

## Managers can be "vulnerable" too

Most employers will by now be aware that specified categories of persons, commonly known as "vulnerable workers", have a right to elect to transfer to a new employer on the same terms and conditions in the event of a restructuring. In this context restructuring includes anything from a sale of a business to changing contractors.

Schedule 1A of the Employment Relations Act defines who is "vulnerable". A decision from the Employment Court last year, *Matsuoka v LSG Sky Chefs NZ and Service and Food Workers Association* [2011] NZ EmpC 44, tells us that an employee does not actually have to be vulnerable in order to be entitled to statutory protection. Mr Matsuoka's remuneration and other benefits, his senior status, and his management responsibilities were not relevant.

The services in question in Mr Matsuoka's case were food catering services provided to Singapore Airlines. Employees who provide "food catering services" are one of the groups entitled to transfer in the event of restructuring. The Employment Court held that food catering is not limited to food preparation. It also includes: delivery of prepared food; organising food supplies; organising supplies and delivery of associated equipment, water, soft drink beverages, and dry ice; and managing stock. Even arranging trucks and running messages may have contributed to the servicing of Singapore Airlines under the catering contract. Because Mr Matsuoka did these things a few hours a day, he was someone who provided food catering services.

If a person's job is affected by a restructuring then it does not matter who the actual employer is. In Mr Matsuoka's case the Singapore Airlines catering contract was held by Pacific Flight Catering, not by his employer PRI. PRI was not even a subcontractor to Pacific Flight Catering. But because PRI ran the operation of Pacific Flight Catering, Mr Matsuoka's job was affected when Singapore Airlines decided to contract LSG to do the catering instead of Pacific Flight Catering.

Mr Matsuoka was made redundant by PRI even though his job included work on catering contracts for other airlines, not just Singapore Airlines. Because he lost his job he was entitled to transfer employment to Singapore Airlines' new catering contractor LSG as a full time employee, not just to the extent that he had worked for PRI only on the Singapore Airlines contract.

Mr Matsuoka was a minor shareholder of PRI's parent company and a personal friend of the managing director of PRI. LSG and PRI were direct competitors. LSG's concerns about Mr Matsuoka's conflict of interest did not affect LSG's legal obligation to employ him.

The effect of this decision is that after losing the Singapore Airlines catering contract to LSG, PRI was able to pass to LSG full responsibility for Mr Matsuoka's significant redundancy compensation, unless LSG could find suitable full time work for him to do. A good result for PRI, not so good for LSG.

Many Pacific Flight Catering staff were also affected by this restructuring. Because they all worked for Singapore Airlines and for other airlines, Pacific Flight Catering was able to pick and choose which of its staff it retained and which it transferred to LSG.

For employers buying a business or tendering for services which include Schedule 1A employees, it is essential for planning and budgeting purposes to get accurate information about which employees are currently engaged in all aspects of providing the services and what their terms of employment are.

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