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RESEARCH NOTES

Recent Redundancy Agreements : a Content Analysis

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Introduction

The on-going saga of the G.N. Hale redundancy dispute appears now to have run its course. From grievance committee, to the Labour Court, to the Court of Appeal, and back to the Labour Court, the case has attracted considerable attention - from the media and naturally from industrial relations practitioners, eager to learn the view of the New Zealand court system on the vexed matter of redundancy compensation. In the most recent Labour Court decision on Hale (WLC89/90), Goddard C J held that while the employer was able to prove that the worker was genuinely made redundant, the dismissal was unjustifiable because "the circumstances called for the payment of compensation; none was paid; and the amount that was offered and refused was fixed by unilateral decision of the employer and was inadequate". The effect of this decision is profound. Employers planning to make employees redundant have a new set of requirements to meet before their actions can be taken as justifiable. While it will remain the case that there is no right to compensation for a dismissal on the grounds of redundancy unless that right is conferred by a redundancy agreement or by an award or collective agreement, there may still be a right to compensation if the dismissal, although genuinely on the grounds of redundancy, is unjustifiable and thereby gives rise to a successful personal grievance. An employer will now need to focus on the circumstances of the redundancy to determine whether it calls for compensation and where it does, the employer will need to offer, and have accepted, compensation that is both adequate and negotiated.

In determining what might be considered *adequate*, it is useful to review what has already been *negotiated* by other employers and unions. Section 184 of the Labour Relations Act 1987 provided for the registration by the Arbitration Commission of redundancy agreements. This research note reports the content of recent redundancy agreements. The research focused on recent agreements - settlements registered in the 12 months from 1 July 1990. In all 223 private sector settlements were examined. This analysis excluded public sector settlements, as these followed a pattern negotiated centrally between the New Zealand

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Public Service Association and the State Services Commission (SSC) as part of the 1988/89 wage round. A reduction in the terms of these redundancy settlements has been on the bargaining agenda of the SSC for the last two wage rounds, and some public sector settlements have experienced reductions. Nevertheless redundancy agreements in the public sector have evolved from a highly centralised pattern and for this reason have been excluded from this research exercise. An analysis of the content of the private sector agreements is as follows.

Industrial classification

Each redundancy agreement has had a two digit NZISC industry classification applied to it. This has enabled the distribution of settlements across industries to be recorded. The results are in Table 1. As would be expected, redundancy agreements negotiated in the manufacturing sector dominate the data.

Table 1. Number of registered redundancy agreements by industry

Industry	Frequency	Percent
Agriculture	1	0.4
Mining	3	1.3
Manufacturing	120	53.8
Construction	25	11.2
Wholesale and retail	19	8.5
Transport and communication	16	7.2
Finance	22	9.9
Public service	11	2.7
Multi-industry	6	2.7
Total	223	100.0

Level of compensation

The number of weeks pay as compensation for the first year of service with an employer is presented in Table 2. Only a small number of settlements calculated service by six monthly or other periods - almost all settlements recorded service as "year or part thereof". There was just one settlement that presented specific monetary payments rather than the service-per-year basis of calculation.

The data show considerable variation in the level of payments for the first year of service with an employer - the range of payments being spread from 0 - 17 weeks compensation. The mean payment was seven weeks. Slightly more than 50 percent of agreements provided for either six or eight weeks pay for the first year and under 20 percent of agreements provided for four or less weeks compensation.

Important differences in the levels of settlement occur between industries. First, agreements in the construction industry contain the lowest provision for compensation with

two thirds of settlements providing for four or less weeks compensation for the first year's service. Nearly half of all settlements that provide for four or less weeks compensation for the first year's service are in the construction industry. Second, agreements in the manufacturing sector provide for the highest level of settlements. Nearly 70 percent of settlements that provide for 11 or more weeks pay for the first year of service are in manufacturing. Third, over 80 percent of settlements in the finance sector provide for seven or more weeks pay for the first year of service. It is worth observing that there is little uniformity across industries in the range of settlements achieved.

Table 2. Number of weeks compensation for the first year of service.

Weeks compensation	Frequency	Percent
0 weeks	2	0.9
1 weeks	2	0.9
2 weeks	6	2.7
3 weeks	2	0.9
4 weeks	23	10.4
5 weeks	20	9.0
6 weeks	66	29.7
7 weeks	9	4.1
8 weeks	53	23.9
9 weeks	1	0.5
10 weeks	5	2.3
12 weeks	29	13.1
14 weeks	1	0.5
15 weeks	1	0.5
17 weeks	2	0.9
Total	222	100.0

The number of weeks pay specified as redundancy compensation for service beyond the first year of service is presented in Table 3. A small number of settlements provided for compensation that included "half" week payments (e.g., two and a half weeks pay for each year of service thereafter). These have been rounded down to the nearest integer. A small number of settlements provided for variable amounts of compensation based on *thereafter* service - e.g., two weeks for the second to fifth years of service and three weeks for the sixth to tenth years of service etc). These have been averaged. The data show little variation in the level of compensation paid for the *thereafter* weeks of employment with 84 percent of all settlements providing for two weeks pay for each year of service after the first.

Table 3. Number of weeks compensation for service after the first year.

Weeks compensation	Frequency	Percent
0 weeks	2	0.9
1 weeks	2	0.9
2 weeks	187	84.2
3 weeks	29	13.1
4 weeks	2	0.9
Total	222	100.0

The maximum number of weeks of payment allowable as compensation is presented below in Table 4. Over half of all settlements provide no limit to the amount of compensation, however many of these settlements specify that after 20 years service, compensation continues at the rate of $500 per year. Of those agreements that do specify a limit, most limit payments to between 40 and 59 weeks pay.

Table 4. Maximum number of weeks compensation.

Max weeks compensation	Frequency	Percent
Under 20 weeks	8	3.6
20 - 39 weeks	5	2.3
40 - 59 weeks	72	32.4
60 - 84 weeks	19	8.6
No limit	118	53.1
Total	222	100.0

Only one agreement provided for additional compensation based on whether the redundant worker had a dependant partner or children. Nearly 90 percent of agreements did however provide for additional compensation. The most common form of additional compensation is the "cashing up" of unused sick leave entitlements. Other forms of leave entitlements (for example long service leave) were sometimes "cashed up" on a pro-rata basis. A small number of agreements provided for the continuation of staff-buying privileges; other agreements provided compensation (up to $2,000 in one case) for the loss of staff buying privileges; other agreements provided for legal fees associated with relocation while other agreements provided cash payments for "job search" and "counselling" costs. Provisions dealing with loan repayments were identified in documents applying in the finance industry.

The period of notice each redundant worker is to be given is summarised in Table 5. Over 56 percent of agreements provided for four weeks notice of redundancy with the mean period of notice being 4.3 weeks. Associated with this provision in most agreements is a provision requiring notification and/or consultation with the union before redundancy notices were given to staff. Only 39 agreements (18 percent) did not contain some form of notification/consultation provision.

Table 5. Period of notice of redundancy in weeks

Notice period	Frequency	Percent
1 weeks	11	4.9
2 weeks	11	4.9
3 weeks	5	2.2
4 weeks	126	56.5
5 weeks	7	3.1
6 weeks	44	19.7
8 weeks	3	1.3
12 weeks	2	0.9
No notice	13	5.8
Total	222	100.0

The term of each agreement was examined to determine when (if ever) the settlement would expire. The results are represented in Table 6. A typical term clause provided for the settlement to run for a period of time (often 12 months) but then to continue in force until either party gave a specified period of notice that the agreement was to expire. In such cases, the expiry recorded was the nominal expiry date even though, by mutual agreement , the settlement may continue in force. There were 23 settlements (10.3 percent) that contained no expiry date.

Table 6. Year in which redundancy agreements are to expire.

Year	Frequency	Percent
1990	7	3.1
1991	86	38.6
1992	54	24.2
1993	34	15.2
1994	10	4.5
1995	7	3.1
1996	2	0.9
No expiry date	23	10.4
Total	223	100.0

Right to payment and other provisions

As with most industrial agreements, redundancy agreements appear to have been negotiated with the permanent full time employee in mind, however redundancy payments generally apply to part time employees. Conversely, casual and seasonal workers along with employees who had reached the company's retiring age are generally excluded from the settlements.

Part-time employees generally appear entitled to similar redundancy compensation as their full time counterparts with 202 settlements (90 percent) being either silent on the matter or positively asserting the right of part time employees to coverage. Just 21 settlements (10 percent) specifically excluded part time employees. Casual, temporary and seasonal workers are much more likely to be excluded from the provisions of a redundancy agreement with 132 settlements (59 percent) specifically excluding such workers. Eight-seven settlements (39 percent) were silent on the entitlements of casual workers though it is likely that few if any casual workers were employed by firms party to these settlements. Retiring age is a major barrier to receiving redundancy compensation. No redundancy agreements specifically provided for entitlements to employees over the company's retiring age, but 138 settlements (62 percent) specifically excluded employees who had reached the retiring age.

"Rights of redundant workers" is a common provision in redundancy agreements. Such provisions include: the arrangement of individual counselling sessions; the company attempting to find alternative employment; the company allowing reasonable time off on full pay for job search and interviews; the provision of reference; taxation to be determined at the appropriate rate as detailed in s68 of the Income Tax Act 1976; the inclusion in the agreement of employees on paternity leave. A number of agreements included either the standard disputes procedure or a specific disputes procedures (including a no-lockout, no-strike undertaking).

Conclusion

If what any future Court might consider *adequate* compensation for redundancy is based on what unions and employers have recently *negotiated* as redundancy compensation, then the findings of this research note are of some importance. A number of principles can be established about what a negotiated redundancy agreement might reasonably be expected to contain. First, compensation for loss of employment would be expected to vary according to the employer's industry. Second, compensation is based on the completed years of service, generally up to 20 years service. Third, compensation for the first year's service is a critical component of the overall calculation. Compensation could be expected to be not less than four weeks, be reasonably expected to be six to eight weeks and at the outside be expected to be 12 weeks pay. Fourth, compensation for service after the first year would be two weeks pay for each completed year of service. Fifth, unused sick leave would be included in the compensation payment. Sixth, any maximum level of compensation would be in the vicinity of one years pay. Seventh, in general terms four weeks notice would be expected to be given to each redundant worker. Finally, consultation with the union about the redundancy would be expected. In terms of the most recent "Hale" decision, redundant workers not receiving negotiated compensation along this basis may well be able to demonstrate that they have been unjustifiably dismissed and seek remedies through the personal grievance mechanisms.

Case

Wellington Taranaki and Nelson Caretakers, Cleaners, Lift Attendants and Watchmen's Industrial Union of Workers vs G N Hale and Son Ltd. WLC 89/90.