DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Taleece Ajarne Paki
v
Howley Group Pty Ltd
(U2022/11709)

DEPUTY PRESIDENT BOYCE | SYDNEY, 24 FEBRUARY 2022

Application for an unfair dismissal remedy - whether dismissal was a case of genuine redundancy - job no longer required to be performed by anyone - redundancy a result of changes in operational requirements – s.389(1)(a) of the Fair Work Act 2009 satisfied - no requirement to consult under modern award as only singular redundancy and not "major change" - s.389(1)(b) of the Fair Work Act 2009 not applicable – reasonable redeployment options offered to the redundant employee rejected - s.389(2) of the Fair Work Act 2009 satisfied – employer objection concerning genuine redundancy upheld – application dismissed.

Introduction

[1] Ms Taleece Ajarne Paki (**Applicant**) has filed a Form F2 with the Fair Work Commission (**Commission**), being an application for an unfair dismissal remedy (**Application**). By way of that Application, the Applicant asserts that her dismissal by the Howley Group Pty Ltd (**Respondent**) was "unfair" within the meaning of Part 3-2 of the *Fair Work Act 2009* (**Act**).

[2] The Respondent says that the Applicant's dismissal was a case of "genuine redundancy" within the meaning of s.389 of the Act, and otherwise denies that the dismissal was unfair.

[3] Following the receipt of submissions and evidence in accordance with directions made, I held a hearing to resolve the Respondent's genuine redundancy objection.

[4] At the hearing, the Applicant was represented by her father, Mr *Reihana Paki*. Mr *Ferris Howley*, Director of the Respondent, appeared for the Respondent.

[5] Having regard to the evidence tendered, and the submissions of the parties, I have determined that the Applicant's dismissal was a case of "genuine redundancy" within the meaning of s.389 of the Act. My reasons for this decision follow.

Relevant law

[6] Section 385 of the Act qualifies a claim for unfair dismissal:

> **“385 What is an unfair dismissal**
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> A person has been unfairly dismissed if the FWC is satisfied that:
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> (a) the person has been dismissed; and
>
> (b) the dismissal was harsh, unjust or unreasonable; and
>
> (c) the dismissal was not consistent with the Small Business Fair Dismissal Code; and
>
> (d) the dismissal was not a case of genuine redundancy.
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> Note: For the definition of consistent with the Small Business Fair Dismissal Code: see section 388.”

[7] Before the Commission can consider issues of harshness, etc, s.396(d) of the Act requires that the Commission decide whether the dismissal was a case of genuine redundancy:

> **“396 Initial matters to be considered before merits**
>
> The FWC must decide the following matters relating to an application for an order under Division 4 before considering the merits of the application:
>
> (a) whether the application was made within the period required in subsection 394(2);
>
> (b) whether the person was protected from unfair dismissal;
>
> (c) whether the dismissal was consistent with the Small Business Fair Dismissal Code;
>
> (d) whether the dismissal was a case of genuine redundancy.”

[8] Section 389 provides the statutory definition as to what qualifies as a genuine redundancy:

> **“389 Meaning of genuine redundancy**
>
> (1) A person’s dismissal was a case of genuine redundancy if:

(a) the person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise; and

(b) the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

(2) A person's dismissal was not a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within:

(a) the employer's enterprise; or

(b) the enterprise of an associated entity of the employer".

[9] In view of s.389 of the Act, there are three questions that need to be answered:

(a) Was the Applicant's job no longer required to be performed by anyone because of changes in the operational requirements of the Respondent's enterprise?

(b) Did the Respondent comply with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy?

(c) Would it have been reasonable in all the circumstances for the Applicant to have been redeployed within the Respondent's enterprise, or an associated entity of the Respondent?

Was the Applicant's job no longer required to be performed by anyone because of changes in the operational requirements of the Respondent's enterprise? (s.389(1)(a))

[10] Sub-section 389(1)(a) of the Act provides that a person's dismissal is a case of genuine redundancy if the person's employer no longer requires the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise. These words have long been used and applied in industrial tribunals and courts as a practical definition of redundancy.[1]

[11] The *Explanatory Memorandum to the Fair Work Bill 2008* provides examples as to when a dismissal will be a case of genuine redundancy:

"1547. Paragraph 389(1)(a) provides that a person's dismissal will be a case of genuine redundancy if his or her job was no longer required to be performed by anyone because of changes in the operational requirements of the employer's enterprise. Enterprise is defined in clause 12 to mean a business, activity, project or undertaking.

1548. The following are possible examples of a change in the operational requirements of an enterprise:

- a machine is now available to do the job performed by the employee;

- the employer's business is experiencing a downturn and therefore the employer only needs three people to do a particular task or duty instead of five; or

- the employer is restructuring their business to improve efficiency and the tasks done by a particular employee are distributed between several other employees and therefore the person's job no longer exists".

[12] The basis upon which "operational requirements" can be said to give rise to change is extremely broad. A change in operational requirements does not only arise where a business has excess labour, is running over budget, unprofitable, losing customers, or down on revenue/s. As Lee J stated in *Nettlefold v Kym Smoker Pty Ltd*[2] (**Nettlefold**), the phrase "operational requirements" encompasses change arising from both internal and external factors, including via the consideration of matters (over the short, medium and/or longer terms) such as "the past and present performance of the [business], the state of the market in which [the business] operates, steps that may be taken to improve the efficiency of the [business] by installing new processes, equipment or skills, or by arranging for labour to be used more productively, and the application of good management to the undertaking".[3] Indeed, changes to operational requirements might arise because an efficient and/or profitable business proposes or desires to become even more efficient and/or profitable.

[13] It equally follows that modifications to a business that might be said to be required or necessary, because of changes to operational requirements, are extremely varied and broad. In other words, the nature and extent of any modifications to a business flowing from changes in its operational requirements are essentially matters of managerial discretion. Such discretion might be exercised to make changes that are, in the opinion of the relevant decision-maker, required or necessary. The fact that others, for example, an employee, customer, shareholder, or stakeholder affected by a decision, or an unaffected member of the public, might consider a particular decision to be bad, or wrong, or consider that another alternative and better (or more appropriate) decision ought to have been made, is not to the point. Persons in managerial roles (in the for-profit, or not-for-profit, sectors) are tasked with the responsibility to make decisions in respect of how a business is run to achieve stability and/or growth over the short, medium and/or longer terms. It is certainly not the role of the Commission to stymie or interfere with operational decisions made on a bona fide basis within the extremely broad bounds of managerial discretion. As was stated by Vice President Hatcher in *Low v Menzies Group of Companies*[4]:

> "It is not the function of the Commission, in determining whether a dismissal is a case of genuine redundancy, to form a view about the merits of the decision to make a position redundant. Whether it was objectively fair or justifiable to decide to abolish a position is beside the point, as long as the employer acted as it did because of changes in its operational requirements."[5]

[14] It has been held that a job involves "a collection of functions, duties and responsibilities entrusted, as part of the scheme of the employer's organisation, to a particular employee". Relevantly, the test is not whether the person's *duties* or *responsibilities* (or some of them) survive or remain. Rather, the test is whether the whole of the *job* previously performed by an employee (unmodified) still exists.[6] Focus is to be placed upon the *job*, not the duties involved in that *job,* or the individual performing that *job* (or a new/modified job). Importantly, as broadly stated in *Dibb v Commissioner of Taxation*[7], an employee may still be genuinely made redundant when there are aspects of the employee's duties still being performed by another employee, or other employees.[8]

[15] The Respondent operates Pandora jewellery retail stores.

[16] The Applicant was employed by the Respondent (commencing 22 March 2022) in the 'new' full time (Tuesday to Saturday) role of Sales Training Officer (**STO role**) pursuant to an employment contract between the parties dated 8 March 2022 (**Employment Contract**). There was no challenge to the validity of the Employment Contract or any of its express terms by any party to these proceedings. Importantly, the Employment Contract applies to the Applicant's employment with the Respondent irrespective of any change to her location, duties, position or reporting lines.[9]

[17] Under the Employment Contract, the location of the STO role is "field based", provided that the Applicant may be directed to perform duties at other locations after consultation.[10] Travel is an inherent requirement of the STO role.[11]

[18] The duties of the STO role encompass organising staff inductions, meeting with new hires, transitioning new employees into sales roles, and working with Sales Managers instore to facilitate requisite sales training.[12] Under the Employment Contract, the Applicant's duties may be amended by the Respondent from time to time.[13]

[19] The Applicant was the only employee employed by the Respondent in a STO role.

[20] The Applicant submits (in summary) that despite her dismissal for reasons of redundancy (by way of letter of termination dated 30 November 2022), her role was still required to be done in that sales training across all stores for new and existing sales employees still needed to occur.[14]

[21] The Respondent does not dispute that sales training across its stores still needs to be done, however, says that it no longer required such sales training to be performed by a standalone role. In other words, such sales training can be facilitated or undertaken by instore management or other instore sales staff, saving the overall business the costs associated with the STO role. The Respondent's evidence discloses that whilst in the first half of 2022 the Respondent undertook a mass recruitment drive to fill gaps that arose from positions vacated during the COVID-19 pandemic and related lockdowns, the last quarter of 2022 saw a reduction in sales and customer numbers, driven by rising interest rates, price hikes and inflation, causing the Respondent to determine that it would not require new or additional staff (beyond ordinary labour turnover) to be employed into the foreseeable future.

[22] In response, the Applicant submits that the Respondent would clearly require the STO role to continue in that there would be a "massive intake of new casual staff members" during the Christmas (December 2022) and Mother's Day (May 2023) periods.[15]

[23] In my view, it is beyond argument that the Respondent's determination, that it no longer required a standalone STO role in its business, was based upon a genuine change in its operational requirements (in the *Nettlefold* sense).[16] Again, the fact that the Applicant might consider the Respondent's decision to abolish the STO role to be bad, or wrong, or consider that another alternative and better (or more appropriate) decision ought to have been made (because training is still required), is not to the point. It is the Respondent's business, and the Respondent is thus the one to decide what operational changes it wishes to make.

[24] All in all, I find that the evidence discloses that the Respondent had genuine operational reasons to make changes to its business, and that such changes (as determined on a *bona fide* basis by the Respondent) resulted in the Applicant's job in the STO role no longer being required to be performed by anyone. I thus find that the Respondent satisfies s.389(1)(a) of the Act.

Did the Respondent comply with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy? (s.389(1)(b))

[25] The Applicant made extensive and detailed submissions asserting a failure by the Respondent to consult with her (or consult with her appropriately) in respect of its decision to make the STO role redundant.[17]

[26] The statutory requirement under s.389(1)(b) requires a finding of fact, whereby the section "is not made out unless the various requirements of the relevant consultation clause are demonstrably discharged by the employer".[18]

[27] The parties accept that the Applicant was covered by the *Clerks - Private Sector Award 2010* (**Award**).

[28] Clause 38 of the Award relevantly requires consultation after an employer "makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees". The phrase "significant effects" is relevantly defined to include "termination of employment".

[29] The consultation requirements under clause 38 of the Award are conditional upon the relevant change being a "major" one that is likely to have "significant effects on employees". Determination of whether a change falls within this definition appears to be one of fact and degree. As White J said in *Port Kembla Coal Terminal Ltd v CFMMEU*[19]:

> "I do not regard a simple comparison between the number of employees to be terminated, and the number of the employees in its workforce overall … as being necessarily conclusive of the question of whether a change is "major". Much may depend on the

circumstances of a given case including, for example, the seniority and importance of the employees…, the extent to which… employees work in an integrated or disconnected manner; the consequences for the continuing employees of the redundancies and consequent terminations, as well as other matters”.[20]

[30] It has been said that reference to the plural “employees” rather than “employee” in similarly worded clauses does not capture individual redundancies on the basis that individual redundancies do not constitute a “major change” to the Respondent’s operations that impact upon a collective of employees.[21]

[31] In this case, there was only one redundancy, i.e. the Applicant’s STO role.

[32] Mr Paki (relevantly) made the following oral submissions at the hearing as to whether the redundancy of the Applicant was a major change having significant effects upon employees:

> “We can only say that Taleece's role was a fundamental connection between head office and the stores to support staff with new product information, sales statistics and training in this role and any operational changes that would necessitate making this role redundant required systems, tools and other individuals to take parts of the role in order to replace Taleece. This, logically, either requires, (a), a period of lead time to implement these operational changes that limits risk and increases the probability of success or, (b), no change in the process at all and let the chaos work itself out.”[22]
>
> …
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> “Second, case law points to a single redundancy as insufficient to trigger consultation, so, Deputy President, thank you for pointing that out. This cannot be considered the sole indicator of major workplace change. In *Khoury v Vaughan*, it's clear the applicant did not work in an area critical to the business. In contrast, Taleece's role was exclusively connected to supporting retail staff in stores, clearly the most important people in any retail business.
>
> This was not only a major workplace change that ended Taleece's employment; there was also a change in the way training and sales support was provided in stores on an ongoing basis. This may have only been one redundancy, but the operational changes will have implications for every employee of the business, whether the respondent chooses to acknowledge them or not, for example, how and when new product training would be completed by sales staff, and not, incidentally, on whose time that training is likely to be conducted, the compilation and sharing of store and sales statistics and what that means for ongoing training and support of people in-store, the coordinating of larger groups of people about the additional requirements they will have to take on once Taleece had been or would be dismissed and, finally, training and support of staff on new computer systems that would replace elements of Taleece's role.
>
> Just because it is only one redundancy does not indicate in this case the ongoing impact those changes will have. It's only reasonable to expect that this sort of change should

> have required consultation, communication and ongoing management across the business in stores, in head office and also with Taleece directly. Only, in this case, it was withheld from her."[23]

[33] Mr *Paki's* submissions, whilst no doubt well-articulated, are unsupported by relevant evidence as to the specific impacts upon other staff in the business of the removal of the STO role. The Applicant chose not to cross-examine Mr *Howley* on this topic.

[34] The Applicant's role was a new role in the Respondent's business, and at the time of the Applicant's dismissal, had only been in existence in the business for around seven months. There is no suggestion that the Respondent's business was unable to cope, in terms of the provision of training to its staff, prior to the commencement of the STO role. Nor is there any evidence that the arrangements put in place (or to be put in place) post the removal of the STO role from the business, would impact upon staff (i.e. beyond the instore management tasked with facilitating or undertaking such training).

[35] In my view, on the evidence, and even by way of strained inference, the effect of the STO role being made redundant (and removed from the business) is, in all the circumstances of this case, not a major change, i.e. other staff may have to pick up sales training functions, but this can hardly be said to be a seismic shift in their day-to-day priorities, functions, duties or responsibilities. Further, there is no evidence before me that the reallocation, or the picking up, of sales training functions by other relevant employees in the Respondent's business is likely to have any, or any significant impact, upon such other employees collectively. In other words, even if the redundancy of the STO role is not a minor change, it is equally not a major change.

[36] I do not accept, on the evidence before me, in the circumstances of this case, that s.389(1)(b) of the Act is enlivened for consideration in these proceedings. In this regard, I find that, on the terms of clause 38 of the Award, by reference to the case law set out in this decision:

a) the redundancy of the STO role in the Respondent's business:

   - was not a "major change";
   - did not have "significant effects" upon the Respondent's remaining employees on a collective basis; and

b) the Respondent has satisfied its Award obligations as to consultation concerning the Applicant's redundancy in that no Award consultations obligations arise for determination in these proceedings.

[37] In her evidence and submissions, the Applicant has sought to intermingle (or mix together) issues going to s.389(1)(b) of the Act, with issues under s.389(2) of the Act.[24] I have previously pointed out the difficulty with such an approach:

> "… an inadequate consultation process does not automatically lead to a finding or conclusion that s.389(2) of the Act cannot be satisfied. Sections 389(1)(b) and 389(2)

are separate and individual limbs. Different issues arise in respect of relevant findings to be made as to compliance or non-compliance with each limb. Whilst non-compliance with one limb gives rise to a redundancy not being genuine under s.389 of the Act, it will not always (or even usually) be the case that a failure to consult will mean that redeployment would have been reasonable. Indeed, in many cases, no matter how much consultation could or should have occurred, there was never a reasonable basis for redeployment."[25]

Would it have been reasonable in all the circumstances for the Applicant to have been redeployed within the Respondent's enterprise? (s.389(2))

[38] Sub-section 389(2) of the Act provides that a person's dismissal cannot be a case of genuine redundancy if it would have been reasonable in all of the circumstances for the person to have been redeployed within the employer's enterprise, or an associated entity of the employer. The Respondent in this matter does not have any associated entities.

[39] The highest binding interpretation of s.389(2) remains that stated in *Ulan Coal Mines Limited v A. Honeysett & Ors*[26] (***Honeysett***):

> "[26] [Subsection 389(2)] must be seen in its full context. It only applies when there has been a dismissal. An employee seeking a remedy for unfair dismissal cannot succeed if the dismissal was a genuine redundancy. In other words, if the dismissal is a case of genuine redundancy the employer has a complete defence to the application. Section 389(2) places a limitation on the employer's capacity to mount such a defence. The defence is not available if it would have been reasonable to redeploy the employee. The exclusion poses a hypothetical question which must be answered by reference to all of the relevant circumstances.
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> …
>
> [28] … [T]he question posed by s.389(2), whether redeployment would have been reasonable, is to be applied at the time of the dismissal. If an employee dismissed for redundancy obtains employment within an associated entity of the employer sometime after the termination, that fact may be relevant in deciding whether redeployment would have been reasonable. But it is not determinative. The question remains whether redeployment within the employer's enterprise or the enterprise of an associated entity would have been reasonable at the time of dismissal. In answering that question a number of matters are capable of being relevant. They include the nature of any available position, the qualifications required to perform the job, the employee's skills, qualifications and experience, the location of the job in relation to the employee's residence and the remuneration which is offered".
>
> (emphasis added)

[40] It can been seen from the foregoing extract from *Honeysett*, that the reasonableness of redeployment for the purposes of s 389(2) of the Act is to be assessed as at the time of the

relevant dismissal.[27] Further, in assessing the reasonableness of redeployment, it is necessary to identify the position or other work to which the employee could have been redeployed,[28] and determine whether that position or other work is, for want of a better term 'the right fit' (or reasonable) for both the employer and the employee. Relevantly, s.389(2) of the Act does not:

a) interfere with the right or ability of an employer (such as the Respondent in this case) to require that the selection criteria (as to skills, qualifications or experience) for a relevant vacant position be met by an employee seeking to be redeployed;

b) require an employer to fit a square peg into a round hole. In other words, simply because a vacant position exists at the time of an employee's dismissal (redundancy), does not mean that an employer is required to bend, twist, ignore, delete, water down or otherwise amend selection criteria to so as to enable the redeployment (of such redundant employee) to occur; or

c) create an obligation upon an employer to redeploy an employee into a role that the employer does not accept is suitable (i.e. because the employee does not hold the requisite skills, qualifications and/or experience that the employer requires). Indeed, such an obligation could hardly be said to be reasonable.

[41] The conclusion of the Full Bench in *Teterin v Resource Pacific Pty Ltd t/a Ravensworth Underground Mine*[29], as to the interaction between s.389(2) and s.385(d) of the Act, are also worth drawing attention to, as follows:

> "The manner in which the Deputy President expressed his conclusions may be justified by reference to s.385(d), which requires that for a person to have been unfairly dismissed, the Commission must be satisfied that the dismissal was *not* a case of genuine redundancy. It must follow that the applicant in an unfair dismissal case bears the risk of failure if the state of satisfaction required by s.385(d) cannot be reached. If the Deputy President considered the evidence insufficient to allow him to determine whether redeployment was reasonable under s.389(2), then (there being no issue with respect to the s.389(1) matters) he could not be satisfied that the dismissals were not genuine redundancies, meaning that the applications before him had to be dismissed."[30]

[42] Similarly, in *Jain v Infosys Ltd*[31], the Full Bench said:

> "… in the context of the question whether a dismissal was an unfair dismissal in which there is also agitated whether the dismissal was a case of genuine redundancy, to the extent that there is a legal onus of proof or something analogous thereto, it rests with the applicant in the sense that the applicant bears the risk of failure if the satisfaction required by s.385 including paragraph (d) is not reached."[32]

[43] The evidence before me is that:

a) at the time of the Applicant's dismissal, the Respondent only had available (for redeployment) sales roles (noting that Mr *Howley* pointed out that the only field-based roles in stores within the Respondent's business are "sales" roles);[33] and

b) the Applicant was offered three different sales roles to redeploy into within the Respondent's business or overall enterprise, namely:

   i. Full time Assistant Manager, Warringah Mall store;

   ii. Acting Sales Manager (Maternity leave relief), Merrylands store; and

   iii. Casual Sales Assistant, Merrylands store.

[44] The Applicant declined the role at the Warringah Mall store because of travel time. She declined the casual role as it was not full time, and she declined the Acting Sales Manager role because it was a temporary maternity leave cover position. The Applicant's overarching position as to redeployment was that she was not interested in taking up a retail sales role (which each of the three roles offered to her were).[34]

[45] At the hearing, the Applicant was unable to identify any specific role or roles that, at the time of her dismissal, were available (vacant) for her redeployment (i.e. beyond the three roles that were already being offered to her by the Respondent that she had already rejected).[35] In my view, this is fatal to the Applicant's contention that the Respondent has failed to comply with s.389(2) of the Act. In other words:

a) How can the Commission assess whether or not it would have "been reasonable in all the circumstances for [an employee] to be redeployed" into another role at an employer's enterprise (at the time of his/her dismissal) when the employee has not identified exactly what the relevant role (or asserted lost opportunity) was? And

b) How can an employer be held to a redeployment requirement or standard when the relevant employee pressing for such a requirement or standard to be observed has not identified the role to which such requirement or standard applies?

[46] The short answer to both of the foregoing questions is that it is not for the Commission to speculate or infer as to redeployment options. Nor is it up to an employer to 'shadow box' in their evidence or submissions about such matters. A vacant position, at the time of an employee's redundancy, that would have been reasonable in all the circumstances (objectively considered) for redeployment into, either exists or it does not, and its existence is a matter for evidence. In this case there is simply no evidence, let alone a suggestion, that there was a vacant role (beyond the three roles that were already offered to, and rejected by, the Applicant) available (at the time of the Applicant's dismissal) for the Applicant to be redeployed into.

[47] In view of my findings set out in paragraphs [43] to [46] of this decision, I find that the Respondent has satisfied s.389(2) of the Act.

Summary of findings

[48] Having regard to the evidence and submissions of the parties, I have made the following findings:

(a) As at the time that the Respondent made the decision to make the Applicant's STO role redundant, this job was genuinely no longer required to be performed by anyone because of changes in the operational requirements of the Respondent's enterprise (s.389(1)(a) of the Act).

(b) The Respondent has satisfied its obligations as to consultation under the Award in that no Award consultations obligations arise for determination in these proceedings (s.389(1)(b) of the Act).

(c) There were suitable positions at the Respondent that the Applicant could have reasonably (in all the circumstances) been redeployed into at or about the time of her dismissal, which were offered to the Applicant, but she chose to reject such redeployment options. The Applicant's rejection of such suitable and reasonable redeployment options, as offered to her by the Respondent, results in the Respondent having complied with the requirements of s.389(2) of the Act.

Conclusion

[49] The Respondent has made good its case as to genuine redundancy. Accordingly, the Applicant's dismissal is not one which the Commission has the power to interfere with under the Act. Her Application is therefore *dismissed*. An order to this effect will follow the publication of this decision.

DEPUTY PRESIDENT

Appearances:

Mr Reihana Paki appeared for the Applicant.

Mr Ferris Howley, Director, appeared for the Respondent.

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[1] *Ulan Coal Mines Limited v Henry Jon Howarth & Ors* [2010] FWAFB 3488, at [15] (Boulton J, Drake SDP, and McKenna C), citing *R v Industrial Commission of South Australia; Ex parte Adelaide Milk Supply Cooperative Limited* (1977) 16 SASR 6; *Termination, Change and Redundancy Cases* (1984) 8 IR 34 and (1984) 9 IR 115; *Short v F.W. Hercus Pty Limited* (1993) 40 FCR 511.

[2] (1996) 69 IR 370.

[3] Ibid, at 373.

[4] [2014] FWC 7829.

[5] Ibid, at [16]. Cited with approval in *Adams v Blamey Community Group* [2016] FWCFB 7202, at [14].

[6] *Kekeris v A. Hartrodt Australia Pty Ltd* [2010] FWA 674, at [27].

[7] [2004] FCAFC; (2004) 136 FCR 388.

[8] Ibid, at [43]-[44].

[9] Employment Contract, clauses 2.5 and 2.6.

[10] Employment Contract, clause 2.4.

[11] Ibid.

[12] Transcript, PN92.

[13] Employment Contract, clause 5.

[14] See Applicant's written submissions, pp.3-5, Item 1 "Genuine Redundancy".

[15] See Transcript, PN90-PN91.

[16] Note Transcript, PN96-PN99 and PN107.

[17] See Applicant's written submissions, pp.6-8, Item 2 "Consultation" and pp.9-10, dot points 3 to 6.

[18] *Maxwell v Bardrill Corporation Ltd* [2015] FWC 4019, at [40]-[41].

[19] (2016) 248 FCR 18; [2016] FCAFC 99.

[20] Ibid at [499].

[21] *Tsiftelidis v Crown Melbourne Limited* [2016] FWCFB 4675, at [33].

[22] Transcript, PN18.

[23] Transcript, PN34-PN36. Mr Paki's reference to the case of *Khoury v Vaughan* is a reference to the case of *Darlene Khoury v Vaughan Constructions Pty Ltd* [2021] FWC 339.

[24] Transcript, PN77-PN81.

[25] *Peter Davison v DHL Supply Chain (Australia) Pty Ltd* [2021] FWC 4573, at [48].

[26] [2010] FWAFB 3488; (2010) 199 IR 363.

[27] See also *Technical and Further Education Commission v Pykett* [2014] FWCFB 714 (2014) 240 IR 130, at [35].

[28] Ibid, at [34], [36], [38]–[40].

[29] [2014] FWCFB 4125; (2014) 244 IR 252.

[30] Ibid, at [31(2)]. See also at [26].

[31] [2014] FWCFB 5595.

[32] Ibid, at [35].

[33] Transcript, PN100 and PN121.

[34] Transcript, PN113-PN115.

[35] Transcript, PN77-PN81.