

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
ER AUTHORITY AUCKLAND OFFICE**

BETWEEN James Sneddon (Applicant)
AND Towers Auckland (2002) Limited (Respondent)
REPRESENTATIVES Francis Sabbineni, Advocate for Applicant
Paul Tremewan, Advocate for Respondent
MEMBER OF AUTHORITY Yvonne Oldfield
INVESTIGATION MEETING 29 June 2006
DATE OF DETERMINATION 12 July 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Mr Sneddon worked for Towers Auckland (2002) Ltd ("Towers") and its predecessor as a crane operator from August 2001 until December 2005, when he was told that he was redundant and given two weeks pay in lieu of notice. The respondent's managing director, Mr Leigh Catley, says that he had no work for Mr Sneddon and no choice but to let him go. Mr Sneddon does not accept that he was genuinely redundant and says that the process by which he was dismissed was unfair.
- [2] The respondent company is a labour hire company which took over its staff from a predecessor company set up in 2000 to supply crane operators and other staff for construction projects. It employed Mr Sneddon on a permanent basis pursuant to a collective agreement between the company and an in-house union of which he was a member. That agreement contains the following:
- "Redundancy*
- 18.1 Redundancy is a situation where Employees are surplus to the needs of the Employer. If a redundancy situation occurs the affected Employee or Employees shall be given two weeks notice or pay in lieu of notice and there shall be no entitlement to any further compensation."*
- [3] Towers' clients usually take operators on for the duration of the job (around eight to ten months in general.) Once a crane comes down and the operators are no longer needed on one site Mr Catley endeavours to place them on another. The company began with fifteen staff which increased to a peak of 40 in early 2005. Over the last year, as the construction boom has slowed, Mr Catley has sometimes had nowhere for staff to go to at the end of a job and has had to let them go. Staff numbers have now dropped to about 25.
- [4] The circumstances around Mr Sneddon's termination were this. He was working on a large job in central Auckland in November 2005 when he took a week's annual leave. While he was away the client told Mr Catley to take one of his men off the job as the client planned to replace him with someone in-house. (This type of thing happens all the time.) Mr Catley advised that he would take off the staff member who was at that

time filling in for Mr Sneddon during his leave. He then said that when Mr Sneddon came back from his leave he would move another person off as well.

- [5] However the site manager indicated that he wanted Mr Sneddon to go instead. He said that his crane co-ordinator did not want to work with Mr Sneddon because years ago, on another job, he had had a run-in with him. Mr Catley told me that site managers have "ultimate control" and "there was no way in the world" he was going to get Mr Sneddon back on this site, so he left it there.
- [6] Mr Sneddon had used his annual leave to go away on a school trip with one of his children. It was Wednesday or Thursday of the week in question before he got home and Mr Catley was able to tell him the news, which he did over the phone. On hearing it, Mr Sneddon became angry and abusive and hung up. He told me he had no recall of any dispute with the crane operator and felt very unjustly treated by the client. He thought Mr Catley could have done more to support him and should have tried to resolve the issue by having a "round table" discussion with the site manager and crane operator. (After his redundancy, Mr Sneddon spoke to some of the client's personnel himself. They were supportive in principle but nothing came of it.)
- [7] Despite being hung up on, Mr Catley rang back and told Mr Sneddon that he would try and find him work at another site at Middlemore Hospital. This was not what Mr Sneddon wanted and he was still very short with Mr Catley during this second conversation. Mr Catley told me that nonetheless, the next day, he checked that site but unfortunately, there was nothing available because that client too was using its own people. He rang Mr Sneddon once more to tell him that there was no work available at all and he was making him redundant.
- [8] This was followed up with a letter confirming the termination of Mr Sneddon's employment and informing him that he would receive two weeks pay in lieu of notice, consistent with the redundancy provision of his agreement. (Another staff member was also made redundant at the same time.)
- [9] Mr Sneddon told me that for a family man the termination of his employment came at a bad time (just before Christmas) and he found the period before he found regular work (in February 2006) very hard. He knew a few cranes were due to come down at around this time and accepts that it was likely some staff would be let go. However, as a long serving and experienced operator, he did not think he would be one of them. In the past he had been given fill in work of two to three weeks duration between one substantial job and the next, and he thought that, even if he could not go back to the central Auckland job, something like this would be arranged this time.
- [10] Mr Catley agreed that he had arranged two or three week placements in the past but said that on those occasions there had been work in the pipeline. This was not the case in November 2005. He had no other projects starting up and had nowhere to place Mr Sneddon. Mr Catley also told me that because clients prefer that the same staff remain for the duration of a job, he does not move operators from one job to make room for someone coming off another. Sometimes this means he loses more experienced and skilled staff, but he keeps in touch with these people and rehires them when other work becomes available.
- [11] Mr Catley said that when he laid Mr Sneddon off he did not know when more work would come up. It was mid January before it did, and then he rehired former staff. He did not approach Mr Sneddon about coming back. He said that at the time he was laid off Mr Sneddon had been so bitter and abusive that there had been no room for any conversation about keeping in touch regarding future work.

First issue: was the redundancy genuine?

[12] I accept that in November 2005 Mr Catley had to take a man off the central Auckland site (in addition to the relief operator.) I also accept that the client insisted that it be Mr Sneddon and so made the selection decision for Mr Catley. This was not fair from Mr Sneddon's point of view and his feeling of injustice is entirely understandable. However I also accept that there was not much Mr Catley could do about it. The nature of his business is that he is at the mercy of his clients. I also accept that there was no other work available at that point. The redundancy was genuine insofar as Mr Catley was genuinely unable to provide further work for Mr Sneddon at that point.

Second issue: was the procedure fair?

[13] In relation to the procedure followed, Mr Tremewan has argued that Mr Catley consulted as much as he could reasonably be expected to, given the nature of the industry and the way he had to operate his business within it.

[14] I agree that as a "middle man" it was difficult for Mr Catley to consult and consider alternatives in the way expected of other employers. Nonetheless labour hire companies of this type cannot be used to effectively undermine normal redundancy practice. If they employ permanent staff like Mr Sneddon those workers may legitimately expect to be treated in the same way as other permanent employees. This was an employment relationship of five years good standing. I do not consider a couple of phone calls constitute sufficient consultation in relation to the ending of it. At the very least I would expect Mr Catley to have discussed rehiring Mr Sneddon when and if further work became available.

[15] Set against this, however, is the fact that Mr Sneddon lost his temper with Mr Catley and hung up on him. Then when Mr Catley did the decent thing and rang him back, Mr Sneddon still could not talk constructively with him. In the circumstances, losing his temper on first hearing the news may have been excusable, but not his ongoing abusive tone and lack of engagement. I have no doubt that Mr Sneddon contributed to his own personal grievance with his continuing negative reaction.

[16] Balancing all these factors I have decided that Mr Sneddon is entitled to a remedy for distress caused by the inadequate process but that it should be substantially reduced for contribution.

[17] I therefore order the respondent company to pay to Mr Sneddon the sum of \$1,500.00 compensation pursuant to s. 123 of the Employment Relations Act 2000.