June. Mr Wang said he found this embarrassing as many people saw the advertisement and assumed it to be for his old job. He did not apply because (as he told me) he did not think the restructure was genuine. He feared being put on a probationary period if he was re-employed. He said he wished to pursue a grievance relating to the redundancy and he believed that he would be at a disadvantage in his case if he were successful in obtaining the new job. He never got to find out that the new job was being offered at a salary 50% above that of the financial administrator role.

[24] Mr Wang worked out most of his notice before leaving, by agreement, a few days early.

[25] The current Board Chair, Ms de Lisle, attended the Authority's investigation meeting to give evidence along with Ms Fraser. I was told that the Board's members were very regretful about Mr Wang's employment relationship problems and disappointed that Mr Wang did not apply for the new job. I was told that many of the Board members had, like Mr Wang, been involved with the Trust well before Ms Fraser had been employed. Having worked with and respected Mr Wang for some years they were sad to see him leave the Trust.

[26] Ms de Lisle told me that the Board had come to believe that the systemic problems were a significant cause of the friction in the relationship between Ms Fraser and Mr Wang. Ms Fraser accepted this view. However, while Mr Wang agreed that the organisational problems were a factor, he saw Ms Fraser's management style as the principal problem.

Determination

[27] I accept that Mr Wang has made some valid criticisms of the process the Trust followed. In the circumstances here, I accept that it would have been appropriate for Mr Wang to have been given a copy of the review report. Although a fair consultation process does not entitle employees to see all the information taken into consideration in relation to a restructure, consultation is only meaningful if it is adequately informed. In this case (as both Ms Fraser and Ms de Lisle agreed) there was nothing in the review report of such a sensitive or confidential nature that he could not have been provided with a copy of it; it simply did not occur to them to do this. Mr Wang was also entitled to a follow up meeting after the restructure proposal was confirmed and to be included in discussions about redeployment options.

[28] However I do not accept that these shortcomings are serious enough to flaw the whole redundancy. I am satisfied that it was genuine. There were major systemic and organisational problems with the Trust's financial functions, arising out of its rapid growth over the previous few years. Piecemeal approaches (such as increasing the amount of resource put into assisting the Financial Administrator or revising the job description for that position) would not have resolved the problems in the comprehensive way that the restructure could. A new structure and a Financial Manager with increased authority and clear accountabilities were clearly needed to remedy the problems in the accounting services.

[29] I also accept that the new role was substantially different from that of the Financial Administrator, whether the basis of comparison was Mr Wang's old job description or what he had come to do in practice. Although there was significant overlap between the financial administrator role and that of finance manager, the differences were critical. They were the decrease in functions (budgets and accountability having devolved downwards) and the increase in management role (with the financial decision-making and the oversight of staff.)

[30] Although Mr Wang was not prepared to concede the point, much of his own evidence effectively supported this finding. He had strenuously resisted changing his job description to increase the level of supervision he gave coordinators, arguing that

he could not be forced to accept a unilateral change of such significance. Having said that, it was inconsistent for him to assert that despite even more extensive changes, the new Finance Manager's role was his old job by another name.

[31] I accept, also, that the Board acted properly in taking the view that it should advertise the new position. It would not have been a responsible exercise of its discretion to simply offer a new role at a substantially higher salary to a staff member who was originally employed to do a different role.

[32] I also note that the Board ratified all the final decisions relating to Mr Wang's redundancy. Mr Wang had a longer history with the organisation than Ms Fraser and (I accept) had the regard and respect of longer serving Board members who had known him during that time. In this way I am satisfied that he was protected against any potential for prejudice that might have arisen as a result of his complaints about Ms Fraser's conduct.

Remedies

[33] At the time of the investigation Mr Wang was still unemployed, despite extensive efforts to find work. As he explained to me (and as the respondent acknowledges) it is not easy for migrants to find work in a tight labour market. Mr Wang remains very bitter about his employment relationship problem.

[34] I conclude that he is entitled to a modest sum to compensate him for the process failings set out in paragraph [27]. Although the failings were relatively minor, I consider that they have impacted on his ability to accept the outcome of the process. Had the Trust maintained better communication with him, and had he been engaged from the outset in discussions about how best to implement the recommendations in the Treasurer's report, his suspicions about the genuineness of the restructure may have been allayed. He may have been able to accept that the new role was not substantially the same as the one he was in, and perhaps even have applied for it.

[35] **In all these circumstances I order Hamilton Multicultural Services Trust to pay to Mr Wang the sum of \$1,000.00 as compensation for deficiencies in the redundancy process.**

Costs

[36] Neither party was represented in these proceedings. If there are costs issues between the parties, any application for costs must be lodged within 28 days of the date of this determination.

Yvonne Oldfield

Member of the Employment Relations Authority