

Legislation on Redundancy?

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Members of the Industrial Relations Society will know that submissions were last year presented on its behalf to the Parliamentary Committee considering the Labour Government's Severance and Re-employment Bill. Those submissions appeared to be well received and therefore the Hon. J. B. Gordon, the present Minister of Labour and a member of the Committee, had no hesitation in accepting an invitation to address the society on the question of redundancy. This he did in Auckland on 11 May of this year in a prepared address, subsequently answering questions and taking part in what was at times a spirited discussion from the floor.

The Minister began by making it clear that the proposals for the National Government's legislation on redundancy which he intended outlining were tentative only, though based on Cabinet discussion. He further invited comment and suggestions as to the form that such legislation should take. By way of comment, it may be noted that neither the Labour nor the National Government appear to have publicly considered whether **any** legislation was desirable or whether, on the other hand, other more informal measures for dealing with the problem could be explored. There had of course in the past year or two been increasing negotiation of redundancy deals in many industries. These had however not necessarily been welcomed by either Government, in their mutual concern to control increases in remuneration. Consequently, a few weeks before the Minister's address, the present Government had in fact extended its wage controls to cover the quantum of redundancy benefits agreed between employers and unions. (See Amendment No. 8 to the Wage Adjustment Regulations 1974).

That the Government did not entirely favour bargaining over redundancy was emphasised by Mr Gordon when he said that this had led to employers in the private sector "being picked off deliberately by some unions." The Government was also concerned, he said, at the inclusion in a recent collective instrument in the building industry of both severance pay and a completion payment, to be made to tradesmen who commenced a job at its inception and saw it through to completion.

Additionally, again in the building industry, agreement to allow tradesmen to "cash-in" accumulated sick pay and the ability to carry this right from one employer to another were thought to compound the problem.

The Minister thereafter sought to provide three basic definitions which he said would be required in any new legislation. These were:

- (1) **Redundancy** — would cover permanent workers on long-term employment.
- (2) **Severance pay** — applicable basically to workers whose employment would be terminated when a particular job or site work had been completed.
- (3) **Completion pay** — payable to a man who accepts responsibility for finding replacement employment but who serves right through the job, not abandoning it in the last stages.

So far so good. However, Mr Gordon then outlined tentative legislative definitions of redundancy and severance which did not appear to accord fully with his concepts described above. **Redundancy**, he said, "is where an employee who has achieved or worked continuously and/or permanently for 104 weeks for the same employer or agency is superfluous to the

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needs of that employer and he cannot find a job of equal remuneration and no less job satisfaction." Severance, on the other hand, could come about by mutual consent, by dismissal for cause, by unilateral termination on either side, by operation of law or by performance.

Even lawyers in his audience found these concepts puzzling but Mr Gordon then compounded the confusion when he then said:

"Where the employer terminates the contract of employment because the employee's position has become superfluous, severance is caused by redundancy."

But surely, some were seen to be murmuring, that's where we started?

Mr Gordon, however, then turned to more solid ground by posing the question as to where responsibility for payment of compensation should rest — with the employer or with the State (or taxpayer)? If, he said, the cause of redundancy was bad management in a firm, then liability should fall on that firm. If, on the other hand, "extraordinary circumstances, economic or otherwise, that may possibly be the dictate of government fiscal policy, or indeed brought about by government action cutting across employment within a specific firm" were the cause, then, said the Minister, "there is logic for the argument that the government should have **some** responsibility." "All the responsibility?" some were heard to wonder.

Mr Gordon then turned to the Labour Bill, still before the House and suggested that the present Government might extend the functions of the proposed Retraining and Re-employment Board to include dealing with specific cases of redundancy as they arise. Specifically, if a skilled person made redundant could be found another job before his holiday pay ran out, then he would not receive redundancy pay. If, however, he could not be found a job then he would for a period receive normal unemployment benefit made up by redundancy pay to his previous wage. Some indication of the "period" envisaged was then given when the Minister referred to the recent restriction of a week for every year of employment contained in the Wage Adjustment Regulations.

It was thought that disputed cases should go to a special tribunal rather than

to the Industrial Court. The composition of the Board was also spelled out. It would probably have two trade unionists on it (total membership — five), Mr Gordon said. He then considered the all-important question of funding:

"Dare one suggest that a simple way out could be to make it a tripartite paying agreement with the worker, the employer and the Government paying a third each?"

This solution he thought, however, not to be acceptable in many quarters. No further suggestions or alternatives were forthcoming, though mention was made of the fact that employers had agreed with the Labour Government to pay 0.025% of all wages as a levy for re-training and re-employment.

The Minister concluded his address by considering a number of miscellaneous and consequential matters — qualifying periods (2 years in case of redundancy, something shorter with severance), seasonal work (non-qualifying), offers of alternative employment, levels of compensation, redundancy in the State Services, the unsatisfactory features of wage and redundancy pay fixing by government regulatory process.

Finally, there came an appeal to all to help the Government by making "a worthwhile contribution to try and find the right answer for the future of the workforce of New Zealand."

What insights did the Minister give? He certainly provided a good guide, as he said he would, to the Government's thinking on the legislation it wishes to see enacted later this year. As to the basic concepts of redundancy, severance et al., however, we must await the exercise of the legislative draftsmen's pen before we can know for sure whether or not clear thinking has been taking place at those Cabinet meetings. ©