

Update Personal Grievances

Service 90 — October 2022

Commentary

Chapter 3: Unjustifiable dismissal

- With the removal of certain border workers and corrections staff, as from 7 July 2022 the COVID-19 Vaccination Order now covers only health and disability workers (see [3.32A]);
- A mother who cared for her brain-injured son at home, under a contracting arrangement for funding from ACC, was held not to be a care and support worker under the Vaccinations Order and her contract was found to have been invalidly terminated (*CSN v Royal District Nursing Service New Zealand Ltd* [2022] NZEmpC 123) (see [3.32A]);
- A purported trial period was held to be invalid where some evidence supported the proposition that the employee had been asked to sign a document containing a trial provision before starting work but did not sign and return it until a week after work commenced (*Farrand Orchards Ltd v Tane* [2022] NZEmpC 131) (see [3.54.1]).

Chapter 4: Procedural fairness

- Mandatory testing of border workers for COVID-19 has now been revoked as from 30 June 2022 (see [4.56.1]).

Chapter 5: Grounds for dismissal

- Special leave to remove a case to the Court was granted where the plaintiff had been dismissed for declining to be vaccinated and claimed that she should then have been dealt with under the redundancy and restructuring provisions of the applicable collective agreement (*QDY v Counties Manukau District Health Board* [2022] NZEmpC 117) (see [5.36.1]).

Chapter 8: Discrimination

- The Human Rights Review Tribunal has held that the phrase “religious belief” in s 13 of the New Zealand Bill of Rights Act 1990 does not extend to cover its manifestation (*Butcher v NZ Transport Agency* [2022] NZHRRT 21) (see [8.13]).

Chapter 11: Remedies

- A contractual long service payment, designed to create a financial bridge or cushion between termination of employment and the obtaining of another job,

was held to be relevant to assessment of loss under s 128(2) (*The Board of Trustees of Southland Boys High School v Jackson and Others* [2022] NZEmpC 136) (see [11.13.6]);

- An award of \$17,000 for emotional distress was described as “reasonably modest”, where the employee had been dismissed for redundancy in a way which breached fundamental procedural obligations (*STL Linehaul Ltd v Waters* [2022] NZEmpC 114) (see [11.24.4]);
- An employee was held not to have contributed towards the situation that gave rise to the grievance where he had been dismissed for redundancy, without basic procedural fairness being observed, and the employer argued that he may not have been selected for redundancy but for discussions about his performance occurring simultaneously (*STL Linehaul Ltd v Waters* [2022] NZEmpC 114) (see [11.47.4]).