

**Attention is drawn to the order prohibiting publication of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2017] NZERA Christchurch 32  
5609084

BETWEEN            NZ MEAT WORKERS AND  
                             RELATED TRADES UNION  
                             INCORPORATED  
                             Applicant

A N D                SILVER FERN FARMS LIMITED  
                             Respondent

Member of Authority:     Peter van Keulen

Representatives:         Peter Churchman QC, Counsel for Applicant  
                                     Tim Cleary, Counsel for Respondent

Investigation Meeting:    2 December 2016, at Ashburton

Submissions Received:    2 December 2016, from the Applicant  
                                     2 December 2016, from the Respondent

Date of Determination:    13 March 2017

---

**DETERMINATION OF THE AUTHORITY**

---

- A. The respondent's restructure of its animal assembly department at its Fairton Meatworks facility was not genuine and is an unlawful restructuring.**
- B. The respondent's consultation process for the restructure of its animal assembly department at its Fairton Meatworks facility was deficient and the respondent breached the duty of good faith it owed to the applicant.**
- C. In the circumstances, the breach of good faith by the respondent does not warrant the imposition of a penalty.**

**D. Costs are reserved with a timetable set for submissions if required.**

**Employment relationship problem**

[1] At the end of November 2015 Silver Fern Farms Limited (Silver Fern Farms) implemented a restructure to the animal assembly plant at its Fairton Meatworks facility.

[2] The effect of this restructure was to reorganise the work of unloading stock, washing and processing stock and moving stock into the meat processing plant for slaughter.

[3] The restructure was based upon:

- (a) The reorganisation and reallocation of tasks amongst workers including assigning different titles and restricting the rotation of workers between different parts of the roles;
- (b) A change mainly by way of reduction to the hours of work;
- (c) A reduction in the wage rates for most workers save for one increase.

[4] The New Zealand Meat Workers and Related Trades Union Incorporated (The Union) says this restructure is not genuine and is merely a ruse to unilaterally reduce rates of pay. It wants me to reverse the changes made.

[5] Specifically the Union seeks:

- (a) A declaration that the restructure of the animal assembly department is not genuine and thus unlawful;
- (b) A declaration that Silver Fern Farms through its deficient process of consultation and its failure to provide sufficient information to the Union has breached its duty of good faith to the union and its members;
- (c) An injunction preventing Silver Fern Farms from continuing to implement the restructure;

- (d) An order that Silver Fern Farms revert to the hourly rate paid to relevant workers prior to the restructure;
- (e) The imposition of a penalty against Silver Fern Farms for the breach of the duty of good faith with an order that any such penalty be paid to the union.

[6] Silver Fern Farms says the restructure is genuine. It says the change in roles, how those roles are carried out and the reduction in pay rates reflects a need to reduce costs in the animal assembly department. In particular it says of all the meat processing plants that it operates throughout New Zealand the unit cost of the Fairton animal assembly department is considerably higher than the others and as such was unsustainable.

[7] Silver Fern Farms denies that its consultation on the proposed restructure was inadequate and therefore it denies that it has breached the duty of good faith.

#### **Non-publication order**

[8] I prohibit from publication any financial information, given in evidence in the investigation meeting, relating to the unit costs for the operation of Silver Fern Farms' animal assembly departments at Fairton and its other meat processing plants.

#### **Facts**

[9] Silver Fern Farms operates a meat processing plant at Fairton. Silver Fern Farms also operates other meat processing plants at various locations around New Zealand.

[10] Members of the Union are employed at the Fairton plant as well as other plants operated by Silver Fern Farms.

[11] The Fairton plant is a sheep and lamb specialist plant which prepares meat for export.

[12] Members of the Union who work at the Fairton plant are employed pursuant to a collective employment agreement between Silver Fern Farms and the Union (the Collective Agreement).

[13] This employment relationship problem concerns the animal assembly department at Fairton. The animal assembly department deals with receiving sheep (that is unloading from the truck), washing and processing those sheep and penning them overnight. It then involves checking the sheep the next day and moving them through and into the meatworks plant to be slaughtered.

[14] Prior to the restructure implemented by Silver Fern Farms there were 14 workers employed in the animal assembly department at Fairton. Twelve of the workers were shepherds, the other two were raceboys. Shepherds were paid \$23.50 an hour and raceboys were paid \$20.63 an hour.

[15] The animal assembly department operated in two parts. The receiving end where stock was unloaded, washed, and penned overnight and the chain end where stock that had already been received were checked and then moved into the meat processing plant for slaughter. Both the receiving end and the chain end of the department had two teams of six shepherds. The chain end of the department also had two raceboys.

[16] At the receiving end the six shepherds worked in pairs. Two shepherds would be involved in unloading the sheep from a truck and counting them. Two shepherds would then herd the sheep into pens where they were washed and checked and the final two shepherds would herd the sheep out of the washing pens and put into night pens.

[17] The six shepherds at the chain end also worked in pairs. Two shepherds would collect the sheep out of the night pen and push them into holding pens. Then there were two pairs of shepherds who would take sheep out of holding pens, push them up the ramps where the raceboys would take over and push the sheep through into the meat processing plant.

[18] Prior to the restructure, this unit operated such that each pair of shepherds would rotate through the roles at each end (receiving end or chain end) and similarly rotate between receiving end and chain end.

[19] The additional component to the structure was that one shepherd would be required as an early shepherd and he would attend early in the morning with a vet to check the sheep that had been penned overnight prior to pushing them into a holding pen.

[20] Overall the hours of work for the shepherds would vary depending on how many trucks were received, but they received a minimum number of hours for work undertaken.

[21] Silver Fern Farms was concerned about the cost involved with the animal assembly department at Fairton. It is clear from the evidence led in the Authority that prior to the restructure the unit cost of the animal assembly plant at Fairton was considerably higher than at the other meat processing plants operated by Silver Fern Farms. Silver Fern Farms considered ways in which costs could be reduced and eventually settled on a proposed restructure.

[22] In September 2015 Silver Fern Farms commenced consultation over the proposed restructure. It did so in a meeting and provided a written outline of the proposal that identified the concern Silver Fern Farms had over the unit cost, provided a summary of the proposed changes, outlined some questions that Silver Fern Farms suggested the Union consider when preparing its feedback, outlined the process for consultation and set out some questions and answers.

[23] The consultation process was reasonably full. There were a number of meetings between Silver Fern Farms and the Union and correspondence exchanged over the proposed restructure. It is not necessary for me to set out the detail of the meetings and the correspondence exchanged. I simply note that the Union raised concerns over the validity of the restructure, querying whether it was in fact a change to working conditions that should be implemented through clause 29 of the Collective Agreement<sup>1</sup> and the Union engaged over the proposed shift pattern.

[24] Through the course of consultation, Silver Fern Farms produced three proposals.

[25] The final proposed restructure included the following:

- (a) One receiving shepherd (early shepherd) paid \$20.00 per hour working 6:30am to 3:00pm.
- (b) Three receiving shepherds paid \$23.00 per hour working 12:00 noon to 9:30pm.

---

<sup>1</sup> See paragraph [34].

- (c) One chain shepherd leading hand paid \$25.00 per hour working from 6:00am to 3:15pm.
- (d) One chain shepherd paid \$20.00 per hour working from 6:45am to 3:15pm.
- (e) One raceboy paid \$20.00 per hour working 6:45am to 3:15pm.
- (f) Two chain labourers paid \$17.00 per hour working 6:45am to 3:15pm.

[26] The proposal included an alternate pattern where two chains were operated. This essentially had the same roles but rather than three receiving shepherds there would be five receiving shepherds, rather than one raceboy there would be two raceboys, and rather than two chain labourers there would be four chain labourers.

[27] The proposed restructure was implemented on 29 November 2015.

[28] The consequence for many of the workers impacted by the restructure was that they had their hours reduced and their hourly wage rates reduced.

## **Discussion**

### *Genuine restructure?*

[29] The documentation provided in consultation for the proposed restructure was limited and was not particularly clear on how the proposed new structure would be implemented or would operate. The evidence I received from both Silver Fern Farms and the Union was that the restructure once implemented operated on this basis:

- (a) The workers were assigned to one task and did not operate through the three different stages of each end or change between the two ends (receiving and chain ends).
- (b) The underlying work remained the same, that is the need to unload stock from trucks, pen them so they could be washed and processed and held overnight, then released from the overnight pens, and into holding pens, subsequently moved up and into the meat processing plant.

- (c) It does not appear that even the number of staff assigned to the different stations or tasks within each chain was different but rather the type of person assigned was changed so that labourers were used more than shepherds.
- (d) There was a change to the hours worked which was facilitated through better coordination of truck arrivals for unloading.

[30] The result of the restructure was that there was a change to the hours worked and the way workers operated because they were assigned a single task. However, in terms of the two ends of the process and the two or three different stages this did not change. I am satisfied from the evidence that I heard that there were still two workers unloading stock and counting, two workers who would herd sheep into pens for washing and checking and then two further workers who would take sheep away to be penned overnight. Then at the chain end, there were still two workers who would take sheep out of the pen and put them into holding pens and then two pairs of workers who would take sheep out and push them up to the raceboys.

[31] I could not discern any change to the actual work being done and questioned Silver Fern Farms about this. In answer to my questions, Silver Fern Farms admitted that the restructuring simply spread the work out more evenly and reduced the downtime but there was no change in terms of skill required or complexity of the tasks undertaken. "It was the same job cut up differently in terms of stages and hours" was how the effect of the restructure was described to me. On the evidence I heard the stages were not even cut up differently, the workers were just restricted to operating a single stage of one end.

[32] Whilst I am satisfied that substantively there is an economic/business basis for Silver Fern Farms considering a restructure (i.e. the higher unit cost for the animal assembly department at Fairton), I do not accept that the redundancy was genuine because the underlying work remained the same. The carving up of that work did not change the skills required or the roles undertaken, it merely changed how the shepherds operated when they carried out that work by restricting the hours that they worked and the variation in their work. It did not introduce any new levels of work or any new aspects of work for them.

[33] Counsel for the Union put it simply by saying in this case there are no facts upon which a reasonable person would come to the conclusion that the previous and current roles are different. The workers are performing the same duties as they were prior to restructure. There is no change in responsibility for the worker. The only terms that have changed are the hours of work and the hourly rate the workers are paid. I accept this submission based on the facts that I have heard and therefore conclude that the restructure is flawed.

[34] My conclusion is supported by the Collective Agreement. Clause 29 of the Collective Agreement contemplates that Silver Fern Farms can implement changes to the way work is carried out, subject to consultation. Clause 29 of the Collective Agreement provides:

29. Alternation in Methods

- (a) Should there be any alteration in methods of work required at any time employees shall meet the employers requirements in this respect. It must be recognised by the parties to this agreement that a considerable degree of flexibility in minor processing detail is required on some operations (e.g. boning and cutting) to allow a quick response to varying market requirements.

In regard to minor alterations, e.g. to product specification and work content, consultation between the employee representative and management should take place and will normally be sufficient.

- (b) Where the employer is planning major changes (either singularly or accumulatively) to work practice including the installation of new machinery which has never been installed in the plant before, the employees shall meet the employers requirements in this respect. If normal production earnings can be maintained and the role/s remain largely unchanged as a result of these changes, (including individual workloads as an example) the change shall be implemented after consultation. If normal production earnings cannot be maintained or the workloads are increased as part of this change, negotiation on wages and conditions of employment shall commence as soon practicable.

[35] Therefore, the parties agreed through collective bargaining that changes to work methods are matters to be implemented by Silver Fern Farms subject to consultation in the appropriate circumstances. And, I conclude that the parties should have implemented the proposed changes to work methods through the operation of clause 29 of the Collective Agreement and not by a restructure.

*Failure to comply with the duty of good faith*

[36] The breach of good faith pleaded in the statement of problem is that the deficient consultation process was a failure to comply with the duty of good faith.

[37] In terms of process I am also satisfied that Silver Fern Farms failed to meet its obligations to consult adequately. This included:

- (a) A failure to provide sufficient information at the outset of consultation. The single document provided was light on the justification for the proposed restructure. It did not include information such as any reports that were produced or any analysis done on cost savings that might be made through the purposed restructure. More fundamentally, the document did not adequately describe what was expected of workers in the new roles (best evidenced by the fact that two further proposals had to be produced in response to consultation).
- (b) A failure by Silver Fern Farms to adequately respond to questions put to it and reasonable requests for information by the Union. This informs my conclusion that Silver Fern Farms did not properly consider what the Union was saying to it in consultation.

[38] I am satisfied that Silver Fern Farms' actions do amount to a breach of the duty of good faith. At its simplest there is a fundamental failure to meet the requirements of s 4(1A) of the Employment Relations Act 2000.

[39] In addition to the breach of good faith pleaded, counsel for the Union submitted that Silver Fern Farms had breached the duty of good faith by insisting on implementing the restructure despite the Union informing it that it was unlawful and unjust. The force of this submission being that Silver Fern Farms was using a sham restructuring to unilaterally impose reduced wage rates and it forced this through despite the Union protesting against the course of action.

[40] I am not convinced that the actions of Silver Fern Farms in using a restructuring to implement changes to working conditions were a breach of the duty of good faith. These were not, in my view, actions that directly or indirectly misled or deceived the Union nor were the actions likely to mislead or deceive - the reality was

the Union was not misled and it stood its ground on its belief that the course of action by Silver Fern Farms was wrong.

[41] I am satisfied on the evidence I heard that Silver Fern Farms was genuine in its desire to reduce costs and its belief that the proposed restructure was the correct way to effect the change that would reduce costs. This was not a sham designed to mislead or deceive, it was simply an unjustified course of action. Implementing the proposed restructure was not a failure to comply with the duty of good faith.

### *Penalty*

[42] In order to impose a penalty for a breach of the duty of good faith that I have determined occurred, I must be satisfied that the failure by Silver Fern Farms to comply with the duty of good faith was “deliberate, serious and sustained” or intended to undermine the Collective Agreement.<sup>2</sup>

[43] The word “deliberate” requires proof of intention. In this case, that means proof that Silver Fern Farms’ actions in the course of consultation, which I say amount to a failure to meet the duty of good faith, were an intentional failure to comply with the duty of good faith. I need to be satisfied that Silver Fern Farms acted as it did in the consultation process intending not to meet the duty of good faith.

[44] Alternatively, I need to be satisfied that Silver Fern Farms intended to undermine the Collective Agreement by acting as it did in consultation.

[45] On the evidence I heard from Silver Fern Farms I am not satisfied that Silver Fern Farms intended to breach the duty of good faith through its consultation. On this basis, the breach is not deliberate and there is no scope to impose a penalty<sup>3</sup>. In addition, I am satisfied that Silver Fern Farms did not intend to undermine the Collective Agreement and again, there is no scope to impose a penalty<sup>4</sup>.

### **Conclusion**

[46] Overall, I am satisfied that the restructure was not genuine and should not have been implemented. What Silver Fern Farms proposed by the restructure and has implemented is actually an alteration in work methods and not a restructure. Their

---

<sup>2</sup> Section 4A of the Employment Relations Act 2000.

<sup>3</sup> See for example *Bourne v Real Journeys Limited* [2011] NZEmpC 97

<sup>4</sup> See for example *Gilbert v Transfield Services (New Zealand) Limited* [2013] NZEmpC 71

actions should have been carried out pursuant to Clause 29 and negotiation should have been undertaken with the Union over the alteration in methods because the proposed alteration in methods would have reduced income by the reduction in hours.

[47] It also follows that Silver Fern Farms cannot unilaterally reduce the workers hourly rate of pay as it has done through the restructure or otherwise. The wage rates have been collectively bargained for and cannot simply be reduced. That is a subject for further collective bargaining.

### **Remedies**

[48] I am prepared to make the two declarations sought by the Union in respect of the proposed restructure. However I will not grant the injunction sought as that is not an appropriate order to make. I believe in the circumstances the appropriate course of action is for Silver Fern Farms and the Union to consult pursuant to Clause 29 of the collective agreement to discuss variation in work. That is a consultation over the way in which the work is performed and the hours in which it is undertaken but not consultation over a potential reduction in pay.

### **Determination**

[49] This determination has been issued outside the statutory period of three months after receiving the last communication from one of the parties. When I advised the Chief of the Authority this would occur he decided, as he is permitted by s174D(3) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s174D(2) of the Act.

[50] Silver Fern Farm's restructure of its animal assembly plant at its Fairton Meatworks facility was not genuine and is an unlawful restructuring.

[51] Silver Fern Farm's consultation process for the restructure of the animal assembly plant at its Fairton facility was deficient and it breached the duty of good faith it owed to the Union.

[52] In the circumstances, the breach of good faith by Silver Fern Farms does not warrant the imposition of a penalty.

**Costs**

[53] Costs are reserved. The parties are encouraged to resolve the issue of costs themselves.

[54] If the parties are not able to resolve costs and a determination is needed, then the Union may lodge and serve a memorandum of costs within 28 days of the date of this determination. Silver Fern Farms will then have 14 days from the date of service of that memorandum to lodge and serve any reply memorandum.

Peter van Keulen  
Member of the Employment Relations Authority