

Legal Update: Redundancy in a role restructure¹

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This case deals with the issue of redundancy – if a role is restructured or ceases to exist, does the employee filling the role automatically become redundant. In particular, an employee who, following a restructure, was given the option of either accepting a new role or continuing in their old role. The employee instead resigned and raised a personal grievance claiming he had been made redundant, and should therefore be entitled to redundancy compensation.

Background

Mr Johnston was a chartered accountant employed by The Fletcher Construction Company Limited (**Fletcher Construction**) in the role of ‘Financial Controller – Group Services’. In March 2016 Fletcher Construction announced proposed changes to its financial system. It was proposed that four senior accounting positions (including Mr Johnston’s role) would be replaced with seven new positions. The new structure would have a phased introduction contingent on the company implementing a new software system.

The company subsequently advised it would proceed with the proposal, and that Mr Johnston’s role would continue until the new software system affected his work area in October 2016, when a “*transition to the new structure*” would occur.

Mr Johnston successfully applied for a new role created by the restructure, titled ‘Business Performance Manager – Constructive Division’. However, he was not satisfied with the proposed employment agreement for the new role, which did not provide for redundancy compensation and did not treat his service as continuous for the purpose of long service leave.

Mr Johnston raised his concerns with the company. While he waited for a response, he continued to perform his usual duties as Financial Controller despite the new software system becoming operational in early October 2016. In response, the company proposed either for Mr Johnston to accept the new Business Performance Manager role with enhanced terms and conditions, or to maintain the status quo by having him remain in his Financial Controller role.

Mr Johnston expressed disappointment about not being dismissed for redundancy and paid compensation of approximately 44 weeks’ pay, and rejected both alternatives. He raised a personal grievance for the company’s alleged failure to comply with the existing employment

¹ *Johnston v The Fletcher Construction Company Limited* [2019] NZEmpC 178

agreement by not terminating his employment for redundancy when the software system became operational.

The Judgment

The key issue identified by the Employment Court was whether Mr Johnston had been made redundant. The Court accepted that the transition to the new structure, as it affected Mr Johnston, did not abruptly occur in October 2016. Rather, Mr Johnston *“continued to work as Financial Controller, while negotiating the terms and conditions of the new job he was offered”*. The Court also stated that the old and new roles *“were sufficiently similar that a conclusion could not reasonably be reached that Mr Johnston’s original position had...disappeared or sufficiently diminished, or been altered, to such a degree that it no longer existed”*. This was based on the finding that the new role involved work at the same location, reporting to the same manager, holding the same status, requiring the same skills and experience, and performing similar tasks.

The Court also concluded that the redundancy clause in Mr Johnston’s Financial Controller employment agreement was not invoked solely because the company gave notice that the new software system would be operational from early October 2016. The Court said *“[i]t does not automatically follow from a restructuring that staff must be surplus to requirements or that jobs have ceased to exist”*. As a result the Court was satisfied the Financial Controller role continued to exist from October 2016 and at the time Mr Johnston resigned. Therefore there had been no redundancy.

The Court also rejected Mr Johnston’s alternative claim that he had been constructively dismissed.

Summary

This judgment is of interest as it confirms that an employee’s role is not by default surplus to requirements or ceases to exist simply because there is a restructure. The key issue for inquiry is whether there has been any substantive change to the existing role.