

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2022] NZERA 609  
3161581

BETWEEN

MICHAEL OXLEY  
Applicant

AND

COMPASS GROUP NEW  
ZEALAND LIMITED  
Respondent

Member of Authority: Rowan Anderson

Representatives: Bede Laracy, advocate for the Applicant  
Paul McBride, counsel for the Respondent

Investigation Meeting: 7 September 2022 at Wellington

Submissions received: At the Investigation Meeting

Determination: 21 November 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Michael Oxley commenced working for Compass Group New Zealand Limited (Compass Group) as a Chef Manager at its St Patrick's Silverstream (St Patrick's) operations from 6 March 2019. Compass Group provide catering services at various locations throughout New Zealand.

[2] Mr Oxley transferred from St Patrick's to Cumberland House, a student hall of residence for Te Herenga Waka—Victoria University of Wellington, in 2020. He claims that he was unjustifiably disadvantaged in his employment following the appointment of a Head Chef by Compass Group which he says resulted in changes to his role, including removal of managerial duties and a demotion. He also claims that

Compass Group failed to act in good faith. Mr Oxley resigned from his employment on 29 March 2021.

[3] Compass Group rejects the claims made by Mr Oxley and says that, from the time he commenced working at Cumberland House, he was employed as a Chef rather than a Head Chef. Compass Group maintains that Mr Oxley's role did not change during his employment at Cumberland House, that his terms and conditions of employment were not altered to his disadvantage, and that it acted in good faith.

[4] I must determine whether Mr Oxley's employment, or 1 or more conditions of his employment, were affected to his disadvantage. If that is the case, I must then determine whether Compass Group's actions were justifiable. If I find that Mr Oxley was disadvantaged in his employment then remedies would need to be considered, including whether he should be compensated for humiliation, loss of dignity, and injury to his feelings.

[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. It has not recorded all evidence and submissions received.

### **Was Mr Oxley disadvantaged in his employment?**

[6] Mr Oxley claims that he has been unjustifiably disadvantaged in his employment. Section 103 of the Act, as to the meaning of personal grievance, relevantly provides:

**103 Personal grievance**

(1) For the purposes of this Act, **personal grievance** means any grievance that an employee may have against the employee's employer or former employer because of a claim—

...

(b) that the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer...

...

[7] It is necessary to first consider whether Mr Oxley's employment, or 1 or more of his conditions of employment, were affected to his disadvantage. If so, then I need

to determine whether the actions of Oxley Group were justifiable by applying the test of justification at s 103A of the Act.

[8] An unjustified disadvantage may arise from an action relating to a condition of employment other than one that amounts to a breach of the employment contract.<sup>1</sup> A change in status absent a reduction in pay may result in unjustifiable disadvantage,<sup>2</sup> and the removal of managerial responsibilities may amount to an unjustified disadvantage.<sup>3</sup> It is necessary to first consider what Mr Oxley's relevant conditions of employment were. I must then consider whether Compass Group took any action that disadvantaged Mr Oxley in his employment.

*What were Mr Oxley's relevant conditions of employment?*

[9] Mr Oxley was initially employed as a Chef Manager working for Compass Group at St Patrick's. In mid-2020, following various events that need not be detailed, Mr Oxley and Compass Group agreed to a change in Mr Oxley's work location and he transferred to Cumberland House. Mr Oxley maintains that when he moved to Cumberland House, he continued to perform the same duties that he had at St Patrick's. He says that those duties included menu planning, ordering of food and supplies, rostering, and management of staff.

[10] Mr Oxley gave evidence that when the transfer occurred, he met with General Manager Roydon Montgomery who explained to him that as he was being paid a higher rate than other Chefs, that more was expected of him. Mr Oxley said that the "more" included the rostering, ordering, and supervisory responsibilities.

[11] Former General Manager of the St Patrick's site, Nikhil D'Souza, gave evidence that he met with Mr Oxley in June 2020 about the potential transfer and that Mr Oxley raised concerns about his hours of work and pay rate. Mr D'Souza's evidence was that he told Mr Oxley that he would retain the same basic contract and pay rate, but that the structure would be different and that he would need to talk to Mr Montgomery about the details of that. He said that he specifically told Mr Oxley his new role would be that of Chef and not Chef Manager.

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<sup>1</sup> *ANZ National Bank Ltd v Doidge* [2005] ERNZ 518 at [45]. *Downer New Zealand Ltd v Jones* [2018] NZEmpC 77 at [104] to [106].

<sup>2</sup> *Northern Local Government Officers Union v Waitakere City Council* [1991] 2 ERNZ 753, at 772.

<sup>3</sup> See *Hayward v Tairāwhiti Polytechnic*, EmpC, AC 43/05, 3 August 2005, at [101] and [102].

[12] Mr Montgomery gave evidence that he expected high standards and good performance from Mr Oxley as a senior and experienced Chef. However, he said that it was clear at the time of transfer that Mr Oxley was engaged at Cumberland House as a Chef, and not a Chef Manager or Head Chef. Mr Montgomery said that as Chef Mr Oxley would usually be the most senior person in the kitchen when at work and that was usual for anyone in that role. His evidence was that it was clear Mr Oxley's role would be different to that he had at St Patrick's. Mr Montgomery said that there was no Chef Manager role at Cumberland House and that Romy Locsin was the Manager there.

[13] Mr Oxley, in answer to questions from counsel for Compass Group, said he had agreed to transfer to Cumberland House as a Chef rather than as a Chef Manager. He agreed to the variation of his individual employment agreement and said that he also signed another document but could not recall when that occurred.

[14] An employment agreement variation was signed on 8 July 2020. The variation did not specify any change in Mr Oxley's role. A further employment agreement, signed on 20 October 2020 (October Agreement), provided that Mr Oxley was a Chef, rather than Chef Manager. There was some dispute between the parties as to whether Mr Oxley signed the agreement. Mr Oxley gave evidence that the initials appearing on the document were not in fact his, and that it was not the contract that he signed.

[15] Mr Locsin gave evidence relevant to the October Agreement. His evidence was that he provided the agreement to Mr Oxley in the kitchen at Cumberland House, that he asked Mr Oxley to read and sign the agreement, and that Mr Oxley signed and returned it to him the same day. Mr Locsin provided Mr Oxley with a position description at the same time. In cross-examination Mr Oxley said he was not sure if he remembered the position description.

[16] Mr Oxley's payslips changed, by at least the pay period of 9 November to 22 November 2020, following the date on which the October Agreement was signed.<sup>4</sup> Mr Oxley's evidence at the investigation meeting was that he could not recall signing the agreement. I am satisfied that it is more likely than not that Mr Oxley signed the October Agreement. No other reasonable explanation has been provided, and I accept the evidence provided by Mr Locsin.

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<sup>4</sup> Payslip recording payment date of 25 November 2020, attached to the statement of Mr Roydon Montgomery dated 7 September 2022.

[17] The October Agreement was provided to Mr Oxley together with a copy of position description which was also signed by Mr Oxley and returned to Compass Group. Both the October Agreement and the position description reflect Mr Oxley's role as Chef, and not Head Chef or Chef Manager.

[18] Mr Oxley submitted several text messages between himself and Mr Locsin and other employees. He suggests that they evidence his performance of rostering, ordering and staff management duties. I find instead that they show that Mr Oxley played a supporting role and that they reflect his duties as a Chef.

[19] I accept Mr Locsin's evidence that for the duration of Mr Oxley's employment at Cumberland House, that Mr Locsin remained responsible for ordering, rostering and staff management. Mr Oxley would help with those tasks. I accept that at times Mr Oxley would make orders, submit rosters for Mr Locsin's approval, and deal with staff enquiries about rosters. However, I find that Mr Oxley considered that role more significant than what it was from an objective perspective and that his performance of those duties was consistent with both the October Agreement and position description. They were not the same responsibilities he had as Chef Manager at St Patrick's.

[20] I find that through the duration of his employment at Cumberland House, Mr Oxley was employed as a Chef and that he did not retain the managerial duties he had at St Patrick's. That position was made clear to him at the time of the transfer and was additionally put in unequivocal terms in the October Agreement that he signed and agreed to. Mr Oxley would assist Mr Locsin with rostering, ordering and staff management, but such duties were limited to providing assistance and were consistent with Mr Oxley's duties as Chef.

*Did Compass Group take any action that disadvantaged Mr Oxley in his employment?*

[21] Mr Oxley worked at Cumberland House from July 2020. Following the summer educational break he returned to work on 10 February 2021, initially by attending the second day of an induction. Some evidence was given as to Mr Oxley's non-attendance on the first day of the induction, 9 February 2021, by reason that he was not notified. I find that nothing rests on that.

[22] On 10 February 2021 Mr Oxley was advised that a new multi-site Head Chef had been employed by Compass Group. Mr Oxley claims that the appointment of the Head Chef resulted in his role and responsibilities being diminished without any consultation, and that he was unjustifiably disadvantaged in his employment as a result.

[23] Mr Montgomery's evidence was that there had not been anyone in the position of Head Chef the year before, 2020. He said that the Head Chef was recruited during the summer University break during which time Mr Oxley was not working and that the new role was put in place to meet expectations of the client as to changing food preferences and to improve quality standards across seven sites. The Head Chef would mainly work at the Capital Hall site but would have some involvement at other sites. Mr Locsin was to remain responsible for ordering, rostering and other management responsibilities at Cumberland House.

[24] Mr Montgomery said that responsibility for rostering, menu planning, food orders and staff management remained with Mr Locsin. He didn't know whether Mr Oxley would assist Mr Locsin with those duties or not. In response to questions from Mr Oxley's advocate, he said that there was no intent for change to occur to rostering or ordering responsibilities as a result of the new Head Chef's appointment, that Mr Locsin was to remain responsible for those duties, and that there wouldn't have been a change as a result of the appointment.

[25] Mr Locsin's evidence was that Mr Oxley would only ever assist with rostering and that Mr Locsin would be there at the time when any changes were made. Mr Locsin had a password for the system and Mr Oxley did not. He said that that was the same for the ordering of food and supplies. He also said that there was no intention to change Mr Oxley's role relating to the Head Chef being appointed.

[26] Mr Locsin had made an order for food and supplies in February 2011 prior to the other staff commencing work after the summer university break. There was nothing extraordinary in that and it is apparent that Mr Oxley incorrectly thought that the Head Chef had completed the order. It is also apparent that Mr Oxley thought he was to be excluded from assisting Mr Locsin with the ordering in the future. That assumption was incorrect.

[27] In the statement provided to the Authority, Mr Oxley asserted that on 11 February 2021 he “...learned that the newly hired Head Chef was taking over all of my responsibilities around rostering, menu planning, food orders and staff management” and that he was “...essentially being demoted without cause and consultation”. When asked how he knew those duties were to be taken away from him, Mr Oxley’s evidence was that he couldn’t recall. I accept Mr Oxley may have believed that such changes were to occur. However, I find that his belief was incorrect.

[28] Mr Locsin’s evidence was that the Head Chef was never going to take on any of Mr Oxley’s responsibilities. He maintained that Mr Oxley was not responsible for rostering, menu planning, food orders, or staff management and that they were instead his duties, albeit that Mr Oxley would assist him.

[29] Mr Montgomery’s evidence was that the menus were the same across the seven University halls of residence. I accept that there may have been some exceptions to this but find that Mr Oxley’s duties and responsibilities remained consistent with his role as Chef and were not managerial duties.

[30] I have considered Mr Oxley’s apparent perception that his role, and importantly his status to other workers, was changed. However, I do not accept that was actually the case, and instead he was to continue in the role he was employed to perform. Mr Oxley was to continue to perform those duties which he had been at Cumberland House. Even if the duties were “managerial” or “supervisory”, they were not to change and therefore he was not disadvantaged.

[31] Mr Oxley’s pay was not reduced because of the transfer, nor was it reduced following the alleged demotion in February 2021. There was no retrograde step in Mr Oxley’s employment or conditions of employment.<sup>5</sup> Mr Oxley’s role was not in fact diminished. Instead, he was to continue in the role he had been employed in. Mr Oxley’s assumptions regarding what he perceived as his diminished responsibilities were incorrect, and he did not continue to attend work long enough to find that out.

[32] Mr Oxley claimed that he was ridiculed by other employees following the appointment of the Head Chef. When asked in cross-examination who it was that “ridiculed” him following the appointment of the Head Chef, Mr Oxley’s response was

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<sup>5</sup> *Henderson v Nelson Marlborough District Health Board* [2016] NZEmpC 123 at [77].

that he could not remember. It is apparent that he only spent a very short time in the workplace following his being told of the new appointment. Mr Oxley may have felt humiliated in relation to the changes he perceived were occurring. However, I am unable to conclude from the evidence that Mr Oxley was subjected to comments or other actions from other employees of any significance, nor that there was any inaction on the part of Compass Group.

[33] I also accept that there was no breach of good faith by Compass Group. On 17 February 2021 a letter was received by Compass Group from Mr Oxley's representative. The letter asserted that Mr Oxley had been told by other employees that he had been replaced as Head Chef. I accept that Compass Group took reasonable and appropriate steps in trying to engage with Mr Oxley to address his concerns. Further, I find that there is no basis on which Compass Group were obligated to consult with Mr Oxley as to the appointment of the Head Chef.

[34] Objectively, Mr Oxley's perception of both his role and the changes he says were to be made to it are not supported by the evidence. I find that there were no changes to Mr Oxley's employment or conditions of employment. He was not demoted, nor were managerial responsibilities removed from him. Mr Oxley was not disadvantaged in his employment.

#### **Were Compass Group's actions justifiable?**

[35] Had Mr Oxley been disadvantaged in his employment the onus would then turn to Compass Group to justify its actions. I would have had to consider, on an objective basis, whether Compass Group's actions, and how Compass Group acted, were what a fair and reasonable employer could have done in all of the circumstances at the time the action occurred.<sup>6</sup>

[36] Mr Oxley was not disadvantaged in his employment. As such, the onus has not been discharged and I need not make a finding as to the justification or reasonableness of Compass Group's actions.

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<sup>6</sup> Employment Relations Act 2000, s 103A.

### **Is Mr Oxley is entitled to any remedies?**

[37] I have found that Mr Oxley was not unjustifiably disadvantaged in his employment and as such his claim is dismissed. Mr Oxley is not entitled to the remedies sought and his application is dismissed.

### **Costs**

[38] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[39] If they are not able to do so and an Authority determination on costs is needed Compass Group may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Oxley would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[40] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>7</sup>

Rowan Anderson  
Member of the Employment Relations Authority

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<sup>7</sup> For further information about the factors considered in assessing costs, see [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).