

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** John Wilkinson (Applicant)  
**AND** Tait Electronics Limited (Respondent)  
**REPRESENTATIVES** Penny Swarbrick, Counsel for Applicant  
Raewyn Gibson, Advocate for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**INVESTIGATION MEETING** Christchurch  
7 and 8 March 2006  
13 March 2006  
**DATE OF DETERMINATION** 10 August 2006

DETERMINATION OF THE AUTHORITY

***Employment relationship problem***

[1] The applicant (Mr Wilkinson), by his statement of problem, alleges that he was unjustifiably dismissed from his employment with the respondent, Tait Electronics Limited (Tait) when his position was made redundant.

[2] Mr Wilkinson alleges that the redundancy was not a genuine one, that it was activated by improper motives on the part of a senior manager with Tait, that there was an absence of proper consultation with him by Tait and that Tait did not act in good faith towards him in relation to the dismissal.

[3] Tait resists the claim contending that the redundancy was at all times genuine and activated by proper business reasons, that there was a detailed consultation process undertaken by Tait and that Tait at all times acted in good faith towards Mr Wilkinson.

[4] Mr Wilkinson was employed by Tait in Singapore as its *Country Manager*. He was employed pursuant to an individual employment agreement which had been entered into between the parties in August 2003.

[5] Mr Wilkinson says that the 2003 year was a particularly difficult year for businesses in Asia for a variety of reasons including the SARS epidemic and a number of geo-political forces which were outside the control of private businesses.

[6] Mr Wilkinson says that he was never consulted by Tait about how those larger forces which had impacted on the Singaporean business could be addressed appropriately. Despite that,

Mr Wilkinson says that by April 2004, a restructuring proposal had been prepared which had the effect of disestablishing his Singapore position.

[7] Tait says that Mr Wilkinson was at all times aware of the difficult business climate in which his position was operating as a consequence of *the ongoing dialogue in the normal course of daily business*.

[8] Tait also specifically denies Mr Wilkinson's allegation that there was no preamble to the restructuring position which resulted in a determination to disestablish Mr Wilkinson's position. Tait says that on two occasions at least, Mr Wilkinson's regional manager made it clear that restructuring was an imminent prospect. In this regard, Tait refers to email exchanges on 20 February 2004 and 23 March 2004.

[9] Tait agrees that it made decisions about the restructuring proposal in April 2004 but contends that those decisions were provisional or preliminary in nature and were followed by an extensive period of consultation with their human resources department to establish the appropriate process for engaging with affected staff. It is common ground that Mr Wilkinson was formally advised of the review by an email dated 10 May 2004.

[10] There was a meeting between the parties on 17 May 2004 at which Tait says Mr Wilkinson was invited to present feedback on the restructuring proposal and while Tait contends that it made it clear at the meeting that it had an open mind on the question, Mr Wilkinson's contention is that the company's behaviour indicated that the decision was already made and that it was simply going through the motions.

[11] In any event, Mr Wilkinson, after consulting with other affected staff, prepared with others a memorandum and submitted that to Tait, the purpose of which was to show that the business was viable on the present structure. Mr Wilkinson says that Tait did not respond to that memorandum.

[12] However, the following day, Mr Wilkinson received advice that his position would be disestablished with effect from 23 July 2004.

[13] Tait says that it earnestly tried to redeploy Mr Wilkinson but despite offering him a number of redeployment opportunities, it was unsuccessful in interesting him in an alternative position.

### ***The issues***

[14] The issues before the Authority which need to be determined are:

- Was the redundancy genuine in that it was based on genuine business reasons; and
- Was the disestablishment of the applicant's role predetermined; and
- Did the respondent engage in a consultation with the applicant in respect of his position prior to declaring him redundant; and
- If the applicant succeeds in his claim, what remedies are due to him?

### *The investigation meeting*

[15] The Authority was assisted by a small number of witnesses at the investigation meeting. Mr Wilkinson gave evidence on his own behalf, while Mr Chick, the respondent's Chief Executive Officer, and Mr Watson, Group Human Resources Manager gave evidence for the respondent. A brief prepared by the applicant's wife, Karen Reyland, was also available to the Authority as Ms Reyland remained in Singapore caring for the couple's young child.

[16] I record the Authority's appreciation to the witnesses for their attendance. I also thank the representatives of both parties for their professional assistance and their comprehensive final submissions.

[17] Following the investigation meeting, Ms Swarbrick indicated that Mrs Earle, the wife of Lionel Earle, was prepared to give evidence to the Authority. Ms Gibson opposed her appearance. I considered the matter carefully and decided the Authority was able to determine the matter without Mrs Earle's evidence. I thank her for her offer of assistance.

### *Analysis and discussion*

[18] At the centre of the applicant's claim is the behaviour of his Regional Manager, Mr Lionel Earle. Mr Wilkinson contends that following Mr Earle's offer to him of the position Mr Earle held (which offer was later withdrawn as Mr Earle had no authority to make such an offer), Mr Earle became critical of the applicant's performance. A range of instances alleging Mr Earle had set about attempting to have the applicant fail in his role was put before the Authority.

[19] Underpinning the applicant's claim was the contention that Mr Earle was manoeuvring to be relocated to Singapore under the guise of correcting the operational performance, when in fact his motive was to continue his liaison with a Ms Ivy Low. Mr Earle subsequently left his wife and took up with Ms Low. There is little to debate over the fact of this latter event, however the Authority has had to decide how much weight to give this in the overall context of the case.

[20] I believe it is fair to say that the 2003 financial results for the region gave concerns to Mr Chick and the financial executives at Tait, and Mr Chick asked Mr Earle as the Regional Manager to realign the structures in the Singapore office in order to reduce overheads and increase sales revenue. I also accept that Mr Chick made the final decision as to the restructuring model to be employed in Singapore, which decision in turn gave rise to the disestablishment of the applicant's position. The Authority accepts Mr Chick's evidence that he was thoroughly unaware of Mr Earle's hidden motivation for wanting to return to Singapore and I have no doubt that he was acting and deciding a course of events in the best interests of the company.

[21] While appreciating the applicant, looking back over events, genuinely believes his redundancy was engineered by Mr Earle for that man's own objectives, it appears to me that the financial position of the Singapore/Thailand operation was ample justification for undertaking a review and establishing proposals to remedy the situation. I am satisfied the respondent's decision to restructure was one that was open to it in the circumstances.

[22] I turn to the events that took place in Singapore in mid-May 2004. Around 7 May, Mr Earle emailed Tait's Chief Financial Officer and other senior executives advising that staff reductions in Singapore had been proposed. The applicant was not copied in on this email. His first advice of the Structure Review was by an email to him on 10 May 2004. Mr Wilkinson telephoned Mr Earle to inquire what was happening and was told he (Mr Earle) did not know.

[23] On 17 May 2004, the applicant met with Mr Earle and Mr Watson at the Carlton Hotel. He says he was presented with the financial issues that the region faced and advised that a new structure needed to be put in place. This was news to him and Mr Wilkinson states clearly that *the possibility of my role being removed was not mentioned*. Further, the applicant says that he was expecting a request that he had input into the proposals affecting the region but was simply told that the restructuring must take place.

[24] Later on the same day, Mr Earle and Mr Watson met the Singapore staff and advised them about the restructuring. Following that general meeting, Mr Watson and Mr Earle met with individual staff members but not with the applicant himself. Following those meetings, both Mr Earle and Mr Watson left Singapore for Thailand and the applicant met with his staff whom he said, expressed their concerns about what was going on and in particular the fact that those who worked in Singapore had not been approached for their input. Following that meeting, at which staff elected to send their views to the company in a group submission, Mr Wilkinson sent a memo to Mr Watson setting out a number of concerns and attempting to show that the business was viable under the existing structure. Mr Wilkinson says the company failed to respond to that memorandum which he copied to Sir Angus Tait and to Michael Chick. The applicant says that he handed the memorandum to Mr Watson on 20 May. He says Mr Watson read it in his and Mr Earle's presence, but made no comment and did not enter into any discussion on the document.

[25] On the evening of 20 May, Mr Wilkinson telephoned Mr Watson to discuss a number of issues and also asked whether the applicant needed a support person with him the following day and Mr Watson replied that it would not be necessary. However, Mr Watson later phoned back leaving a message saying Mr Wilkinson could have somebody with him. Again, the applicant says that Mr Watson did not state that *we were to discuss my redundancy*.

[26] On 21 May 2004, Mr Wilkinson attended a meeting with Mr Watson and Mr Earle. The applicant was accompanied by a Mr Simon Walker, a personal friend, as his support person. It was at this meeting that the applicant was advised that his role was to be disestablished. In a letter dated the same day, Mr Wilkinson was advised that his position would be disestablished on 23 July 2004. The letter refers to an extensive three month consultation process, which the applicant says just did not happen.

[27] Considering first the respondent's claim that an extensive three month consultation process had been undertaken, I think it reasonable to say that in terms of the company considering the need for review and the construction of proposals for that review, had taken approximately that amount of time. I think it odd, however, that the respondent has not involved the country manager, who was inevitably going to be affected no matter what proposal was put in place. On the other hand however, given that Mr Earle, the Regional Manager, was now located back in Christchurch and it was he who had overall responsibility for the Singapore/Thailand operation, it was open to Mr Chick to engage Mr Earle in the development of the proposals.

[28] I accept that, from the respondent's perspective, Mr Earle and Mr Watson went to Singapore to discuss a range of proposals before recommending to Mr Chick which proposal offered the company the most effective results. This is all very well, as the focus initially was on what I have called the model to be adopted. It did not meet the company's obligation to advise the applicant that under the model selected for implementation, it was the applicant's position which was to be disestablished. Mr Earle and Mr Watson were obliged to put Mr Wilkinson on notice that his job was at considerable risk and engage in discussions with him on that likely outcome and provide him with the opportunity, in respect of his position, to put alternative proposals to him. What those proposals may have been no one will ever know because neither Mr Watson, the Group Human Resources Manager, nor Mr Earle, the Regional Manager, entered into a consultative process in respect of the applicant's position.

[29] At the investigation meeting, Mr Wilkinson told the Authority that the company's reason for not advising Mr Wilkinson earlier of the likely demise of his position was due to the implementation of what he called an HR strategy designed to ensure that the consultation process in respect of the restructuring would not be affected. I am unimpressed by that evidence. I would also observe that, during the course of the meetings and various telephone conversations between the applicant and Mr Watson, Mr Watson's responses to the applicant at various stages were in my view at best evasive.

### ***The determination***

[30] Returning now to the issues set out earlier in this determination, I find that:

- The redundancy of the applicant was justified and was based on genuine economic reasons.
- The disestablishment of the applicant's role was not predetermined.
- The respondent did engage in a consultative process with Mr Wilkinson in respect of the **structure** to be implemented but did not engage in a consultative interaction with Mr Wilkinson in respect of the loss of his position, thus depriving him of the opportunity to perhaps avoid his dismissal. The respondent's evidence at the Authority's investigation meeting that it was made plain to all that any of their positions could be affected, is evidence which falls short of the mark.
- I find that the applicant, Mr Wilkinson, has a personal grievance and I turn to the remedies.

### ***Remedies***

[31] In considering this matter, I have been mindful of the exemplary manner in which the company conducted itself following the applicant's dismissal. The company doubled the notice period from one month to two months, paid the redundancy compensation due to the applicant, paid rent on the applicant's family accommodation for an additional two months, met Mr Wilkinson's costs incurred with a career consulting firm, continued to pay his fuel allowance for June and July and met the costs of a full medical.

[32] In his statement of problem, Mr Wilkinson sought a range of remedies including reinstatement. This claim was, however, withdrawn in the final submissions put to the Authority.

- **Lost remuneration.** It is trite law that where a redundancy has been found to be genuine and the employer has met its obligations to the redundant employee, there can be no claim for lost remuneration. I decline Mr Wilkinson's claim under this head.
- **Claim for compensation.** This claim relates to monies invested in alterations to the home leased by the applicant. While I accept that the applicant took the view that his employment agreement was for a period of three years, the actual clause in the agreement relating to these matters is *our expectation is that this agreement will be for a full three years however it is subject to business considerations, Company Policy and The Tait Core Conditions of Employment*. In addition, the Authority's jurisdiction is restricted to providing compensation only in terms of s123 of the Act.

- **Claim for repatriation allowance.** The applicant elected to remain in Singapore and any entitlement to a repatriation allowance under the agreement lapsed at the expiry of the notice period. In this context, I have accepted the respondent's submission that the intention of the parties at the outset was for a period of three years. However, *business considerations* intervened.
- **Loss of future earnings.** I decline the applicant's claim under this head, given that I have found the redundancy to be genuine.
- **Claim for allowances.** I decline the applicant's claim under this head for the same reason given immediately above.
- **Compensation under s123(1)(c)(i) of the Act.** I accept that the effect of the applicant's dismissal was very significant, particularly in the light of his position as an expatriate employee and also given the circumstance of the recent arrival of the couple's first child. I have also considered the humiliation occasioned the applicant by his wife having to return to work from parental leave earlier than was anticipated in order to assist supporting the family.

[33] In all the circumstances of this case, I think it just to award Mr Wilkinson the sum of NZ\$15,000.

#### *Costs*

[34] Costs are reserved. I encourage the parties to attempt to resolve this issue between themselves. If that is not possible, counsel are to lodge and serve their respective memoranda 30 days from the date of issue of this determination.

Paul Montgomery  
Member of Employment Relations Authority