

The Authority's investigation

[3] Witness statements were lodged by Ms Parkins, Flight Centre's CFO Terence Blokker and one of Flight Centre's Human Resources Business Partners Juliet Becker. Each of these witnesses answered questions under oath or affirmation during a one day investigation meeting.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[5] The issues for investigation and determination were:

- (a) Was Ms Parkins' dismissal for redundancy justified?
- (b) If Flight Centre's actions in dismissing Ms Parkins were not justified, what remedies should be awarded, considering lost wages and compensation under s 123(1)(c)(i) of the Act?
- (c) If any remedies are awarded, should they be reduced under s 124 of the Act for blameworthy conduct by Ms Parkins that contributed to the situation giving rise to her grievance?
- (d) Should either party contribute to the costs of representation of the other party?

Background

[6] Flight Centre is an established travel company with retail and corporate clients. It is a global business with operations in multiple countries, including South Africa, Canada and the United Kingdom. The company originated in Brisbane, Australia and the main global head office is based there.

[7] The COVID-19 pandemic had a significant impact on travel and tourism businesses, including Flight Centre. As New Zealand emerged from the effects of the COVID-19 pandemic, so did Flight Centre. It became apparent that a range of changes were needed to improve the efficiency of the global business in a post-pandemic world.

[8] Accordingly, since this time there have been a range of changes to Flight Centre's business structure in New Zealand, and globally, as it rebuilt from the pandemic's effects.

[9] Ms Parkins originally started with Flight Centre in 2019 as a Project Manager. In 2021 she was promoted into the role of Transformation Team Leader where she remained until that role was disestablished in March of 2024.

[10] Ms Parkins' role as Transformation Team Leader involved leading a team who provided change management services. Ms Parkins would oversee and support the management of change processes impacting people, systems and technology. She would also support the provision of appropriate governance and controls to ensure projects proceeded as planned and the benefits from business cases were realised.

[11] Ms Parkins' role was unique in Flight Centre's global operations. Although there were other change management roles across Flight Centre's global business, there was no other Transformation Team Leader role.

[12] At the time her employment ended Ms Parkins reported to Mr Blokker. Both described their working relationship as generally positive.

Feedback from Ms Parkins' team and the steps taken to address it.

[13] In around early November 2023 Ms Becker received feedback from a small number of members of Ms Parkins' team that they did not find Ms Parkins sufficiently approachable, and particular members of the team considered that some of the meetings held by the team were not satisfactorily efficient or well-planned. However, no allegations of misconduct were made against Ms Parkins.

[14] On 6 November 2023 Ms Parkins met with Mr Blokker and Ms Becker and the feedback was discussed. The meeting was about half an hour and its purpose was to pass on what had been said to Ms Becker.

[15] Ms Parkins says she was shocked to receive the feedback and felt as though she was being undermined. Ms Parkins said she had heard specific members of her team articulate unhappiness about certain ways the business was working and providing

resistance to some of the processes used within the Transformation Team itself. Ms Parkins took the feedback to mean that those individuals in the team who had issues with the way the company worked were now directing their unhappiness toward her.

[16] When Ms Parkins asked Ms Becker who had provided the feedback, Ms Becker said the comments she had received were general in nature and she declined to provide specific details of any alleged events or who had provided the information. Given the feedback did not involve any allegations of wrongdoing against Ms Parkins and Ms Becker's intention was to provide the feedback to Ms Parkins and support her in resolving it, it was reasonable for the discussion to proceed in the way that it did.

[17] Over the following months, Ms Parkins attempted to improve things within the team and Flight Centre took a range of steps to support her in doing so. Ms Parkins met with her team to discuss the feedback directly with them, which would have been a difficult step to take in the circumstances. Ms Becker attended this meeting with her.

[18] As part of trying to improve the team environment, Ms Parkins continued with activities she regarded as being positive, such as celebrating successes, arranging morning teas and holding team lunches.

[19] Ms Becker and Mr Blokker's evidence was that they sought to support Ms Parkins in resolving the issues raised by the team members. They did this through a variety of ad hoc means, including giving advice on various issues that emerged so that Ms Parkins could manage them herself. Ms Parkins gave reports in her regular one-to-one meetings with Mr Blokker about how her team was going, and he supported her when she raised concerns. Ms Becker also attended a workshop day with Ms Parkins and her team and provided some HR programme materials.

[20] In January 2024, after returning from her summer break Ms Parkins felt as though things in the team worsened. On 22 January 2024 a member of the team asked her whether she was aware multiple people had complained about her. Given the broader context and the fact Ms Parkins had recently received and was attempting to deal with difficult feedback, she was concerned about this and asked Mr Blokker about it. He said he had not heard any such complaints.

[21] A number of months earlier, a question had arisen in the team regarding whether they should have internal terms of engagement to describe how they work. Ms Parkins was not supportive of this approach and had indicated this when it was raised. However, the issue was resurrected early in 2024 and Ms Parkins was concerned that it may have been a further attempt to undermine her. On 26 February 2024 Ms Parkins decided to speak with Mr Blokker about it to seek his support. Mr Blokker was receptive to (and agreed with) Ms Parkins' views and said that he would meet with the members of her team promoting the idea in order to close down discussion about it.

[22] By this time Ms Parkins says that she had experienced approximately six months of toxic behaviour at work and was beginning to lose confidence in her abilities. She says this is why she asked Mr Blokker for his support and she also told him that she was feeling stressed and having difficulty sleeping.

The restructure process.

[23] On 11 March 2024 Ms Parkins and Mr Blokker had their usual one-to-one meeting. At the end of the meeting Mr Blokker said that Flight Centre was considering a restructure of the Transformation Team which may affect Ms Parkins' role. He indicated he would provide her with a proposal the following day.

[24] On 12 March 2024 Ms Parkins, Mr Blokker and Ms Becker met in order for Ms Parkins to be told about the proposal. During the meeting the reasons for the proposed change and what may happen to the roles within the Transformation Team was discussed. Mr Blokker indicated that if the change were to proceed Ms Parkins role would be disestablished.

[25] A copy of a letter dated 12 March 2024 setting out more detail about the proposal was sent to Ms Parkins after the meeting via email. The cover email highlighted the fact that a link to a feedback form was within the letter.

[26] In essence, the proposed change involved removing the Transformation Lead Role and having its direct reports redistributed to other managers. There were also some other relatively minor changes to some of the roles within the team resulting in title changes and there were some pay reductions. All other members of the Transformation

Team were directly appointed to other roles as part of the proposal, but Ms Parkins was not.

[27] As part of preparing the proposal for change, Mr Blokker had a range of discussions with Australian management and other counterparts to see whether there were any roles in the Australian-based change teams. Mr Blokker's evidence was that there were not any such roles. Mr Blokker and Ms Becker also said there were no other roles in Flight Centre's New Zealand operations at Ms Parkins' level to which she could have reasonably been directly appointed or redeployed.

[28] Later on 12 March 2024, Ms Parkins responded asking whether she would "be placed on gardening leave for my 6 week notice period from 25 March to 3 May", for a breakdown of her redundancy payment (including annual leave payout), whether she would receive her profit bonus and on what date the redundancy payment would be made. Each of these questions was premised with the words "should my role be disestablished" and were therefore questions conditional on the proposal going ahead.

[29] The following day Ms Becker responded to Ms Parkins giving answers to each of the questions, again conditional on the change going ahead, to which Ms Parkins then responded. In summary, in this exchange Ms Parkins asked reasonable questions regarding what would happen if the change went ahead as proposed, and Ms Becker provided reasonable responses.

[30] On 18 March 2024 Ms Parkins asked for confirmation regarding whether a payment in lieu of notice could be approved, rather than her going on gardening leave. Payment in lieu of notice would be more favourable to her because of annual leave she had booked for a period that would have otherwise been during her notice period. Ms Parkins also asked that her employment end on 22 March 2024, the day on which the outcome of the change process was to be announced so she could make arrangements to hand back company property. Ms Becker responded saying she had checked and payment in lieu would be approved "if the proposal goes ahead".

[31] Ms Parkins chose not to provide any substantive feedback on the proposal to disestablish her role and Mr Blokker and Ms Parkins had no further discussion about

the change proposal in the period between the announcement of the proposal and the communication of the outcome.

[32] On 22 March 2024 Flight Centre confirmed it would proceed with the restructure as proposed. Ms Parkins' employment then ended, as she had requested, on 22 March 2024.

[33] Ms Parkins accepted that Mr Blokker, on behalf of the company, wished to make cost savings. However, she believed she had been targeted as a means of achieving this because of the difficulties in her team. On this basis Ms Parkins considered the restructure to have been predetermined and that it would inevitably result in the termination of her employment. Ms Parkins says this is why she did not seek any further conversations with anyone in the business during the consultation process. Ms Parkins further said she was waiting for a conversation with her leader but was not contacted during the process, which she says added to her sense of embarrassment and isolation.

Was Ms Parkins' dismissal for redundancy justified?

[34] An employer is entitled to restructure its operations in order to realise efficiencies and cost savings. In order to do so it must undertake a fair process compliant with s 4 of the Act and have genuine reasons for the change.

[35] This means Flight Centre was obliged to provide Ms Parkins with sufficient detail about the proposed change which may affect her role and an opportunity to comment on its proposal before deciding whether to proceed with it¹. Flight Centre was also obliged to have genuine commercial reasons justifying the disestablishment of Ms Parkins' position and to act in a manner consistent with what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal².

[36] Employers must consider redeploying employees whose roles are disestablished as a result of a restructure. This obligation is consistent with an employer's obligation to avoid the termination of the affected employee's employment.

¹ Section 4(1A)(c) of the Act

² *Grace Team Accounting Ltd v Brake* [2015] 2 NZLR 494

Did Flight Centre undertake a fair restructure process?

[37] In the 12 March 2024 meeting Ms Parkins was told about the proposal and the reasons for it were discussed. A letter to Ms Parkins describing the detail of the change and the potential impact on her and others was then sent to her.

[38] Sufficient detail was provided to Ms Parkins such that the proposal could be understood and she was able to comment on it. Although Ms Parkins was unhappy about the impact the proposed change would have on her, she did have enough information to comment on the reasons for it.

[39] Ms Parkins was then given until 22 March 2024 to provide her feedback or comments on the proposed change. As above, she did not provide any substantive feedback.

[40] By taking these steps Flight Centre fulfilled its good faith obligations under s 4(1A)(c) of the Act and undertook a fair restructure process.

Was the proposed change genuine?

[41] After COVID-19's impact on Flight Centre it has been moving toward an increasingly globalised model because of the efficiencies available to it by doing so. As part of this broader strategy it has restructured numerous teams within its business. The restructure of the Transformation Team occurred in this context.

[42] Ms Parkins accepted there were cost savings that could be made through the proposed restructuring and the company has continued with the proposed structure since its implementation. These factors show the change was proposed for genuine reasons.

[43] Ms Parkins had a difficult experience at work during the latter part of 2023 and early part of 2024. However, Flight Centre took adequate steps to support her in managing the issues that had arisen in her team. I am not persuaded that the decision to disestablish her role was materially motivated by a desire to resolve those issues. Rather, the main reason for the disestablishment of Ms Parkins' position was because

the business was able to function without her position and was able to make cost savings as a result.

[44] Accordingly the Authority was satisfied that the proposed change was genuine and substantively justified.

Did Flight Centre consider alternatives to terminating Ms Parkins' employment for redundancy?

[45] Prior to terminating Ms Parkins' employment because of its decision to proceed with its proposal to disestablish her position, Flight Centre was obliged to have considered whether redeployment opportunities existed which could avoid the termination of her employment.

[46] Mr Blokker gave evidence that he considered redeployment when formulating the proposed change. He said he had conversations with his Australian counterparts regarding whether there were any roles at a similar level to Ms Parkins' in that part of the global group. He confirmed there were no such roles available.

[47] Ms Becker said as part of work on the restructure she had a conversation with Mr Blokker about whether there were any other roles that were suitable for Ms Parkins available, and they concluded there were not.

[48] Ms Parkins says she could have performed a Project Manager role created as part of the restructure and should have been appointed to it. However, a person who prior to the change was a Project Manager Lead was directly appointed to that role. Given the Project Manager Lead's role was materially more similar to the new Project Manager role than Ms Parkins' role was, Flight Centre's approach to direct appointment in this context was reasonable.

[49] Ms Parkins further says she should have been appointed to a role in one of the companies within the global group. In addition to the fact Mr Blokker said he had looked and that no appropriate such roles existed, Flight Centre was not obliged to redeploy Ms Parkins to another entity in a different country, even if it was part of the same group.

[50] Ms Parkins' lack of communication about redeployment or request to be paid out in lieu of working her notice did not change Flight Centre's duty to consider redeployment options. However, given there were no roles available, discussion with Ms Parkins on this point would not have resulted in her being redeployed.

[51] For these reasons Flight Centre discharged its obligation to consider redeployment.

Outcome

[52] Flight Centre's decision to disestablish Ms Parkins' role and the way it went about doing so were consistent with what a fair and reasonable employer could have done in the circumstances. Accordingly, Ms Parkins has not succeeded in establishing her personal grievance and is not entitled to any remedies.

Costs

[53] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[54] If they are not able to do so and an Authority determination on costs is needed Flight Centre may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Parkins would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[55] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.³

Matthew Piper
Member of the Employment Relations Authority

³ See www.era.govt.nz/determinations/awarding-costs-remedies.