

Job Transfers and Acceptable Alternative Employment

Written by Mick Sheils and Peter Punch

One issue that often arises in these times of almost continuous change in our business environment is whether a different job offered to an existing employee in a situation of restructuring by the employer is "acceptable alternative employment" such that the employer is excused from paying the employee redundancy benefits if the employee does not accept the job offered.

The frustrating thing about this issue is that there is just no hard and fast rules to guide employers or unions – every case seems to turn on its own facts and the personal judgement of the industrial tribunal member hearing the case.

All that we can say by way of general guidance is the following:

- a) The employer has the onus of establishing that the job offered is "acceptable alternative employment"
- b) A job at significantly reduced take home pay will almost certainly not satisfy the test;
- c) Simply having to travel further to get to and from work will not mean a job is not acceptable alternative employment.

A recent decision of Senior Deputy President Watson in the Australian Industrial Relations Commission is an interesting illustration of the problems in this area – *Target Australia Pty Limited v SDAEA* (decision 4 April 2002; Commission Print PR916204).

As with many awards and industrial agreements (both Federal and State) it is common to find a provision to the effect that an employer is relieved from any obligation to pay severance pay to an employee whose job with that employer comes to an end due to redundancy of the job if the employer obtains for the employee "acceptable alternative employment". That was the issue in this recent Target case.

The essential facts were that Target closed down its facility at a place called Keon and offered an employee there, Mr Chapman, a position at another facility at Laverton. The job offered to Mr Chapman was in all material respects the same job as he had at Keon, but the distance he had to travel by car from his home to Laverton, compared to Keon, was in his view very significant – 22 extra kilometres each way, and perhaps as much as 40 minutes extra travel to and from work each day. In addition, he would incur additional weekly travel costs in an amount that was disputed but which the Judge ultimately ruled to be about \$25.00 a week. Mr Chapman also expressed concern about problems with fatigue due to the extra travel bearing in mind that driving work formed part of his duties.

Target applied to the Commission to be relieved from any obligation to pay severance pay, on the basis that the job offered to Mr Chapman at Laverton was "acceptable alternative employment".

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The Judge agreed with Target, subject to one proviso, concerning additional costs. In making his decision Senior Deputy President Watson made these important general points, based on previous case law:

n The employer bears the onus of establishing that the job offered to the employee is acceptable alternative employment;

n "acceptable" does not mean "acceptable to the employee" – it means acceptable by objective standards, not just the employee's opinion;

n consideration has to be given to all the circumstances of the case, including pay levels, hours of work, seniority, fringe benefits, workload, job security and so forth;

n there can be either total or, where appropriate, partial exemption from severance pay obligations.

In this case his Honour ruled that, bearing in mind all other aspects of the job offered were the same as Mr Chapman's previous job (including remuneration, continuity of employment, seniority and duties and conditions, job security or work methods) the extra travelling required was not sufficient of itself to stop the job being regarded as "acceptable alternative

employment". His Honour regarded the extra distance and travel time as limited and not onerous, and found no evidence that the extra travel gave rise to occupational health and safety problems. His Honour was however concerned about the additional travel costs and as a result, ordered the employer, as a condition of its exemption from paying severance pay to Mr Chapman, to pay him a dislocation allowance of \$25.00 per week (to be absorbed over time in subsequent wage adjustments provided for staff in agreements or awards).

Employers dealing with these issues should always bear in mind that the question of what constitutes an "acceptable alternative job" turns on a consideration of all the circumstances of a case, and it is up to the employer to demonstrate why the job is "acceptable" on an objective basis and ultimately, acceptable in the view of a judge dealing with a dispute on the matter. n

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