

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 232
5625190

BETWEEN YILUN (TERRY) YANG
Applicant
AND GMP DAIRY LIMITED
Respondent

Member of Authority: T G Tetitaha
Representatives: Applicant in person
T Liu/R Kumaran, Respondent representatives
Investigation Meeting: 7 July 2016 at Auckland
Submissions Received: 7 July 2016 from Applicant
7 July 2016 from Respondent
Date of Determination: 7 July 2016

ORAL DETERMINATION OF THE AUTHORITY

- A. Yilun Yang's dismissal for redundancy was substantively justified, but procedurally unjustified.**
- B. GMP Dairy Limited is ordered to pay compensation of \$750 to Yilun Yang pursuant to s.123(c)(i) of the Employment Relations Act 2000.**
- C. GMP Dairy Limited is to ordered to pay Yilun Yang the sum of \$71.56 being the filing fee.**

Employment relationship problem

[1] Yilun Yang was employed as a customer services coordinator until he was made redundant on 22 April 2016. He alleges he was unjustifiably dismissed.

Relevant Facts

[2] Mr Yang started his role as a marketing coordinator (with a later name change to customer services coordinator) on 25 November 2015. This was for a three month fixed term. His role was to coordinate the delivery of product to customers.

[3] In February 2016, Mr Yang was offered a further three month contract. He was unhappy with this because he needed a longer term due to the conditions of his open work visa. After some discussions with his manager, Ravi Kumaran, a one year fixed term contract was offered. The reason for the fixed term was "... based on the need for additional marketing work to be done due to increased order volumes for this period of time."¹ The term ran from 26 February 2016 until 25 February 2017. At the time business was booming.

[4] In March 2016 GMP Dairy Limited (GMP Dairy), became aware of a substantial reduction in a major client's demand for its product. GMP Dairy produced infant milk formula powder and the major client was located in China. There had been a change in regulations governing the importation and production of infant milk formula. This major client reduced sales volumes from 1 million units per month to 150,000 units per month.

[5] As a result, a decision was made by the shareholders and upper management to reduce labour costs. This included the role undertaken by Mr Yang and one other customer services coordinator. Their two roles were to be merged into one.

[6] I accept on 18 March 2016 Mr Kumaran verbally advised Mr Yang that there was no marketing work available for him. He then offered him redeployment to a position of production assistant.

[7] Between 18 March and 4 April 2016, Mr Kumaran and Ms Toni Liu, HR Manager, continued speaking to Mr Yang about transferring to the production assistant job to avoid redundancy.

[8] Mr Yang refused to accept the job, stating that he wished to remain in marketing. It appeared that this was driven by the terms of his visa requiring his work align with his qualifications.

¹ Clause 3.1 Employment Agreement between Y Yang and GMP Dairy Ltd dated 25 February 2016.

[9] On 19 April 2016, Mr Yang was advised that he was to be made redundant to take effect on 22 April 2016.

Issues

[10] There is a single issue for determination, namely whether Mr Yang was unjustifiably dismissed for redundancy.

Was Mr Yang unjustifiably dismissed for redundancy?

[11] Mr Yang tells me that it was an unjustified dismissal because there was no genuine reason for the redundancy. He says there was sufficient work for him to remain in his marketing job and that he had been working very hard up to dismissal. He further alleged that the respondent employed another person, “Molly”, to replace him or to do tasks that he could have done himself in the marketing department.

[12] An employer proposing to make a decision which may adversely impact on an employee’s ongoing employment is required under s.4(1A) of the Employment Relations Act 2000 (the Act) to provide the employee with information relevant to its decision before it makes a final decision. From the evidence, it appears that this did not occur.

[13] The only information Mr Yang received that his job was at risk of redundancy was on 18 March 2016 when he was told no marketing work was available to him. He was not told that a decision had already been made to select him for redundancy as opposed to the other customer services coordinator. He was not consulted about the decision regarding selection or told the selection reasons. He was simply advised on 18 March 2016 that he had no marketing work, redeployment was offered then redundancy occurred. In that sense, the respondent has breached its good faith obligations to Mr Yang.

[14] Justification of a dismissal must be assessed against the tests set out in s.103A of the Act. This requires me to objectively assess whether GMP Dairy’s actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time Mr Yang was made redundant.

[15] There was evidence that the procedural fairness tests set out in s.103A(3) of the Act were not met here. This is because the concerns giving rise to the

redundancy, including selection of Mr Yang for redundancy, were never raised with him. Because this was not raised with him in advance, he was given no opportunity to comment on that concern and the employer could not have genuinely considered any response as a consequence.

[16] That failure, together with the breach of good faith, means that this employer cannot justify Mr Yang's dismissal. Fair and reasonable employers are expected to comply with their statutory obligations. Unfortunately, GMP Dairy did not.

[17] However, I am satisfied from the evidence produced by Mr Kumaran about the reduction in client demand that there were genuine reasons for this redundancy. I am also satisfied from the evidence of Ms Liu and Mr Yang that he would have been selected for redundancy. This is primarily because the other customer services coordinator had more experience and was also a permanent resident. Therefore, she was not subject to what Ms Liu described as the "stability issues" that Mr Yang may have faced having no permanent residency status.

[18] I do not accept that there was evidence of a new employee, Molly, being employed to replace Mr Yang or to undertake jobs that he could perform. I accept Ms Liu's evidence that Molly came as a secondment from one of the major shareholders in China on a temporary basis and only did sales work as opposed to the customer services coordination work Mr Yang would have done.

[19] I also accept the evidence that no employee has been employed to replace Mr Yang and in fact from the figures provided by Mr Kumaran, staff numbers are still being reduced due to the reduction in client demand for its product.

[20] However the process flaws were not minor and did create unfairness for Mr Yang. I therefore find that Yilun Yang's dismissal for redundancy was substantively justified, but procedurally unjustified.

Remedies

[21] Because Mr Yang's dismissal was substantively justified, he is not entitled to any lost remuneration. This is because even if the procedural requirements had been followed correctly, the result would have been exactly the same.

[22] I am, however, satisfied that he has suffered humiliation, loss of dignity and some injury to his feelings as a result of the procedurally flawed dismissal. In those circumstances, GMP Dairy Limited is ordered to pay compensation of \$750 to Yilun Yang pursuant to s.123(c)(i) of the Employment Relations Act 2000.

[23] There are no penalties because this matter does not meet the tests for an award.

Costs

[24] After hearing from both parties regarding costs, I also order that GMP Dairy Limited is to ordered to pay Yilun Yang the sum of \$71.56 being the filing fee.

T G Tetitaha
Member of the Employment Relations Authority