

Is the employee a casual employee (on-call employee) or a permanent part-time employee?

Depending on the answer to this question an employer's obligations to the employee will be different.

If the employer gets it wrong then they may end up facing a personal grievance by their employee for unjustified dismissal. This may result in the employee being awarded money not only for their lost remuneration but also compensation for hurt, humiliation and injury to feelings. The employee may also be awarded compensation for an unjustified disadvantage in employment. The employee is also likely to be entitled to recover their legal costs as well. In a recent case two young school girls and their grandmother who lived in a rural town were employed to work at a café on a rostered basis. Prior to starting with this employer, the girls resigned from their positions as permanent part-time employees at a dairy.

Only three weeks after the employees started working for the employer the employer decided there was insufficient demand so the two girls could no longer be employed. Because the girls would not be employed as originally anticipated the grandmother resigned.

The two girls and the grandmother raised a personal grievance.

The employer said the girls were employed on a casual basis.

The Employment Court said the girls were in permanent employment.

What is a casual (on-call) employment agreement?

A casual employment agreement is one where the employee works from time to time only, or on an intermittent basis, or on an as required basis, or where there could be no legitimate expectation of work.

The reality of the employment arrangements in this case were that the employer intended that there would be a roster. The girls were each offered regular employment on the basis that they would work according to a regular work arrangement as shown on the roster. They each had a legitimate expectation of work on set days. They were therefore working as permanent part-time employees.

The Employment Court noted that the business was not financially viable. The issue as to the girls continued employment required they be given notice and that there should be proper consultation including discussion as to possible options before any decisions were made by the employer. That did not happen. The employer made the decision and then told the employees.

The employer was found to have significantly breached the statutory obligation of good faith. The steps taken by the employer were not those which a fair and reasonable employer could have taken in the circumstances. The girls' dismissal was therefore unjustified and their personal grievances were established.

The employer was ordered to pay the girls in excess of \$7,800 including \$3,000 for hurt, humiliation, loss of dignity and injury to feelings. The employer was ordered to reimburse the girls' professional costs.

How can we help you?

Are you concerned that someone working for you is actually a permanent employee and not a casual/on-call employee as you intended? Are you concerned about another employment matter? If the answer is yes then please contact Julie Withers and Graeme Withers of Graeme Withers Law. We are very experienced solicitors who can help you. For prompt, professional and personal service please call (04) 478 4888; (027) 7155421; Email info@witherslaw.co.nz www.witherslaw.co.nz

Please visit our website www.witherslaw.co.nz

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