

[2] It was clear that the Authority did not have jurisdiction over many of the matters Ms Scarborough wanted investigated. The Authority therefore dealt with the jurisdiction issue on the papers prior to its substantive investigation meeting to avoid the parties having to file evidence about matters over which there was no jurisdiction.

[3] The Authority concluded it only had jurisdiction to investigate Ms Scarborough's unjustified dismissal and breach of good faith claims so the substantive investigation was confined to those claims. Other concerns Ms Scarborough wanted to pursue were not considered and were deemed not relevant to the two claims over which the Authority did have jurisdiction.

[4] Ms Scarborough was employed by Micron on 16 September 2013. She was given notice of redundancy on 16 December 2013 and her employment ended at the end of that week on 20 December 2013.

[5] The Authority heard from Ms Scarborough. It also heard evidence from Mr Mel Weston, one of the directors and the shareholders of Micron and Mr Alan Palwankar, Ms Scarborough's former manager. Each party was given the right to cross examine the other party's witnesses.

[6] There is no dispute that on 16 December 2013 Mr Weston verbally advised Ms Scarborough that the company did not have sufficient work for her to continue working for Micron in the New Year or that she was given written notice of redundancy that same day. The parties confirm that Ms Scarborough was paid all of her contractual entitlements upon termination and that she was not given any information before being issued with notice of redundancy.

Issues

[7] The following issues are to be determined:

- (a) Did Micron breach its good faith obligations to Ms Scarborough?
- (b) Was Ms Scarborough's dismissal on the grounds of redundancy justified?
- (c) If not, what if any remedies should be awarded?
- (d) What if any costs should be awarded?

Did Micron breach its good faith obligations to Ms Scarborough?

[8] 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.

[9] Mr Weston admits that did not occur. The only information Ms Scarborough got was her letter of redundancy letter. It is clear that Micron breached its good faith obligations to Ms Scarborough.

Was Ms Scarborough's dismissal justified?

[10] Justification is to be assessed in accordance with the justification test in s.103A of the Act. This requires the Authority to objectively assess whether Micron's actions and how it acted were what a fair and reasonable employer could have done in all of the circumstances at the time that Ms Scarborough was made redundant.¹

[11] Mr Weston acknowledges Micron did not comply with any of the four procedural fairness tests in s.103A(3) of the Act. That failure together with its breach of good faith means Micron is unable to procedurally justify Ms Scarborough's dismissal. A fair and reasonable employer is expected to comply with its statutory obligations but Micron did not do so.

[12] However I am satisfied from the evidence produced by Micron of its sales and expenditure and from the evidence given by Mr Weston and Mr Palwankar about the financial difficulties faced by the company subsequent to Ms Scarborough's employment in September 2013 that her redundancy was genuine.

[13] There were three people who did Ms Scarborough's role but not enough work for all of them. Ms Scarborough agreed that she was aware at the time of her redundancy there was not sufficient work to do and she agreed that the amount of work had decreased since she had started work at Micron. Ms Scarborough herself had raised concerns about the business with Mr Weston.

[14] I am satisfied that even if a fair and proper process had been followed and even if Micron had complied with its good faith obligations, Ms Scarborough would

¹ Section 103A of the Act.

still have been made redundant. Micron had to address its declining sales and increased costs by realigning its outgoings with its income. It did not replace an employee who resigned in November and it has still not filled Ms Scarborough's vacant position.

[15] I am also satisfied that Ms Scarborough would have been the employee who was selected for redundancy. Of the three employees who did the same work as Ms Scarborough one had been employed for 26 years and the other had been employed for 16 years. It was open to a fair and reasonable employer to have selected Ms Scarborough for redundancy because she had only been employed for three months over its two other long serving employees.

[16] I therefore find that although Ms Scarborough's redundancy dismissal was procedurally unjustified it was nevertheless substantively justified.

What if any remedies should be awarded?

[17] Because Ms Scarborough's dismissal was substantively justified she is not entitled to any lost remuneration. Her reinstatement claim also does not succeed as Micron has no work for her to do.

[18] I am satisfied Ms Scarborough has suffered humiliation, loss of dignity and injury to her feelings as a result of her procedurally unjustified dismissal. I order Micron to pay her \$750 under s.123(1)(c)(i) of the Act to compensate her for the distress she has suffered.

What if any costs should be awarded?

[19] Neither party was legally represented so no issue arises as to costs. Ms Scarborough incurred the cost of a filing fee so as the successful party she is entitled to be reimbursed for that. Accordingly Micron is ordered to pay Ms Scarborough \$71.56 to reimburse her filing fee.

Rachel Larmer
Member of the Employment Relations Authority