

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 454  
3080938

BETWEEN                      GRAEME MURRAY WATTS  
Applicant

AND                              NGATI PAHAUWERA  
COMMERCIAL  
DEVELOPMENT LIMITED  
Respondent

Member of Authority:        Geoff O’Sullivan

Representatives:              Bill Calver, advocate for the Applicant  
Michael McAleer, advocate the Respondent

Investigation Meeting:        4 August 2020

Submissions [and further    4 August 2020 from the Applicant  
Information] Received:        4 August 2020 from the Respondent

Date of Determination:        3 November 2020

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Graeme Murray Watts commenced employment as Farm Manager for Ngāti Pāhauwera Commercial Development Limited (NPC). His terms and conditions of employment were set out in an employment agreement which commenced on 28 November 2016 and was for the position of Farm Manager of all the NPC farms. Mr Watts’ employment relationship ended when he was made redundant on 18 October 2019. He believes his dismissal on the basis of redundancy, was unjustified.

[2] Mr Watts claims as follows:

- (a) On 8 August 2019 he was advised by email that a Mr Hilton Collier had been appointed to take over his management duties. He says from that moment on, NPC moved to end his employment by way of redundancy through a restructuring of his role. He says this was an attempt to retrospectively justify the decision to dismiss him. He says in reality, once he had been stripped of his management responsibilities and they had passed to Mr Collier, "*the die was already cast*".
- (b) He claims that the termination of his employment on 18 October 2019 was unjustified because:
  - (i) His role remained but in the main was being undertaken by Mr Collier;
  - (ii) He was not provided with relevant information regarding the restructure and the proposed redundancy.
  - (iii) There was no chance for any real consultation because the termination of his employment had already been decided by NPC prior to it writing to him on 11 September 2019 advising him of the restructure.
- (c) As a result he claims lost salary and damages of \$25,000 in terms of s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[3] NPC denies the claims and says Mr Watts' employment was terminated by way of redundancy following a necessary restructure. It says the restructure was justified and arose out of recommendations made in the document styled "the Perrin" report. It says the need to restructure was signalled to Mr Watts in that report which identified corporate governance issues, and a lack of management oversight of the day to day activities of the farms.

[4] It says the restructure was for genuine commercial reasons and followed consultation over several months, with Mr Watts being provided with information and the opportunity to provide feedback.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made but has not recorded all the evidence and submissions received.

## **The Issues**

- [6] The issues identified for investigation and determination are:
- (a) Was Mr Watts' redundancy procedurally and substantively justified?
  - (b) If not, was Mr Watts unjustifiably dismissed?
  - (c) If Mr Watts was unjustifiably dismissed, what remedies should be ordered?
  - (d) If any remedies were awarded, should they be reduced under s 124 of the Act for blameworthy conduct by Mr Watts that contributed to the situation giving rise to his grievance.

## **The Authority's Investigation**

[7] The investigation meeting was held in Napier on 4 August 2020. At the investigation meeting I heard evidence from Mr Watts, Mr Collier, who had been appointed as farm supervisor for NPC on 2 August 2019, and Robin Hape, the Chief Executive of NPC.

### *Background*

[8] NPC manages the extensive commercial interests of the Ngāti Pāhauwera Development Trust (the Trust). The Trust remains responsible for the non-commercial/cultural interests. In the 2017-2018 annual report, NPC made a surplus but because of concerns, engaged Perrin AG to undertake a comprehensive review of the farming activities of the company. As a result of this the Perrin report was prepared. It was comprehensive to the extent it analysed such matters as fertiliser strategy, pasture renovation, cattle policy and budgeting. It also considered the farm manager role undertaken by Mr Watts, providing (7.2.3.1 of the report):

We think there is a need to increase (and thereby) improve the level of reporting by the farm manager, the role currently held by Graeme Watts, above and beyond that currently occurring. As we understand it, other than overall oversight of stock reconciliations and incident reporting in Farm IQ (both of which are appropriate and a good use of the technology), there is little if any formal reporting of farm operations through to the CCO, NPCDL Board and the Trust. The farm operational reporting that occurs seems to be exclusively from the CCO, appears to be largely based on formal and informal meetings with the farm and stock managers and data captured within Farm IQ.

[9] And further, in clause 7.2.3.2:

As suggested in 7.1.7 above, this might be best achieved by devolving some day-to-day responsibility from the farm manager to the stock managers (thereby creating farm manager roles for Pihanui, Rawhiti and Chimney

Creek/Kakariki [for a singular role for the latter 3] and devolving responsibility for the farms from the CCO to the farm manager, creating an operations manager role. This role would report directly to the farm sub-committee.

[10] A number of recommendations were also made, including 8.11(v):

Give strong consideration to NPCDL restructuring the responsibilities and reporting lines for the farm businesses to have individual farm managers reporting through to an operations manager, who then reports directly to [a sub-committee of] the Board.

[11] Luke Hansen to whom Mr Watts reported to and Mr Watts considered the Perrin report with Mr Hansen forwarding a review of it in April 2019 that was critical. Amongst other things he pointed out that the consultants had spent just 30 minutes with him and even that meeting was by chance rather than being pre-arranged. He was critical of the decision to establish a committee and to appoint a consultant to report to that committee, stating: *“I highlight that such a decision was made without a clear plan on what responsibilities would fall to who, and when which now creates confusion around expectations”*. NPC had no further discussions with Mr Watts regarding the Perrin report and how it may impact on the farming operations.

[12] On 8 August 2019, Mr Watts was copied into an email (document 15 of the bundle) stating:

Please note effective today Hilton Collier will assume management responsibility for the farms. The appointment of Hilton should not impact on the daily operation of the farms except to say all major work on the farms should now be discussed with Hilton first. It is business as usual except with Hilton’s management oversight.

Hilton will be in touch regarding the reported requirements and how he expects the operations to run. He has visited the farms, met the staff and now discussed operations with the staff in the Napier office. As a consequence he will prepare an initial figure 3 monthly management plan to provide immediate guidance which will develop the annual and longer term farm plans. ...

[13] Mr Watts states that this was the first time he had heard that Mr Collier was taking over the management. He saw this as a demotion and read the email as advising him that Mr Collier was taking over the management of the farms which had been his role.

[14] On 11 September 2019 Mr Watts was handed a letter by Mr Hape (document 17 in the bundle). Although the letter referred to a restructuring proposal, Mr Watts considered the purpose of the letter was to retrospectively justify a decision that had already been made, i.e. that he had been replaced by Mr Collier without any consultation. The letter, however, did

provide Mr Watts with the opportunity to provide his views prior to any final decision being made.

[15] On 18 October 2019, Mr Watts' employment was terminated on the grounds of redundancy. It was on that date, that NPC's representative wrote to Mr Watts' representative confirming termination of employment.

### **Discussion**

[16] Following the receipt of the 11 September letter Mr Watts instructed his advocate to contact his employer for clarification. This cumulated in a 16 October 2019 letter from Mr Watts' employment consultant raising a personal grievance complaining, amongst other things, that the restructuring proposal, although containing an inference that no final decision had been made, simply reflected NPC "going through the motions" in an attempt to retrospectively justify the decision it had already made, namely to end Mr Watts' employment by way of redundancy.

[17] The claim of predetermination was based on the advice Mr Watts received on 8 August 2019 regarding Mr Collier assuming management responsibility for the farms. At this stage neither Mr Watts nor his advocate were aware of the general manager's report of 11 August 2019 (document 33), the general manager's recommendation (document 34) or the Board minute of 4 September 2019 (document 32). In accepting the report and recommendation the Board minute recorded

That the Board, as recommended by Hilton Collier, Farm Supervisor and accepted by the farm committee:

1. Receives the paper.
  2. Approves the new operating structure subject to HR advice.
  3. Confirms the position of Farm Manager previously filled by G. Watts be declared surplus to requirement.
  4. Approves redundancy provisions be enacted for G. Watts.
- ...

[18] There is nothing in the Perrin report which would put Mr Watts on notice of any possibility that his employment was in jeopardy. It seemed clear from the Perrin report that the farm manager position would continue.

[19] Mr Watts was not part of any discussion regarding the setup of a sub-committee which had been considering the appointment of a farm supervisor. He received an email on 26 July 2019 (document 8) which did not particularly concern him because although that email advised that Mr Collier of Ag First had been appointed, the email signaled he had been appointed as a farm adviser to provide independent advice and management oversight of the farms. The email also provided that "...things remain unchanged until formal notice otherwise".

[20] Mr Watts was not part of the decision to appoint Mr Collier, he had not been privy to the preparation of the role description for the farm supervisor (document 10). He knew nothing other than Mr Collier had been engaged. The relevant documents were not shown to him until the disclosure process was completed in preparation for the Authority investigation. Likewise, he was not privy to Mr Collier's letter of 11 July 2019 (document 13) to Mr Hape which comprised an expression of interest, which it is clear Mr Collier had been asked to submit as the letter commenced by thanking Mr Hape for his email of 28 June 2019.

### **The evidence**

#### *Mr Watts*

[21] Mr Watts' evidence was straightforward. He felt that the 11 September letter simply reflected a decision that had already been made on 8 August and that NPC was simply going through the motions. He highlighted the fact that Mr Collier had replaced him as supervisor without any consultation.

[22] Mr Watts was cross-examined by NPC's representative, Mr McAleer, regarding the letter of 11 September 2019 and putting it to him that he had not provided feedback, even though he had been invited to do so. Mr Watts reiterated his view that from his perspective the 8 August email had taken his job away, and that there was no real opportunity to consult.

[23] He also confirmed that from his perspective the Perrin report did not give any indication to him of an impending redundancy, nor raised any concerns regarding his job. He states that the first time he felt his job was gone, or indeed was under threat, was when he received the 8 August email. He felt that the Perrin report could not be used as a justification for any redundancy as, in any event, the Perrin report could have only covered the 2018/2019 year. He also confirmed that he felt he had given feedback on the Perrin report through Mr Hanson.

[24] Mr Watts also gave evidence that between the issuing of the Perrin report in March, and receipt of the letter of 11 September, no-one had mentioned redundancy to him.

[25] Mr Watts also commented on the general manager's report dated 11 August 2019 (document 33) and Board minutes (document 32) dated Wednesday 4 September 2019. Mr Watts confirmed that he did not see these documents until January 2020 when he was preparing for the Authority's investigation meeting. It is worth noting these documents were prepared and actioned prior to NPC writing to Mr Watts on 11 September 2019, offering to consult before a decision was made.

[26] The reference "Receives the paper" referred to in paragraph 17 above was clarified by Mr Hape and Mr Collier as being the general manager's report (document 33) dated 11 August 2019

*Mr Collier*

[27] Mr Collier gave his evidence in a straightforward manner. He said his company had been in contact with NPC and in late June/early July 2019, he had received a communication from Mr Hape and accepted a role as farm supervisor. He stated he saw his role as the general manager and certainly saw his position as taking over the management of the farms and controlling the business on a day to day basis. He confirmed his position was a hands on role for which he was paid approximately \$180,000 a year. He was asked by Mr Watts' representative about the general manager's report he had prepared on 11 August 2019. Mr Collier advised it was this report that formed the basis for the decision to make Mr Watts redundant

[28] The covering memorandum was dated 4 September 2019, although the report had been prepared on 11 August 2019. Again, Mr Collier's evidence was clear. It was the general manager's report that formed the basis for the decision to restructure the operation and terminate Mr Watts' employment on the grounds of redundancy. Neither he nor NPC were relying on the Perrin report, which he confirmed was more about breeding and furnishing properties. Mr Collier confirmed that the recommendation for redundancy was based on his own analysis and indeed the general manager's report did not refer to the Perrin report.

[29] Mr Collier also confirmed that from his perspective he knew that Mr Watts' position was redundant well prior to the 11 September letter. When it was put to him he had taken over Graeme's role in August 2019, he responded "And more".

[30] Mr Collier was cross-examined regarding the report with Mr Watts' representative, Mr Calver, asking him how many hours he had spent with Mr Watts in August, to which he replied "Less than 20". Mr Calver then put it to him that in fact it was less than five hours. He agreed with this. He was also asked about the criticisms of Mr Watts' performance contained in the report. Mr Collier advised he had relied on what he had been told by stock managers and had not spoken to Mr Watts regarding those issues.

*Mr Hape*

[31] Mr Hape then gave evidence. He advised that it was the controlling Trust and not NPC that initiated the Perrin review because of expenditure concerns. Those concerns had apparently arisen because there had been a programme of buying more stock, hence the need for more fertilizer, more food etc. and there was a concern whether or not this was the best way forward. He confirmed that a governance committee was set up and expressions sought from Perrin Ag and also from Ag First, which was Mr Collier's company. He confirmed that Mr Watts was not involved in that process.

[32] He stated that the termination of Mr Watts' appointment was a Board decision, saying they needed good farming advice and they were not getting it.

[33] Although having initially advised that NPC was relying on the Perrin report, he confirmed that the company did in fact rely only on the report produced by Mr Collier. He reiterated that the decision to terminate Mr Watts' employment was a Board decision and was referenced in the 4 September Board minute (document 32, page 4). Mr Hape also confirmed that the Board resolution made on 4 September 2019 made it clear that at that time, the decision to terminate Mr Watts' employment had been made. He said, however, that from his perspective the decision to terminate employment was subject to HR advice. He agreed however that no such advice was forthcoming. It was put to him in cross examination that this matter could have been cleared up as the meetings were recorded so they could be transcribed later. It was also put to him that the recordings contained more information, including more statements regarding Mr Watts' performance and a need to get rid of Mr Watts in the sense of

terminating his employment. Mr Hape advised that it was possible that such a discussion had been had at the Board meeting.

[34] Mr Hape also advised that the Board relied on Mr Collier's advice and further confirmed that from NPC's perspective, the general manager's report of 11 August (document 33) had never been shown to Mr Watts, nor had he been invited to comment on it, despite it forming the basis for the redundancy. He also confirmed that the memorandum of 4 September 2019 setting out the current structure and the proposed structure, and recommending Mr Watts' redundancy (document 34) was also never shown, nor discussed, with Mr Watts.

### **Analysis**

[35] The law relating to an employer's obligations regarding redundancy have been clear for some time. In *Grace Team Accounting limited v Judith Brake*<sup>1</sup> the Court highlighted the explicit requirements for disclosure of information in consultation that apply in redundancy situations, noting:

The reality is that the Employment Court will have before it the information provided by the employer to the employee justifying redundancy. Whatever may have been the case in the pre-s 103A environment, the clear words of s 103A now require the Employment Court to determine on an objective basis whether the employer's actions and how it acted were what a reasonable employer would have done.

[36] It was incumbent on NPC to ensure that before it made any decision in respect of Mr Watts' employment, he was provided with all relevant information. Amongst other things, this is to ensure consultation is meaningful.

[37] In Mr Watts' case, the inevitable conclusion must be drawn that Mr Watts was correct in his belief that at least from 8 August 2019, NPC had decided it did not want him to continue in the role and wished to make him redundant. It seems unlikely there was anything Mr Watts could have done to have reversed that. This is because it is now clear by that date, NPC no longer wanted Mr Watts as an employee. The general manager's report of 11 August 2019 (document 33) would have taken some days to prepare and was likely to have been in the pipeline by at least 8 August 2019. It was prepared by Mr Collier yet was never shown or

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<sup>1</sup> [2014] NZCA 541

discussed with Mr Watts. Indeed, findings and assumptions contained in the report simply could not have been made in a reliable way without some input from him. NPC, however, deliberately chose not to allow Mr Watts access to this report. Accordingly, the major report, relied on by NPC in justifying its decision to make Mr Watts redundant was hidden from him. He had no chance to comment on it and in fact did not know of its existence until he was preparing for the Authority's investigation.

[38] Section 103A of the Act provides a test for all dismissals whether for cause or for redundancy. This requires compliance with the duties set out in s 4 of the Act in relation to redundancy situations and as said above, explicitly require the disclosure of information. That did not happen here and is a major flaw in NPC's process. Further, the Board minutes of 4 September 2019 further demonstrate that Mr Watts was correct that consultation was a charade. This is because on 4 September 2019 the Board had already made its decision to end Mr Watts' employment. The 11 September letter (document 17 in the bundle) stating that the restructuring was simply a proposal and that NPC was interested in feedback and had not made a final decision was deceptive and misleading. The decision, based on the general manager's report which was never shown or discussed with Mr Watts, had already been made, as evidenced by the Board minutes (document 32).

[39] I find therefore, that Mr Watts' dismissal on the basis of redundancy, was both procedurally and substantively unjustified. There were no proper grounds evidenced for the decision. Mr Watts' position still remained in its entirety, however, his role was being carried out by Mr Collier. Also, as mentioned above, the basis for the decision was Mr Collier's General Manager's report of 11 August 2019. This document was deliberately kept from Mr Watts and he had had no input into its preparation. He did not see this document until after his dismissal. Further, the decision to terminate Mr Watts' employment on the grounds of redundancy, was made on 4 September 2019, a week before NPC wrote to Mr Watts, ostensibly to start a consultation period. There was no intention to consult with Mr Watts, as evidenced by the 4 September 2019 Board minute which makes it clear the decision to terminate Mr Watts' employment had already been made.

## **Remedies**

[40] Mr Watts gave harrowing evidence as to the emotional harm he suffered as a result of NPC's actions. He was at a loss to know what he should do each day. He fell into a depressed mental state, concerned about the future for him and his wife and his ability to provide. Mr

Watts said that he became an absolute mess, his health was suffering, and his life had been turned upside down. There is no doubt, that NPC's defence to Mr Watts' redundancy, namely that his performance was mediocre, that he was a poor role model and poor leader, added to the negative feelings Mr Watts found himself confronting. The hurt and humiliation suffered by Mr Watts is at the higher end of the scale.

[41] Mr Watts had been paid to 1 September 2019. Following his dismissal on the grounds of redundancy, Mr Watts applied for a position as farm manager but although he was selected for an interview, he missed out on the job. He worked at the Tyre General, which he had set up, and for which he was paid some \$14,400 over a three-month period. Mr Watts claims lost salary of \$8,150. He also claims \$25,000 for hurt and humiliation in terms of s 123(1)(c)(i) of the Act.

[42] Section 124 of the Act requires me to consider whether or not Mr Watts contributed at any way to his dismissal. I find that he did not.

### **Conclusion**

[43] Mr Watts' dismissal on the grounds of redundancy constitutes an unjustified dismissal. Mr Watts' position did not disappear, rather it was filled by Mr Collier. Further, the redundancy was premised on Mr Collier's report (the general manager's report dated 11 August 2019) which was deliberately withheld from Mr Watts. He had no chance to have any input into it. Further, when NPC wrote to him on 11 September 2019 advising him of a proposal to restructure, it had already made a decision to terminate his employment. I order NPC to pay Mr Watts the following:

- (a) Lost salary of \$8,150 (less PAYE);
- (b) The sum of \$25,000 compensation in terms of s 123(1)(c)(i) of the Act;
- (c) Costs are reserved.

**Geoff O'Sullivan**  
**Member of the Employment Relations Authority**