



Restructuring?

Have you fully considered redeployment options?

I have had clients recently asking me about the process for a restructure, in case they need to consider making a structure change in future, given the current economic climate. So, the recent Employment Court decision, in *New Zealand Steel Ltd v Haddad* [2023] NZEmpC 57, provides a very timely reminder about one of the obligations that employers have; to consider redeployment of an employee following the disestablishment of their role.

In New Zealand Steel's 2019 restructuring, the employee, Mr Haddad, had his role disestablished and 3 new roles were created, which were found, in the case, to be very similar to Mr Haddad's role. Mr Haddad applied for all of the new roles, as well as indicating interest in other available roles outside his own department, but he declined to be interviewed for the new roles and offers were made by the company for the other roles before Mr Haddad had a substantial response about his interest in them.

Mr Haddad felt that the company should have simply appointed him to one of the new roles. However, NZ Steel claimed that the new roles were different to Mr Haddad's role, and therefore they were not obliged to offer Mr Haddad one of those roles. They also noted that their decision to not appoint Mr Haddad was due to not being able to assess his suitability for the roles, since he did not agree to be interviewed. Ultimately, Mr Haddad was not appointed to any role and his employment was terminated by reason of redundancy.

In considering Mr Haddad's claim, the Court was clear that employers must consider redeployment in such a way as to comply with their good faith obligations (as detailed in section 4 of the Employment Relations Act 2000). This includes, for example, being active and constructive in consulting with the employee about potential redeployment options, as well as being responsive and communicative in responding to employee enquiries about potential redeployment options in a timely manner.

The Court's decision included that:

1. NZ Steel did not treat Mr Haddad fairly and reasonably in relation to redeployment, including by not engaging with him in relation to the roles outside his department in a responsive and communicative manner
2. Mr Haddad was not treated fairly and reasonably in the selection process for his preferred role

3. NZ Steel had predetermined that another employee (whose position had not been disestablished) would be offered the position that Mr Haddad had preferred.
4. Mr Haddad's dismissal was therefore unjustified.

This case highlights the well-established principals for redeployment i.e. that an employer must offer the employee, whose role is disestablished, any new or vacant roles that they have the skills and experience to perform (including where these can be gained through training, within a reasonable timeframe).

There are a number of requirements, such as the ones highlighted in this case, for employers when considering restructuring, to ensure compliance with their statutory obligations. If you would like to discuss the requirements for your company or organisation's particular circumstances, please do not hesitate to reach out to me.