

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 21A/10  
5284901

BETWEEN                      RAVI MANGER  
   Applicant

AND                              SOUTH WAIRARAPA  
   DISTRICT COUNCIL  
   Respondent

Member of Authority:      Philip Cheyne

Representatives:            Michael O'Brien, Counsel for Applicant  
   Michael Quigg, Counsel for Respondent

Investigation Meeting:      20 January 2010 at Wellington

Determination:              12 March 2010

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**DETERMINATION OF THE AUTHORITY**

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[1] Ravi Manger is employed by the South Wairarapa District Council (SWDC) as its Manager, Works and Services (MWS). SWDC has undergone a restructuring exercise that will make a number of changes to its staffing. One change is the establishment of a position called Group Manager Infrastructure and Services (GMIS).

[2] In an earlier determination dated 8 February 2010 (WA 21/10), I found that Mr Manger's position as MWS will be substantially changed as a result of the GMIS position so that SWDC may be entitled to invoke the redundancy provisions in the employment agreement that applies between it and Mr Manger. I also declined to accept that, but for flaws in SWDC's consultation process concerning the restructuring, SWDC might have decided that Mr Manger's position was not substantially changed by the restructuring. I released the earlier determination with these findings as soon as I could so as to enable both parties to take whatever further action they considered appropriate. Unfortunately it has taken until now to have the

time to complete work on this matter. In this determination, I will deal with Mr Manger's residual complaints about the consultation process. To gain a complete picture both determinations should be read together.

[3] Jack Dowd is SWDC's Chief Executive. He was employed from August 2008. One of his briefs from the outset was to review the structure of SWDC and restructure the Council if necessary to ensure efficient and effective use of ratepayer funds. Leanne Welsh is the Director of Boss Group and is experienced in local government restructuring. In late June 2009, SWDC contracted Boss Group to provide consultancy services and advice regarding restructuring.

[4] On 7 July, Dr Dowd and Ms Welsh met with the employees' union representative, following which they met with Dr Dowd's managerial direct reports, including Mr Manger. Mr Manger and others were provided with a memorandum from Dr Dowd dated 7 July setting out the critical issues, the intended consultation process and timetable and a briefing paper setting out answers to give to questions that might be asked by staff. There was then a full staff meeting on 8 July where Dr Dowd introduced the restructuring proposal to all staff.

[5] Part of the consultation about the restructuring was to collect data from staff about their work activities over a three week period starting 20 July. In addition, Ms Welsh met with staff, including Mr Manger. That was in early August. Ms Welsh's evidence, which I accept, is that she spoke to Mr Manger about staffing numbers within his area of responsibility but that she did not speak directly with him about his own situation. It was nonetheless an opportunity for Mr Manger to raise any issues on his mind about his own situation for the future.

[6] Mr Manger and other staff completed the survey form and that data was collated by Ms Welsh along with the information from staff interviews. Ms Welsh reported her findings to Dr Dowd on 17 August and was asked to develop a structure to suit a modern, small organisation dealing with the span of work covered by the Council. Ms Welsh then met with Dr Dowd on 24 August, with Dr Dowd and the Mayor on 1 September and with councillors on 10 September. It was decided to present the restructuring proposal to staff at a meeting scheduled for 17 September. However, before then, on 14 September, a briefing was given to the Union followed by a briefing to several managers (including Mr Manger) who were not able to be

present on 17 September. The last mentioned meeting was an emotional one but I do not accept that there was any breach by SWDC of its obligations owed to Mr Manger.

[7] On 15 September, Mr Manger met Dr Dowd to discuss Mr Manger's concerns about the restructuring proposal. Mr Manger was angry because the proposal meant that he would not be eligible for reconfirmation. I accept Dr Dowd's evidence that Mr Manger said he felt Dr Dowd had betrayed him; that he could not understand why Dr Dowd had not consulted him when coming up with the proposal; that he thought Dr Dowd was racist; and that he had given Dr Dowd assistance to develop Council plans and that the Council was now trying to get rid of him. In response, Dr Dowd acknowledged Mr Manger's assistance during his tenure and rebutted the allegation of racism. Addressing the documentation about the GMIS position, Mr Manger made the point that he performed 19 out of the 20 identified functions. It is common ground that Dr Dowd promised to consider the points raised by Mr Manger and revert to him. While this was again an emotional meeting, I do not accept that there was any breach by Dr Dowd of his obligations towards Mr Manger.

[8] On 17 September, Ms Welsh and Dr Dowd presented the restructuring proposal to staff generally. There was a PowerPoint presentation and an information pack. That material was also provided to Mr Manger. Staff were invited to ask questions and provide submissions about the proposal up until 2 October, leaving approximately a month thereafter for consideration of that feedback before the announcement of a final decision about the proposed restructuring. Later, the date for any response was extended to 9 October.

[9] Having not had the promised response mentioned on 15 September from Dr Dowd, Mr Manger sought legal advice and instructed his solicitors to write to SWDC. The letter dated 29 September makes the point about the responsibilities for the proposed GMIS position falling within Mr Manger's MWS role. It asks for confirmation that he will be eligible for reconfirmation. The letter includes a request for a copy of all information relevant to the proposed restructuring. This letter drew an acknowledgment, including advice about the extension to the timetable to 9 October referred to above. When no substantive reply had been received by 8 October, Mr Manger's solicitors wrote again repeating the point about reconfirmation and asked for an extension to the consultation deadline so as to permit Mr Manger to receive and comment on any further information. Again, in the

absence of a reply, the solicitors wrote on 12 October. That drew a more fulsome response dated 14 October but not the information requested nor an answer about the extension sought. On 16 October, SWDC's solicitor wrote advising that all relevant documents had been provided to Mr Manger so it was not necessary for there to be any extension of time.

[10] From 13 October, Dr Dowd and Ms Welsh met and worked through the various submissions that had been received in response to the restructuring proposal. It is common ground that Mr Manger's only written input comprised the correspondence from his solicitors. SWDC contracted consultants (Strategic Pay) to draft job descriptions and do a job sizing exercise for the positions envisaged by the new structure. On 24 November, Dr Dowd met with the Mayor to outline the intended final structure and there was then a meeting with councillors on 26 November.

[11] On 27 November, Dr Dowd met with all SWDC staff, including Mr Manger, and he released to them his decisions about the restructuring proposal. Each person received a letter explaining the outcome as it affected them personally, a response to submissions and an organisational chart and job descriptions for the positions established as a result of the restructuring. As foreshadowed, the outcome for Mr Manger was the establishment of the GMIS position, an assertion that he was not eligible for reconfirmation into that position and the announcement of the decision to publicly advertise the three group manager positions.

[12] These proceedings were lodged on 30 November, an earlier mediation having not resolved Mr Manger's concerns. From the outset, Mr Manger took the position that there was no substantial change to his position so he would never apply for the GMIS role. As far as I am aware he has therefore not been considered for appointment to that position. Also as far as I am aware, no further action has been taken by SWDC to terminate Mr Manger's employment for redundancy.

[13] Mr Manger's view is that his position has not substantially changed as a result of the restructuring. For the reasons given in the earlier determination, I do not accept that view.

[14] There is a complaint that SWDC, through its solicitors, indicated:

*As a result of feedback received ... the respondent might make further changes to the proposed new role to ensure it was substantially different from MWS role.*

[15] The concern appears to be that SWDC did not disclose this feedback to Mr Manger. There is also an implication that SWDC adjusted the restructuring so as to ensure that Mr Manger could not be eligible for reconfirmation. There is simply no evidence to support the last mentioned allegation or implication and I reject it. Supporting the first part of the concern, Mr Manger's evidence is that he was not given an opportunity to comment on all the feedback before SWDC made its final decision.

[16] It is helpful to set out more fully what is said in the solicitors' letter dated 14 October because that is the source of the concern:

*Our client's position is that the Council considers that the role of Manager of Works and Services was substantially different from the proposed new role GM Infrastructure and Services. As you will be aware the Council is currently in the consultation stage in relation to the proposed restructure. It is possible that following the receipt of all the feedback there may be some further changes to the proposed role of GM Infrastructure and Services. The likelihood is however that that will only add to the degree of substantial difference between the two roles.*

[17] The last sentence in the extract from the solicitors' letter reflects some thinking at the time about the proper application of the principle that lay behind the restructuring proposal and the division of responsibilities between the three Group Manager roles. That thinking resulted in some minor change from the original proposal. It is the sort of fine detail change quite likely to occur in such a process. I do not accept that any breach of SWDC's consultation obligations to Mr Manger arises as a result.

[18] There was also a confidential submission received prior to 13 October suggesting that only two GM positions were needed rather than the three proposed. Dr Dowd rejected that suggestion again because it was inconsistent with the principle guiding the proposed new structure. I accept SWDC's position that adopting the suggestion would have exacerbated the differences between Mr Manger's MWS role and whichever of two GM roles would have incorporated more of his tasks. It follows that the omission to copy Mr Manger in on the confidential submission made no difference of any substance to Mr Manger's capacity to argue that he should have been reconfirmed into the GMIS role because of insubstantial change.

[19] There is a complaint that SWDC failed to properly consider Mr Manger's tasks as at the time of restructuring but focused instead on an outdated position description. In my earlier determination, I generally preferred Dr Dowd's evidence about Mr Manger's current responsibilities where there was any conflict with Mr Manger's evidence. Mr Manger claimed to have formal reporting relationships with several employees and contractors but I found that not to be so. Those findings partly dispose of this complaint. Dr Dowd and Ms Welsh were keenly alert to Mr Manger's current responsibilities when consulting with him and making decisions about the proposed structure. In addition, I note that Mr Manger had adequate opportunity to assert his view as to the overlap between his current tasks and the responsibilities of the GMIS role. He took that opportunity in person with Dr Dowd and he instructed his solicitors to make the same point. That all occurred prior to SWDC's decision about the new structure, including its refusal to reconfirm Mr Manger. It demonstrates that there was proper consultation based on an awareness of Mr Manger's current tasks. On the view that I take of events, SWDC did properly consider Mr Manger's views, it just did not agree with him. Accordingly, there is no merit in Mr Manger's complaint.

[20] SWDC did not disclose to Mr Manger prior to its announcement of the final decision on the restructuring the full job description and results of the job sizing exercise done by Strategic Pay in respect of the GMIS role. It is said that this is information that should have been released in accordance with s.4(1A)(c) of the Employment Relations Act 2000. I do not accept that there is any breach of SWDC's consultation obligations to Mr Manger arising from this information being released with or after SWDC's decision about the restructuring. The material was created as a consequence of SWDC's decision to proceed with the restructuring proposal. Its relevance is to the implementation of the restructuring decision rather than making of the decision itself.

[21] Part of Mr Manger's complaint is that the restructuring decision will mean that SWDC does not comply with various provisions in the Local Government Act 2002 as to the process required by a council when making changes to its Long Term Council Community Plan (LTCCP) and more generally as to separation of responsibility and processes for decision making in relation to regulatory and non-regulatory responsibilities. Mr Manger is critical of Dr Dowd and Ms Welsh for persisting with the restructuring despite his expressed views about non-compliance

with the Local Government Act 2002. At heart these are complaints that SWDC will be acting ultra vires its statutory powers by implementing the restructuring. Council for SWDC submits and I accept that jurisdiction to adjudicate on a complaint that a council's actions are ultra vires lies elsewhere.

### **Summary**

[22] I do not accept that there has been any breach of good faith requirements or other consultation obligations owed to Mr Manger in respect of SWDC's restructuring proposal and decision.

[23] I do not accept that Mr Manger has a valid personal grievance of unjustified action causing him disadvantage as a result of the restructuring proposal and decision.

[24] In the absence of any breach of obligations by Mr Manger's employer his claim for special damages to cover the cost of his legal advice must fail.

[25] Costs are reserved. Any claim for costs in respect of the Authority's investigation must be lodged and served within 28 days and the other party may then have 14 days to lodge and serve a reply.

Philip Cheyne  
Member of the Employment Relations Authority