

Employment relationship problem

[1] Andrew Timms worked for Suncorp New Zealand Employees Limited (Suncorp or the company) and its predecessors for around 17 years. Suncorp employees work at Vero Insurance.

[2] Prior to a restructuring in mid-2018 Mr Timms' role was as Northern Marine Underwriting Manager (the old position). The old position was disestablished and Mr Timms was told that he was automatically appointed to the role of Manager Marine Underwriting Solutions (the new position). That was not a role which Mr Timms wanted and he disputed that it was a comparable role. He worked in that role on a without prejudice basis until he resigned on 23 October 2018. He left without another job to go to.

[3] Mr Timms claims that as the new position was not comparable he could not be required by Suncorp to take it and should instead have been made redundant and paid redundancy compensation in accordance with his employment agreement. Suncorp says that the new position was comparable to the old position and thus Mr Timms could be automatically appointed into it. Therefore Suncorp does not consider that Mr Timms is entitled to redundancy compensation.

[4] An investigation meeting was held on 30 January 2019. I heard evidence in person from Mr Timms and Allen Chong (Executive Manager Marine for Vero Insurance New Zealand Limited and Mr Timm's manager).

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received but has stated findings, expressed conclusions and specified orders made as a result.

Issues

[6] The issue for determination is limited to a dispute regarding the interpretation, application or operation of the employment agreement between Mr Timms and Suncorp, as regards the restructuring. Was Suncorp entitled to appoint Mr Timms into the Manager Marine Underwriting Solutions role and thus deprive him of redundancy compensation? There is no personal grievance claim.

[7] The focus in the statement of problem appeared to be whether the old and new positions were comparable. However, at the start of the investigation meeting Mr Harrison, on behalf of Mr Timms, raised an additional issue about whether clause 8.3(b) of the employment agreement, described as the gateway into clause 8.3(c) of the agreement, had been complied with. I will expand on this below.

Mr Timms' employment history

[8] Mr Timms has been working in the insurance industry since graduating from university in the United Kingdom. During a secondment to New Zealand as a Marine Claims Manager, the business he worked for was sold and in 2003 he became an employee of the newly created Vero Insurance. In 2006 the employment of Vero Insurance's employees was transferred to Suncorp. Mr Timms managed staff when working in claims. In 2005 Mr Timms moved from a claims management role into a junior underwriting role.

[9] In 2012 Mr Timms was seconded for two years to work as a Sales Manager in a non-marine part of the business, outside of Auckland. This involved managing staff. He sought to end the secondment and in 2014 chose to return to the marine part of the business as Senior Marine Executive – Claims. In July 2015 he was appointed the Northern Marine Underwriting Manager, the old position.

[10] Mr Timms' interest is in maintaining and growing what is described as his book of business. This is direct customer/broker work. On the other hand Mr Chong emphasises that of the 17 years Mr Timms was with Suncorp and its predecessors, nine of those years involved managing and leading other staff.

Employment agreement

[11] Mr Timms remained employed on an employment agreement document which came into force on 1 September 2006. As set out above he had changed positions but remained covered by the same document.

[12] Clause 8 of that agreement deals with redundancy and redeployment and includes:

8.3 Redeployment

If the employee's position has or will become surplus to the employer's requirements in line with the definition above, the employee shall be entitled to the following provisions in respect of redeployment and, where necessary, redundancy.

- (a) Before the employee is made redundant, the employer undertakes to examine all alternative job options and make every reasonable endeavour to identify and offer alternative employment.

- (b) Any such job offer shall be in writing and shall include information on the location, hours of work, principal duties of the job, salary range, salary and allowance, details of transfer provisions and any other benefits detailed in the letter of offer which may include a personal Attachment. Where the position offered is a newly created one, then the employer undertakes to assess and set the salary range, salary and benefits (which may be detailed in a personal Attachment) prior to the job offer.
- (c) If the employee declines an offer of a comparable position, the employee may be made redundant and will not be entitled to any of the provisions of this clause.

“A comparable position” shall mean a position with the employer or any Company in any way associated with the employer which is or will be bought, taken over by, or merged with the employer which has at least the same salary range, salary and benefits which may be contained in a personal Attachment, and is in the same location or at another location ... and involves duties which would not be considered a change from the employee’s existing duties, significant enough as to be unreasonable in the circumstances of that employee’s skills and abilities or employment history, or the specialist nature of the work for which the employee was employed.

[13] The formula for redundancy compensation is set out in clause 8.5 of the agreement.

Restructure

[14] Suncorp initiated a restructuring exercise on 28 May 2018, which was part of wider organisational design changes. The proposal saw the disestablishment of the Northern and Southern Marine Underwriting Manager positions and the establishment of the Manager Marine Underwriting Solutions which Suncorp believed to be a comparable role for Mr Timms.

[15] It was clear from Mr Chong’s evidence that he respected Mr Timms and wanted him to stay with Suncorp. He considered that Mr Timms was capable of carrying out the new position but needed to be encouraged to make the jump into a more senior managerial role.

[16] Mr Timms provided feedback which included questioning the company’s view that the new position could be considered a comparable role.

[17] Suncorp went ahead with the disestablishment of Mr Timms’ old position. Its letter of 21 June 2018 stated that:

“...as a result of the restructure there is a significant change to your current role...which will result in the position being disestablished... I can also confirm that you will automatically be appointed to the role of Manager Marine Underwriting

Solutions as we believe it to be a comparable role to your current role. (*emphasis added*)

[18] The human resources representative who met with Mr Timms on the same day told him he was going to be directly appointed to the new position.

[19] The parties exchanged emails on the comparability issues. On 26 June 2018 Suncorp's human resources representative emailed Mr Timms more details about the new position. This included that it was at his same salary but that his remuneration would be reviewed as part of the upcoming annual remuneration preview process.

[20] The new structure was to take effect on 9 July 2018. On 4 July 2018 Mr Timms emailed Suncorp's human resources representative and Mr Chong saying that given the impasse he would be following the process in his agreement and seeking mediation. Further, he would continue to work "without prejudice to the outcome of this next process". Although the email states that Mr Timms would "continue my role", he proceeded to operate from 9 July 2018 in the new position.

[21] There appears to have been no objection to the without prejudice arrangement from Suncorp, with the human resources representative replying and encouraging Mr Timms to meet with Mr Chong, as well as with himself and the general manager before pursuing mediation.

[22] On 11 July 2018 Mr Timms met with the general manager and the human resources representative. The general manager advised Mr Timms that he had obtained authority to carry out an "out-of-cycle pay review" for him. This appears to have been a different process to the annual review which had been referred to in the 26 June email. The proposal was that Mr Timms' salary in the new position would increase by \$40,000 per annum. Mr Timms says that that offer was made on condition of dropping his dispute about role comparability. That evidence was not challenged by Suncorp. Mr Timms did not accept the offer and remained on his old salary.

Steps in the process

[23] I accept Suncorp's submission that clause 8.3 is focused on avoiding termination of employment. The employer is required under 8.3(a) to examine "all alternative job options" and make "every reasonable endeavour to identify and offer alternative employment".

[24] At the investigation meeting Mr Harrison identified what he regarded as flaws in the process adopted by Suncorp which meant that it had not fully complied with clause 8.

[25] Mr Harrison submitted that under clause 8.3(b) there are requirements in relation to a job offer which had not been complied with, there being no written offer setting out the specified information and Suncorp not having undertaken a required assessment before proposing the new position.

[26] Clause 8.3(b) begins with the phrase “[a]ny such offer”. I take this to be a reference back to the previous sub-clause, 8.3(a), which concludes with “offer alternative employment”.

[27] Clause 8.3(b) contains two requirements; the first as to what an offer involves and the second, a requirement where the position being offered is a newly created one. With newly created positions the employer has an obligation before the offer is made, so I will deal with that first. There is no dispute that the new position is a newly created one.

New position obligation

[28] Before making the offer, Suncorp is required to assess and set the salary range, and the salary and benefits of the new role. These may be detailed in a personal Attachment. It is not evident that Suncorp assessed and set the salary for the new position before offering it to Mr Timms. Rather Suncorp initially specified the same salary, despite describing the new position as sitting higher in the band range than the old¹. Reference was made at that point to the upcoming annual salary review process. Then Suncorp appears, a few days after the new structure was in place, to have carried out an out-of-cycle assessment as it offered Mr Timms a substantially higher salary rate, albeit dependent on him withdrawing his comparability claim.

[29] I am not satisfied that Suncorp assessed the new position as it was required to do prior to offering the position to Mr Timms.

¹ Email from human resource representative of 26 June 2018

Offer

[30] Suncorp is also required under the first sentence in clause 8.3(b) to make an offer in writing which includes information on the location, hours of work, principal duties of the job, salary range, salary and allowances, details of transfer provisions and any other benefits “as detailed in the letter of offer which may include a personal Attachment”.

[31] It is therefore mandatory that there is an offer and that it is in writing.

[32] Suncorp did not approach the matter in that way. It did write to Mr Timms. However, the company considered that it could automatically appoint Mr Timms into the new position as it was a comparable role to his current position. This is not the same as an offer of employment. Mr Timms was not offered something to consider. He was told that he would be automatically appointed.

[33] Suncorp had already decided that Mr Timms’ role was to be disestablished. Automatic appointment is not provided for in the agreement. Mr Chong says that within Suncorp there is reference to automatic appointment, which applies to desk top appointments. These are appointments without candidates necessarily applying for a role. I accept that clause 8.3 does not require the employee to make an application, but it does require an offer to be made.

[34] Even if it is concluded that an offer was made, there is still the question of whether it contained the required elements. There is reference to a personal attachment, which may relate to something to be attached to the employment agreement. However, that is not a mandatory requirement. If there is no such attachment a letter or email should contain the specified details.

[35] The letter of 21 June 2018 does not comply when looked at in isolation. It identified the name of the new position but does not refer to the location, hours of work, principal duties, salary range, salary and allowance/s, details of transfer provisions (if any) or any other benefits.

[36] Although not entirely clear when, the position description for the new position dated 15 May 2018, was available at some stage. However, it does not identify the

location of the role, hours of work, actual salary and any allowances or benefits being offered.

[37] The human resources representative provided some details by email on 26 June 2018, including the location, salary band, hours of work, duties (by way of reference to the attached position description) and that the salary and benefits were as per Mr Timms' current arrangements, albeit to be reviewed. Therefore ultimately Suncorp did provide the required details. Although not ideal, I do not regard the use of several documents to contain those details as fatal.

Conclusion on the process

[38] I am not satisfied that Suncorp assessed the salary for the job before making an offer. Nor did it make an offer. Rather it told Mr Timms that he was being automatically appointed.

[39] The offer required by clause 8.3(b) of the employment agreement is not only mandatory but is the gateway into sub-clause 8.3(c) if Suncorp is to withhold redundancy compensation. That provision begins:

If the employee declines an offer of a comparable position, the employee may be made redundant and will not be entitled to any of the provisions of this clause.

[40] In order to comply with clause 8.3(b) and be able to rely on the definition in clause 8.3(c) of a comparable position and thus avoid paying redundancy compensation, Suncorp was required to identify alternative employment, assess it if it is a new position and then make an offer to Mr Timms.

[41] There was no offer here for Mr Timms to accept or decline. I accept the argument by Mr Harrison that this is an issue of substance. If Suncorp had assessed the salary for the role as was required by clause 8.3(b) and made an offer setting out the information required by that clause, that may have provided greater information to Mr Timms and helped the parties focus on any discussions around the alternative position before Mr Timms made a decision as to whether or not to decline the role. As it did not comply with clause 8.3(b), Suncorp did not make it through the gateway to the employee declining a comparable position, in clause 8.3(c), thus disentitling him to redundancy compensation. Mr Timms should thus be entitled to redundancy compensation under the agreement.

Comparable positions

[42] In the event that I am wrong regarding whether the requirements in clause 8.3(b) were complied with, or as to the effects of any such failure, I go on to consider the comparability issue.

[43] Although the focus of clause 8.3 is on finding other work for the employee whose role is surplus, there is a limit. Employees are entitled to decline redeployment offers to jobs that are not comparable.

[44] Clause 8.3(c) describes a comparable position as one which has “at least the same salary range, salary and benefits” and is at the same or other reasonable location. Several of those aspects are clearly satisfied in this case.

[45] The main area of dispute is whether the new position involved:

... duties which would not be considered a change from the employee’s existing duties, significant enough as to be unreasonable in the circumstances of that employee’s skills and abilities or employment history, or the specialist nature of the work for which the employee was employed.²

[46] Mr Harrison submits that the test is essentially the same as that developed by the courts to determine whether a change in job description is within the employer’s management prerogative or is in essence a new position which the employee cannot unilaterally be required to undertake.

[47] In *Carter Holt Harvey Ltd v Wallis* the Employment Court adopted the test:

Would a reasonable person, taking into account the nature, terms and conditions of each position and the characteristics of the respondent (*employee*), consider that there was sufficient difference to break the essential continuity of the employment?³

[48] I accept that the test in the clause reflects that approach. The test is objective, so it is not a matter of Mr Timms or Suncorp’s beliefs about the new position. There must be an assessment of the degree of any differences. However, I note the comment by Judge Colgan as he then was, in *Sewell v New Zealand Trade and Enterprise* that it is neither:

² Clause 8.3(c) of the employment agreement

³ *Carter Holt Harvey Ltd v Wallis* [1998] 3 ERNZ 984 at 995, alternative name *Wallis v Carter Holt Harvey Ltd*

... appropriate or necessary to minutely or pedantically scrutinise the fine detail of the two positions. Any job change as a result of reorganisation... is going to produce a degree of change.⁴

[49] There can thus be some changes in an employee's duties without the role becoming not comparable. An employee cannot expect that his or her duties will never be altered.⁵

[50] Mr Houlston for Suncorp submitted that other decisions were of limited assistance as the focus must be on the clause in this employment agreement.⁶ I accept that I must consider the wording in light of the purpose of the clause and the particular factual matrix.

[51] I was referred by Mr Houlston to the Authority's decision in *Le Comte v Vero Insurance New Zealand Ltd*⁷ which considers the same clause as that in Mr Timms' employment agreement. Mr Houlston submitted that *Le Comte* was determined on its particular facts.

[52] I am not bound by that decision. However, I note the Authority's comment that job title, level of seniority, remuneration, place of work and job description are all factors falling within the "scope of comparability" as defined in clause 8.3.⁸ Mr Le Comte's position was distinguished from a newly established position, including on the basis that the latter had a higher level of ultimate accountability, leading or managing various key accountabilities in comparison with Mr Le Comte's position which supported or contributed to those areas.

The old position

[53] I now move on to look at the two positions in more detail. The old position of Northern Marine Underwriting Manager had five staff reporting to it, all of whom were based in the Auckland office. Mr Timms was also responsible for customers based in Northland, Auckland, Waikato and the Bay of Plenty. He describes the old position as primarily involved in the development and retention of marine insurance business through customer relations and the development of new business.

⁴ *Sewell v New Zealand Trade and Enterprise* (unrep) Employment Court, Auckland, AC5/05, 22 February 2005 at [21]

⁵ *Group Rentals NZ Ltd v Canterbury Clerical Workers IUOW* [1987] NZILR 255 at 257

⁶ *Auckland Regional Council v Sanson* [1999] 2 ERNZ 597

⁷ *Le Comte v Vero Insurance New Zealand Ltd* (unrep) Employment Relations Authority, Auckland, AA 400/08, 24 October 2008, Member Arthur

⁸ *Ibid* at [28]

[54] Mr Timms says that he only undertook that role after he received assurances, on expressing concerns about the management component after his previous experience. He was assured by the then head of Marine that the direct reports were an experienced team based in Auckland and that he would be able to undertake his own book of business. Mr Chong was not aware of those assurances.

[55] Mr Timms estimated that the administration and management component took up about 30 % of his time. The remaining time he spent handling customer work. Although making such estimates has difficulties, Mr Timms was not cross-examined on that evidence and I accept that he attempted to genuinely estimate portions of his work.

[56] There was an equivalent position for the southern region, based in Christchurch. The long-serving incumbent in that role had resigned before the restructuring commenced. Mr Timms described the two regional manager roles as being very similar, except the southern role had remote direct reports, who were based in Wellington, and a much larger geographical area.

The new position

[57] The new position, Manager Marine Underwriting Solutions, was a combination of two full time regional roles.

Geographical responsibility and reports

[58] The new position had wider geographical responsibility; the whole country, instead of Taupo northwards. Mr Timms saw the responsibility for a large new geographical area as adding difficulty as he had not had previous contact with clients in that area. However, I accept Mr Chong's evidence that client relationship building was required in both roles and was one of Mr Timms' strengths.

[59] The new position had an increased number of reports, with half being remote from Mr Timms' Auckland base.

[60] Mr Timms considers managing people remotely to be different to managing them from the same location. He refers to needing to be mindful of what he could be missing when those he was managing were not physically present to be observed. Also, he was conscious of the risk that those operating remotely from their manager

may feel left out. Mr Chong says that the Auckland marine team had frequent dialogue about the work team members were doing. I accept that that would not be as easy with people based in different offices.

[61] Mr Timms outlined the requirements of the twice yearly performance review process for all staff and the daily requirements of coaching and guidance. Contacts had to be arranged, using phone, email or video-conferencing. At this time there was minimal travel expected or approved.

[62] Mr Chong did not consider the administrative or management component of the new position to be significantly greater than under the old position. More will be said on this below.

Nature of the job

[63] Mr Timms described the new position as an executive role with administrative, managerial and strategic functions as the main components of the position. He says that those areas are not where his skillset and experience lay. Mr Timms was not prepared to have that level of additional work and responsibility. He estimated that he could now only spend 30% of his time in the new position on customer responsibilities.

[64] Suncorp described there being a “marginal change” to the emphasis of customer or market facing duties. Mr Chong says that he did not intend that a large portion of the new role would be administrative and managerial. However, while there may be some economies of scale it was not clear how Mr Chong intended that component not to be significant when the number of reports doubled. The solution suggested at the investigation meeting was that Mr Timms should be able to work smarter.

Responsibilities

[65] A comparison of the position descriptions (PDs) for the two positions was not entirely straight forward. In the time between the creation of the two the style of PDs had changed somewhat.

[66] Clearly there were some similarities between the PDs. However, the old PD referred to the objectives as including, as part of the management team setting

budgets, following through on the strategic plan and having accountabilities within that plan. The PD for new position refers to the incumbent being responsible for all KPIs as specified in the strategic plan and having:

full underwriting authority within Vero Marine and includes the responsibility to set the underwriting direction for the future. (*emphasis added*)

[67] Under key accountabilities there are a number of similarities between the two PDs. However, the new position includes the following new references:

Develop, diversify and manage Vero Marine Underwriting Strategies...

Responsible for overall Vero Marine Loss Ratios and Profits as per plans in conjunction with the Executive Manager, Marine. (*emphasis added*)

[68] In the new position Mr Timms was responsible for an increased level of gross written premium of around a third. Mr Chong's view was that the same skills, abilities and specialist knowledge were required, although the amount Mr Timms was responsible for was larger.

[69] According to the new PD Mr Timms was responsible for Vero's loss ratios and profits in conjunction with Mr Chong. Mr Chong suggested that he was responsible for the bottom line but that is not what the PD indicates. Mr Chong accepted that there was a poor choice of words in the PD. However, there was no evidence of that being spelt out to Mr Timms or the PD being changed. Mr Chong accepted that the role involved a significant increase in responsibility.

Salary

[70] Although not apparent from the PDs, the old and new positions were in the same salary band. The evidence regarding the bands was not entirely clear. It appears that each band has a median point with a 20% plus or minus variable allowed. However, the previous southern manager was on a rate above the plus 20% point, as was the rate conditionally offered to Mr Timms.

[71] The human resources representative in his 26 June 2018 email acknowledges that the new position sits higher in the same salary band than the old position, although still maintaining that they are comparable.

[72] Mr Chong had previously attempted to gain out-of-cycle salary increases for Mr Timms, sometimes successfully. He understood that the increase offered to

\$198,000 was to demonstrate that Mr Timms was highly valued rather than relating to the restructuring. An increase of around 25% at one time solely on the basis of recognising talent seems unlikely, particularly when Mr Timms had received other out-of-cycle increases previously.

[73] No documentary evidence was filed regarding the 2018 assessment process and those that made the offer or did the assessment did not give evidence. I am left with the sense that the increase recognised the higher level of responsibility in the new position, possibly as well as recognition of Mr Timms himself.

Mr Timms' experience in the new position

[74] This case was unusual in that the employee, Mr Timms, had carried out the new role for some time and was thus able to give evidence about how it operated in practice. Although there is obviously a risk that the employee's perception or evidence could be influenced by the impending claim, I also had the opportunity to hear Mr Chong's evidence of events after the new structure was put in place.

[75] Mr Timms describes the difference between the roles as even more acute than he had anticipated and says that the new position is not one he would have applied for had he been given the choice. His resignation without another position to go to supports his evidence.

[76] Mr Timms struggled in the new position to the point where he felt that it affected his character and behaviour. He did not feel that he could manage such a large team, spread throughout the country. He felt like he was missing things, making mistakes and glossing over issues. When he had previously managed people remotely they had been geographically close to his home base, which made it easier. That was not the case with the new position.

[77] Mr Timms described himself as going from a quite extroverted person to others saying he had become quite introverted. He found that the new position put him under considerable stress and pressure and had an impact on his health and wellbeing.

[78] However, there was no reporting of this to Suncorp and Mr Chong did not notice any changes. He did not receive any complaints about Mr Timms' work. Mr Timms says customers contacted him when things were not going right, but because

he had established connections and people appreciated that he was under pressure, no complaints were made.

[79] Although Suncorp informed Mr Timms that he could still operate his own book of business, he found that it was not realistic to undertake much of that work with the managerial demands of the new position. Mr Chong accepted that the new role had a lot more work, but that the tasks were essentially the same. It was not apparent that any of Mr Timms' previous responsibilities were removed to make way for the additional work. Mr Chong expected him to work smarter.

Mr Chong's evidence

[80] Mr Chang focused on Mr Timms' ability to undertake the new position in light of the latter's previous experience. Mr Timms had previously undertaken management roles for Suncorp and its predecessors, which included management of staff.

[81] Mr Chong had managed up to 16 people before although he accepted that was not ideal. He considered that he always maintained "constant dialogue" with the staff he had managed, including by telephone.

[82] Suncorp considers that there were no changes between the old and the new positions, or that at best a change which is de minimums to Mr Timms' duties. Mr Chong described it as the same job on a bigger scale.

Summary table

[83] A summary of some features of the two positions follows:

Job aspects	Old position	New position
Location	Auckland	Same office in Auckland
Number of reports	5	9, then increased to 10
Location of reports	All in same office as Mr Timms	Half in same office, half remote
Geographic responsibility	Taupo northwards	Whole of New Zealand

Level of responsibility	First Line Leader ⁹	First Line Leader
Objectives include	Lead direct and manage staff. As part of management team, set budgets, follow through on strategic plan and have accountabilities in the plan.	Lead, direct and manage staff. Responsible for all KPIs as specified in strategic plan. Full underwriting authority within Vero Marine and setting future underwriting direction.
Salary range	B6	B6
Salary	\$158,000	Same salary initially specified. Proposal of \$198,000 – approximately 25% increase.
Benefits	Company car	Company car
Mr Timms’ estimated time of managerial work of underwriting (customer relations) work	30:70	70:30

Conclusion on comparability

[84] Mr Timms wanted to focus on what he felt good at. However, employees cannot expect to continue to have their role unchanged. This case is somewhat unusual in that the employer is offering what was, I find, a bigger job, a promotion, but the employee did not want it. For Mr Timms it was accepted that it was the company’s prerogative to combine the two regional roles into one but it cannot be said that logically it is the same position.

[85] The clause in the employment agreement requires comparability. Are the duties significantly enough changed to be unreasonable in light of the employee’s skills, abilities and employment history?

⁹ In position description

[86] The geographical change could potentially be seen as simply having the same responsibilities in a wider area. However, that is not what the position description envisages. It is having full underwriting authority and being responsible for risk selection, which is different from the old position.

[87] The new position was a substantial step up from the old position with a significant increase in the level of responsibility. A redeployment offer which amounts to a promotion to a more senior role may be attractive to some. However, the clause envisages an assessment of whether the changes are “significant enough to be unreasonable”.

[88] The old position allowed a primary focus of direct dealings with clients and the operation of Mr Timms’ own book of business. Mr Timms had been in what was primarily a specialist role as a marine underwriter whereas the new role was primarily an executive management one. Mr Timms’ abilities were less suited to the new position.

[89] I was not persuaded by Suncorp’s submission that as long as the components or tasks of the job were the same, the roles must be viewed as comparable. This would mean that a role which involved a 5% component of a particular task, could become a new role involving a 95% component of that task, as long as the other components continued in the 5% remainder. So an administrative role which had a 5% component of dish-washing in the staff kitchen could become a role involving 95% dishwashing. That does not seem in keeping with the clause, with its reference to a change which is unreasonable. In any event, the responsibilities with the new position here were much greater.

[90] I conclude that considered objectively the new role and its duties were sufficiently different to Mr Timms’ old position to make it unreasonable in his circumstances, as set out in clause 8.3(c), to see it as a comparable position. As he was not offered a comparable position he was entitled to redundancy compensation.

Resignation

[91] Mr Houliston referred to the company’s understanding being that Mr Timms would remain in the new position until, at least, the Authority’s determination was issued. However, Mr Chong’s evidence at the investigation meeting was that he

understood Mr Timms to have accepted the new position provisionally subject to mediation. The limited email correspondence on that issue reflects that.

[92] Suncorp says that in the event the Authority finds that the positions are not comparable it should have been open to Suncorp to modify the new position to bring it within the parameters of a comparable position, such as removing or altering duties and/or assigning them to other employees so as to maintain the employment relationship with Mr Timms.

[93] However, Mr Timms had made it clear that he did not consider the positions comparable. He had a four week notice period, which he worked out. There was an opportunity for Suncorp to have entered into further discussions with him about the new position or alter the new position before he left, but it chose not to do so. I consider that Mr Timms is entitled to redundancy compensation.

Redundancy compensation payment

[94] The parties agreed that in the event that I found Suncorp was required to pay Mr Timms a redundancy compensation payment, the parties should be able to resolve the quantification and payment by themselves. I encourage them to do so. In the event that they are unable to resolve that matter I give leave for either party to return to the Authority on that issue.

Costs

[95] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Mr Timms shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. Suncorp shall have a further 14 days in which to file and serve a memorandum in reply. Submissions claiming costs must include a breakdown of costs and be accompanied by supporting evidence.

[96] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors require an adjustment upwards or downwards

Nicola Craig

Member of the Employment Relations Authority