

REDUNDANCY—NEW APPROACH MEANS TOUGHER REQUIREMENTS



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A recent Court of Appeal decision *Grace Team Accounting limited v Judith Brake* [2014] NZCA 541 has confirmed that courts may vigorously test an employer's reasons for making an employee redundant, to ensure such reasons are justified. Whether a redundancy is justified depends on two key considerations:

- (a) Whether the decision is a "genuine" business decision (i.e. not on account of any ulterior motive); and
- (b) Whether the employer carried out the redundancy process in a "procedurally fair" manner (i.e. undertook proper consultation with the employee, inviting comments and adopting a fair process to identify job terminations).

In this case Ms Brake was employed by Grace Team Accounting (GTA) in October 2009 as a senior accountant as permanent replacement for another employee taking parental leave.

She was then made redundant in April 2010 after GTA bosses projected significant cost overruns and revenue falls in the upcoming year. These figures were later proved to be incorrect (in fact GTA was actually due to make a profit.)

The Employment Court held that the decision rendering Ms Brake redundant was a genuine one, and that there was no ulterior motive. However, because the decision was based on incorrect data, the redundancy was not justified. The employment court concluded that had the calculations for GTA's projected turnover been correct, there would have been no immediate need for Ms Brake's sudden termination.

GTA were ordered to pay Ms Brake \$65,000 (12 months' salary) for lost remuneration and \$20,000 compensation.

GTA appealed that decision in the Court of Appeal, arguing that the Court should treat a redundancy as "justified" if, looking objectively at the matter, the Court concludes that the employer genuinely considered that the position was superfluous to its needs.

The Court of Appeal, however, found that the employers' obligation to be "fair and reasonable" could not be read down to mean "a genuine employer".

Further, where the reason for redundancy is a "financial" one, employers must:

- (a) Ensure any financial analysis is correct;
- (b) Provide that analysis, together with any background or supporting financial information, to the affected employees for their input;
- (c) Properly research strategic advantages to be gained from proposed restructures;
- (d) Carefully consider alternatives to redundancy.

It is simply not enough for an employer to cite "lack of work" or "light trading" as reasons for implementing redundancies, without provided valid financial data in support. In any event failure to undertake the correct approach is likely to be very costly.

If you require any advice about redundancy or general employment law, please feel free to contact the team at Collins and May Law.

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