



NO AGREEMENT: NO TRIAL PERIOD

When a language school decided not to employ a teacher following a two-week trial period, he raised a grievance alleging unjustified dismissal. The Employment Relations Authority found the arrangement was not a trial period but a fixed-term contract, says Paul Robertson. Fixed-term agreements cannot be used to establish the suitability of a potential employee.

AN AUCKLAND-BASED English language school has learned an expensive lesson following a recent decision of the Employment Relations Authority.

The school was found to have unjustifiably dismissed an employee when it believed it was entitled to give him notice because of a probationary period.

Mr Williamson is an English language teacher who has been employed by several language schools in recent years. After a trial class, he was employed in June 2014 by the New Zealand Institute of Studies on a part-time basis subject to a two-week trial period.

The trial period was set out in an email to Mr Williamson along with the other essential terms of his appointment. He was not offered a written employment agreement and did not ask for one.

The trial period did not go well. The management of the language school became concerned about Mr Williamson's

inability to work as a member of a team, his irregular hours and attitude, and there were complaints from students.

He was offered support, but matters did not improve. Mr Williamson walked out of one class early in June 2014 looking angry and flustered and he was late to his first class the next day.

The decision was made not to continue his employment beyond the trial period and, after some delay, this decision was given to him in an email which was confirmed in a meeting.

He raised a grievance alleging unjustified dismissal.

THE AUTHORITY DECIDES

The Authority considered whether a trial period had been agreed that complied with the terms of the Employment Relations Act.

"No," said the Authority member, no employment contract was signed off and the arrangement set out in the email correspondence was not a trial period, but

instead was a short, fixed-term contract intended to see if he was suitable.

Fixed-term agreements cannot be used to establish the suitability of a potential employee.

In the absence of a formal employment contract that complied with the Employment Relations Act, the dismissal was found to be unjustified.

THE MONEY

Mr Williamson found another position, but only for a short period. He claimed for lost salary over five months down to the hearing, but only received compensation for a week's salary because he did not provide evidence of his attempts to find work.

The award was reduced 50 percent because of his contribution towards his dismissal, particularly his belligerence and refusal to engage with the management of the school.

The Authority also said that Mr Williamson ought to have

enquired about the existence of an employment contract.

The Authority member recorded that Mr Williamson had brought successful personal grievances against three of his former employers, all language schools, adding:

"It appears the Institute and some other private learning institutions, particularly English language institutions in Auckland, would benefit from taking legal advice to ensure they are fully aware of their obligations when seeking to employ staff on fixed term, casual, permanent employment agreements or employment agreements containing trial periods."



Williamson v New Zealand Institute of Studies Ltd [2014] NZERA Auckland 495

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