

employment shall mean a position at a rate of wages and conditions of employment no less favourable than those which applied immediately prior to the transfer, unless at the Employee's choosing.

[2] In the agreement clause 9 is placed immediately after a redundancy provision, which commences with the following:

8.1 Where for economic reasons or as a result of a re-organisation of the Company's operation or business, the Employee is dismissed, because the position filled by the Employee is, or will become superfluous to the Company the following provision shall apply.

[3] The provisions that follow clause 8.1 serve to fix the period to be given as notice of redundancy and also the compensation to be paid, based on length of service. As well there is a 'technical redundancy' provision for the event that a position becomes superfluous because of sale or transfer of the business and where the company acquiring the business offers the same or similar employment to the affected employee.

[4] From 1968 and for all of his working life Mr McIntyre was involved in the production of the New Zealand Herald newspaper and associated publications. When the owners of the business Wilson & Horton Ltd sold it to APN, Mr McIntyre's employment was continued until December 2005, when he was made redundant. He challenged that action by alleging that the termination of his employment by APN was in breach of the Guarantee of Employment clause in his employment agreement.

[5] That provision had its genesis in an assurance given in writing on 30 April 1980 by the management of Wilson & Horton to members of the New Zealand Printing Trades and Related Trades Union. In giving the assurance the General Manger restated an earlier policy of the employer that compulsory redundancy would not be enforced on full-time newspaper production staff, because they had accepted the need for "*technological change*" to occur. The nature of the new technology was described in a 1983 memorandum of the employer as being "*in the form of computer equipment.*" The assurance was repeated in 1981 and 1983, in particular.

[6] Over the next few years from the early 1980's while Mr McIntyre continued in employment at the Herald in positions falling within coverage of various collective agreements, he remained subject to the same Guarantee of Employment provision

which, by the time of his redundancy in 2005, was expressly a term of the individual employment agreement he was by then a party to.

[7] For this dispute to be determined in Mr McIntyre's favour, the removal of his position must be found to have occurred for reasons "*directly attributable*" to the introduction of new technology or, as it is put in clause 9.2, to have been "*directly caused*" by technological change.

[8] It is accepted that the Guarantee of Employment provision, if it applied, required APN to not declare Mr McIntyre redundant. Instead, APN was required to "*propose alternative employment options,*" or in effect to offer him a position at a rate of wages and conditions of employment no less favourable than those in force at the time his position was affected by the introduction of new technology.

[9] Mr McIntyre has argued that over a long period of time from the early 1980's technology affected his workplace gradually or incrementally until, by 2005, the accumulation of the changes was responsible for his position being made redundant. Mr McIntyre has sought to link changes back from the time of his redundancy in 2005 to the early 1980s, when the company first announced its intention to introduce new technology in the form of "*computer equipment.*"

[10] Mr Bevan for APN has argued that as the wording itself of the Guarantee of Employment clause indicates, the provision intends that the introduction of new technology is to be a finite or discrete occasion, or 'big bang' change. He submits for APN that the clause applies only to change introduced by the employer and not to change it may have merely passively absorbed or accommodated as a result of on-going technological developments in commerce and industry generally.

[11] When looking at any links to the termination of his employment in 2005, there is nothing expressly in Mr McIntyre's employment agreement providing any limitation as to how far back in time developments with regard to the introduction of technology may be considered for the purposes of applying clause 9. Although the agreement, which is dated 19 March 1996, expressly provides that it came into force on 26 February 1996 and that it superseded all previous agreements and arrangements, those provisions do not preclude from consideration in this case the introduction of any new technology prior to February or March 1996.

[12] The issue is one of the causal nexus between any technological change and the termination of Mr McIntyre's employment, and it is therefore a question of fact and degree.

[13] It seems unlikely that the introduction of computers nearly 25 years earlier in 1981, as significant a development as that undoubtedly was at that time, was still having direct flow-on consequences in 2005 to positions of employment such as Mr McIntyre's. It also seems improbable that in 1981 when the guarantee of employment was first given, anyone including the employer could have contemplated the full extent and variety of technological change that would take place over the next 25 years.

[14] Undoubtedly, besides the introduction of computers there have been many other technological advances made in industry and commerce generally over that period of time, such as the use of bar-coding, communication by email and internet and the particular developments that have allowed advertisers to create their own copy and transmit it to a newspaper or publication in a format ready for printing. I accept from the evidence that those sort of technological changes were occurring in the years leading up to the removal of Mr McIntyre's position.

[15] I agree with the submission for APN that clause 9.1 must be applied at the time of the termination of Mr McIntyre's employment, in 2005, by looking back to see whether it was the product "*directly*" of technological change.

[16] I find that individually or collectively such technological change as had previously occurred was not the proximate or operative cause of the disestablishment of Mr McIntyre's position. That I find was directly attributable to, or directly caused by, a review of the Copy Processing division of the business. That review was performed by Mr Mark Kay, the Operations Manager of APN, as part of an overall restructuring of the Operations and Production departments. I find that through carrying out that exercise APN merged the Production and Operations departments and reorganised the workflows as a consequence.

[17] The restructuring was in two stages, starting with the creation of a centralised operations team within the publishing division. This, I accept, did not fundamentally change the role of Mr McIntyre's copy processing team, but it did highlight inefficiencies arising through having different personnel located on different floors in

the employer's premises. The second stage was the merger of the operations and production functions, allowing co-location of staff on the same floor and reorganisation of workflows as a consequence.

[18] I accept the evidence of Mr Kay that the need for change was driven by the quest for cost reduction, enhancement of operational efficiency, reduction in the time taken to produce advertisements, and improvement of customer service. Although work methods were altered to achieve efficiency, this was without any new technology being introduced or utilised by APN, at least solely or primarily to achieve that purpose.

[19] I accept that as a result of the reorganisation and the efficiencies achieved by that exercise, the copy processing team required only two members instead of three and consequently Mr McIntyre's position was affected. He was given the opportunity to apply for one of two new positions created but did not wish to do so. Consequently he was made redundant.

[20] Accordingly, I find that the strongest and most immediate link to the disappearance of Mr McIntyre's position was the reorganisation of work methods and the division of work. Technological change, while constantly present, was not a primary force that caused the disappearance of Mr McIntyre's position.

Determination

[21] For the above reasons, I determine the dispute in favour of APN by upholding as correct its contention that Mr McIntyre was not declared redundant for reasons that were attributable directly to the introduction of new technology. There was, therefore, no breach of clause 9, the provision of his employment agreement that guaranteed Mr McIntyre's job in certain circumstances.

Costs

[22] Costs are reserved. If the parties are unable to resolve the issue themselves, memoranda may be filed in the usual way.

