

Case round up: Gate Gourmet Appeal and Vaccination Case

Gate Gourmet off to the Court of Appeal

Employees of Gate Gourmet have been given leave to appeal the Employment Court's decision in *Gate Gourmet New Zealand Ltd v Sandhu* and others.

The Employment Relations Authority initially held that Gate Gourmet breached the Minimum Wage Act by paying staff less than the minimum wage, when they were not working, during the 2020 Level Four Lockdown. That decision was then reversed by the Employment Court early this year, although there was a notable dissent by the Chief Judge (read our article on the Employment Court decision [here](#)).

Leave to appeal was granted based on the question of whether the minimum wage is payable for all of a worker's agreed contracted hours of work, in the absence of sickness, default or accident; or whether it was lawful to make deductions from wages for lost time not worked at the employer's direction. The Court of Appeal held this was a question of general and public importance, noting that the difference in the views of the majority and the Chief Judge in the Employment Court decision reinforced the legal significance of the question.

Vaccination Case Being Heard in the Authority

A worker who was dismissed for refusing to be vaccinated against Covid-19 is taking her case to the Employment Relations Authority, in what will be the first decision of its kind.

The employee (who has name suppression) was a port worker and therefore subject to the COVID-19 Public Health Response (Vaccinations) Order 2021. She is arguing it was unreasonable for her employer to insist that she should be vaccinated for her role. In the alternative, the employee is contending the requirement to be vaccinated altered the terms and conditions of employment to the point that she should be declared redundant.

The employee sought leave to have her application removed from the Authority to the Employment Court on the basis that an important question of law was likely to arise. The employer supported the application, suggesting the dismissal involved a novel and important issue with wider ramifications for employers. However somewhat surprisingly, Employment Relations Authority Member David Beck refused to grant the removal, stating that the case involved a narrow contextual setting and that there were no compelling features that would warrant removal.

Our Employment Team will provide an update once these cases have been heard.

Want to know more?

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