DECISION

Fair Work Act 2009
s.739—Dispute resolution

United Voice

v

Laminex Group Pty Limited T/A Laminex Cheltenham
(C2019/1166)

DEPUTY PRESIDENT GOSTENCNIK MELBOURNE, 25 JUNE 2019

Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)]; dispute of whether there is a retrenchment entitlement; proper construction of the agreement; application dismissed.

[1] United Voice (UV) and Laminex Group Pty Limited (Laminex) are in dispute over whether certain of Laminex's employees employed at its plant in Cheltenham, Victoria, are entitled to a retrenchment benefit pursuant to the *Laminex Pty. Ltd. Cheltenham Plant Production Enterprise Agreement 2017* (Agreement). The dispute arises because of a decision by Laminex to cease a treating process at the plant. Treating will instead be undertaken at Laminex's decorating plant in Ballarat, Victoria.[1]

[2] An application under s.739 of the *Fair Work Act 2009* (Act) for the Commission to deal with the dispute in accordance with the dispute settlement term of the Agreement was lodged by UV on 22 February 2019 and there is no dispute that I have power to arbitrate the dispute.[2]

[3] At the time I heard the dispute there were 60 employees employed at the Cheltenham plant, 42 of whom are covered by the Agreement.[3] The Agreement applies to these employees in their employment with Laminex at the Cheltenham plant. UV is covered by the Agreement[4] as is Laminex.[5]

[4] The Cheltenham plant manufactures high pressure laminex, which is referred to as HPL.[6] The manufacturing process of HPL at the Cheltenham plant involves treating (where

---

[1] Exhibit 15 at [12]

[2] Respondent's Outline of Submission dated 14 May 2019 at [3.1]

[3] Exhibit 15 at [4]

[4] [2017] FWCA 2858 at [4]

[5] Clause 4 of the Agreement provides "Laminex Pty Limited" as a party bound. The Applicant for approval of the Agreement was "Laminex Group Pty Limited" (see [2017] FWCA 2858 at [1]). No party raised this issue, and I assume that Laminex Group Pty Limited is misdescribed in the Agreement. Prior names of Laminex Group Pty Limited do not include Laminex Pty Limited and a company known as Laminex Proprietary Limited was deregistered on 2 July 1970

[6] Exhibit 15 at [6]

paper that is to be pressed onto board is prepared), pressing (where the board is pressed) and warehousing (where the board is batched for distribution).[7]

[5] A weekly rotating roster operates at the Cheltenham plant.[8] Except for the warehouse, the roster is Monday to Wednesday – day shift (6:00am to 6:00pm) and night shift (6:00pm to 6:00am); and Thursday, day shift (6:00am to 2:00pm).[9] For the warehousing employees, the roster is day shift (7:00am to 3:00pm) and afternoon shift (3:00pm to 11:00pm) on Monday to Friday.[10]

[6] Two treater machines operate at the Cheltenham plant.[11] One treater (treater 463) requires a maximum of three employees to operate it at any one time.[12] The other (treater 521) requires a maximum of four people to operate it at any one time.[13]

[7] Ten employees are allocated to the treating process.[14] Generally, only one treater is operated at a time, however on a weekly basis, both treaters will operate simultaneously on the one shift.[15] Given the treater operating staffing requirements, when only one treater is operating or when neither treater is operating, about half of the employees will be allocated to pressing, and the other half will remain in treating and will operate the treater, or will perform cleaning, preventative maintenance, and pre-collation duties, if neither treater is operational.[16]

[8] Production employees at the Cheltenham plant will typically work within the same process (treating, pressing or warehouse). All are classified as "Production Employees" or "Team Leaders" under the Agreement and they are expected to, and do, work flexibly across the plant as required.[17]

[9] The market for HPL has been in decline in recent years with other products such as composite stone and stone benchtops providing competition resulting in the popularity of HPL to decline.[18] Consequently, Laminex decided to increase the volume of product at the Cheltenham plant by manufacturing an additional product – compact laminate.[19] Compared to HPL, compact laminate is a thicker and heavier product.[20]

[10] To accommodate the new product, Laminex decided to cease the treating process at the Cheltenham plant which will instead be undertaken at its Ballarat decorating plant where

---

[7] Ibid

[8] Ibid at [5]

[9] Ibid

[10] Ibid

[11] Ibid at [7]

[12] Ibid

[13] Ibid

[14] Ibid at [8]

[15] Ibid

[16] Ibid

[17] Ibid at [9]

[18] Ibid at [11]

[19] Ibid

[20] Ibid

the treating facility and equipment is more modern and operates at more cost-effective rates.[21] Pressing and warehousing will continue at the Cheltenham plant.[22]

[11] Laminex plans to employ an additional 9 employees to work on the pressing process for compact laminate.[23] The 10 existing employees, who are currently working in the treating process, including Team Leaders, will continue working in their current classifications as Production Employees and Team Leaders but perform work in pressing.[24] Seven of the 10 employees in treating are already trained in the pressing process and have worked in pressing previously and periodically when not required in treating or to cover absences.[25]

[12] Laminex anticipates the new employees will be employed from July 2019, that treater 521 will cease operation in July 2019 and treater 463 will cease operation by December 2019.[26] The new employees, once engaged and trained, will commence working on the pressing process for compact laminate.[27] The existing 10 employees who work in treating will rotate between pressing and treating until the treating process for HPL ceases entirely in December 2019.[28] Laminex anticipates that some limited further training will be required for those employees, as the pressing process for compact laminate will require the use of lifting machinery.[29] Otherwise, the process for manufacturing compact laminate is substantially the same as for HPL.[30]

[13] Laminex's decision to invest in the Cheltenham plant and to grow the plant by manufacturing compact laminate suggests greater job security, new jobs and new technology for the plant and has better secured the future of the plant which might otherwise likely have closed at some point in the future.[31]

[14] Laminex has obligations under the Agreement to consult about the introduction of major change.[32] Laminex commenced consultation with employees and UV representatives about the decision to manufacture compact laminate at the Cheltenham plant, and to cease treating operations, in August 2018.[33] One of the issues that arose during the consultation process was that some employees currently working in treating considered that they should be offered the option of taking a redundancy package.[34] Laminex's position was that all jobs in the classifications of Production Employee and Team Leader were required and that no retrenchments would occur.[35]

---

[21] Ibid at [12]

[22] Ibid

[23] Ibid at [13]

[24] Ibid

[25] Ibid at [15]

[26] Ibid at [14]

[27] Ibid at [15]

[28] Ibid

[29] Ibid

[30] Ibid

[31] Ibid at [18]

[32] *Laminex Pty. Ltd. Cheltenham Plant Production Enterprise Agreement 2017* at clause 33

[33] Exhibit 15 at [17]

[34] Ibid at [19]

[35] Ibid at [20]

[15] The contention advanced by UV may be simply stated. It contends that at the Cheltenham plant there are several departments into which employees are assigned and employees in each department perform work in positions that are significantly different to each other. The positions or jobs affected by the decision in the treating process are no longer required to be performed by anyone. The alternate positions offered to employees in the pressing process will be significantly different to the current jobs performed and therefore the affected employees should be offered the option of retrenchment.[36]

[16] Against this factual background, the resolution of the dispute turns on the proper construction of the Agreement.

[17] The principles applicable to the proper construction of an enterprise agreement were canvassed at length in *Australasian Meat Industry Employees Union v Golden Cockerel Pty Limited* (*Golden Cockerel*).[37] The summary of the applicable principles set out in *Golden Cockerel* was modified in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' known as the Australian Manufacturing Workers Union (AMWU) v Berri Pty Limited (Berri)*[38] to take account of the discussion by the Full Bench of the extent to which evidence of prior negotiations and positions adopted in negotiations might be called in to aid a construction in light of the statutory scheme under which an enterprise agreement is made and the fact that it is made when a majority of relevant employees vote to approve the agreement.

[18] The applicable principles need not be rehearsed at length here and were not put in issue in the proceeding before me. However, in short compass, much like the approach to construing a statute, the construction of an enterprise agreement begins with a consideration of the ordinary meaning of the words used, having regard to the context and evident purpose of the provision or expression being construed. Context may be found in the provisions of the agreement taken as a whole, or in their arrangement and place in the agreement being considered. The statutory framework under which the agreement is made may also provide context, as might an antecedent instrument or instruments from which a particular provision or provisions might have been derived.

[19] Turning then to the text of the Agreement. The Agreement contains Appendices and a Schedule. By clause 6 of the Agreement, the Schedule and the Appendices form part of the Agreement. Clause 6 also contains rules about how the body of the Agreement, the Schedule and the Appendices relate and are to be interpreted.

[20] Relevantly, clause 6 of the Agreement provides:

> "…Where there is any inconsistency between the provisions in Schedule I, the Appendices and the body of this Agreement, the provisions in the body of this Agreement will prevail to the extent of any inconsistency. Where there is any inconsistency between the Appendices and Schedule 1, the Appendices will prevail to the extent of any inconsistency."

---

[36] Outline of Submissions for the Applicant at [7]-[8]

[37] [2014] FWCFB 7447

[38] [2017] FWCFB 3005

[21] An inconsistency may occur where there is a direct clash between, for example, a provision in one of the Appendices and a provision in the Schedule so that it is not possible to comply with both provisions.

[22] An inconsistency might also arise where on a proper construction of a provision of, for example, one of the Appendices, the provision deals so comprehensively with a particular subject matter that it is intended to cover the field in relation to that subject matter leaving no room for the operation of a provision in the Schedule dealing with the same subject matter. This is called indirect inconsistency.

[23] I do not, however, consider that the concept of indirect inconsistency as I have just described, has any application for the purposes of construing the meaning of inconsistency in clause 6 of the Agreement. Self-evidently, the objectively ascertainable intention of the parties was to include the Appendices and the Schedule as enforceable terms of the Agreement. The hierarchy established by clause 6 is intended to give pre-eminence first to the body of the Agreement, next to the Appendices and last to the Schedule. It is unlikely that in making the Agreement, those making it had in mind that one or more provisions of the Schedule would have no effect at all if a provision of the Appendices or of the body of the Agreement were determined to be comprehensively covering the subject matter with which it is concerned. Inconsistency for the purposes of clause 6 is, in my view, confined to direct inconsistency.

[24] Absent an identified direct inconsistency, clause 6 of the Agreement has no work to do and so a provision, for example, in one of the Appendices dealing with a subject matter should be read together with a provision in the Schedule touching upon the matter.

[25] The Agreement contains some aspirational objectives and an agreed commitment. For example, clause 7 provides, *inter alia*:

> " . . .
>
> The parties to this Agreement agree that to achieve the objective and thereby secure the future of the business, they will commit to a philosophy of continuous improvement, including the measurement of performance indicators.
>
> The Agreement recognises the vital role the employees at The Laminex Group Cheltenham play in the success of the enterprise in this increasingly competitive market.
>
> It will provide the mechanism to allow employees to respond to change and continue to develop the enterprise into a competitive and mutually satisfying place to work.
>
> The economic health of the Company and the wellbeing of the employees depends on a shared commitment to respond to a changing business environment.
>
> . . .
>
> c) Continue to recognise the importance of flexibility within the organisation and to build on the current level of flexibilities already in existence.

. . . ”

[26] Clause 10 of the Agreement deals with training and relevantly provides:

“(a) The principle of skills attained must be utilised and maintained applies to all training and career path movements.

. . . ”

[27] Appendix 1 to the Agreement sets out the wage rates for classifications covered by the Agreement and provides:

PRODUCTION CLASSIFICATIONS Appendix IV of this Agreement)	**Wage Rates from first full pay period on or after (FFPPOA):**		
	1st May 2017 (1.5%)	1st Feb 2018 (1.5%)	1st Feb 2019 (1.5%)
Level E Production Employee	$1015.77	$1031.00	$1046.47
Level D Production Employee	$1067.824(sic)	$1083.83	$1100.09
Level C Production Employee	$1119.75	$1136.54	$1153.59
Level B Production Employee	$1171.81	$1189.39	$1207.23
Level A Production Employee	$1236.76	$1255.31	$1274.14
Team Leader	$1379.84	$1400.53	$1421.54
ALLOWANCES			
Meal Allowance (per occasion)	$14.37	$14.59	$14.81
First Aid Allowance (per week)	$14.43	$14.64	$14.86
Team Leader Allowance (per hour)	$2.50	$2.54	$2.58

[28] Appendix IV to the Agreement makes provision for the production classification structure and relevantly provides:

“**Aim**

The Production Classification System at The Laminex Group Cheltenham Plant has been developed to achieve the following aims:

- To provide a structured competency based remuneration system for the employees covered by the Agreement.
- To reward personnel for the development of skills that enable the Company to continuously improve.
- Provide a career path for production employees.
- To facilitate the development of a multi-skilled workforce which is able to cover for personnel who are absent (due to personal or other leave etc.).

Classification Level:

- Production Employee Level A
- Production Employee Level B
- Production Employee Level C
- Production Employee Level D
- Production Employee Level E (nominally 3 months qualifying period)

Operators will be trained in the number and mix of skills as deemed necessary by the Company.

. . .

Competency Points:

- Competency points have been developed by the company for each function relevant to the production classification structure taking into account criteria such as the complexity and importance of any particular function.
- The competency points have also been developed to define the requirements of each wage level.
- The sum of competency points which will be developed for each of the current teams will form the basis of the requirements of each wage level.
- Future functions will be incorporated into the production classification structure on the same basis that existing functions have been attributed competency points.
- Casuals or contractors who have worked at Cheltenham site engaging in production work covered by this Agreement and have been doing so regularly prior to being offered permanent position, can lodge paper work and apply to have their competencies assessed to move from Level E to Level D classification from their first day of employment.. (sic) Assessments will be completed within two weeks following the receipt of the application for such employees.

Skills Required:

The management of The Laminex Group Cheltenham Plant reserves its responsibility to finally approve the skills required at any time.

. . .”

[29] Part 2 of Schedule 1 to the Agreement deals with the employment relationship and relevantly provides the following:

“**2.1 THE COMPANY AND EMPLOYEE DUTIES**

2.1.1 The Company may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure in the Agreement to which this Schedule is attached, provided that such duties are not designed to promote de-skilling.

2.1.2 The Company may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

2.1.3 Any direction issued by the Company under this clause is to be consistent with the Company's responsibilities to provide a safe and healthy working environment."

[30] The sum of the provisions thus far discussed shows that the Agreement makes provision for the engagement of a flexible and multi-skilled production workforce which is achieved through ongoing training and skills acquisition, and is reflected in the generic multi-skilled classification structure capable of application to any production work at the Cheltenham plant.

[31] Clause 2.4 of Schedule 1 to the Agreement deals with the subject of redundancy. It relevantly provides:

"**2.4 REDUNDANCY**

2.4.1 Definitions

2.4.1(b) Redundancy occurs where the Company has made a definite decision that the Company no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

2.4.1(d) Transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

2.4.1(e) Week's pay means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

2.4.2 Severance pay

An employee whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

Period of continuous service	**Severance pay**
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*

2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 yeas	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 ears and over	12 weeks' pay

*Week's pay is defined in 2.4.1.

2.4.2(a) Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the Company had proceeded to the employee's normal retirement date.

2.4.2(b) Continuity of service shall be calculated in the manner prescribed by 5.1.5.

2.4.2(c) Application may be made for variation of the severance pay provided for in this clause in a particular redundancy situation in accordance with the *Redundancy Case Decision* [PR032004, 26 March 2004] and the *Redundancy Case Supplementary Decision* [PR062004, 8 June 2004].

. . .

2.4.9 Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the Company may at the Company's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks of notice still owing."

[32] Appendix V to the Agreement is also concerned with the subject of redundancy and it relevantly provides as follows:

"**1. Consultation**

The Company will advise employees and their representatives of any retrenchments according to *clause 32 (Introduction of Major Change*) and Appendix IV (*Redundancy*) provisions of this agreement.

2. Reasons for Retrenchments

Retrenchments may occur for any of the following reasons:

(a) a specific job is no longer required;

(b) the amount of work available to an employee or employees has reduced due to technological and/or mechanical change:

(c) the amount of work available to an employee or employees has reduced due to economic or market conditions;

(d) restructuring of the enterprise, work systems or staffing levels;

(e) no suitable alternative employment can be provided by the Company.

3. Application of Agreement

(a) This agreement does not apply to employees who leave the Company under circumstances of:

(i) Resignation;
(ii) Retirement;
(iii) Dismissal as described in clause 2.4.3(a) of Schedule 1.

(b) This agreement applies to permanent employees of The Laminex Group Cheltenham Plant only. This agreement does not apply to casuals, fixed term contract or employees engaged for a specific period of time or for a specified task or tasks.

. . .

5. Notice Period

(a) 4 weeks notice will be provided to retrenched employees.

(b) Employees over the age of 45 years will be entitled to one additional week notice.

(c) Payment in lieu of notice may be paid at the employer's discretion.

(d) Any employee required by the Company to work out their notice period and who does not work out that notice period will be paid for time worked for the purpose of this clause i.e., not time in lieu).

(e) Should an employee under official notice of redundancy die prior to their nominated date of termination of employment, all benefits of this agreement to which such employee was entitled shall be paid to the estate of the employee.

6. Alternative Employment

(a) Where an employee accepts a position within the Company at a lower rate of pay due to the reasons contained in Clause 2 of this agreement, the Company will either:

(i) maintain the employee's current rate for a period of 12 months; or

(ii) make a *once only* payment in recognition of the reduction in the employee's classification rate of pay to a maximum of eight months difference.

(b) Where an employee is offered alternative employment due to the reasons contained in Clause 2 of this agreement and the alternative position is significantly different from the current position, this agreement can apply.

(c) Where an employee is offered alternative employment at another location due to the reasons contained in Clause 2 of this agreement and the alternative employment location involves relocation of the employee's permanent place of residence, this agreement can apply.

(d) Where an employee is offered alternative employment at another location, and the offer of alternative employment involves travel to a location more than 35 kilometres from the employees current location of employment, then this agreement can apply, subject to the following exceptions:

(i) If the employee chooses to relocate to that new location; or
(ii) If an employee travels no more than their usual distance to the Cheltenham site by the shortest road route from their normal place of residence.

(e) Where an employee has genuine and reasonable grounds based on hardship due to change of location of employment and the employee has explored all reasonable alternatives to enable them to relocate to the new location of employment, then the employee can request that this agreement apply to them and such a request will be dealt with according to the Dispute Settlement Procedure clause in the EBA to which this agreement is attached.

7. Service Related Payments

(a) In addition to other payments prescribed herein, retrenched employees will be paid four weeks pay for each completed year of continuous service for the first five years and three weeks per year for every completed year of continuous service thereafter;

(b) Service related pay is limited to a maximum of 80 weeks.

(c) Service related payments will be calculated at the retrenched employee's ordinary weekly rate of pay including shift allowances but excluding penalty rates applicable at the time of termination of employment.

(d) Employees retrenched with less than 12 months continuous service will qualify for three weeks pay for the purpose of this clause.

8. Sick Leave

Accrued sick leave entitlements shall be paid up to a maximum of 240 hours.

> **9. Selection**
>
> The following criteria will be used to select employees to be retrenched:
>
> (i) Skill requirements of the business;
> (ii) Employee's current skills and competence;
>
> The Company may also determine the selection criteria to be used on a case by case basis.
>
> Volunteers for retrenchment will be considered but the Company reserves the right to accept or reject any voluntary applications on the basis of the above selection criteria.
>
> . . .
>
> **18. Avoidance of Disputes**
>
> During the term of this agreement, the parties agree that there will be no industrial action, such as bans, limitations or stoppages with respect to redundancy and/or the terms of this agreement. If there are any concerns over the interpretation or implementation of this agreement, the parties agree to meet together as a matter of urgency to resolve the issue, with ultimate recourse to Fair Work Australia."

[33] The obvious issue that arises here is how two provisions of the Agreement, each dealing with the subject of redundancy, are to be read in light of clause 6 of the Agreement. On a proper reading of the two provisions there is no direct inconsistency. There are no provisions which directly clash to make impossible compliance with both at the same time. To the extent that there are overlapping obligations in the two provisions, compliance with the greater obligation in one provision will satisfy the lesser obligation in the other. Thus, for example, the payment of a severance payment to an employee having a continuous period of service of two years and less than three years of eight weeks' pay pursuant to clause 7 of Appendix V will satisfy the lesser obligation to pay that employee six weeks' severance pay for which provision is made in clause 2.4.2 of Schedule 1.

[34] Even if, contrary to the view I have earlier expressed, clause 6 of the Agreement is also concerned with indirect inconsistency, I do not consider there to be any inconsistency as between the two provisions. True it is that the provisions both set out in some detail various matters concerning redundancy, and as already noted, some of the provisions are overlapping although the obligations differ. However, Appendix V does not evince an intention to comprehensively cover the subject matter of redundancy so as to leave no room for the operation of any other provision. Importantly Appendix V, which according to clause 6 is the dominant provision *vis-a-vis* the Schedule, plainly calls up Schedule 1 in clause 3. It also does not deal with the trigger for redundancy, that is, an employer's decision to dismiss on redundancy grounds. In short, it is a provision which deals with the entitlement to retrenchment and other payments upon the employee being selected by the employer for dismissal on redundancy grounds. It is not a provision that evinces an intention to cover the field as to the subject matter of redundancy.

[35] In the result, the two provisions must be read together.

[36] Though Appendix V identifies the circumstances in which a retrenchment may occur it says nothing about the connection between a position becoming redundant and a dismissal. On a proper construction, the word "retrenchment" in Appendix V to the Agreement is intended to convey a dismissal on redundancy grounds. This is consistent with the ordinary meaning of "retrenchment". A retrenchment is the act of reducing expenditure on something that is redundant, that is, no longer needed. In the employment context, it is the termination of employment of an employee whose job the employer no longer requires because it is redundant. The answer to that which will constitute a redundancy under the Agreement, which coupled with a dismissal results in an entitlement to retrenchment benefits, is to be found in clause 2.4.1(b) of Schedule 1, the text of which has been earlier reproduced.

[37] Thus, redundancy under the Agreement occurs when Laminex has made a definite decision that it no longer wishes the job an employee has been doing, done by anyone, and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour. There are several elements to this definition. The first concerns the making of a decision that Laminex no longer wishes "the job" the employee has been doing, done by anyone. This requires consideration of what "job" the employee is doing. The second element requires that that decision to no longer require the job to be done by anyone leads to the termination of employment of the employee. Both elements must be present.

[38] Laminex contends that having regard to the wording and meaning of Appendix V of the Agreement, and particularly clauses 2 and 6, the Appendix relates to "*retrenchments*". It contends that it is well established that the word "*retrenchment*" means to "*dismiss*".[39] This is consistent with my analysis earlier that retrenchment means dismissal on redundancy grounds.

[39] Laminex says there have been no dismissals in the instant case. Thus, no retrenchment entitlement arises. It says further there is no underlying redundancy of the employees' positions. In this regard Laminex requires, and wishes to retain, all existing employees including those 10 employees currently allocated to the treating process. These employees are engaged as either Production Employees or Team Leaders under the Agreement and Laminex requires those jobs to be performed. Laminex also requires an additional 9 employees to be employed.

[40] Laminex contends that clause 6 of Appendix V refers to the "alternative position" and the "current position". It says these references are also clear in that there needs to be two different "positions". This is not the case here as the evidence shows that the employees are engaged as Production Employees or Team Leaders, and not as "treaters" as alleged by UV and will continue to be engaged as such.

[41] I accept the first submission concerning the requirement for a dismissal to trigger a retrenchment entitlement under the Agreement as correct. Plainly, the definition of redundancy in clause 2.4.1(b) of Schedule 1 requires the decision to no longer require a job to be performed by anyone to lead to the termination of employment of the employee who was performing the job. As is evident from the material before me, this has not occurred. Moreover, even if the redundancy definition had no work to do, in the instant case, as already

---

[39] See for example *Paul Health v National Australia Bank Ltd t/as National Australia Bank (NAB)* [2014] FWC 3944 [405]; *Construction, Forestry, Mining and Energy Union v Amcor Ltd* (2002) 113 IR 112; *The Queen v Industrial Court (SA); ex parte General Motors-Holden's Ltd* (1983) 35 SASR 161, 187; see also s.556(2) of the *Corporations Act 2001* (Cth)

noted, the meaning of retrenchment in Appendix V connotes dismissal on redundancy grounds. There has been no dismissal of any employee.

[42] I do not however accept the second proposition that the jobs performed by the 10 employees are or will become redundant once the decision to cease treating operations is fully implemented. Respectfully, Laminex confuses the job that is being performed by the relevant employees and the classification under the Agreement attaching to that job.

[43] The word "job" describes a collection of the duties, functions and responsibilities that are entrusted to a person within an organisation. The collection of duties, functions and responsibilities together constitute the job that is performed. It is always open to an employer to rearrange an organisational structure by breaking up a collection of duties, functions and responsibilities that attach to a job and to redistribute them amongst other positions or to create a new position.[40] If after such a reorganisation there are no longer any duties, functions and responsibilities assigned to a job, that job is no longer required by the employer to be performed by anyone.

[44] That is self-evidently the case here. I accept that the employees are multi-skilled and qualified to perform jobs elsewhere at the Cheltenham plant; that from time to time the employees perform such jobs which are within the employees' skillset and these other jobs are encompassed by the Agreement classification that attaches to the jobs currently performed by the employees. However, it does not follow that simply because a multi-skilled classification applies to several jobs undertaken at the Cheltenham plant, that the jobs associated with treating are not or will not by December 2019 be, redundant. The jobs associated with the treating process will, when the change discussed above is fully implemented, no longer be required to be performed by anyone at the Cheltenham plant. This is quintessentially a redundancy. Put another way, the specific jobs associated with the Cheltenham plant's current treating process will no longer be required when the change in production operations at the Cheltenham plant is fully implemented. A retrenchment "may" but need not, occur for that reason as contemplated by clause 2 of Appendix V.

[45] I also do not accept that the reference to "alternative position" is intended to convey a meaning that the position is at a different classification entirely from that of Production Employees or Team Leaders as the case requires. In my view, the current position in the business that each of the 10 employees occupy is the collection of duties attaching to the job they perform which is principally in the treating process at the Cheltenham plant.

[46] Nonetheless, this fact alone does not give rise to a retrenchment entitlement because there has not been nor will there be a dismissal as, contrary to the requirements of clause 2 of Appendix V, Laminex is able to provide suitable alternative employment. I consider that the allocation of 10 affected employees to positions in the pressing process at the Cheltenham plant is alternative employment for the purposes of clauses 2 and 6 of Appendix V of the Agreement. I am satisfied on the evidence that the positions in pressing are not significantly different to the positions in treating, which by reason of Laminex's decision, will become redundant.

[47] Amongst other things, the terms and conditions of employment will remain the same. The affected employees will remain engaged and classified as either Production Employees or

---

[40] *Jones v Department of Energy and Minerals* (1995) 60 IR 304 at [308]

Team Leaders as appropriate and they will continue to receive the same remuneration. The employees will continue to work at the same location. Many of the affected employees have already worked on the pressing process and possess the required level of skill. To the extent that upskilling is required this can, according to Laminex, be achieved in no more than three months.[41]

[48] Additionally, the duties are substantially similar to the duties currently performed by the 10 employees.[42]

[49] I do not accept UV's contention that the roles are "significantly different" including because the employees are specifically engaged as "treaters", the skills required are different and there are different standard operating procedures that apply to different processes. Fundamentally, under the Agreement, Production Employees are multi-skilled and should have the capacity with further training to undertake the positions in the pressing process. The significant differences asserted are frankly overstated and not supported by any cogent evidence.

[50] I also do not accept UV's contention that the period of further training required to enable some employees to acquire the skills necessary to perform the positions is unreasonable. Firstly, because UV did not advance any evidence from which it could be objectively ascertained that the estimated maximum duration of retraining was unreasonable. Secondly, it is evident that Laminex wishes to provide the training necessary and is prepared during the training period to effectively continue to employ persons from whom it cannot obtain full productivity.

[51] To the extent that UV relies upon an assertion that there is an inability of some of the affected employees to perform a position in pressing duties because of a medical condition or on occupational health and safety grounds as a reason why the positions in the pressing role are not "alternative employment", it advanced no cogent evidence save for the vaguest of generalised hearsay evidence contained in the statement of Kyriacos Christodoulou[43] to support its contention. Thus, even if the contention were relevant[44] it is not made out on the evidence and so must be rejected.

[52] Accordingly, there is no retrenchment pursuant to clauses 2 and 6 of Appendix V of the Agreement nor is there a redundancy within the meaning of clause 2.4.1 of the Agreement. This is because there is not nor will there be a dismissal. Suitable alternative employment can and is being provided by Laminex and therefore no retrenchment or severance pay entitlement arises.

[53] For the reasons stated, there is no, nor will there be a retrenchment in respect of the 10 affected employees working in the treating process by reason of Laminex's decision to cease the treating process currently undertaken at its Cheltenham plant. Moreover, there is no obligation on Laminex under the Agreement to offer voluntary retrenchments to employees

---

[41] Exhibit 15 at [22]

[42] Ibid at [23]

[43] Exhibit 1

[44] See *Szanto v ISS Facility Services Pty Ltd* [2013] FWC 3270; *Smith v Onesteel Ltd* [2013] NSWDC 18; *Von Bibra Robina Autovillage Pty Ltd* [2007] AIRC 397 as to the question whether such considerations are relevant in assessing whether an alternative position is acceptable alternative employment

who do not wish to take up positions in the pressing process. The dispute is determined accordingly. The application is dismissed.

DEPUTY PRESIDENT

Appearances:

D Robson for the Applicant.
S Pill with *M Condello* for the Respondent.

Hearing details:

2019.
Melbourne:
May 31.

Written submissions:

Applicant, 26 April and 21 May 2019.
Respondent, 14 May 2019.

Printed by authority of the Commonwealth Government Printer

<PR709319>