

for positions. Mr Wong applied successfully for the Team Leader - File Review position.

[5] The last job description Mr Wong received was dated 8 January 2007. His position was titled Team Leader – File Review.

[6] At the beginning of October 2007 Baycorp management advised that there was to be a meeting in November/December 2007 about changes in the organisation. During that meeting the new organisation structure was shown to the staff.

[7] The eight current Collection Team Leaders had to reapply for the six Team Leader positions in the new structure. The two unsuccessful applicants were to offered positions as a Collector or take redundancy.

[8] Team Leaders had to submit their CVs during December 2007 and advise what position they would like. Mr Wong said that although the positions were quite specific Baycorp provided a generic job description for all the six positions. The job descriptions did not match the duties that were to be carried out.

[9] Mr Wong applied for the position of PDL Collections. Looking at the flowchart provided, he suspected that his existing position of Team Leader - File Review was the same as that of the PDL Collections position. He assumed that as he had been carrying out the requirements of that position for six years to a high standard that the reappointment process would be a formality. He said he now believed he should not have to go through the reapplication process.

[10] In December 2007 Team Leaders had the option of providing feedback on the new structure by January 2008. He did not do so, believing that the restructure would proceed in any event.

[11] On 18 February 2008 Mr Wong was told that he had been unsuccessful in all the positions for which he had applied. He chose not to take up a role as a Collector as he saw this as a backward step. His employment ceased on 29 February 2008. He was paid redundancy compensation.

[12] A problem for the respondent is that the people who gave evidence were not the people who initiated the restructure nor did they make the decisions regarding the nature of the positions or appointments to the positions.

[13] The respondent says that the eight Team Leader positions existing before the restructure were interchangeable. This is despite the positions having different job titles. It is interesting to note that the proposed operations structure chart shows there will be a reporting line change and a minor JD update. The proposed operations changes include three new roles, one disestablished role and a reduction in Team Leader positions from 8 to 6. The Team Leader positions are not identified as new positions.

[14] An email dated 4 February 2008 from Mr Joe Nel, General Manager NZ, to Margaret Richardson, Human Resources Consultant, on the subject of Team Leader Restructure Selection Process states:

- *One of the Three Team Leader roles reporting to the Corporate Collections Manager will be responsible for leading the collections team for Baycorp's PDL book. The remaining two Team Leaders will be responsible for collections for Baycorp's Major clients*
- *The three Team Leader roles reporting to the Call Centre Manager will be responsible for collections for Baycorp's Middle Market and Small Clients as well as outbound and inbound calling programs*
- *The Job Description for all six roles is consistent and the roles and responsibilities the same. The only difference is the underlying client base. ...*

[15] On 1 December 2008 Mr McFadden emailed Mr Bennett, the respondent's HR Manager, stating:

My understanding of Baycorp (NZ) Ltd's position on the redundancy issue in essence is that while the position previously occupied by Mr Wong still exists in the same form, Baycorp considers the Team Leader positions to have been interchangeable and chose to appoint another party to this, following an assessment process.

The key issue will be whether or not the Team Leader positions can be considered as being the same and as such Baycorp was able to take the action it did.

[16] The respondent did not resign from this position.

[17] The Team Leader positions were not the same positions: they were not generic. While there may have been a crossover of some aspects of some of the positions the positions were nonetheless discrete entities. I am satisfied that the File Review and PDL positions were the same.

[18] Mr Wong's position was not redundant and he should not have had to reapply for it.

Remedies

[19] Mr Wong was on a salary of \$49,985 gross plus eligibility for a bonus at the time his employment terminated. His loss was \$3,359.95.

[20] In *Money v Westpac Banking Corporation* [2003] 2 ERNZ 122 Goddard CJ treated payment of redundancy compensation as income when assessing lost earnings but awarded compensation for humiliation and distress. As the redundancy compensation paid exceeds Mr Wong's loss he is not entitled to any compensation for loss of wages.

[21] He seeks \$12,500 compensation pursuant to s 123 (1) (c) (i). There was little evidence regarding humiliation and distress. Mr Wong did say it was very humiliating to know that someone else had been given his job.

[22] The respondent is to pay the applicant the sum of \$3,000 pursuant to s 123 (1) (c) (i).

[23] Mr Wong did not contribute to the personal grievance.

Costs

[24] If the parties are unable to resolve the issue of costs the applicant should file a memorandum within 28 days of the date of this determination. The respondent should file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of the Employment Relations Authority