

## **Court of Appeal confirms requirements for redundancy**

The Court of Appeal recently issued the judgement *Grace Team Accounting Limited v Judith Brake* [2014] NZCA 541 confirming previous decisions of the Employment Court that employers' reasons for making an employee redundant will be vigorously tested.

### **Background**

The case was an appeal against a decision of the Employment Court in which it was found that the respondent, Ms Brake, had been unjustifiably dismissed by the appellant, Grace Team Accounting ("GTA") on the basis that:

- She was employed at a time when GTA was overstaffed,
- There was no evidence the financial position of the business had deteriorated as represented by GTA.
- The decision to make Ms Brake redundant was based on incorrect information. The calculation for the turnover of GTA for the 2009/2010 financial year was discovered to be \$120,000 higher than that originally calculated; and
- Ms Brake had been added to GTA's restructuring proposal despite her having sufficient work to do.

The Employment Court held the decision to make Ms Brake redundant was genuine. There was no suggestion the redundancy was a mask for an ulterior motive and the situation was described as a genuine but mistaken dismissal. However, because of the factors given above, the redundancy did not meet the test of justification. The Employment Court concluded that had the calculations regarding turnover of GTA not been based on error, there would have been no immediate need for Ms Brake's redundancy.

GTA was therefore ordered to pay Ms Brake \$65,000 (equivalent to 12 months' salary) for lost remuneration, and \$20,000 in compensation under s123(1)(c)(i) under the Employment Relations Act 2000 ("ERA").

### **Decision of the Court of Appeal**

The Court of Appeal was required to determine whether the Employment Court applied the correct test under s103A of the ERA for justification of dismissal on the grounds of redundancy.

It was submitted by GTA, that a redundancy dismissal will be justified if the Court, looking objectively at the matter, concludes that the employer genuinely considered that the position was superfluous to its needs.

The Court of Appeal determined that when the words of s103A are considered in light of the purposes of the ERA, and the overarching duty of good faith, it did not consider the reference in s103A to "a fair and reasonable employer" could be read down to mean the same as "a genuine employer."

While previous Court decisions on redundancy were examined in detail by the Court; O' Regan P found it to be a mistake to treat observations made in previous cases "as if they were legislation."

The Court of Appeal ultimately found that the focus of the Court has to be on the objective standard of a fair and reasonable employer. The subjective findings about what the particular employer has done in any case then have to be measured against the Court's assessment of what a fair and reasonable employer could have done in the circumstances.

The Court of Appeal was also asked to determine whether the Employment Court applied the correct principles when exercising its discretion to award remedies to Ms Brake.

An award greater than the default amount specified under s128(2) of the ERA was considered appropriate on the basis there were no factors which would indicate Ms Brake, but for the dismissal, would not have carried on employment at GTA for the period in which reimbursement of lost wages was sought. Ms Brake's past record demonstrated stable and satisfactory work, and she was held in high regard by GTA. Furthermore, the financial material provided by GTA showed that redundancy was not a likely consequence in the period under consideration.

The Court of Appeal also found no reason to differ from the judgement of the Employment Court in making an award for compensation. The consequences of the redundancy decision on Ms Brake were accepted as being serious, and therefore a compensation payment of \$20,000 was justifiable.

Both grounds of appeal were therefore dismissed.

### **Conclusion**

The Court of Appeal has confirmed that it is not enough to just follow a fair process in redundancy situations. In order for any resulting redundancy decision to be justified, it must be based on accurate factual information as well as genuine reasons.

If you have any questions about redundancy, or would like further information about this decision, please do not hesitate to contact a member of our litigation or employment teams.

Prepared by Anna Davidson.