

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 410
5398312

BETWEEN	THE PULP & PAPER INDUSTRY COUNCIL OF THE MANUFACTURING AND CONSTRUCTION WORKERS UNION Applicant
A N D	NORSKE SKOG TASMAN LIMITED Respondent

Member of Authority: Alastair Dumbleton

Representatives: Kathryn Beck, counsel for Applicant
Kylie Dunn, counsel for Respondent

Investigation Meeting: 5 November 2012

Submissions Received: 7 and 8 November 2012

Date of Determination: 19 November 2012

DETERMINATION OF THE AUTHORITY

- A. Norske Skog has interpreted and applied its Redundancy and Redeployment Policy correctly and in accordance with the collective employment agreement it has with the Pulp and Paper Workers Union.**
- B. Costs are reserved.**

Employment relationship problem

[1] A redundancy situation has arisen for members of the applicant union (“PPWU”) employed by the respondent employer (“Norske Skog”) in its Tasman

Mill. The collective agreement applicable to the employment states that the Norske Skog Redundancy and Redeployment Policy will apply in the event of redundancies.

[2] The union disputes the way the company has applied particular provisions of the Policy and seeks a declaration from the Authority that in the circumstances before it the employer has failed to correctly interpret or apply the Policy and collective agreement. Remedies including a compliance order and an injunction are also sought, but before they can be considered the Authority must first determine the rights and obligations of the parties under the employment agreement and the Policy which by reference has been incorporated into the agreement.

Paper machines – PM2 and PM3

[3] Norske Skog currently has two machines producing paper at the Tasman Mill. Known as PM2 and PM3, they are located in the Paper Mill part of the plant at Kawerau. About 70 members of PPWU are employed to work on the machines which operate 24 hours every day except for maintenance periods.

[4] A third machine PM1 was in operation until 2006 when it was closed.

[5] Norske Skog's main paper product has been newsprint but the market for that has been dropping steadily in recent years, as more and more consumers are going on-line using the internet and similar technology for advertising and reading the news.

[6] On 10 September 2012 following a consultation process with PPWU and its affected members, Norske Skog advised it had decided to close paper machine PM2. This will occur in January, or before the end of March 2013 at the latest.

[7] The company has chosen to retain PM3 because it is technologically a newer machine and has the ability to produce more tonnes of paper than PM2.

[8] There is no issue between the parties in this case about the closure decision or the procedure followed by Norske Skog in reaching it. There is also no issue that the closure of PM2 has created a situation in which the Redundancy and Redeployment Policy is applicable, as about 30 positions, the equivalent of one paper machine crew, will become redundant in consequence of the employer's decision.

[9] The dispute has arisen because the employer intends selecting the redundant positions from both paper machines, PM2 and PM3, although the latter is not being closed.

Redundancy and Redeployment Policy

[10] At issue is whether Norske Skog has correctly interpreted and applied the Redundancy and Redeployment Policy to widen the scope of redundancies and draw in PM3 positions.

[11] At the beginning of it the Policy has a declaration by Norske Skog and PPWU of their shared interest “in ensuring that employees are treated fairly in any change process, particularly in the event of demanning.” A number of principles are expressly included among those the parties are to take account of in treating employees fairly and maximising “support of permanent employees.” The principles include;

- *Commitment to voluntary redundancy as a preferred mechanism of demanning.*
- *Commitment to ensure that people who remain with the Company have the appropriate skills to meet the future needs of the business.*

[12] Clause 3 of the Policy provides for the process to be as follows:

3. REDUNDANCY AND REDEPLOYMENT PROCESS

After consultation with employees and Unions in affected work areas (work areas defined by the Company following discussion with the relevant Union), if a decision is made by the Company to reduce the number of positions in a work area, the Company will approach demanning as follows ...

3.1 The employees and Union(s) will be advised of the Company’s decision.

- (a) If the redundancy of positions is as a result of asset closure or cessation of service, employees employed in positions identified by the Company as redundant will be advised that their positions are, or will become, redundancy and clauses 3.2-3.13 will apply to those employees.*
- (b) If the redundancy of positions is as a result of partial demanning of a work group, clauses 3.2-3.13 will apply to all employees in that work group.*

[13] Under the opening part of clause 3 Norske Skog has defined the “work area” as being the Paper Mill within which both machines PM2 and PM3 operate. PPWU contends that the work area is confined to the machine being closed, PM2, and consequently must be defined as such.

[14] The Policy expressly provides for two situations; “asset closure” and “partial demanning of a work group”. Norske Skog accepts that the machine being closed, PM2, is an *asset* as that word is normally used. However the company contends that because it has defined the affected work area as the Paper Mill the redundancy of positions results from “partial demanning of a work group,” being the 70 workers who are employed on both PM2 and PM3.

[15] Clauses 3.2 through 3.13, which apply to employees whose positions will become redundant, make extensive provision for voluntary redundancy, redeployment and involuntary redundancy after a selection process has been applied. The employer sought an indication from PM2 workers as to how many of them wished to apply for voluntary redundancy. The response has led it to think that there will not be sufficient volunteers to be able to avoid a situation of involuntary redundancy for many workers in the work area.

Discussion

[16] Clause 3 of the Redundancy and Redeployment Policy, as it states, is a process to be followed. It is commenced when the company discusses with the union an area of work before giving definition to the “work area” that will be affected by a proposed reduction in the number of positions. Defining the work area is expressly the company’s role for it to take after a discussion. The next step is for the company to make a decision whether to “reduce the number of positions in a work area.”

[17] The way the employer defines the “work area” determines whether the reduction in the number of positions is as a result of asset closure or partial demanning of a work group.

[18] Had Norske Skog defined the work area as a particular paper machine such as PM2, then the situation would have been one of asset closure. In that event clauses 3.2 to 3.13 are to apply to the employees employed in positions identified by the company as redundant, presumably PM2 positions only.

[19] The company has however defined the work area as the Paper Mill in which there are currently two machines. A reduction by 30 to the collection of 70 workers manning PM2 and PM3 will amount therefore to a “partial demanning of a work group.” In that event sub-clauses 3.2 to 3.13 are to apply to all the employees in the Paper Mill and not just those employed on one particular machine.

[20] The sequence or order under the clause 3 process does not begin with identifying whether the cause of the redundancy of positions is an asset closure or a partial demanning of a work group. I do not consider that the Policy at clause 3 allows for working backwards, by deciding that because what is being closed is an asset, the situation must be one of “asset closure” for the purposes of clause 3.1(a) and that therefore the company must define the “work area” as that asset rather than the wider area of the Paper Mill.

[21] Although it might appear that in some circumstances clause 3.1(a) could be subsumed under, or included within, clause (b), in my view they are two separate and distinct situations. Which situation will materialise, (a) or (b), depends on how the work area has been defined by the employer.

[22] Clause 3 in its introductory words contemplates that a “work area” may be defined broadly or narrowly by the company in its discretion. There is no dispute in this case that in 2006 the “work area” was confined to a particular paper machine, PM1, following the definition the company gave of it and that accordingly the redundancy of positions resulted from asset closure. Only the positions of employees who worked on PM1 were treated by the employer as being affected and clauses 3.2 to 3.13 were applicable to those employees alone.

Requirement of fair treatment of employees

[23] In defining the work area Norske Skog under the Policy must ensure employees are treated fairly in the change process. The evidence of the Mill General Manager, Mr Peter McCarty, who made the decision to close PM2, was that in defining the Paper Mill as the work area he weighed up the lack of any significant number of volunteers for redundancy, the fairness to employees who had only recently transferred from PM3 to PM2 and the retention of skills to meet the Mill’s future needs.

[24] The evidence for PPWU from Mr Tane Phillips, the union's senior site delegate, was that PPWU members had viewed PM2 as the work area affected by the closure, not the Paper Mill which also included PM3. Consequently the members believed the situation ought to be regarded as one of asset closure under the Policy. Mr Phillips considers that the employer's motive in defining a wider work area than PM2, leading in consequence to a partial demanning situation where those to be made redundant involuntarily will be selected by the employer, is to allow it "to pick and choose who gets to stay." In selecting those to be made redundant Mr Phillips considers the employer may bring "personalities" of employees into account rather than objectively applying criteria such as length of service, skill, experience and performance in relation to individuals.

[25] When it comes to selecting individuals to be made redundant, the personal grievance remedy remains available if it should be thought that the employer has acted unfairly and unreasonably, or has acted discriminatorily in relation to any individual because of perceived personality traits of any kind.

[26] Norske Skog considers it is fairer to select those to be made redundant from the pool of both PM2 and PM3 workers within the Paper Mill. It is accepted by PPWU that it is the role of the employer to define the work area. The employer has some discretion in giving definition, provided it does not act arbitrarily, or disregard relevant factors or take into account of irrelevant factors. The parties differ as to how fair treatment of employees is best achieved and how other stated principles under the Policy are to be followed as required.

[27] I consider that the employer's decision to define work area as the Paper Mill was open to it. It might equally have defined the area as PM2, as the union considers it should have done and as it did in 2006 with the closure of PM1.

[28] The different definition of work area in relation to the closure of PM1 in 2006 has been reasonably explained in my view. In 2006 there were enough volunteers for redundancy to allow for the work area to be confined to the paper machine being closed, whereas in the current situation the indication has been that there will not be enough to avoid a significant number of involuntary redundancies.

[29] It seems to me that the employer's view of the principle relating to skills needed to meet future requirements of the business may be an unduly narrow one, if it

is suggesting that the skills are only those an employee has acquired at the time a redundancy selection process is being applied. The principle seems capable of being applied to skills an employee might in the future acquire if given appropriate assistance by the employer, such as training. That is a matter for it to consider at the time it applies a selection process.

Determination

[30] I consider that Norske Skog has exercised its discretion and judgement with regard to circumstances that are relevant and for reasons that are not arbitrary. The employer has done so as required after discussion with the PPWU and as permitted by the Policy and collective employment agreement that it is part of.

[31] The Authority therefore declares that Norske Skog has applied the Redundancy and Redeployment Policy correctly and in accordance with the collective agreement. Accordingly there is no basis for granting any of the remedies sought by the PPWU to resolve the employment relationship problem.

Costs

[32] Costs are reserved. PPWU and Norske Skog will be aware that when there has been a genuine dispute, as in this case, it is usually appropriate that the parties to it should bear their own costs.

A Dumbleton

Member of the Employment Relations Authority