

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 704
3326820

BETWEEN KIM KNIGHT
 Applicant

AND ASUREQUALITY LIMITED
 Respondent

Member of Authority: David G Beck

Representatives: Yvette Hope, counsel for the Applicant
 Zachary Pentecost and Phillis Goredema counsel for the
 Respondent

Investigation Meeting: 2 September 2025 in Christchurch

Submissions Received: 5 September 2025 from the Applicant
 5 September 2025 from the Respondent

Date of Determination: 3 November 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kim Knight worked for AsureQuality Limited (Asure) a Crown owned entity, as a field technician from 4 October 2021 until her employment terminated on 14 June 2023, resulting from a nationwide restructuring process that identified her Greymouth based position as surplus in Asure’s Livestock Business Group. Ms Knight’s position was an ongoing seasonal position (10 months of the year) and subject of a collective agreement between Asure and the New Zealand Public Service Association Te Pukenga Here Tikanga Mahi (NZPSA) with a term from 1 October 2022 to 30 September 2023. Ms Knight was a union member.

[2] Ms Knight raised a personal grievance by letter of 5 September 2023, alleging that she had been unjustifiably dismissed and unjustifiably disadvantaged. The letter set out alleged

procedural deficiencies and substantive reasons to support claims that included a suggestion Ms Knight's selection for redundancy had involved an ulterior motive. Asure's response of 22 September, countered the redundancy had been enacted for genuine reasons and followed an extensive and extended, consultation period that exhausted all options to avoid terminating Ms Knight's employment.

[3] the parties attended a mediation in June 2024 that did not resolve matters, and an application was made to the Authority on 24 September 2024. The Authority initially after a case management conference call on 8 April 2025, scheduled an investigation meeting for 5 August in Greymouth but due to the member's unavailability this was rescheduled to 2 September 2025 and the parties agreed to have the investigation meeting in Christchurch.

[4] At the investigation meeting, I heard evidence from Kim Knight and Rachel Silcock (by an audio-visual link (AVL)) and from Asure's: Kylea Heaton, Group Services Manager and Emma Nightingale, Head of People and Culture Operations.

[5] All answered questions on written statement's they had provided. After the meeting I received submissions from counsel for both parties and additional documentation that I have carefully considered.

[6] Pursuant to s 174E Employment Relations Act 2000 ("the Act") I make findings of fact and law and outline conclusions on matters to resolve the employment relationship problem and make orders, but I do not record all evidence and submissions received.

Issues

[7] The issues to be decided are:

- a) Was Ms Knight unjustifiably dismissed or unjustifiably disadvantaged including the issue of whether the employment relationship ended by reason of a genuine redundancy absent of any ulterior motive.
- b) Did Asure breach any good faith obligations in enacting the decision to make Ms Knight redundant including whether they properly consulted with Ms Knight; provided sufficient information to facilitate genuine consultation and justification for the decision to disestablish Ms Knight's position.

- c) Did Asure satisfy its obligations arising from the applicable collective agreement and case law concerning reassignment and or redeployment?
- d) If it is found that Asure unjustifiably dismissed or unjustifiably disadvantaged Ms Knight, what if any remedies should be granted.
- e) If remedies are awarded to Ms Knight, should they be reduced because she has contributed to the situation giving rise to her personal grievances.
- f) How costs are to be resolved.

What caused the employment relationship problem?

[8] Ms Knight's concerns relate to a nationwide restructuring process Asure started by distribution of a change proposal "consultation pack" that accompanied a 29 March 2023 AVL meeting presentation by Ms Heaton for 150 potentially impacted workers. After the AVL meeting, Ms Knight and three other West Coast technicians, received an individual letter over Ms Heaton's signature, commencing consultation on three broad organisational changes as part of a review of Livestock Services, these were proposals to:

1. Change from current team structure of eight teams to four geographical teams.
2. Change from Field Technicians reporting to a Team leader to reporting to an Area Manager.
3. A reduction in the number of current Field Technician roles.

[9] The last proposal that Asure described as "driven by customer demand and a fall in future work volumes", was then expanded upon to suggest a nationwide reduction of 25 technician roles was required to meet current and future demand. The letter then noted Asure would be conducting "roadshows" to talk more fully with impacted teams. The letter addressing Ms Knight more specifically noted:

At this time, we believe that your role is at risk of being selected for reduction. Until consultation has been concluded we cannot confirm this.

[10] At the same time, the letter also asked for expressions of interest of taking voluntary redundancy and Ms Knight was advised: "If we do not reach the required numbers through voluntary redundancy, then we will undertake a selection process".

[11] However, the letter then noted the reduction of technician positions by 25 was “provisional” and:

This may change as feedback and information is gathered during the consultation process, is fully considered prior to a final decision being made about the proposed structure.

[12] The letter advised Ms Heaton was seeking “constructive feedback on all aspects of the proposed changes as outlined in the consultation pack” by 14 April. An offer to meet individually was also extended and EAP counselling was offered.

[13] Asure witnesses described the above as Phase 1 of the restructuring process.

[14] However, despite assurances of provisional decision making, tucked away at page 9 of the 13-page consultation pack under the heading “LIVESTOCK ON FARM - PROPOSED CHANGES and later relied upon as exposition of a proposed “selection criteria”, was a somewhat ambiguous statement, that despite identifying 25 more roles than needed:

For the proposed restructure, against our future structure of four regions, we have identified the number of roles by that are needed to go forward [sic]. Of these, we have identified the roles that deliver critical services to our customers that will need to remain in place to meet future customer and operating model needs.

These are based on:

- Location of the role
- Specialist or Lead Auditor/Assessor – Deer services, TB Environmental
- TB-Critical to retain role for region/customer
- Dairy Assessor and Dairy Assessor Trainee

The remaining roles may be at risk of potential disestablishment, and we will work through the options during consultation. Details by region will be provided to all employees within this structure and further details shared at road shows.

[15] The consultation pack noted that two newly created roles of “planning co-ordinator” would be established with recruitment commencing from 1 May 2023. Ms Knight says at the time she did not consider applying for the roles believing her technician’s job was busy enough to be sustained as ongoing.

[16] The consultation pack also included a heading “REDUNDANCY AND REDEPLOYMENT PROCESS WHERE APPLICABLE” that initially stated, “redundancy and

redeployment processes are detailed in our Collective and Individual Employment Agreements and: These processes will be followed at all times”. The pack then stated.

Redundancy is the last resort. Redeployment may include a mixture of direct appointment, internal-only applications as well as external advertising. The choice will depend on the role available, and the skills and experience required. Where there is more than one affected employee that may be suitable for an available position, a closed-pool assessment process may first be undertaken.

The relevant collective agreement provisions

[17] The problem for Asure is that despite the use of the term “redeployment” in referencing the collective agreement, this term was absent from the actual document’s relevant provision. Part 12 of the collective agreement under a heading “REDUNDANCY AND REASSIGNMENT” details sequentially how a restructuring should play out.

[18] Under cl 12.3 heading “Reassignment” it describes that following a consultation process with the PSA if an employee’s position was declared surplus “then, in consultation with the PSA and employee(s) affected, AsureQuality will explore the possibility of reassignment of the employee elsewhere within AsureQuality”. ‘Reassignment’ as a concept, is then fleshed out by describing what it “may” involve, including (in summary).

- Some on the job training or formal training to be detailed prior to any reassignment.
- A salary equalisation allowance.
- Support with travel time if a new location was involved in a reassignment.
- Other options as agreed.

[19] Sequentially the next step (cl 12.5) is where “no suitable alternative” exists the redundancy provisions apply. I now outline what transpired in the process and assess as one factor amongst others, whether the events were consistent with the above-described collective agreement provision and if not, what is the significance of this. I also apply the test contained in s 103A of the Act and assess good faith issues. A difficulty from the outset in conducting this assessment is that although Ms Knight was a NZPSA member she chose not to be represented by them during consultation meetings.

[20] However, I do observe that how the employment agreement is structured is consistent with established case law that it is first, the position is assessed as surplus then once that

decision is arrived upon, the employer must consider whether to redeploy the worker¹ and, as observed by the Employment Court, in *Gafiatullina v Propellerhead Limited*, an “assessment of suitability for redeployment is not to be conducted unilaterally outside of the restructure consultation” period.²

4 April 2023 Greymouth group meeting

[21] On 4 April, Ms Heaton and two local managers met with the South Island, West Coast number 1 Team (SI 1 Team) and informed them that Asure’s restructuring meant the possibility of team redundancies. The purpose of the meeting was for Asure to expand upon and take any questions about the 29 March consultation pack or phase 1 of the restructuring process. Ms Knight and Ms Silcock say at the meeting, they were advised that Asure would not be using contractors on an ongoing basis, but they claimed overhearing a conversation shortly after the meeting that suggested an existing local contractor would be retained. Ms Heaton denied this conversation.

[22] At the time the SI 1 Team of technicians was split between four areas with Ms Knight servicing the central area from Greymouth and the other three areas were covered by three technicians and a contractor.

[23] After the meeting Asure after discussions with NZPSA, extended the time for feedback on the consultation pack to 21 April. Ms Knight did not provide feedback. I observe it was unclear on what the specific impact (apart from a change in reporting line) would be on Ms Knight’s position as her 29 March letter and the pack were expressed in broad generalities.

Phase 2 of the restructuring

[24] Asure, say they reviewed all feedback received and accepted 19 applications for voluntary redundancy. This left four technician roles still in the ‘at risk’ of disestablishment group. At an 8 May AVL presentation to impacted field services workers with slide show summarising feedback (a document entitled “Livestock post consultation outcome”), Asure outlined the next phase they had determined which they say affirmed the decisions that:

¹ See for example *New Zealand Steel v Hadad* [2023] NZEmpC 57 at 84.

² *Gafiatullina v Propellerhead Limited* [2021] NZEmpC 146 at 111.

- a) 25 positions would be disestablished and as 19 workers had accepted voluntary redundancy and two had resigned this left four positions to be disestablished from the “at risk” pool against the published criteria”.
- b) Consultation would commence with each technician whose role was proposed to be disestablished.
- c) Team leader roles would be replaced by newly established Area Manager roles.

9 May meeting

[25] Ms Heaton says that on 8 May she called and emailed Ms Knight inviting her to an individual meeting that was agreed upon to occur the next day with Ms Heaton and a local manager attending for Asure. Ms Knight chose to proceed with the meeting unaccompanied, but it was agreed the meeting be recorded and the Authority was provided with a transcript of the approximately 25 minutes’ meeting.

[26] At this meeting, Ms Heaton and the local manager immediately identified that Ms Knight’s role was proposed to be disestablished mainly due to what was described as a reduction in movement control testing. Ms Heaton then refers to Ms Knight’s role being centrally located and amenable to “be split with other roles around it more easily”. In response Ms Knight appeared to understand the proposal as in response, she described how the other technicians could encroach on her area. Ms Heaton then confirmed that was the envisaged plan by stating “it wouldn’t necessarily be ideal, but the surrounding regions would all encroach into your area more to cover it.” There was also a discussion about contractors continuing and Ms Heaton saying: “We don’t plan on having a contractor over our people”. After some further discussion, Ms Knight appeared to accept on the distances travelled by her to attend to local farm testing, it made sense to disestablish her role. Ms Heaton in response, impliedly believing Ms Knight accepted the presented changes, indicated a letter will be provided with “some of the details in and around it” and the next meeting would be scheduled. Ms Heaton then referred to available outplacement services while emphasising the changes had not yet been decided. However, this comment was then narrowed to an observation that a possible alternative outcome would only involve an adjacent area technician resigning in the interim.

[27] In summary, it was evident Asure already had a firm view on how the West Coast area would be covered after the restructuring was completed but they were ostensibly committed to hearing from Ms Knight before finalising the matter. Ms Heaton did confirm when Ms Knight asked “so it’s just because I live in Greymouth – It’s because of the area you work in that’s right (and the manager saying: “And the reduction in that area”). Ms Knight then asked when the changes would be effective from, and Ms Heaton noted they were working to a date of 23 June to disestablish the role. Despite this, toward the end of the meeting Ms Knight was reassured any alternative proposals she puts will be considered.

[28] However, in what would later become contentious, Ms Heaton confirmed technicians in roles not being considered for disestablishment (including Ms Knight’s adjacent colleagues), would get comforting letters by the end of the week. The meeting ended with Ms Knight having it confirmed that a close analysis of workload distribution had not yet been undertaken, but Ms Heaton endeavoured to provide data before the next meeting.

[29] After the meeting, Ms Heaton provided Ms Knight with a 9 May letter headed “COMMENCEMENT OF CONSULTATION”. The letter says the proposed disestablishment of Ms Knight’s role had been explained for two reasons – 1) a significant decrease in testing required and 2) the existing role being “more central” and amenable to being split to save costs and travel time. Feedback was sought on the proposal and “our selection process” by 17 May, and a further meeting of that day was suggested. The letter ended by offering EAP assistance and noted if the proposal went ahead free outplacement support would be provided and that: “These services are offered to you to support you working through your options outside of AQ”.

Confirmation of Ms Knight’s co-worker position

[30] Despite inviting Ms Knight to comment on their selection process and commencing ongoing consultation on the disestablishment of her position, Ms Heaton after meeting with the three other West Coast technicians on 8 May, emailed them all on 12 May a “Consultation Outcome Letter”. This letter provided by Ms Silcock, first thanked her for feedback during the change process then after outlining that the “outcomes of the consultation process that we are proceeding with” as the decision to reduce the field technician service by 25 roles and move to area managers from team leaders, proceeded to advise that Ms Silcock had been unconditionally

“confirmed into your position as a Field Technician”. Ms Silcock’s evidence was she could not recall any discussion with Ms Heaton prior to receiving the letter assuring her that her position was secure. Ms Silcock resigned three months after Ms Knight left Asure.

17 May meeting

[31] Ms Heaton and the local manager met with Ms Knight on 17 May, again Ms Knight was unaccompanied but the meeting by agreement, was recorded and the Authority was provided a transcript. Ms Heaton says at this meeting she also provided a detailed overview paper “West Coast Area Redistribution” with maps showing the changes of area coverage on the West Coast. I note that the various presentations provided to Ms Knight were undated that made my investigation difficult to follow in sequence as Asure witnesses seemed equally unsure in recalling their exact presentational sequence.

[32] Ms Heaton opened the meeting, referencing the described paper above as being helpful for Ms Knight to understand “the selection process” Asure had undertaken “identifying your area”. Ms Heaton then discusses the reduction in testing numbers that led to the decision and Ms Knight questioned the accuracy of the figures. Ms Heaton then explained how the decision to split Ms Knight’s area was made using hand drawn maps as an explanatory aide.

[33] Ms Heaton explained when Ms Knight asked when her last day would be, that the proposal had not been confirmed as definitely going ahead and proceeded to suggest they could be persuaded otherwise. Ms Heaton also tentatively suggested some new positions may be established and that Asure “need to make sure that you have an opportunity to apply for those” as the new structure was to be announced on 29 May. The parties then discussed Ms Knight’s end date of employment and the possibility of extending it. Ms Knight also discussed acceptance of what was happening and what she needed to do to move on, including Asure providing a redundancy pay calculation and contacting the outplacement service. After the meeting Asure emailed Ms Knight an estimate of her redundancy pay and committed to provide data around projected testing numbers that were used to form the basis of the restructuring decision.

22 May AVL meeting

[34] Ms Heaton and the local manager then convened an AVL meeting of 22 May. Ms Heaton in her evidence describing the purpose of the meeting as for Ms Knight to provide additional feedback (i.e. a continuation of the consultation process). Again, Ms Knight was not represented, and the call was recorded, and a transcript provide to the Authority. At the commencement of the call, Ms Knight vigorously contested the data provided to support the disestablishment of her position. After some debate the discourse switched to the other reasoning behind the decision that travel times were at issue and, the decision was based upon the central area being disestablished and the work absorbed into surrounding areas. Ms Knight then asked how individual “skills and attributes” fit into the decision making.

[35] Unfortunately, Ms Heaton in response, somewhat confused the issue by expressing acceptance that all technicians had the same skills. What she did not make clear was skill set had no bearing on the decision. Ms Heaton then suggested the process was now “we will go away and think about it” and have a further meeting noting “at that point I’ll have a final decision so it should be quite a quick call”.

[36] At this point in the meeting, Ms Knight indicated a concern that the decision had been “already pre-determined by you sending the letters to the other staff”. Ms Heaton’s response to this, suggested that the letters contained only conditional assurance of ongoing employment and that this may change if there was a “significant shift” including an example if those who had accepted voluntary redundancy changed their minds. Ms Heaton then elaborated that:

But we thought it better to give the ones that their roles safe, predominantly due to location – we needed them in their locations with what we knew and with what they could do and the skills in the locations, especially as a lot of them were made safe because someone who is in the same area took a voluntary redundancy and that what made their role safe. Cause if there is 2 in the same area, they had to both be at risk, and then one takes voluntary redundancy then it makes the other one no longer at risk. And it just got too hard to start splitting the ball up, was getting a little bit too much.

[37] On the above, I do appreciate that Ms Heaton was ‘put on the spot’ and was responsible for a complex nationwide restructuring, but given she was the author of the 12 May letters (that were in unambiguous terms affirming ongoing employment), I objectively consider the above comments to be misleading and confusing.

[38] After the meeting, Ms Knight emailed Ms Heaton twice contesting the testing figures provided pertaining to her area as inaccurate and suggested Asure's analysis had not been evenly applied.

25 May AVL meeting.

[39] The next meeting of 25 May, was attended by Ms Nightingale (Head of People and Culture Operations) and the local manager, again recorded and transcribed with Ms Knight attending alone. The meeting lasted around 30 minutes and was mainly taken up with a debate about whether Asure had accurately assessed the number of testing tasks Ms Knight was thought to be losing (26,000); the boundaries of her area and, how a contractor had been taken into the equation. Ms Knight expressed a view that if the numbers were accurate, she agreed it made sense to disestablish the central role she occupied. Ms Nightingale assured Ms Knight that further information would be provided so that she could "understand why your role has been selected". The local manager conceded the figure of an estimated 26,000 less tests was inaccurate and should be 16,000 (with consequent impact on the neighbouring technician). The concerns about predetermination were not discussed at this meeting.

1 June AVL meeting

[40] The same parties as above attended this meeting, but it was only partially recorded and transcribed. Ms Knight identified a concern that a technician in an area South of her area appeared underutilised and suggested alternative coverage scenarios including an adjacent position be reduced to a 9-month contract or disestablished with Ms Knight picking up their testing responsibilities. Ms Knight also raised the utilisation of contractors.

[41] Ms Nightingale pointed out to re jig their proposal may require disestablishing another role and Ms Knight pointed out that may prove problematic given the letters issued indicating their jobs were safe. Ms Nightingale did not address this dilemma in response until pushed further and then responded this could be responded to. At this point in meeting, Ms Knight expressed a view that it looked like she was being targeted for redundancy rather than her role and that some of her work was being given to another technician who was underutilised.

[42] I observe by this point in time it is doubtful if Asure was engaging in genuine consultation as decisions already made prevented them genuinely considering Ms Knight's input. However, at the end of the meeting they assured Ms Knight they would consider her input, and Mr Heaton would meet with her again.

7 June meeting final decision communicated

[43] This meeting with Ms Knight again alone, involved Ms Heaton and the local manager and again was transcribed. The purpose, described by Ms Heaton was to indicate an outcome Asure had decided. After assuring Ms Knight her submissions had been considered, Ms Heaton indicated they still needed to go ahead to disestablish Ms Knight's role predominantly based on an assessment that there was not enough ongoing work for Ms Knight. An effective disestablishment date of 30 June was then set, but Ms Heaton noted that marked the commencement of Ms Knight's notice period (of four weeks). They then discussed an actual finishing date as Ms Knight explained she was on a permanent seasonal agreement and noted her work normally ended at the beginning of August. Nothing was agreed on a finishing date with Ms Heaton signalling that could be worked through later.

[44] Ms Heaton then discussed Ms Knight working with Asure's contracted outplacement service and noted some new roles within Asure and that if Ms Knight was interested in anything she should contact her local manager or Ms Heaton. Redeployment (or reassignment) was not specifically alluded to, and no specific roles were identified as potential ongoing employment. Ms Heaton assured Ms Knight they would keep in contact.

[45] Ms Knight asked what was to become of a contractor and was advised that they were on contract till the end of June and then there would be a review. The meeting ended with Ms Knight contesting the testing projections and the remaining technicians' ability to cope with reallocated work.

Ending of the employment relationship

[46] Following the above meeting, Ms Heaton provided a 9 June: "Proposal Outcome" letter to Ms Knight. The letter set out the reasoning behind Asure's decision making and why Ms

Knight's role had been specifically identified; it confirmed Ms Knight's role was disestablished from 30 June with a final working day to be agreed separately.

[47] The letter then proceeded to indicate further options may be explored including "transfer to a suitable alternative position" or potentially redundancy. The latter options were described as a last resort and "all alternatives to termination will be considered before redundancy arises". Ms Heaton then noted outplacement services had been set up and a consultant would soon be in touch with Ms Knight.

[48] Ms Heaton in evidence that concentrated on a belief that a fair selection criterion had been communicated to Ms Knight (during Phase 1 of the restructure), noted:

The reason for selecting the central region, to obtain the lowest travel times, resulting in better travel efficiencies, less risk of fatigue and faster times to test, remained an appropriate measure.

[49] I observe that throughout the consultation process although challenging the testing numbers that rationalised the decision, Ms Knight accepted there was sense in how her area had been effectively abolished.

[50] By email of 12 June, Ms Knight's local manager noted Ms Knight's last working day would be 30 June, but the notice period would be paid in lieu to allow Ms Knight to work with the outplacement service. In addition, the manager noted Asure would up until the termination date, continue to discuss other options available that may include transfer to a suitable alternative position. Ms Knight subsequently requested and had 14 June approved as her last working day and, signalled she wished to immediately start working with outplacement services.

[51] Ms Knight says no contact was made to explore any redeployment/reassignment options and on 16 June she discovered she was locked out of Asure's job vacancy portal. Ms Knight emailed the local manager several times and did not get a response until 22 June. This included a 19 June email from Ms Knight, asking if all jobs would be advertised on Asure's internal system as she was locked out of access. The local Manager's response of 22 June was: "There is a AQ website where you can create a profile this will allow you to see all active roles". In a

further email of 10 July, the local manager attached a list of employment opportunities throughout the business by position and closing date with contact persons identified.

[52] It was Asure's evidence that they identified vacancies during the notice period for Ms Knight, but none were suitable anywhere in New Zealand. However, they did acknowledge some internal opportunities arose that would have required training, relocation and interviews consistent with re-assignment obligations, but they suggested Ms Knight chose not to explore these options. Ms Nightingale noted a potentially suitable scheduler role was available, but Ms Knight did not apply for it and that she quickly left the workplace. However, Ms Nightingale acknowledged Asure had not been "perfect" in identifying opportunities and had used an outplacement service due to a lack of HR capacity to handle both internal and external opportunities.

[53] In contrast, Ms Knight while acknowledging her regional manager identified vacancies says a barrier to applications was her belief Asure was not interested in redeploying her and Asure did not even ask for her curriculum vitae. Ms Knight says she did utilise the outplacement service. Ms Knight says she was confused by having to trawl vacancies thinking Asure should have taken more proactive steps to redeploy her.

The legal framework

[54] To justify termination of employment including in a redundancy situation, Asure must comply with relevant provisions of Ms Knight's employment agreement and meet statutory requirements set out in s 103A of the Act. This requires the Authority to undertake an objective assessment of whether the employer's actions and how it acted, were what a fair and reasonable employer could do in all the circumstances at the time of the ending of the employment relationship.

[55] In applying this test, the Authority must consider several factors including: the resources available to the employer (extensive) and here in context whether the employer gave Ms Knight an opportunity to comment on the proposal to end the employment relationship and whether that comment was genuinely considered.

[56] The Court of Appeal in *Grace Team Accounting v Brake*³ has ruled that an employer claiming to be in a redundancy situation is only entitled to justifiably end an employment relationship for valid and demonstrable commercial reasons and when looking at applying s 103A of the Act has said:

If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s.4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s.103A test.

[57] In essence, the above requires the Authority to determine first if the redundancy was genuine (an assessment that must exclude any ulterior motive) and then whether it was enacted in a procedurally fair manner.

Good faith

[58] To ensure a redundancy is enacted in a procedurally fair manner, good faith obligations also apply as set out in s 4 of the Act - these include a positive disclosure obligation of an affected employee being provided with access to information supporting the reason for the redundancy and the detail of how it is proposed it will be implemented.

[59] Further, an employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised. In the Employment Court decision *Stormont v Peddle Thorp Aitken Ltd* the consultation is described as involving:

.... the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done. Consultation must be a reality, not a charade. Employees must know what is proposed before they can be expected to give their view on it. This requires the provision of sufficiently precise information, in a timely manner. The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.⁴

³ At [85].

⁴ *Stormont v Peddle Thorp Aitken Ltd* [2017] ERNZ 352 at [54].

Assessment

[60] Assessing whether a redundancy is genuine is often a subjective exercise and this situation is particularly fraught given the size and purpose of the organisation that was objectively driven by commercial imperatives. The restructuring was nationwide and conducted in a comprehensive manner with significant information being shared with impacted workers and consultation being engaged in with their collective representative (NZPSA). However, Ms Knight's situation was a relatively simple assessment of a region occupied by four technicians and the question became how best to organise and deploy those workers in the most efficient manner.

[61] I do not comment on whether abolishing the area Ms Knight worked in and absorbing the ongoing testing and other work into surrounding areas was a sensible measure to endorse or not as this was a business decision the organisation was entitled to make without in the circumstances, the Authority substituting its judgment for that of the employer.⁵ I consider Asure has made out that the redundancy was for a genuine reason.

[62] The consultation and engagement with Ms Knight up to the point her job was disestablished was extensive, sensitive and significant information sharing took place. To this extent good faith principles were adhered to.

[63] What I was not convinced about was whether the consultation was an unforeseen charade as Asure had during the first phase of the restructure, unwittingly bound themselves to an outcome by selecting the role Ms Knight occupied to be disestablished by virtue of its location. This rendered the consultation to be meaningless and it was effectively curtailed once Asure confirmed to Ms Knight's adjacent colleagues that their jobs were safe on 12 May 2023. From this point, Ms Knight was misled into thinking any input she had or alternatives she identified would be considered with an open mind by Asure.

[64] The redundancy process was not a comfortable experience for Ms Knight, and this was not assisted by some initial disorganisation of Asure's local management being unable to

⁵ *Innovative Landscapes (2015) Limited v Popkin* [2020] NZEmpC 40.

provide accurate data to support their decision. It led Ms Knight to be defensive and seeking justification for her role disappearing and sadly, into thinking the decision could be changed.

[65] I ironically find that Asure's intense engagement only served to complicate matters as the simplicity of the proposal was merging areas to save on travel costs and a reduction of the headcount of technicians. I do not find that Asure properly articulated the criteria they were adopting which led Ms Knight to understandably consider she was being personally targeted for an ulterior motive rather than a rational reorganisation of the area she serviced.

[66] As Ms Knight is alleging, she was unjustifiably dismissed I also must examine whether Asure properly engaged in exploring alternatives to redundancy. This involves first examining whether Asure adhered to the provisions of Ms Knight's collective agreement.

[67] The first definitional matter was Asure's witnesses did not appear to understand the distinction between reassignment and redeployment. There was no provision in the employment agreement covering redeployment obligations but there was a positively expressed duty to explore the possibility of reassignment. Objectively, reassignment is a more positive duty than exploring or identifying redeployment opportunities and, the employment agreement (at 12.3) reflects this by providing that reassignment may involve "on the job training and/or formal training" and identifying "support needs". The first step that I could see no evidence of having occurred is the opening sentence of 12.3:

Reassignment

Where, following the consultation process as agreed as part of Partnership for Quality provisions, an employee's position is declared surplus then, in consultation with the PSA and employee(s) affected, AsureQuality will explore the possibility of reassignment of the employee elsewhere within Asure Quality.

[68] There was some evidence that AsureQuality had involved NZPSA in Phase 1 of the consultation including an agreement that voluntary redundancy be made an option. I also note that Ms Knight although a union member, chose not to involve the union during her meetings in the consultation phase but once the position was declared surplus it would appear Asure believed they had no further duty beyond referring Ms Knight to an outplacement agency and steering her to an internal jobs' website. Asure took no positive steps to formally meet with Ms Knight after making her redundant to construct reassignment options. This is despite Asure

conceding that such opportunities existed. I do not consider outsourcing the task of assisting Ms Knight to find alternatives, while laudable, met Asure's contractual obligations.

Finding

[69] For completeness, while I find the reasoning behind the redundancy was genuine and did not involve an ulterior motive, this was a flawed and muddled redundancy process with 'surface' consultation and insufficient focus upon reassigning Ms Knight to retain her services. These procedural defects were not minor, and they resulted in Ms Knight being treated unfairly. The respondent also failed to meet obligations set out in s 4 of the Act in failing to avoid engaging in misleading behaviour and then not being constructive in maintaining the employment relationship.

[70] The procedural defects and breaches of good faith that I have identified above ended Ms Knight's employment relationship prematurely in a manner that did not fall within the parameters of what a notional, fair, and reasonable employer could have done in all the circumstances. As a result, Ms Knight is entitled to consideration of remedies sought but I decline to make orders for lost wages as I have found substantively that the redundancy was genuine. In addition, on the facts, the lengthy consultation period needs to be considered in prolonging Ms Knight's employment, and Ms Knight chose to leave early during her notice period when additional remuneration was on offer. I am also conscious of the fact that Ms Knight's position was seasonal and for the period August to the end of September 2023 she would not have been in employment.

Remedies

Section 123(1)(c)(i) Compensation

[71] Ms Knight gave compelling evidence of the significant impact of her dismissal and the uncertainty it created at a difficult time to find immediate alternative employment.

[72] Ms Knight explained that how her employment ended left her confused and hurt and had a major impact upon her mental well-being, confidence and sense of self-worth. Ms Knight felt committed to her role and the local farming community and had a belief that her failure to complete testing work would damage her local reputation for reliability.

[73] I am convinced that Ms Knight suffered humiliation, loss of dignity and injury to feelings for a lengthy period before she could resolve her employment situation and that this must have been an extremely alienating experience.

[74] Considering all the circumstances and awards made by the Authority in similar cases, I consider Ms Knight's impact evidence warrants a reasonably significant compensatory amount. I fix that sum at \$25,000 under s123 (1)(c)(i) of the Act.

Contribution

[75] Section 124 of the Act states that I must consider the extent to what, if any, Ms Knight's actions contributed to the situation that gave rise to the personal grievance and assess whether any calculated remedy should be reduced. In these circumstances, I can find no reason to reduce the remedies awarded as Ms Knight's response to the proposal to disestablish her role although robust, was understandable in the circumstances of the finding that she was misled. In this respect, Ms Knight has not engaged in a wrongful action and did not act in a blameworthy or culpable manner that gave rise to the grievance occurring. I am also conscious this was a no-fault termination of employment.

Order

[76] I have found that:

- a. Kim Knight was unjustifiably disadvantaged and suffered detriment by the way AsureQuality handled the disestablishment of her position and as a result the following remedy is ordered.
- b. AsureQuality Limited must pay Kim Knight the sum of \$25,000 compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

Costs

[77] Costs are reserved.

[78] The parties are encouraged to resolve any issue of costs between themselves.

[79] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Kim Knight may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum AsureQuality Limited will then have 14 days to lodge any reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[80] The parties can expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁶

David G Beck
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1