

Update Personal Grievances

Service 89 — June 2022

Commentary

Chapter 2: The Grievance process

- In *FMV v TZB*, the Supreme Court held that issues of compliance with settlement agreements generally are employment relationship problems. Further, post-contractual obligations entered into as part of an employment relationship, and in a work context, can give rise to employment relationship problems within the exclusive jurisdiction of the Authority under s 161, even if they are not sourced from the employment agreement (*FMV v TZB* [2021] NZSC 102) (see [2.15]);
- The Authority has jurisdiction to determine applications for interim reinstatement. This includes the jurisdiction to order applications for reinstatement where a personal grievance claiming unjustified disadvantage has been raised, rather than a grievance claiming unjustified dismissal (*WN v Auckland International Airport Ltd* [2021] NZEmpC 153) (see [2.19]).

Chapter 5: Grounds for dismissal

- Application for leave to appeal was declined where the employer had been held to have genuine and reasonable grounds for taking the professoriate in a university department out of scope of restructuring proposals so as to retain academic leadership (leaving the proposals to impact only on other academic positions) (*Caddy v Vice Chancellor, University of Auckland* [2022] NZCA 195) (see [5.25.1]);
- The Employment Court struck out a personal grievance claim alleging discrimination, but in essence challenging the legality of the 2021 Vaccinations Order, for want of jurisdiction (*Malcolm v The Chief Executive of the Department of Corrections* [2022] NZEmpC 39) (see [5.33]);
- Workers still covered by vaccine mandates after 4 April 2022 include health and disability sector workers, aged care workers, prison staff and border and MIQ workers (see [5.36]).

Chapter 6: Aspects of substantive fairness

- Where the employer failed to alert the employee of the relevant process relating to their dismissal, the Court found that the employer had failed both to communicate constructively and to give the employee a reasonable opportunity to respond to the circumstances only known to the employer (*Restaurant Brands Ltd v Gill* [2021] NZEmpC 186) (see [6.3]);

- In *Coetzee v Oamaru Meats Ltd*, the Court recognised that an employee's language barrier could be relevant when considering the fairness of a decision-making process. Although language was found not to be an issue in the case, the Court accepted that there may be occasions when the known circumstances of the employee require a more nuanced response by the employer when dealing with their potential dismissal (*Coetzee v Oamaru Meats Ltd* [2021] NZEMPC 137) (see [6.8]).

Chapter 11: Remedies

- An application for interim reinstatement was declined in the light of an “alleged poor quality behaviour . . . problematic working relationships and alleged lack of insight into what caused them” (*New Zealand Qualifications Authority v Hickey* [2022] NZEmpC 76) (see [11.4A.7]);
- Application for a stay of order for interim reinstatement was declined where a board administrator had been reinstated and the longer she was absent from the workplace, the more difficult reintegration would become (*Board of Trustees of Te Manawa O Tūhoe Trust v McDonnell* [2022] NZCA 1) (see [11.6]);
- An application for interim reinstatement was unsuccessful, even though the defendant conceded that the dismissal was unjustifiable, when it would have imposed a significant financial burden on a small Trust, the plaintiff had been replaced, and there were other significant relationship problems including a lack of trust on both sides (*Tupe v The Board of Trustees of Te Manawa O Tūhoe Trust* [2022] NZEmpC 86) (see [11.9]).