

Importance of Managing the Employment Contract upon Promotion/Transfer

The importance of properly managing employment contracts when an employee's position is altered has been highlighted by a recent decision in the NSW Supreme Court.

The Court has awarded a senior manager of an international company a redundancy payout equivalent to 9 months wages. The company had sought to limit the payout to 3 months, arguing that the dismissal was based on performance grounds rather than redundancy.

The employee had started out in a lower position, but in time had been promoted to the position of General Manager/Managing Director. The promotion was confirmed in a letter of appointment. The letter was silent on both the terms of notice and termination, and there was otherwise no new contract entered into for the new role with the exception of a change in salary and position.

When a restructure of the operations occurred, the company decided to split the employee's position into 2 separate roles, allowing more time to be spent on each of the areas.

The Supreme Court found this to be a form of redundancy due to the dual role previously being held by the employee no longer being performed by the one person, fitting the definition of redundancy. The presiding Judge qualified her position by saying that even if she were wrong in her determination of redundancy, the company had breached its requirement to provide the employee reasonable notice.

In the company's defence, it held that it was only obliged to offer 3 months notice which was stated in an earlier contract with the employee (the one held before he was promoted to his final position). The employee's predecessor had confirmed in writing before his departure the entitlement to a payout totalling 9 months wage, a fact the Court felt compelling in the employee's claim.

A lesson to be learnt by this case is that when any changes are made to the employment relationship requiring the employee to change position and/or status, the contract of employment needs to be maintained to reflect the changes. Relying on previous contracts in the case of a transfer, promotion, demotion or status change is not recommended, and could result in similar consequences.

EMA Consulting recommends that clients issue new contracts when a substantial change to a position occurs. For further assistance in the development of such practices please contact your EMA Consultant.

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