

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Hohepa Paewai (Applicant)

**AND** Sheddan Investments Group of Companies, trading as Aotearoa  
Coolstores Limited (Respondent)

**REPRESENTATIVES** Bill Calver for the applicant  
Ken Thurston for the respondent

**MEMBER OF AUTHORITY** P R Stapp

**INVESTIGATION MEETING** Napier, 4 May 2006

**DATE OF DETERMINATION** 10 May 2006

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

1. An employment agreement was signed off between Hohepa (Hepa) Paewai and Aotearoa Coolstores Limited on 15 October 2003. Mr Paewai was employed as a coolstore manager at the company's Briasco Street Awatoto plant. Mr Paewai was paid \$55,000 per annum.
2. On 27 June 2005 Mr Thurston told Mr Paewai on the telephone there was going to be redundancies. On the same day Mr Paewai received the following letter dated 27 June 2005:

*"Dear Hepa*

*Further to recent discussions regarding the operations at Awatoto we regret to advise you that your position with Aotearoa Coolstores Limited at Awatoto will be made redundant effective from close of business on 8 July 2005.*

*In addition to the normal winter shutdown of some of our cold storage operations, we have reviewed the operations at Awatoto and for economic reasons, have decided to undertake all of the Awatoto administrative functions at the Hastings site from 1st July 2005. This action is necessary to sustain company operations at a viable level.*

*We would appreciate the further opportunity to talk with you regarding future employment options for you at our Hastings site. You do need to be aware that it may become necessary to impose a compulsory stand down periods over the months of August, September, October and November in line with seasonal troughs.*

*Thank you, we will be in contact with you within the next two weeks to discuss further.”*

3. Mr Paewai says there were no rumours in regard to any pending redundancy prior to 27 June 2005.
4. On the morning of 28 June 2005 Mr Thurston telephoned the workers and met with them individually.
5. Mr Thurston also met with the applicant on the same day, where he talked about the power costs and the Grovedale and Awatoto plants owned by the company.
6. On Wednesday 6 July Mr Thurston told Mr Paewai that the Awatoto plant would close on 8 July and that Mr Paewai would be required to work another week.
7. On 14 July Mr Thurston telephoned Mr Paewai to inform him of a meeting planned at the Grovedale site, and Mr Paewai says that Mr Thurston told him there would probably be another week's work for him.
8. On 15 July Mr Thurston, Mr Paewai and Mr Paewai's representative (Mr Calver) met to discuss the matter. The matters raised included:
  - That the notice given on 7 June was not properly provided in terms of the employment agreement that required four weeks' notice;
  - The running of the Awatoto plant;
  - The trouble Mr Thurston had with his bank and company losses and power costs;
  - The need for redundancies;
  - The options of shutting the Awatoto plant for 3 months and offering Mr Hepa something after 3 months;
  - That Mr Thurston said there would be a letter to follow.
- A few days later Mr Paewai received the following letter dated 15 July 2005:

*“15 July 2005*

*Dear Hepa*

*Further to our earlier letter of 27 June, our meeting earlier today, and the ongoing discussions regarding the future operations of our Awatoto site, we regret to advise that*

*the position of Coolstore Manager Awatoto will become redundant effective from the close of business on 12 August 2005.* (Emphasis added)

*As you have been made aware on previous occasions the Awatoto site has been running at a loss for sometime, mainly because of excessive power and very high labour costs. The company can no longer continue to absorb these losses, and the only option available is to follow through with a course of action outlined in our earlier letter. It is now necessary to undertake a significant restructure that will involve the integration of Awatoto with our Hastings branch. This will mean that the functions of your position of Coolstore Manager will no longer be necessary.* (Emphasis added)

*We will however, be making every endeavour over the next two weeks to present a proposal to you regarding a new role at our Hastings site. Regardless of the position description for this role there will be no reduction from your current hourly rate of remuneration. Please note however, that should you chose to accept our offer, there will be stand-down period of no longer than three months before the commencement of this new position.”*

9. Mr Thurston agreed that the decision was made, and the letter had been prepared, before the meeting held on 15 July 2005. The decision was “*that the position of Coolstore Manager Awatoto will become redundant effective from the close of business on 12 August 2005*” and “[t]his will mean that the functions of your position of Coolstore Manager will no longer be necessary.”
10. Mr Calver raised a grievance on 19 July 2005 in the following terms:

*“Dear Mr Thurston*

***Re: Hepa Paewai***

1. *This letter follows on from our meeting of 15 July 2005.*
2. *Mr Paewai was employed as Coolstore Manager in October 2003. His normal place of work is at the Awatoto coolstore, but the agreement expressly provides that he may be required to work at other locations as and where directed by the company.*
3. *His salary was \$55,000 per annum. The agreement provided that could only be terminated by written notice of one month by either party.*
4. *On 27 June 2005 you wrote to Mr Paewai advising his position was to be made redundant from the close of business on 8 July 2005.*
5. *That letter was a serious breach of your employment obligations in two major respects. The first of those is quite obvious it did not comply with the notice period in the agreement. The second however is that you have totally failed to recognise your obligations as a good faith employer to carry out any form of consultative process as a precursor to purporting to make by client redundant.*

6. *When we met on 15 July 2005 you frankly conceded that you had ‘stuffed up’, and you said that you were hiring a firm of consultants to come in and ‘re-do’ the redundancy, following proper protocols.*
  7. *You told Mr Paewai and I that you did not wish to lose him, but that you could not afford to keep him on for the next three months. You said that after that you hoped to find him a new position, but could not make any promises.*
  8. *You subsequently wrote to my client on 15 July 2005 stating his position was to be redundant as from 12 August 2005. Plainly you decided not to go through with the charade of a consultative process which, at this stage, could only be designed to give the appearance of ameliorating your position.*
  9. *I am instructed at this stage to initiate a personal grievance based on the grounds of unjustified dismissal. The termination of my client’s employment is both substantively unjustified and procedurally flawed and unfair. The remedies which are sought are ...”.*
11. Mr Paewai says Mr Thurston telephoned him in response to this letter on 25 July 2005, and says it left him shaking, because he believed Mr Thurston threatened him with a job offer for less hours and pay for either himself or his son to work at Hastings. Mr Paewai says this was taken up again by Mr Thurston on 28 July. Mr Thurston denied threatening or giving an ultimatum to Mr Paewai.
  12. Mr Paewai says he was told by Mr Thurston on 27 July that the company had lost a PPCS/Richmond contract for storage and there was no job.
  13. Mr Paewai says that Mr Thurston raised reservations about him and his performance. Mr Thurston denied this claim.
  14. Mr Paewai continued to attend work and on 30 July went on holiday, which had been pre-planned earlier. On his return from holiday he was handed a letter dated 9 August 2005 confirming the redundancy. Mr Paewai’s redundancy was effective from 12 August 2005. Mr Thurston relies upon his telephone calls and meetings to consult Mr Paewai, who Mr Thurston says, was given options that included a job for him or his son at Hastings, a shut down for 3 months at Awatoto and after that time to try and find something for Mr Paewai. Mr Thurston also relied upon the decision of PPCS Richmond not to renew their storage contract, Mr Paewai’s team leaving and the plant closure to support a redundancy.

### **The company’s reply**

15. In a letter dated 13 September 2005 Mr Thurston replied to the applicant’s statement of problem. Mr Thurston says that his action of not giving the correct one month’s notice in

writing was subsequently corrected with his letter of 15 July giving the required month's notice to the 12th August. He says the company attempted in good faith to give Mr Paewai employment in an alternative position at the Hastings plant. Mr Thurston says that this was done through "numerous" telephone conversations between himself and Mr Paewai in the period 27 June – 9 August 2005. Mr Thurston considers these discussions were part of the consultative process. He says that in the first week of August 2005 the company received notice that the Richmond contract was not going to be renewed. He says the company was therefore forced to close the Awatoto plant. He further says that a registered land encumbrance forbids the company to store any lamb/sheep/beef etc from any other party other than Richmond Limited, which limited the options he had. Mr Thurston says the plant remains closed and that there can be no question that Mr Paewai's redundancy is anything but genuine. He says the company has retained the services of Mr Paewai's son by transferring him to the Hastings site, where there was only one job available at the time, even though the loss of the Richmond work has meant that additional redundancies have been necessary to the Hastings staff numbers.

## Findings

16. My findings are that the letter of redundancy notice dated 27 June did not contain the correct notice in terms of the employment agreement. Mr Thurston had made his decision before telling Mr Paewai. Mr Thurston attempted to correct the situation with the letter dated 15 July. However, Mr Thurston still failed to get the process right when he decided prior to the 15 July 2005 meeting "*that the position of Coolstore Manager Awatoto will become redundant effective from the close of business on 12 August 2005*" and "[T]his will mean that the functions of your position of Coolstore Manager will no longer be necessary". Instead of putting Mr Paewai on notice of the possibility of a redundancy, and giving him the information with the reasons before making the decision, the decision was a *fait accompli* and a breach of good faith.
17. The process followed by Mr Thurston was far from adequate because Mr Paewai was left confused about what was happening, until he received the final letter dated 15 July when he learnt clearly what his last day would be and that the decision had been made. The nature of Mr Thurston's telephone calls and meetings on site also left Mr Paewai confused as to the meaning of the job option that Mr Thurston says involved only one job vacancy available in Hastings: Mr Paewai understood he had to choose between himself and his son to fill the vacancy. It was unfair to put this responsibility on Mr Paewai. The employer should have

consulted on selection criteria and applied it objectively, but in the end Mr Paewai handed the job to his son.

18. I am satisfied that Mr Paewai should have reasonably known his job was in jeopardy for redundancy. He was written to by Mr Thurston three times. He knew from 27 July that the PPCS/Richmonds' contract had been lost. There were options discussed that included job offers, albeit the Hastings offer was poorly communicated and the choice unfairly left with Mr Paewai. I therefore reject Mr Calver's submission that Mr Thurston was attempting to change Mr Paewai's employment unilaterally. I am supported in this conclusion because:
  - The claim was not referred to in correspondence from Mr Calver to Mr Thurston on 19 July 2005,
  - It was not a matter raised in the applicant's statement of problem.
  - The applicant never himself commented on it, and
  - The evidence simply does not support the claim.
19. The meeting held on 15 July was an opportunity for consultation. However, a proportion of the time at the meeting was spent on the failure of Mr Thurston to give proper notice in advance. Mr Thurston accepted he got the process wrong over the breach of a notice requirement but had set out to correct it with his letter of 15 July. That meeting was adversarial on the notice requirement rather than being used as an opportunity to endeavour to resolve the problem. The law enables an employer to correct any breach and that subsequently was attempted in the letter of the 15 July, (applying *Rankin v Attorney-General* [2001] 1 ERNZ 476), but as I said earlier, Mr Thurston had already made his mind up, and therefore, could not be objective. Mr Thurston's approach did not leave Mr Paewai with a fair opportunity for input and comment on the possibility of redundancy. In fact while Mr Thurston attempted to correct the notice he did not revisit the decision, which was therefore predetermined without Mr Paewai having the proper opportunity for any input and comment to change the outcome. The only input from Mr Paewai could involve what would happen to him next, since his position was going to be made redundant. That was unfair.
20. The procedural defects would not have changed the redundancy outcome because the plant closed; the PPCS/Richmond contract was lost, which Mr Paewai knew about before leaving; and his team left and it was his choice to let his son have the job at Hastings.

## **Conclusion**

21. Mr Paewai has a personal grievance where his position was genuinely superfluous to the employer's needs but procedurally unfair.
22. Initially Mr Paewai sought reinstatement but withdrew his claim formally at the Authority's investigation meeting. He is not entitled to lost wages to compensate him for the loss of his job. However, Mr Paewai is entitled to compensation for humiliation, loss of dignity and injury to feelings caused by the employer's failure to get the process right. He has not established the claim for \$30,000 compensation made by his representative that is entirely unrealistic. He did give some evidence of the impact of the dismissal on him. I am satisfied the impact of the dismissal effected his feelings and caused him embarrassment. I award him \$8,500 under section 123 (1) (c) (i) of the Act. I order Aotearoa Coolstores Limited to pay Mr Paewai \$8,500 compensation.

## **Costs**

23. Mr Paewai has been successful, and therefore, should be awarded some costs. Mr Paewai's representative has requested 50% of \$6,000. There were no details provided of the sum claimed and what it involves. Mr Thurston was late for the meeting by an hour. This has added to the cost for the applicant so I have included it in the meeting time. The matter did not go to mediation and I decided not to make a direction. I was satisfied that it would not contribute constructively to resolving the matter because of the difficulties put up by Mr Thurston with his unavailability and his unwillingness to go to mediation. I am satisfied that applicant made attempts to go to mediation.
24. This was a straightforward matter requiring basic preparation. The investigation meeting time was set down for a day but lasted approximately 5 hours, which I have multiplied by 2 for preparation. Using \$200 per hour since no hourly rate was provided I determine that reasonable costs for this matter were \$2,000. Mr Paewai is entitled to all this.

25. I order Aotearoa Coolstores Limited to pay Mr Paewai \$2,000 towards his costs plus the \$70 filing fee.

P R Stapp  
Member of Employment Relations Authority