

Genuine restructure or hidden agenda?

Commercial reasons behind a redundancy are a matter for the employer's judgement, but a recent Employment Relations Authority determination highlights that the genuineness behind a restructure can still be scrutinised

The employer's decision to make an employee redundant was found to constitute an unjustified dismissal for being motivated, (at least in part), by matters other than genuine commercial considerations - concerns around an employee's performance and conduct.

Facts

ADO was employed by the Joan Fernie Charitable Trust Board (JFCT) as a Fencer General.

ADO allegedly had a disagreement with the Chairperson of the JFCT Board of Trustees in October 2023. ADO claimed that after the argument, the Chairperson told ADO they would no longer be doing stock work.

Two days later, JFCT advised ADO of a proposed restructure, which if it went ahead, would involve the appointment of a Livestock Manager, and as a result, ADO's position would become surplus to requirements.

ADO was informed that there were no redeployment opportunities or vacancies, and that it would likely go through a recruitment process to fill the newly created Livestock Manager position.

ADO met with JFCT and provided feedback on the proposal. ADO said they were advised that they did not meet the requirements, or have the qualifications, for the Livestock Manager role, and that they would not be successful in that position.

JFCT ultimately confirmed the restructure, and gave ADO notice of termination on the grounds of redundancy.

ADO then raised a personal grievance of unjustified dismissal, and sought, amongst other things, immediate reinstatement to his role, or as an alternative, redeployment to the Livestock Manager role.

Employment Relations Authority

The Employment Relations Authority (**the Authority**) ultimately concluded that ADO had been unjustifiably dismissed from their employment.

In coming to that conclusion, the Authority stated that some of the correspondence JFCT had sent to ADO suggested the redundancy was not genuine. JFCT had sent a letter to ADO raising various issues, such as:

- allegations that ADO had anger management issues and would lose control and become verbally abusive;
- an allegation that ADO had presented an invoice to the JFCT's accountant for repair of a trailer portrayed as belonging to the JFCT but that was in fact ADO's personal trailer;
- that ADO did not have the requisite skills to take on the managers role; and
- that ADO's physical condition limited the manner in which they could perform work.

The Authority noted that while the commercial reasons underlying redundancy are a matter for the employer's judgement, it did not accept that the allegations of misconduct were irrelevant to the decision to proceed with issuing the restructuring proposal, nor were they irrelevant to the decision to implement the proposal or to dismiss ADO. The Authority noted that there was little evidence of the commercial basis for the proposal being discussed amongst the Board of Trustees.

ADO had also claimed that the work they were performing was unknown to JFCT, and that a fair and reasonable employer could not have disestablished their role where its understanding of the role was incorrect. The Authority accepted that submission, and

Genuine restructure or hidden agenda? (Continued)

stated it was not satisfied that ADO's role was in reality surplus to the needs of the business. This assessment would have required an understanding of what ADO's role actually entailed, and the Authority considered there was at best, a lack of understanding as to ADO's role, or at worst, that JFCT had purposefully sought to artificially limit the scope of ADO's role to exclude tasks and duties.

The Authority further accepted ADO's submission that with sufficient time and training, they likely could have performed the Livestock Manager role. The Authority therefore found that ADO's claim that JFCT had conflated the restructure with redeployment, and that it dismissed ADO prior to considering all options short of dismissal was made out.

The Authority held that the dismissal was both substantially and procedurally unjustified.

Remedies

ADO had applied for permanent reinstatement, however this was not granted on the basis that the employment relationship had irretrievably broken down, and reinstatement would be impracticable.

ADO was awarded \$30,000 as compensation, and \$8,055.19 as lost wages for the unjustified dismissal personal grievance.

ADO had also raised an unjustified disadvantage personal grievance, alleging JFCT treated them unfairly in relation to unsubstantiated allegations, and a subsequent unjustified investigation and findings. This was also upheld and ADO was awarded another \$15,000 compensation.

Want to know more?

If you have any questions about this article, please contact our [Employment team](#).