



cullings

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cullings is the newsletter of
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'Tis the season for Good Faith

Most employers are familiar with their legal requirement to deal with their employees in good faith during the employment relationship. They may, however, be surprised to learn that this obligation continues even after the employment relationship comes to an end.

Recent case

A recent Employment Court decision has highlighted the importance for employers to act in good faith towards other parties during a dispute. Good faith is a central principle of the *Employment Relations Act 2000* (the Act) and amongst a number of purposes it intended to promote prompt and flexible options for resolving problems in employment relations. It does this by requiring parties to deal openly and honestly with one another in the hope of quickly resolving a dispute.

Background

The Travel Practice Limited v Owles involved the resignation of an employee who had only been in her job for two weeks. The employer was described as aggressive, abusive and condescending. He made no attempt to help the transition of the employee into her new job despite being aware that she was new to the work involved. When the employee resigned she lodged a personal grievance with the Employment Relations Authority citing unjustifiable constructive dismissal as the cause for her departure.

The employer made little attempt to respond to these accusations. It failed to file a Statement in Reply with the Authority or provide statements of evidence contravening the orders of the Authority. The employer was also not present at the Authority's investigation meeting or any of the three attempts at mediation. The one instance where it did comply with the Authority was to ensure a Director took part in a telephone conference outlining communication procedure.

Not surprisingly, the Authority found for the employee and ordered the employer to pay a remedy in excess of \$8000 and costs of \$1070.

The employer was unhappy with this outcome. It appealed.

Given the adverse comments regarding the employers conduct in the investigation the Employment Court ordered a "good faith report" into the conduct of the parties from the Authority. A "good faith report" assesses the extent to which the parties involved in the investigation have facilitated (rather than obstructed) the Authority's investigation and whether or not the parties have acted in good faith towards one another.

A negative report from the Authority may affect a party's rights in relation to an appeal and how it may proceed.

The Employment Court

The Authority's "good faith report" concluded that the employer had obstructed the Authority's investigation in three ways:

- failing to file and serve a Statement in Reply;
- failing to provide and serve statements of evidence; and
- failing to attend an investigation meeting.

In light of this, the Employment Court carefully considered the ramifications of allowing the employers appeal to proceed.

Appeals to the Employment Court usually proceed on the basis that the case is heard afresh. In this instance however, any evidence introduced by the employer would be new to both the employee and the Court because of its lack of compliance throughout the Authority investigation. Furthermore, a key principle of the Act is that relationship problems should first be dealt with by mediation reducing the need for judicial intervention.

The Court did however state that its discretion must be exercised in a way that is consistent with the interests of justice. It also has to take into consideration the interests of both parties and not just the poor conduct of the employer. If the appeal by the employer were to be dismissed, there would be a consequent risk of injustice. The Court believed that the potential prejudice against the employee and extra cost of proceedings could be balanced by imposing a series of conditions and costs upon the employer. The Court therefore allowed the employer to continue with its appeal under strict conditions including a requirement to attend mediation, payment of costs and a limit on the evidence that could be presented at trial.

What this means for employers

This case highlights the importance for employers to continue to act in good faith after the employment relationship ends. Even though this case upheld the employer's right to an appeal, it only permitted it under strict conditions. It also highlights the possible danger for employers of losing their ability to appeal a claim to the Employment Court if they take an uncooperative stance towards the Authority.