



GETTING THE PAPERWORK RIGHT

To take advantage of the 90-day trial period provision it is crucial for a business to have all its paperwork in order, says Paul Robertson. He looks at a recent Employment Court decision which proved to be costly for a Christchurch company found to have unjustifiably dismissed an employee.

A TARDY ADMINISTRATIVE

and contractual jumble ended up being costly for a Christchurch construction company.

The Employment Court decision emphasises the need to get the paperwork right to take advantage of the 90-day trial period.

While trial periods are not available for employees covered by a collective agreement, they can be inserted into agreements for those employed pursuant to an individual employment agreement.

THE BACKGROUND

Mr Hall was recruited from the UK as a senior piling project manager for Smith Crane and Construction Limited (SCC). An SCC manager met him in the UK and was directly involved in his recruitment.

Mr Hall was sent an offer of employment by email on 3 September 2013 which referred to there being an employment agreement attached. No employment agreement was attached.

Mr Hall and the manager then spoke by telephone to discuss salary, which led to an amended offer of employment being made.

On 6 September 2013, Mr Hall was sent an email letter of offer together with a copy of the standard individual employment contract which included a 90-day trial clause.

The standard individual employment contract was in template format. For example, the position description was not completed and there were no details of the role.

The letter of offer did not refer to a 90-day trial period.

Mr Hall started work on 13 January 2014. Later that month he countersigned the letter of offer and returned it to the company.

On 11 February 2014, it was discovered that no final agreement had been signed by Mr Hall. Belatedly, an agreement was prepared and this was signed by the company and Mr Hall.

This agreement included a

clause which stated that the agreement was to replace any previous agreement, whether verbal or written, and it also included a 90-day trial clause.

On 31 March 2014, Mr Hall was dismissed, relying on the 90-day trial period. Mr Hall raised a personal grievance alleging unjustified dismissal.

THE DECISION

The Employment Court held that Mr Hall was unjustifiably dismissed. The 90-day trial period was not effective.

Firstly, the fact that he counter-signed the offer of employment letter did not mean that the 'pro forma' employment agreement was binding.

None of the terms were binding, including the 90-day trial period.

Secondly, while the employment agreement signed on 11 February 2014 had a 90-day trial period, the trial period was not effective.

Trial periods are only available where an employee has not

previously been employed by the employer.

The Employment Court held that Mr Hall became an employee of the company on 13 January 2014 when he started work, and for this reason the February agreement with the trial provision came too late.

THE MONEY

Eleven weeks after his dismissal Mr Hall started a new job.

Mr Hall was awarded 11 weeks' wages totalling \$31,326.91 along with \$7000 for humiliation, loss of dignity and injury to feelings, as well as reimbursement of some costs associated with his work visa, and a contribution towards his legal costs.

Smith Crane and Construction Limited v Hall [2015] NZEmpC 82



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