

RELIANCE ON 90 DAY TRIAL

The decision of the Employment Relations Authority (“the Authority”) in Hall v Smith Crane & Construction Limited highlights the importance of understanding legal requirements when parties are negotiating and entering into employment agreements.

Mr Hall was recruited from England as a senior piling project manager by Smith Crane & Construction Limited (“SCC”) to work in Christchurch. A letter of offer was emailed to him and enclosed with the letter was an Individual Employment Agreement (“IEA”). The IEA contained a 90-day trial period clause. The letter of offer stated;

“Should you find the terms and conditions of the above letter and attached employment contract acceptable please sign one copy and return to our Johns Road office, and keep one copy for your own records”.

Mr Hall signed the letter of offer but not the IEA. He subsequently commenced employment with SCC on 13 January 2014. Mr Hall had been employed for approximately 4 weeks when it was discovered by SCC that he had not signed the IEA. It was presented to him and signed by him on 11 February 2014.

Mr Hall was dismissed from SCC in reliance on the 90-day trial period provision in the IEA. SCC expressed itself as being dissatisfied with his performance. Mr Hall raised a personal grievance alleging unjustified dismissal. The Authority was required to first consider whether the trial period was valid. If it was, then the Authority had no jurisdiction to hear Mr Hall’s claim of unjustified dismissal.

In its decision the Authority observed that for a 90-day trial period to be valid, there must be a written provision in an employment agreement and the employee must not have previously been employed by the employer. The Authority recorded;

“These two requirements are intertwined and establish that if an IEA containing a 90 day trial provision has not been signed by both parties before an employee begins their employment there is no effective 90-day trial provision.”

The Authority determined that Mr Hall was an employee of SCC before he signed the IEA containing the written provision for a 90-day trial period. He had commenced employment on 13 January 2014, but did not sign the IEA until 11 February 2014. Therefore the trial period provision was not effective and Mr Hall was able to exercise his right to bring a personal grievance claim alleging unjustified dismissal.

The Authority went on to find that Mr Smith had been unjustifiably dismissed from his employment. SCC had not complied with the basic procedural requirements in dismissing Mr Hall. Mr Hall was not advised of concerns about his performance, and not provided with an opportunity to respond to those concerns or to improve his performance. In the absence of a valid 90-day trial period provision (which would have prevented Mr Hall from raising a grievance for unjustified dismissal), it was held that a fair and reasonable employer could not have acted as SCC did. In respect of the unjustified dismissal, Mr Hall was awarded \$31,326.91 as lost remuneration, \$7,000.00 as compensation for humiliation, loss of dignity and injury to feelings and \$766.75 reimbursement for variation of work visa costs.