

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Trevor Beamsley (Applicant)
AND AFFCO New Zealand Limited (Respondent)
REPRESENTATIVES John Unsworth for Applicant
Graeme Malone for Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Palmerston North, 13 September 2006
DATE OF DETERMINATION 11 October 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. Trevor Beamsley is seeking reinstatement to perform full-time Union duties at AFFCO New Zealand Limited's Imlay meat works in Wanganui. AFFCO pays Mr Beamsley's full time Union duties.
2. Mr Beamsley claims that the AFFCO unilaterally changed the arrangement put in place on 7 February 2000, and which was to remain in place for the period of his tenure as the site Union Secretary.
3. AFFCO says it is entitled to restructure Mr Beamsley's position and is entitled to take the view that the payment of a full-time secretary is not warranted. It denied that there has been any procedural failure.

The facts

4. On 7 February 2000, Bryan Goldsack, the site manager, confirmed in writing an arrangement for Trevor Beamsley to undertake full-time Union representation at Imlay. For completeness, the memorandum reads as follows:

*"To: **Trevor Beamsley***

cc Stu Bell, Pat Crawford, Leon Roebuck, Jim Collins

*From: **Bryan Goldsack***

Date: Monday, 7 February 2000

*Subject: **Site Union Representation***

Further to our earlier discussions ...

I'm pleased to formally advise you that the Imlay Management Team have made the decision to provide you with the opportunity to undertake full-time Union representation of the Imlay site.

We have made the decision to expand the time available to you because we feel that this will not only benefit the people we employ, but also it will allow us both to develop and grow what is already a very positive relationship between us both.

Furthermore, we accept and support that due to the nature of the work at Imlay (i.e. triple shift patterns) it will be necessary for you to manage your time across all work activities.

***This arrangement is in place for the period of your tenure as Site Union Secretary** and it should not be assumed that this position would be maintained should a person other than yourself have the role of Union Secretary (Emphasis added).*

We look forward to working together for the betterment of the Imlay site and our employees.

Should further clarification be required, please don't hesitate to contact me.

Sincerely,

*Bryan Goldsack
Site Manager"*

5. On 15 June 2006 AFFCO wrote to the Applicant advising him that his status was to change and the company required him to report to work in the Cutting Room on the same day. The Applicant says he received the letter on 17 July 2006 upon returning from leave. The letter also confirmed that there were brief discussions between Mr Beamsley, Leon Roebuck, the Acting Plant Manager, and Graham Cox, the Employee Relations Manager, on 1 and 9 June 2006.
6. The Applicant says Mr Roebuck told him that unless he agreed to the change he would only be paid for four hours for the whole week. Mr Roebuck confirmed that he did indeed say this. Mr Roebuck says that the decision was made by Mr Richard McColl from the company's Head Office. Mr Roebuck says he was conveying the message.

7. The Applicant continued to receive his normal pay while negotiations took place involving the parties' lawyers. The arrangement to maintain the status quo until an outcome is delivered from this investigation was worked out between the parties' lawyers.
8. On 31 July 2006, AFFCO set out its full position on the Site Secretary's role in a letter from Mr Cox to Mr Beamsley.
9. Another meeting took place on 1 August between David Eastlake, union secretary, Trevor Beamsley, and Leon Roebuck, Graeme Cox and Tony Miles. Messrs Cox and Miles made a final decision on 2 August 2006 and the decision was confirmed in a further letter from Graham Cox. The company says the decision was made because Messrs Beamsley and Eastlake would not agree to any changes.

Discussion

10. There are three issues that I have identified. They are as follows:
 - Is the company entitled to vary the arrangement that it had with Trevor Beamsley without his agreement?
 - What is the status of the 7 February 2000 memorandum?
 - Is the Authority required to determine the extent of the Site Secretary's role?
11. The Applicant says that AFFCO is prohibited from unilaterally varying the arrangements entered into on 7 February 2000 for Mr Beamsley to be paid as the full-time Site Secretary at Imlay (applying *New Zealand Meat Processors, etc IUOW v. Alliance Freezing Company (Southland) Ltd* 2 NZILR 246). The Applicant rejected the Respondent's suggestion of a redundancy-type situation applying here because the duties of the Union site Secretary exist. The Applicant says this is not a redundancy.
12. AFFCO says that the issue is whether it has the right to restructure Mr Beamsley's position without his consent when he would not agree to other arrangements. The company says that the memorandum does not provide Mr Beamsley with a lifetime job. That is quite true but I hold only if he is not re-elected to the position: "*it should not be assumed that this position would be*

maintained should a person other than yourself have the role of Union Secretary". It relied on Mr Beamsley's evidence that he agreed he could be dismissed for serious misconduct under the terms of the core collective agreement. In such a situation, AFFCO maintains that, despite the terms of the memorandum of 7 February 2000, the normal provisions allowing termination or variation would apply. AFFCO says that the statement in the memorandum that says *"this arrangement is in place for your tenure as Site Union Secretary"* is only a statement recording that in addition to general principles that might see the position come to an end, e.g. notice by the employee, misconduct, restructuring etc, it would definitely come to an end upon cessation of office. It only explains the terms of Mr Beamsley's position and because the memorandum cannot be read as preventing dismissal for reasonable cause, AFFCO has the right to restructure.

Decision

13. Trevor Beamsley and the Union have accepted that AFFCO is entitled to conduct an evaluation or review of cost deficiencies. However, in this case, the impact of such an ongoing review of cost deficiencies impacts on the central terms of an arrangement between Mr Beamsley and AFFCO. In this regard, AFFCO had a clear arrangement with Mr Beamsley under the 7 February 2000 memorandum that made provision for the arrangement to stay in place for the period of his tenure as the site Union Secretary: *"this arrangement is in place for the period of your tenure as Site Union Secretary"* and supported by the words *"it should not be assumed that this position would be maintained should a person other than yourself have the role of Union Secretary"*. For completeness the memorandum represents terms for Mr Beamsley's employment at Imlay.
14. AFFCO had already made its decision when Mr Beamsley had requested it to put its views in writing. Those views were not put in writing fully until 31 July 2006. Before that the decision had been made to require Mr Beamsley to report for productive duties and if he refused to do so, the decision had been made that he would not be paid for any full time Union duties.
15. The evidence also supports that no agreement had been reached on any process that would enable Mr Beamsley to be released from any productive duties to undertake his Union role. In addition, no agreement had been reached on the "productive work" that Mr Beamsley would be required to

undertake although suggestions had been made. There certainly were discussions around various options which Mr Beamsley had requested be put in writing.

16. I find that there was no process. There was no consultation before the decision was made on 17 July 2006.
17. Also, this is not a redundancy situation given two factors:
 - (a) The role of Union Site Secretary remains;
 - (b) AFFCO has not linked any cost efficiencies to Mr Beamsley's previous position or any other position that he might have held prior to becoming the Union Site Secretary where with custom and practice he would normally be expected to return to work.
18. I find that what AFFCO has done is to make a unilateral variation to Mr Beamsley's terms and conditions of employment as they relate to the 7 February 2000 memorandum and in doing so that was unjustified. The decision to require him to report to productive duties or not be paid was unjustified and a breach of his terms and conditions of employment. The failure to follow any due process in reaching agreement before making a decision was a breach of good faith.
19. In all the circumstances under Mr Beamsley's conditions of employment, he is entitled to continue to be paid full-time as the Union Site Secretary.
20. It is not necessary for me to determine any changes in his union secretary role.
21. Mr Beamsley is currently working on interim arrangements agreed by undertakings between both parties for him to fulfil his Union Site Secretary role on full-time pay. I am hopeful that this decision will bring the matter to a conclusion and for the parties to make those arrangements permanent (but subject to the terms of the memorandum) and for that reason I do not need to make any further orders. Indeed I am prevented from doing so in terms of making any injunctive relief. However, I reserve leave for Mr Beamsley to apply for a compliance order should that become necessary.

Costs

22. Costs are reserved.

P R Stapp
Member of the Employment Relations Authority