

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 11  
5539621

BETWEEN                      KIM CHARLEEN TEINAKI  
Applicant

A N D                              NATURE'S SUNSHINE  
PRODUCTS (NZ) LIMITED  
Respondent

Member of Authority:        James Crichton

Representatives:              Michael Scott, Advocate for Applicant  
Michael Smyth, Counsel for Respondent

Investigation Meeting:        24 July, 5 and 6 October 2015 at

Date of Determination:        11 January 2016

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant (Ms Teinaki) alleges that she was unjustifiably dismissed from her employment by the respondent (Nature's Sunshine) and Nature's Sunshine denies the allegation saying that Ms Teinaki lost her position as a consequence of a genuine restructure made for proper commercial reasons.

[2]     By agreement between the parties, the only issue for this determination is whether Ms Teinaki's claim is made out; only if liability is established is there to be any consideration of remedies.

[3]     Ms Teinaki was employed on and from 14 January 2013 as a customer services specialist. Initially the employment was for a six month fixed term but permanent employment was offered and accepted on and from 15 July 2013. Contrary to Ms Teinaki's claim, a fresh permanent employment agreement replacing

the old fixed term agreement was provided by Nature's Sunshine and executed by both parties.

[4] The evidence for Nature's Sunshine is that the reason for the initial fixed term engagement was an upcoming new website and IT infrastructure which the company expected to be in place in six months and the intention was that there be a review about staffing requirements at that point.

[5] In the result, the new arrangements were not in place after six months and Nature's Sunshine decided to offer permanent employment to all its customer service specialists (including Ms Teinaki).

[6] During calendar 2013, Ms Teinaki alleges that there were increasing tensions between her and Ms Carla Swan who was the general manager of Nature's Sunshine. Ms Teinaki reported to Ms Swan. The first of these difficulties concerned the mid-year Christmas lunch where Ms Teinaki claims to have been harassed by Ms Swan for not travelling with the other staff in a taxi van.

[7] Next in November 2013, Ms Teinaki alleges that on Melbourne Cup day, although her shift finished at 1pm, Ms Swan was angry that Ms Teinaki did not attend the social function at work to watch the race.

[8] Third, in December 2013, Ms Teinaki says that she was again subjected to disapproval by Ms Swan because of her refusal to join the rest of the staff in the taxi van which was provided for the office Christmas function.

[9] I deal with all of these claims later in this determination; it is enough to observe at this point that Nature's Sunshine's evidence is different.

[10] Then, on 31 January 2014, Ms Teinaki had her performance review. It is common cause that that performance review went well with Ms Teinaki getting a bonus for her excellent service.

[11] Ms Teinaki claims that she was unfairly dealt with in respect of an error she made in processing sales orders and she refers to a letter from Ms Swan dated 28 February 2014 which she categorises as a warning and she felt this response of the employer was unfair because other staff had made mistakes as well.

[12] Ms Teinaki complained about this allegedly unfair treatment to Mr Fahy, the managing director, and it is common ground that Mr Fahy made it clear to Ms Teinaki at the time that the letter was no more than a request that she follow the procedure; it certainly was not a disciplinary warning.

[13] There is then an issue relating to customers of Nature's Sunshine, Mr and Mrs Caudwell. When Ms Teinaki met with Mr Fahy to complain about the 28 February 2014 letter from Ms Swan, Mr Fahy raised an issue with Ms Teinaki concerning her treatment of Mr and Mrs Caudwell and the suggestion that she may have been rude to Mrs Caudwell in particular.

[14] I note here that despite the allegation that Ms Teinaki may have been rude to a customer, even on Nature's Sunshine's evidence, no action was taken and while the matter seems to have been discussed between Ms Teinaki and both Mr Fahy and Ms Swan, the matter was never definitively resolved one way or the other.

[15] Ms Teinaki also complains that she spoke to Mr Fahy about the way that Ms Swan spoke to her but, according to her, nothing was ever done about it although Ms Teinaki does acknowledge that she received an apology from Ms Swan in respect of one of her complaints.

[16] On 13 March 2014, there was a staff meeting at which Ms Swan proposed a reduction in staff hours for all staff. The reason for this proposal being made at this time was that management had been studying the financial report since the close of the company's financial year on 31 December 2013. The proposed action was apparently a result of advice from the company's accountants about the need to "*re-evaluate [the] overall operations and expenditure*".

[17] I note that the proposal to change working hours was contemplated by the employment agreement between Ms Teinaki and Nature's Sunshine: clause 6(c). Notwithstanding Nature's Sunshine's ability to promote such changes, after meeting further with staff, a decision was taken not to proceed with the proposal.

[18] From May 2014, Ms Teinaki alleges that she was effectively sidelined by being taken out of the front office reception situation and that this, associated with other changes, had the effect of degrading her role in the business. At around the same time, her voice on the answerphone machine was deleted and replaced with the voice of another staff member and she was not told of this.

[19] There were further complaints later in the year about Mr Fahy and Ms Swan treating her brusquely and then on 14 July 2014, Ms Teinaki was asked by Ms Swan if she would reduce her hours by .5 per day, which Ms Teinaki declined to agree to. Then on 13 October 2014, CCTV cameras were installed in the workplace and Ms Teinaki alleges that this was designed to keep an eye on her and her co-workers. That allegation is vehemently denied by Nature's Sunshine.

[20] By letter dated 17 November 2014, Nature's Sunshine advanced a restructuring proposal, the principal effect of which, so far as Ms Teinaki was concerned, was that her position was disestablished (along with the other two like roles), and the telephone ordering part of the business was to be outsourced to a call centre provider. There were two positions that Ms Teinaki could apply for within the proposed restructured organisation and in the result she applied for one only of those roles, that of customer order processor.

[21] Ms Teinaki was provided with the information that Nature's Sunshine thought appropriate about the restructure and at no stage did she ask for further and better information from that which was provided.

[22] Because there was a competitive situation for the role that Ms Teinaki had applied for, a recruitment process was required. The other candidate, Ms Proffitt, was the niece of Mr Fahy although she had been an employee of Nature's Sunshine for several years (albeit with breaks of time when she was away from the business).

[23] Given that Ms Proffitt was related to Mr Fahy, a formal interview process was chaired by Ms Lisa Mackay, a human resources professional, who ran a competency-based interview process with a scoring system. That process resulted in Ms Proffitt being scored higher than Ms Teinaki and as a consequence Ms Teinaki's position came to an end and her position was disestablished.

### **The issues**

[24] The Authority needs to deal with the following questions:

- (a) Was Ms Teinaki's dismissal occasioned by redundancy;
- (b) If redundancy, was it genuine; and
- (c) Is there evidence of any improper motive?

### **Was Ms Teinaki's dismissal occasioned by redundancy?**

[25] I conclude on the evidence before me that Ms Teinaki's position was disestablished as a consequence of redundancy.

[26] I note for the sake of completeness that Nature's Sunshine suggests in its closing submissions that Ms Teinaki was wanting to argue that she had not been dismissed for redundancy and it may be she argues this as a subsidiary point. However, as I understand her case, Ms Teinaki's principal contentions are that she acknowledges the explanation given to her was that she was dismissed for redundancy but she says first, the redundancy was not genuine and second, it was activated by improper motives.

[27] Whatever the parties may think, it seems to me inescapable that this was a dismissal for redundancy (whether justified or not). There was a continuing employment relationship during which process a restructuring proposal was advanced by the employer and as a consequence of that proposal subsequently being implemented, Ms Teinaki's position was disestablished and she was dismissed for redundancy.

[28] That is what the letter of 26 November 2014 says, setting out as it does the results of the recruitment process which resulted in the alternative candidate to Ms Teinaki being selected for the single vacancy then existing after the restructuring.

[29] I do not accept the argument advanced for Ms Teinaki that the dismissal for redundancy did not fall within the terms of the definition of redundancy contained in the employment agreement. Mr Scott for Ms Teinaki acknowledges in his submissions that the definition contained in the employment agreement is an entirely standard one and I agree with that. But he then appears to say that there can be no redundancy because the particular circumstances of this case fall outside the definition of redundancy.

[30] I do not agree with that analysis. As I understand the employer's proposal, it intends to "*outsource our incoming calls to a call centre provider*" and that would seem to me to evidence a situation "*... where the needs of the business have changed such that the employee's position no longer meets the needs of the business*": clause 23(a) of the operative employment agreement.

[31] It follows that in my view this is very clearly a dismissal for redundancy and the real issues are whether the redundancy is a genuine one or not and/or whether it has been activated by improper motives, or not.

[32] The only other matter that I desire to address in this section of the determination relates to submissions made for Ms Teinaki about the *Salt v. Fell* principle. Here, Ms Teinaki says that Nature's Sunshine's contention that facts it discovered after the dismissal for redundancy might have justified disciplinary action against her. This relates to the issue involving Mr and Mrs Caudwell.

[33] There is no necessity to take this issue any further; the dismissal of Ms Teinaki was fair and square a dismissal based on redundancy and while it is true that Nature's Sunshine contended that it might have taken disciplinary action based on information that they discovered after the dismissal, the fact is it did not and there is no suggestion in the evidence that the dismissal was for any other reason than its justification by reason of the restructuring proposal having been adopted by Nature's Sunshine.

#### **Was the redundancy genuine?**

[34] I have not been persuaded that the redundancy was anything other than an entirely genuine one made for proper commercial reasons.

[35] I start my analysis with the initial notification to staff that a restructure was in prospect. That was initiated by a letter dated 17 November 2014 which identified the mischief as being the preference of customers to purchase product electronically rather than through telephone orders and it was contended that that preference had developed a definite upward trajectory over time.

[36] To remedy the mischief, Nature's Sunshine proposed disestablishing the three part time customer service specialist roles (one of which was occupied by Ms Teinaki) and replacing those three with a combination of a single full time customer order processor and the outsourcing of the telephone orders to an offsite call centre.

[37] The evidence from Nature's Sunshine indicated that Ms Swan had been analysing customer service call volumes since the introduction of the employer's new software platform and commensurate with that analysis had also looked at the time spent by customer service specialists (Ms Teinaki's role) dealing with those phone

orders. This was how the trend away from telephone ordering into electronic ordering was identified.

[38] Ms Swan's evidence (which I accept) is that she spoke next with Mr Fahy, as managing director, and between them they agreed to get some human resources advice on how they might address and respond to the problems that seemed to fall out of this set of facts.

[39] Those problems included, according to Ms Swan, a decreasing requirement for customer service specialists because many of the electronic orders simply required what she describes as "*pick and pack*" in the warehouse, in other words, little or no input from the customer service specialist.

[40] Moreover, Ms Swan considered that her own observations identified inefficiency because of the job sharing arrangement that they had had for a number of years (all the customer service specialists were part time) and because the physical processing of customer orders was interrupted from time to time by telephone orders which did not seem efficient.

[41] It is apparent from the evidence of Nature's Sunshine that Ms Swan and Mr Fahy worked with Ms Mackay who had advised Nature's Sunshine since 2010 on human resources matters.

[42] Between them, the proposed restructuring was developed. The essence of Ms Mackay's advice was to make changes to the structure of the business to reflect the changes in the trading environment and the elements of that advice eventually constituted the restructuring proposal. Ms Mackay's advice effectively had three parts to it but only two are relevant to the present proceeding. The three elements Ms Mackay identified were a requirement to reduce the workplace input provided by customer service specialists, to outsource the telephone answering requirement to a call centre and to beef up the staff in the warehouse because of the "*pick and pack*" element growing as a consequence of electronic ordering.

[43] Ms Mackay's role was particularly important in the present case because as well as providing human resources advice based on her experience as a dispassionate outsider, she also effectively had to take charge of the selection process which Ms Teinaki was subsequently involved in because Ms Teinaki's competitor for that position was a relative of Mr Fahy.

[44] Recognising that fact, Nature's Sunshine determined to adopt Ms Mackay's advice that it follow a competency-based interview process which involved a numerical scoring system against previously established benchmarks and that Ms Mackay would herself take charge of the process and would effectively chair the selection panel. To further assist the transparency of the arrangements, Nature's Sunshine determined (again on advice) that the questions to which candidates were to respond were to be provided to candidates in advance.

[45] The consultation letter was drafted by Ms Mackay, although it was signed by Ms Swan, and having studied it carefully, it seems to me to be a well presented, clear and balanced example of its kind.

[46] As part of that letter, affected staff were asked to provide feedback. That solicited a sensible series of observations from Ms Teinaki, the two most significant points made being the suggestion that customer service would deteriorate if customers could not talk to an experienced staff member by telephone and the contention that website orders take longer to process anyway.

[47] In the course of that feedback document, Ms Teinaki emphasises her passion for the business and her desire to continue working in it, makes clear that she wants to apply for one of the new roles, and critically for our purposes, acknowledges that there is "*decreased phone traffic*".

[48] Nature's Sunshine did not accept that web based orders took longer to process but the response provided by Nature's Sunshine to Ms Teinaki by letter dated 20 November 2014 specifically refers to the point she made about reduced customer service if there was a reduction in staff onsite, and indicates how the employer thought that could be dealt with. Moreover, the same letter also refers to a subsidiary point Ms Teinaki made in her submissions around whether the new position "*could be a job share*". Amongst other things, such a suggestion would have allowed for annual leave situations. However, Nature's Sunshine was not attracted by that suggestion and felt it could cope with leave situations without the necessity to job share as suggested.

[49] In any event, all of the evidence suggests that the proposal was made, it was a clear and straightforward proposal, it was supported by proper commercial considerations, it was clearly identified to staff, staff were given the opportunity of

providing feedback during a consultation process and the key elements of the collective feedback provided was commented upon by Nature's Sunshine.

[50] I note also that although it is now contended by Ms Teinaki that she was not provided with further information (and in particular was not provided with the detailed information that was before the Authority), it is also the case that she did not ask for any further information. Indeed, the exchanges between Ms Teinaki and Nature's Sunshine at the time seem to be sensible, level headed and entirely without drama.

[51] It does not seem to be difficult to identify why Nature's Sunshine produced a raft of graphs and charts for my investigation meeting; Ms Teinaki's approach to attacking the rationale for the redundancy was to suggest that there was no genuine basis for the commercial decisions that were made, a view that she has been unable to persuade me of.

[52] Much was made during the investigation meeting about apparent arithmetical errors. For instance, Ms Teinaki says that the reduction in telephone calls as a percentage is less than the figure she claims Nature's Sunshine used. That may be so, but even on her figures, there is a significant reduction in telephone calls and a reduction which she herself acknowledges in her feedback to the change proposal. Moreover, as counsel for Nature's Sunshine correctly points out, the restructure proposal was never justified on the basis of any particular run of figures; it was justified on the basis of an emerging trend, a trend which was not unexpected given that when Ms Teinaki was employed she was employed on a six month fixed term contract because at that time the expectation Nature's Sunshine had was that its new website would be operational in six months and there would be a need to look at the structure of the business at that point.

[53] In the result, the website, as is the case with many of these electronic wonders, took far longer than anticipated and by the time it was finally on task it had been necessary for Nature's Sunshine to confirm Ms Teinaki into a permanent part time position.

[54] But the point still remains that it had always been in Nature's Sunshine's contemplation that once the website came on stream there would need to be a reconsideration of staff numbers once trends became apparent.

[55] This restructure is justified not by specific numbers but by a change in the way that customers are doing business with Nature's Sunshine, a change which can be identified over time. It is a trend, a movement, a change and the fact of that change justifies an employer following the usual rules, which the law allows, of making the business more efficient.

[56] The law on the point is straightforward. The starting point on the genuineness or otherwise of a redundancy must be the Court of Appeal decision in *GN Hale & Son Ltd v. Wellington Caretakers etc IUOW* [1990] 2 NZILR 1079.

[57] Two central propositions can be drawn from that case. The first is that an employer is entitled to make its business more efficient and an employee does not have the right to continuity of employment if the business is capable of operating more efficiently without her.

[58] A second proposition usually derived from *Hale* is that it is not for the Court or the Authority to substitute its view about how a business should be operated; that is a matter for the management of the business and the Authority ought not to interfere with that decision provided it is made for "*genuine commercial reasons*".

[59] However, in more recent decisions of superior courts, it has become apparent that those "*genuine commercial reasons*" need to be able to be demonstrated to the court or tribunal. As Chief Judge Colgan observed in *Michael Rittson-Thomas t/a Totara Hills Farm v. Hamish Davidson* [2013] NZEmpC 39 (*Rittson-Thomas*):

... It will be insufficient under section 103A, where an employer is challenged to justify a dismissal or disadvantage in employment, for the employer to say that this was a genuine business decision and the Court (or Authority) is not entitled to inquire into the merits of it. The Court (or Authority) will need to do so to determine whether the decision, and how it was reached, were what a fair and reasonable employer would/could have done in all the relevant circumstances.

[60] That decision was followed by the Employment Court (Travis J) in *Brake v. Grace Team Accounting Ltd* [2013] NZEmpC 81 and subsequently the reasoning was confirmed on appeal by the Court of Appeal.

[61] Ms Teinaki seeks to bring herself within the factual matrix of *Brake* and *Rittson-Thomas*, both of which involve dramatically inaccurate financial calculations by the employer to justify the redundancy. In *Brake*, put shortly, the Court found that there was an error of \$120,000 in the financial justification for the redundancy which

but for that error there would have been no immediate need for the position to be declared surplus.

[62] In the present case, Nature's Sunshine has demonstrated to my satisfaction that its proposed restructure was designed to make the business more efficient (*Hale* applied), and that the "genuine commercial reasons" stand up to dispassionate scrutiny: *Rittson-Thomas*. Moreover, there is no similarity between *Brake* and the present case; *Brake* involved an egregious error which had that error been identified and corrected, would have disclosed a surplus rather than a loss and thus would have removed any justification at all for the redundancy being necessary for "genuine commercial reasons".

[63] In this case, the trend or change in customer behaviour that I have referred to throughout this section of the determination created, I am satisfied, a "genuine commercial reason" sufficient to enable me to conclude that a good and fair employer could have reached the decision Nature's Sunshine reached to confirm the restructure of its business resulting in Ms Teinaki's position being disestablished: s.103A of the Employment Relations Act 2000 (the Act) applied.

[64] By virtue of the test for justification as it now exists in the statute, all that is required is for the employer to satisfy the Authority that the decision that the employer reached was one of the decisions that a fair and reasonable employer in that employer's situation could have reached: *Angus v. Ports of Auckland Ltd* [2011] NZEmpC 160 applied.

[65] In particular, it is not for the Authority to decide which of a range of outcomes ought to be preferred; all that is required is that I satisfy myself that it was available to this employer to reach this conclusion.

### **Was the redundancy activated by any improper motive?**

[66] The legal test here is simple; Nature's Sunshine must satisfy me on the balance of probabilities that the predominant reason for the dismissal was redundancy and that there was no improper motive which activated the employer.

[67] Ms Teinaki's evidence, as I have already related, is redolent with complaints about various matters during the employment which she seeks to see as evidence for her conviction that she was, to put it shortly, got rid of. I have not been persuaded

that that is the case at all. I have already made clear my view that the redundancy was effected for genuine commercial reasons. That had the effect of disestablishing her role. She had the opportunity to compete for a newly created role, she did compete for that newly created role but was not the chosen candidate. The successful candidate was Mr Fahy's niece.

[68] There are then two groups of issues that I need to comment on, namely the issues that Ms Teinaki refers to up to the initiation of the restructuring proposal and her complaints about the recruitment process that followed.

[69] However, as Mr Smyth, counsel for Nature's Sunshine observes in the submissions filed for his client, the complaints about the early part of the employment do not seem to feature as strongly in the closing submissions filed for Ms Teinaki as they did in her evidence.

[70] However, it is appropriate that I deal with those matters insofar as they are relevant. The first group of complaints revolve around Ms Teinaki's treatment at social occasions (to use the phrase adopted by Nature's Sunshine in its submissions). Ms Teinaki's complaints in respect of these matters are completely unsupported by any other evidence save her own, and her claims are resisted by the evidence of Nature's Sunshine. In particular, Ms Swan makes clear that she was aware that Ms Teinaki was claustrophobic and as a consequence would certainly not insist that she travel in a taxi van that was provided for a work social function. Moreover, Ms Swan makes the point that other staff did not travel in the taxi van either for a variety of reasons and I prefer Ms Swan's evidence to the evidence of Ms Teinaki.

[71] Insofar as Ms Teinaki is saying that this range of complaints represents evidence of an improper motive, I reject that claim on the evidence.

[72] Ms Teinaki complained about a failure to give her a pay increase. The factual position is that the pay rate that she started on was higher than Nature's Sunshine had anticipated it would pay and there was simply no room for her to get an additional increase; she did, however, get a bonus which she seemed happy enough with at the time. The short point is that the employer is under no obligation to pay increased hourly rates to Ms Teinaki; that is a matter for negotiation and no negative inference can be taken from a failure to agree an increase.

[73] Ms Teinaki made much of a letter she described as a warning letter that she received on 28 February 2014 concerning the failure to enter source information in order details. As Mr Fahy pointed out to Ms Teinaki, this was not a warning letter but was simply a proper attempt by Nature's Sunshine to have Ms Teinaki be accurate in her work, something it should not resist from and should not have to explain. It is and was a lawful and reasonable instruction and no more than that.

[74] In relation to the Caudwell matter, it is a fact that there was a complaint about Ms Teinaki from Mr and Mrs Caudwell and the employer initially engaged with Ms Teinaki but subsequently decided to take matters no further. There was no disciplinary consequence or any other negative impost on Ms Teinaki as a consequence and it is difficult to see what the employer could have done differently.

[75] The contention that Ms Swan spoke harshly to Ms Teinaki is resisted by Ms Swan; despite what Ms Teinaki says, both Ms Swan and Mr Fahy deny on oath that they were ever told that Ms Teinaki was concerned about the way that she was spoken to. As I have remarked before in these sorts of situations, there is no counsel of perfection in these matters; there is no requirement for an employer to be nice and Ms Swan herself acknowledged that she could be short from time to time but that she was even handed about it and Ms Teinaki was certainly not singled out for special treatment.

[76] Even if Ms Teinaki's complaints about the way that she was treated were made out in their entirety, the fact that I have not been persuaded that the employer ever knew that Ms Teinaki was concerned about them means that they cannot possibly have any impact on the employer's decision to entertain a restructuring proposal nor can they be said to have any impact on the development of an improper motive in the redundancy process.

[77] Next, Ms Teinaki claims that her role degraded over time especially in the second half of 2014 but the employer is entitled to make changes and, as Mr Smyth astutely points out in his submissions, the fact that the changes (or some of them) were necessary suggests the need for the structure of the business to be looked at. Ms Teinaki maintained that the effect of these changes were to make her role less busy but the employer says that that was a function of the changes in ordering patterns which ultimately resulted in the restructuring plan.

[78] Critically on this point, the allegations that Ms Teinaki makes are simply not supported by the evidence; in particular, Ms Swan flatly denies that the portions of her job which she ceased doing were ever core responsibilities. Ms Swan's evidence, which I prefer, is that these were general duties that any employer could be asked to do. Moreover, Ms Swan makes the point that Ms Teinaki, because of her useful skills in many areas, was regularly asked to assist in other parts of the business doing work that was not part of her role at all.

[79] Again, I prefer the evidence of Ms Swan; even if it is true that some peripheral parts of Ms Teinaki's duties ceased to be attended to by her, that is the employer's prerogative and reflects the right the employer has to do precisely that in the employment agreement.

[80] Lastly I refer to the allegation that CCTV cameras were installed by the employer to effectively spy on staff. This claim has no merit. The employer was advised by one of its suppliers to install CCTV cameras to improve the security of the workplace; had they been successful in acquiring the New Hope Nutrition products (which Ms Teinaki complains she was promised a role in looking after but which never materialised), Nature's Sunshine would have been required to install security cameras in any event. In the result, although New Hope Nutrition did not materialise as a supply line (and therefore Nature's Sunshine was unable to involve Ms Teinaki in that work), the security cameras were required by other supply lines, and according to Ms Swan primarily located at all entry points of the building. She further says that no cameras were directly placed over work stations and that their only purpose was to improve security. I accept that evidence at face value.

[81] Accordingly, any suggestion which Ms Teinaki still makes that she was (to use her phrase) bullied, harassed or subjected to a designed exit is rejected by me as being frankly without any viable evidentiary basis.

[82] I turn now to deal with the other complex of issues concerning the recruitment process following on from the decision the employer made to restructure.

[83] First is the question whether Ms Teinaki was provided with the quality and quantity of information that the law requires in terms of s.4(1A)(c) of the Act.

[84] The law requires that the employer provide to an employee affected by a possible discontinuance of their employment access to information that is relevant to the decision concerning their employment and the opportunity to comment on it.

[85] I am satisfied that Nature's Sunshine did precisely that. If Ms Teinaki wanted further and better particulars, then she had only to ask for them and assuming the information was available, Nature's Sunshine would have been under an obligation to provide that information assuming it was relevant to the matters in issue. I am not persuaded that it is the obligation of the employer to overwhelm the employee with information but simply to provide the employee with the material that was "*most relevant and helpful*" to use the phrase adopted by the Employment Court in *Vice Chancellor of Massey University v. Wrigley & Ors* [2011] NZEmpC 37. In my judgment, that is precisely what Nature's Sunshine did.

[86] Ms Teinaki now says that she should have been supplied with a whole raft of material which, by virtue of her role, she would know the employer had at its disposal and knowing that, it is difficult to understand why she did not ask for it at the time if she thought it was relevant. Certainly there would have been no point in Ms Teinaki asking for evidence of financial distress; that was never the basis on which the restructure was proposed and so there would be no evidence to support that view.

[87] Finally I must allude to the fact that Ms Teinaki presented to me as an assertive young woman and it seems to me inconceivable that if she had wanted information about the justification for the restructure she did not ask for it. I am persuaded that the proposal to ask for it now in these proceedings is an *ex post facto* rationalisation.

[88] The final issue that I need to comment on is the contention that because the successful candidate for the role that Ms Teinaki applied for was a family member of Mr Fahy, to put it shortly, the game was rigged. I do not accept that for one moment. In my judgment, Nature's Sunshine has gone to considerable lengths to ensure that a level playing field was provided. Indeed, it has gone so far as to almost step aside from the recruitment process and leave it to the dispassionate professional to make the judgment. In effect, the appointment of the person to the new role was made by Ms Mackay and not by Nature's Sunshine or at least the decision as to who should be appointed was made by Ms Mackay. I have already outlined the efforts that Nature's

Sunshine went to in an endeavour to provide a transparent process and I am not persuaded that there was anything more that it could have done in the circumstances.

[89] In the end, if Ms Teinaki had been appointed as a consequence of this transparent process, then there would be no employment relationship problem and it is only because she has fallen at the last hurdle that this case is on foot at all.

[90] My conclusion then is that the evidence before me discloses no improper motive in the redundancy process and the only reason for the restructure was the change in business patterns which resulted in a change in the number of staff required. Ms Teinaki competed with one other for a vacancy and on the scoring system adopted and developed by the independent professional came second so I am not persuaded there can be any complaint about that part of the process either.

### **Determination**

[91] For reasons I have analysed in this determination, Ms Teinaki's claim is completely unsuccessful and is accordingly dismissed.

### **Costs**

[92] Costs are reserved but the representatives are encouraged to try and resolve costs between themselves. If they are unsuccessful in that regard, Nature's Sunshine is to file and serve a memorandum seeking costs to be fixed by the Authority and Ms Teinaki can respond to that within 14 days.

James Crichton  
Chief of the Employment Relations Authority