Determination Number: AA 379/06
File Number: 5070785

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Lynette Weatherly
AND	Pulp and Paper Industry Council of the Manufacturing and Workers' Union
AND	Norske Skog Tasman Limited
REPRESENTATIVES	Kathryn Beck for the Applicant Richard McIlraith for the Respondent
MEMBER OF AUTHORITY	Vicki Campbell
INVESTIGATION MEETING	29 November 2006
SUBMISSIONS RECEIVED	7 December 2006 from Applicant 6 December 2006 from Respondent
DATE OF DETERMINATION	15 December 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Weatherly was employed by the Respondent as a Cleaner from 23 December 1991 until 17 December when her employment was terminated by reason of redundancy.

[2] In July 2004 Norske Skog announced a proposal to close one of its three paper machines and make 132 positions redundant mill wide. Consultation and discussions took place over a two year period and eventually 125 staff chose to take voluntary redundancy with two employees being given notice of forced redundancy. Ms Weatherly is one of those employees given notice of forced redundancy.

[3] Ms Weatherly's employment was to end on 30 September 2006. However, issues arose between the Pulp and Paper Industry Council of the Manufacturing and Construction Worker's Union ("the union"), Ms Weatherly, and the respondent, in relation to the quality of the consultation relating to Ms Weatherly's redundancy. Those issues were resolved at mediation on 4 October 2006.

[4] On 14 November 2006 the applicants filed a statement of problem relating to events after 4 October 2006 alleging various breaches of the employment agreement (including

document 315K), breaches of the good faith provisions of the Employment Relations Act 2000 and a claim that Ms Weatherly's redundancy was unjustified.

[5] Ms Weatherly seeks reinstatement.

[6] NST denies all the claims and says that Ms Weatherly's redundancy was for genuine business reasons and occurred only after NST had followed a fair and reasonable process which included consultation undertaken in good faith.

[7] I am required to scrutinise NST's actions in accordance with the statutory test of justification set out at section 103A of the Employment Relations Act. The section states:

> For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[8] The test of justification does not change the longstanding principles about justification for redundancy. An employer must act genuinely and not out of ulterior motives. Business decisions about the number of positions required in an organisation are for the employer to make and not the Authority (see *Simpson Farms v Aberhart*, unreported, Employment Court, Colgan CJ, AC52/06, 14 September 2006).

Mediation Settlement

[9] In September 2006 Ms Weatherly was given notice of redundancy. On 4 October 2006 the parties met in mediation to resolve an employment relationship problem relating to the quality of consultation during the period of restructuring which led to Ms Weatherly being made redundant. An agreed settlement was signed by the parties which included Ms Weatherly's reinstatment from 9 October 2006. In return Ms Weatherly agreed to repay all the redundancy money's previously paid to her.

[10] The parties agreed to promptly re-convene a good faith consultation process regarding the impact of the closure of the PM1 on manning levels in the Facility Cleaners and Stores workgroups. The agreement specifies that the consultation period would end on 10 November 2006 at which time a decision about final manning levels would to be made.

[11] The parties agreed, that if, following the consultation, Ms Weatherly was made forcibly redundant, NST would provide Ms Weatherly with causal work on the basis of a minimum of two weeks per month from the date of termination until 17 January 2007.

[12] Further, the parties agreed that in the event Ms Weatherly was made redundant NST could elect to pay her one weeks pay in lieu of notice.

Was the dismissal by reason of genuine redundancy?

Relevant terms of the employment agreement

[13] The relevant clauses of the collective agreement are set out below:

> Clause 2:
>
> The intent of this agreement is to create a mutually beneficial relationship between the Company and the Employees based on shared values and the achievement of our goals. We share the responsibility for running our business successfully to maintain its competitiveness and ensure its continual operation for the long term, while taking into account the importance of quality of life for all employees.
>
> Through this agreement and the way we intend to continue to work together, we seek to create a work environment where openness, honesty and co-operation shall be actively pursued by the Parties, and employees have the opportunity to develop and be recognised and rewarded for their performance.
>
> Clause 10
>
> During the term of this contract significant change in the Company's business operations may occur and the Company undertakes to consult in good faith with affected employees about the effects of such changes.
>
> The objective of this consultation will be to reach agreement on how any changes should be introduced. In the absence of agreement, the Company reserves the right to take the final decision on the introduction of changes and the Union reserves its right to represent any matters resulting from such changes which it considers adversely affect the employment conditions of the Employees.
>
> Consultation will be used to:
>
> - Review and analyse options and proposals
> - Enhance the involvement of those individuals likely to be affected by proposed changes prior to a decision being made
> - Improve the level of communication within the business units
>
> The specific method and forum by which consultation will take place in each business unit will be specified in the appropriate domestic schedules.
>
> Clause 38
>
> The current established manning levels of the Business Units are as specified in the Domestic Schedules attached. Reviews will take place to confirm or alter those manning levels through the term of the agreement under the following guidelines.
>
> Regular review – Regular reviews will take place in each Business Unit in two ways:
>
> Monthly performance reviews of KPIs and general business performance. Specific KPIs relating to utilisation of resources will be developed for this purpose.
> Annual reviews of the Business Units in line with annual business planning and budgeting processes.
>
> Trigger review – A review will be triggered by a change in the workload of the Business Unit. Triggered reviews will be undertaken by a joint committee made up of team, union and management representatives and will be completed within three months of the change in workload. Where a change that may affect workload is anticipated, a review will take place before any change occurs.
>
> The parties recognise that the established manning level of the Business Unit may change as a result of a triggered review.
>
> If the established manning level is increased as a result of a review, the company will consult with the Union and the team concerned and begin the process to fill the vacancy.
>
> If the established manning level is decreased as a result of a review, the company will consult with the Union and the affected employees and investigate options for redeployment or redundancy.
>
> As a result of the Tasman Challenge, the parties agree that the manning levels and structures will be reviewed to reflect the mediation settlement, CHH/NST/PPWU Settlement.

[14] The appropriate domestic schedule referred to in clause 38, is Domestic Schedule A for Facility Cleaners. Clause 2 of Schedule A outlines the team structure and sets the manning level for the Facilities Cleaners workgroup at 14 workers. This number was changed by agreement and reduced to 8 in August 2004.

[15] The schedule recognises that a review of the current workload and work patterns is required and will …result in a consistent work pattern that takes account of the necessary work/life balance issues and the needs of the business.

[16] After the Company had announced its proposal to close one of its three paper machines, negotiations between NST and the unions represented on its site commenced. The negotiations resulted in an agreed process for demanning in contemplation of the closure of the paper machine - PM1. The agreements were reduced to writing which resulted in a document entitled 315K Redundancy Principles.

Document 315K

[17] Document 315K was signed off by the parties in 2004 and outlines the agreed guidelines to be used when demanning occurs. The main focus of the document is to provide for voluntary redundancies and to ensure redeployment occurs wherever possible.

[18] The relevant parts of the document read:

> …Therefore should there be a Board decision to shut PM1 the Unions and the Company have agreed to meet with a view to developing a process to manage demanning as per these principles:
>
> - Provide a platform for co-operation between the Unions and the Company in relation to 315K demanning.
> - Minimise the negative impact of any 315K de-manning on employees and their families.
> - Wherever possible, to have de-manning occur on a voluntary redundancy basis.
> - Ensure re-deployment occurs where this is possible.
> - Ensure people who exit do so with the right information and support.
> - Ensure people who remain have the appropriate skills for the future.

[19] NST's redundancy policy dated 31 August 2004 sets out the principles and commitments by the company and unions in the event of demanning:

- Consultation with the appropriate employees/Union.
- Commitment to voluntary redundancy as a preferred mechanism of demanning.
- Commitment to use of redeployment opportunities.
- Commitment to developing processes that maximise voluntary redundancy and/or redeployment.
- Commitment when appropriate to reduce the use of the contractor workforce.
- Commitment to ensure that people who leave the Company do so with the right information and outplacement support.
- Commitment to ensure that people who remain with the Company have the appropriate skills to meet the future needs of the business.
- Where appropriate demanning will include the reduction of the use of contractor workforce.

[20] In April 2005, as a direct consequence of the decision to close PM1, NST decided to reduce the facility cleaners group from eight to four. The manning level was determined on the basis that the team members would working 5 days of the week – Monday to Friday. However, during the consultation process the days of work were extended to include Saturday mornings. At the time the decision to extend the days of work was made, the team agreed that the person who worked on the Saturday would take one day off during the following week on either a Tuesday or a Thursday as Mondays and Wednesdays had heavier workloads. On the day when only three team members were working it was agreed they would all share the work usually undertaken by the team member who had worked on the Saturday.

[21] On 24 May 2005 Ms Scott wrote to each of the unions bound by document 315K, and reinforced the company's commitment to working with the unions to maximise the use of voluntary redundancies. In relation to forced redundancies, Ms Scott reconfirmed that where only a small number of employees were left in total, and/or in a particular workgroup the issue of forced redundancies would be reviewed taking into consideration the following:

- The skill level of the remaining employees to facilitate their utilisation.
- The remaining employees willingness and ability to be part of a utility pool.
- Sinking lid in affected work groups until final demanning numbers reached, e.g. no external recruitment until those individuals were absorbed.
- No employment of additional temporary employees in affected work groups unless surplus employees were actively working.

[22] It was common ground at the investigation meeting that the last on, first off, principle would pertain to any employee in the Facilities Cleaners group where forced redundancy applied.

4 October to 10 November 2006

[23] On 11 October 2006, NST met with the union and the Facility Cleaners workgroup to discuss trailing the four person runs during the consultation period. All those present at the meeting, including Ms Weatherly, discussed and agreed on the makeup of each of the four runs and the duration of the trial for each run. It was agreed that the trial would start on 16 October and that each of the four cleaners would do each of the four runs for two days and then rotate.

[24] It was also agreed that the trial would run for two weeks with a full review on 25 October 2006. Pursuant to the mediation settlement agreement the consultation period, and therefore the run trials, would end on 10 November 2006. Any concerns/problems during the trials were to be reported immediately and if necessary a team meeting would be called.

[25] During this time, Ms Weatherly was engaged in odd jobs such as filling up the stores cupboards for the rest of the cleaners, scrubbing walls, doing electrical checks, and relieving

other team members who had to attend appointments etc. She was not involved in the trial runs.

[26] At the weekly team meeting on 19 October the trial was discussed. At that meeting the team members raised issues about not having enough time to get to grips with each run and it was suggested that each run be trial over a week, instead of two days. No decision about that suggestion was made at that time although changes to the runs were made to achieve a better balance of the workloads and to make it easier to get from location to location. This allowed a smoother flow of work during the shift.

[27] On 25 October the two week trial was reviewed more formally. General comments made at the meeting and recorded in the minutes included:

- Runs considered "tough"
- Don't think there is enough time to clean things properly
- Central area difficult to cover when Shuts are on (Wednesdays)
- Suggested that some sections/smoko rooms be transferred to another Run
- Need to get all areas up to a good standard before trying four person trial/runs
- Areas of concern were with walls, urinals, around rubbish bags, and the showers
- Suggested – "company got it wrong" – should have shut areas before reducing numbers
- Lyn still to go on 10 November
- We continue on current Run for four days and then another cycle of four days on the next Run
- It was suggested an extension be made to trial, so everyone has four full rounds

[28] At this meeting it was agreed to extend from 2 to 4, the days over which each run would be carried out.

[29] The union proposed that the consultation period be extended for one week to end on 17 November instead of 10 November 2006. The proposal was made to allow all four workers to undertake all four runs for the longer 4 day cycle.

[30] Mr Christini considered the request and discussed it with Ms Scott. He decided an extension was not necessary. It was his view that the cleaners had already trialed the four runs each for two days. He felt that by 10 November, each team member would have had an opportunity to trial at least three of the runs for a second, longer time and that this would be adequate to provide enough feedback on which to then determine if the manning levels would remain at four or be extended to include a fifth position.

[31] Ms Scott says that when Mr Christini raised the question of an extension with her Mr Christini was clear that by 10 November all team members would have done all four runs either for two days or four days. She says that if the information coming through as feedback from both the team members and the clients had been inconsistent then an extension would have been appropriate.

[32] At the weekly team meeting on 2 and 9 November 2006 the trial was discussed. The Minutes recorded from these meetings indicate that the team members were finding the runs were getting better. The minutes also record that no complaints had been received from the workgroups' internal clients, but the team members were finding the runs difficult, particularly on the days when only three cleaners were working. Notwithstanding that, the team members indicated their eagerness to settle into their own runs.

[33] The agreement reached in mediation provided for the consultation period to end on 10 November 2006. The proposal to extend the consultation period to allow each of the four team members to trial all four runs was given consideration by NST. The decision not to agree to an extension was a decision open to an employer acting fairly and reasonably.

10 November Meeting

[34] Pursuant to the agreement reached on 11 October 2006 the consultation period ended on 10 November 2006. A meeting was held to discuss the trials and the impact on Ms Weatherly's employment.

[35] The minutes recorded from the meeting indicate that the team members were still finding each of the runs difficult to get through. Mr Christini asked the team members whether they thought if they each had their own run full time whether the routines or work load would improve. No-one responded to his question.

[36] At the meeting, Mr Harold Appleton, union Secretary, disputed the ability of the four team members to undertake the cleaning necessary for the site. Mr Appleton provided Mr Vincent and Mr Christini with copies of written submissions outlining his view, based on his calculations, that the company required at least 4.85 full-time employees to undertake the cleaning effectively. Mr Appleton reminded Mr Christini and Mr Vincent that the staffing level of four was initially determined on the basis that the team would only work Monday to Friday. Since the staffing level had been set, the decision to work on Saturdays had been made and this impacted on the numbers required to undertake the work.

[37] Mr Vincent and Mr Christini told me they listened to Mr Appleton while he took them through his submissions. They each took a copy away and discussed the submissions with Ms Scott.

[38] It was common ground at the investigation meeting that the Facility Cleaners workgroup had never carried a spare member to assist with absences. The number of cleaners had always related to the number of runs to be carried out by the team.

[39] Ms Scott told me that she was aware that team members were saying at the meetings, that there was not enough time to get all the duties done during a run, but that this was contradicted in discussions she had personally with some team members who told her that the work could be completed.

[40] Mr Vincent told me that when he had spoken to team members the feedback he was receiving was that they were finding the runs easier the longer they were doing them.

[41] Ultimately, the need to increase numbers from 4 to 5 was not accepted by NST. NST determined that Ms Weatherly's position was surplus to requirements and she was given notice of redundancy which was effective on 17 November 2006.

[42] Pursuant to the settlement agreement Ms Weatherly was made a written offer of temporary employment for the period 17 November to 17 January 2007. Ms Weatherly declined the offer on the basis that this application was before the Authority and she wanted to see what the final outcome was before she would commit to any further work for NST.

Alternatives to redundancy

[43] I am satisfied that during 4 October to 10 November 2006, pursuant to its obligations under the 315K document, NST considered alternative options other than redundancy for Ms Weatherly. However, options were restricted by Ms Weatherly's availability. She was unable to work 12 hour shifts, and only able to work irregularly on weekends. One possibility, which was discussed with Ms Weatherly, required an HT licence which Ms Weatherly did not have. NST offered to assist her in getting her HT licence if she wanted the job. Unfortunately nothing came of that proposal as the position did not eventuate. In any event the position would have required Ms Weatherly to work a 4 on, 4 off 12 hour rostered shift and that would have been a barrier for her.

[44] Mr Vincent told me he approached two of Ms Weatherly's colleagues and discussed with them whether they would be prepared to take redundancy. In one case Mr Vincent says he went so far as to ask one of the cleaners if they considered it was time for them to go. He says he did this because of concerns he held about that persons work performance. Unfortunately again, the answer in both cases was no.

[45] Pursuant to section 103A, I am satisfied that a fair and reasonable employer would have concluded that in all the circumstances there was no need to have more than four cleaners employed in the Facility Cleaners workgroup. It follows that, having made that decision, and where no redeployment opportunities existed, it was fair and reasonable that Ms Weatherly be dismissed on notice as she was.

[46] Having determined that the dismissal was substantively justified, I must now turn my mind to the other statutory consideration under section 103A which is how the employer acted and whether a fair and reasonable employer would have so acted in all the circumstances at the time of dismissal.

How did the employer act?

[47] Section 4(1A) of the Employment Relations Act requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of one or more of its employees, to provide to the employees effective access to information and an opportunity to comment before such decisions are made. Consultation is necessary in any redundancy situation (see *Simpsons Farms Ltd v Aberhart*, unreported, Coglan CJ, AC52/06, 14 September 2006).

[48] Section 4(1A) requires the parties to employment relationships to be "...active and constructive in establishing and maintaining a productive employment relationship..." in which they are, among other things, responsive and communicative.

[49] In *Communication & Energy Workers Union Inc v Telecom NZ Ltd* [1993] 2 ERNZ 429, the Court discussed the meaning of "consultation" in the context of redundancy, and listed a series of propositions extracted from the Court of Appeal's decision in *Wellington International Airport Ltd v Air NZ* [1993] 1 NZLR 671 (CA). In particular, the Court noted:

> (a) Consultation requires more than mere prior notification and must be allowed sufficient time. It is to be a reality, not a charade. Consultation is never to be treated perfunctorily or as a mere formality.
>
> (b) If consultation must precede change, a proposal must not be acted on until after consultation. Employees must know what is proposed before they can be expected to give their view.
>
> (c) Sufficiently precise information must be given to enable the employees to state a view, together with a reasonable opportunity to do so. This may include an opportunity to state views in writing or orally.
>
> (d) Genuine efforts must be made to accommodate the views of the employees. It follows from consultation that there should be a tendency to at least seek consensus. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done.
>
> (e) The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.

[50] The decision to reduce the manning levels in the Facility Cleaners workgroup from eight to four, was made in April 2005. The focus on my investigation is on the actions of the employer from 4 October to 10 November 2006. Any irregularities or deficiencies in the consultation process up to 4 October 2006 had been finally dealt with by way of the mediation settlement agreement dated 4 October 2006.

[51] The stated agreed purpose of the consultation period following the mediated settlement agreement was related to …the effect of PM1 closure on the manning levels of [the Facility Cleaners and Stores] workgroups. [my emphasis]

[52] At the meeting on 11 October 2006 the parties agreed how they were going to review whether the manning levels were correct. It was agreed that the team members in the Facility Cleaners workgroup would undertake a trial of the four person runs. At that meeting there was a full discussion about the runs and alterations, additions and deletions were made to previously documented schedules.

[53] The applicants' claim NST entered into the consultation process with a closed mind and therefore the decision to dismiss Ms Weatherly was pre-determined. In support of that claim Mr Malcolm Helyar and Mr Neville Shakes say they had a conversation with Ms Scott on 5 October where she indicated that the company felt that Ms Weatherly would still be redundant come 10 November 2006. The applicants' also point to the minutes of the meetings on 25 October and 2 November which records that …Lyn still to go on 10 November and Correction – Lyn to remain until 17 November 2006 to support their claims.

[54] In answer to questions at the investigation meeting Mr Helyar told me that he doesn't recall what Ms Scott actually told him because he wasn't paying that much attention to the detail of the words used. He says he gained the impression that the process would result in the same outcome.

[55] Mr Shakes told me that his understanding was, Ms Scott said the "likely outcome" would be the same. He understood this to mean that the situation was not likely to change. He told me that Ms Scott did not state that the outcome would be the same but that was his impression.

[56] Ms Scott says that during her conversation with Mr Helyar and Mr Shakes she advised them that NST had not permanently reinstated Ms Weatherly, but had reinstated her only while further consultation could take place. Ms Scott denies she told Mr Helyar or Mr Shakes that Ms Weatherly would still be made redundant on 10 November. Rather, she says she told the men that redundancy was still an outcome that was open to NST under the terms of the mediated settlement.

[57] I am satisfied that it is more likely than not, that Ms Scott did not tell Mr Heylar and Mr Shakes that Ms Weatherly would be redundant on 10 November, but rather, that it was a possible outcome. That is not a surprising thing to have said, given that the 4 October 2006 settlement agreement specifically provided for Ms Weatherly's redundancy as a possible outcome.

[58] The men reported their impressions to Mr Appleton who told Mr Shakes that he should remember the words and then rang his legal advisor. Having taken those steps, Mr Appleton did not raise any issues about the process being a sham until the parties met in mediation regarding this application, on 8 November 2006. He says he just tucked it into the back of his mind. It wasn't until he did not get the extra week for the trials that he decided it all added up and that the process was a sham.

[59] The decision not to extend the trial for an additional week was made on or about 25 October 2006. No issue that the consultation process was a sham was raised with the company at that time. Given the union's involvement in the process, if the claim was genuine I am quite sure Mr Appleton would not have hesitated to raise it.

[60] In relation to the comments recorded in the minutes from the meetings held on 25 October and 2 November 2006 and in answer to questions at the investigation meeting Mr Vincent told me the bullet points relate to a question asked by one of the team members about what would happen to Ms Weatherly. Mr Vincent says he told the meeting that if the trial showed they could do the work with four, then Ms Weatherly would have to go on 10 November. The date was then altered at the next meeting to reflect the week's notice which would have to be provided to Ms Weatherly if the decision made, on 10 November 2006, was to keep the manning levels at four.

[61] While on their face, the minutes could be construed to indicate a closed mind, when the statements are taken into account and the context in which they were made and recorded, the minutes are not sufficient evidence for me to draw a conclusion that NST had a closed mind during the consultation process.

[62] Regular discussions took place between the team members and NST regarding the trial runs where all team members were given the opportunity to provide feedback and changes to the runs were discussed and agreed. Outside the team meetings and the review meetings on 25 October and 9 November 2006 I am satisfied informal feedback indicated that as people became more used to the requirements of the runs, the runs became easier. Mr Vincent gave evidence that at least one of the team members had told him that she was satisfied the work could be done with only four people.

[63] Mr Christini told me the decision to keep the manning level at four was made in the context that since 1 August 2006 four cleaners had been doing the work previously undertaken by eight. The team had taken the eight runs and doubled them up to make four runs.

[64] I am satisfied NST has neither breached its obligations under the collective agreement nor the Employment Relations Act. The minutes recorded of all the team meetings show that the parties reviewed the proposal for a manning level of four and options were considered by NST including the possibility of changing the agreed end date of the consultation period from 10 November to extend the trial of the runs by one week. The union and Ms Weatherly attended or were invited to attend all the meetings at which the trial of the runs was discussed. I have concluded that both the union and Ms Weatherly had a full opportunity to be involved in the consultation process.

[65] I am also satisfied that the consultation process adopted from 4 October 2006 met the requirements of NSTs' redundancy policy dated 31 August 2004. The process included the appropriate employees and the union and there was a demonstrated commitment to voluntary redundancy. This is evidenced by the enquiries to team members by Mr Vincent, as to whether there was a possibility of another person selecting voluntary redundancy so that Ms Weatherly would not be made forcibly redundant. Redeployment opportunities were considered but options were restricted by Ms Weatherly's availability and there was no dispute that Ms Weatherly was provided with the right information and support including information about EAP services.

[66] I have concluded that NST has complied with the 315K guidelines for the reasons outlined above. In relation to Ms Scott's letter of 24 May 2005, reinforcing NST's commitment to working with unions to maximise use of voluntary redundancies, I am satisfied that through their various discussions and meetings with the union and the team members, NST through its managers Mr Vincent, Mr Christini and Ms Scott, met its obligation to review whether a forced redundancy in Ms Weatherly's case was appropriate.

[67] In answer to questions at the investigation meeting in relation to whether use of the "sinking lid" principle had been considered, Ms Scott told me the company has recently announced a further demanning process which may see up to 80 positions removed from the site and that this was a factor when she was reviewing the need for a forced redundancy.

[68] In relation to the undertaking not to employ temporary staff unless a surplus staff member was fully utilised, I am satisfied there is no intention to employ temporary staff except as it relates to the coverage of leave for periods of one week or longer which occurs on an irregular basis. A temporary employee was employed following Ms Weatherly's dismissal, however, I am satisfied this situation arose as a direct result of NST making special arrangements so that it could meet its commitment to offer Ms Weatherly continued work up to 17 January 2007 pursuant to the 4 October 2006 settlement agreement and which Ms Weatherly declined.

Separating out NST's actions against the statutory objective standard of what a fair and reasonable employer would have done in these circumstances I find Norske Skogg Tasman Limited's actions were what a fair and reasonable employer would have done. Ms Weatherly's dismissal for redundancy is justified. I can be of no further assistance to her.

Additional Comment

Redundancy is a difficult and emotional time for employees and never more so than when a person has been employed for more than 14 years with the employer. Ms Weatherly was a well respected and long serving employee at the NST site. Her skills and abilities in carrying out her work were not disputed. Quite the opposite. NST were quite clear that if they had had the option of selecting those to remain in the Facility Cleaners workgroup, there was no doubt that Ms Weatherly would continue to be employed today. At the investigation meeting the praise for her work ethic and the quality of her work was resounding. This case demonstrates the unfortunate reality for both Ms Weatherly and NST where selection of employees to be made redundant is based on the principle of last on, first off.

Vicki Campbell
Member of Employment Relations Authority