



HAVE I BEEN DISMISSED?

An employer needs to tread carefully when an employee resigns suddenly, says Paul Robertson. He looks at the case of a preschool teacher who stormed from a meeting saying she would resign 'next week', then claimed she had been illegally dismissed, despite her employer offering to talk things through.

DISMISSAL OCCURS AT THE initiative of the employer. It normally involves a 'sending away' of the employee. A decision to resign is made by an employee. However, the situation is not always so clear cut.

THE BACKGROUND

Ms Griffiths was a teacher in a preschool. She struggled with one child at the school who had behavioural problems. There was an incident where Ms Griffiths alleged that the child kicked her, but this incident was not witnessed by other staff members.

Ms Griffiths was later asked whether she liked the child. She found this question insulting, particularly because she was asked at a meeting in front of a representative of the Ministry of Education. She stormed from the meeting saying that she did not want to work with such "nasty bosses" and "I will not work for you any more, you will be getting my resignation next week". She then told other staff that "[the managers] are nasty bitches", got into her car and drove home.

She did not attend work the

next day. There followed an exchange of tense text messages to and from a manager. Ms Griffiths texted saying "I havent (sic) resigned yet. I ... [will] do it next week".

The manager texted back saying that her verbal resignation had been accepted, confirmed that her (bad) conduct had been sufficient to justify instant dismissal, but offered to meet with her to talk through the situation.

A roster was sent showing Ms Griffiths working. She did not take up the offer of a meeting or to come back. Instead, Ms Griffiths saw a lawyer who wrote saying that Ms Griffiths had been treated very poorly, and asked whether she had been fired.

A manager wrote back suggesting Ms Griffiths could return to work on the basis that she was rostered for a different part of the preschool. Ms Griffiths wrote to say that she wasn't coming back, she had not resigned, she had been "illegally dismissed" in a text message from the manager. She asked for her final pay to be made up then raised a personal grievance.

DISMISSAL/RESIGNATION/ CONSTRUCTIVE DISMISSAL

The Authority went through the facts carefully; there was much disagreement. The starting point was that Ms Griffiths had left the meeting after declaring, in the heat of the moment, that she intended to resign. She appears not to have changed her position in respect of her intention in leave.

While a manager initially accepted that resignation, there were attempts to repair the relationship such as putting her back on the roster and asking to meet to talk through the situation. The letter sent to Ms Griffith's lawyer also left open the possibility of Ms Griffiths returning to work.

The Authority noted that both parties to an employment relationship need to be "responsive and communicative". Here, the employer did try to clarify the situation, but Ms Griffiths was not cooperative. She seized upon one of the text messages as evidence she had been dismissed. In the dynamic situation that followed her initial verbal resignation, that was not sufficient.

Finally, the Authority considered whether asking Ms Griffiths if she liked the child in front of her peers and the representative from the Ministry of Education was conduct justifying a finding of constructive dismissal. The Authority accepted that it would have been better to ask that question privately. However, asking the question publically could not "... reasonably be treated as having fundamentally destroyed the duty of trust and confidence between the parties". Ms Griffiths was not constructively dismissed.

The Authority concluded that Ms Griffiths had resigned.

An employer needs to tread carefully when an employee resigns suddenly. The employee needs to be given a reasonable opportunity to reconsider their decision and some attempts should be made to repair the relationship if possible.



Griffiths v Childs Play Preschool Limited [2016] NZER Christchurch 206

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