



**cullings** is the newsletter of  
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## Good news Employers!

Within every employment relationship there are a number of duties and obligations on both parties. Most employment litigation surrounds the obligations of an employer but employees are also bound by a number of obligations which are equally enforceable.

The Employment Court has recently considered the case of *Masonry Design Solutions Ltd v Nicholas Bettany* where the employer claimed damages for breaches by the employee of his employment agreement.

### Background

Mr Bettany is a well qualified and experienced computer-aided design draughtsperson. Masonry Design Solutions (MDS) had enough design work for a full-time draughtsperson but was apprehensive about a prospective downturn in the building industry. MDS offered, and Mr Bettany accepted, a three month fixed term contract of employment.

Towards the end of the three-month term of his employment, MDS became concerned about Mr Bettany's time keeping and work output. On a number of occasions Mr Bettany had arrived at work late without explanation, and on some occasions did not show up at all. Mr Bettany was warned that this would have to improve if there was to be any continuation to the employment relationship beyond the end of the fixed term agreement. Mr Bettany promised to improve and meet his employer's expectations. Mr Bettany did not keep his assurances and after a number of meetings between the parties he was dismissed summarily for serious misconduct relating to his timekeeping and unreasonable use of MDS's email and internet system.

After Mr Bettany's dismissal MDS discovered that some of his work had been of such poor quality that it had to be redone at a significant cost. MDS claimed this was to the tune of \$18,000. It also discovered that Mr Bettany had exceeded the permitted level of private use of the company cell phone, which it had paid for.

### The Employment Relations Authority

Following his dismissal Mr Bettany issued proceedings in the Authority claiming unjustified dismissal. MDS counterclaimed for the cost of rectifying Mr Bettany's poor work and for cell phone charges.

The Authority concluded that Mr Bettany had been dismissed unjustifiably and he was awarded modest compensatory awards. The Authority dismissed MDS's claim for damages, but awarded it the cell phone costs.

MDS appealed to the Employment Court.

### The Employment Court

The Employment Court upheld MDS's appeal. It concluded that Mr Bettany was not unjustifiably dismissed.

More importantly the Court upheld MDS's counterclaim for loss from poor workmanship.

It was found that Mr Bettany worked very carelessly so that much of his draughting was mistake ridden. He was found to have been provided with sufficient training, and had Mr Bettany believed his knowledge or skills actually were deficient, he would have brought this to the attention of MDS (which he did not do). Mr Bettany was negligent in the errors that he made and in his failure to check and correct his work, probably attributable to his almost constant distraction with his personal business and other interests conducted on the internet. The Court did not accept Mr Bettany's assertion that MDS failed to check his work adequately. It was reasonable in the circumstances for MDS to expect Mr Bettany to produce drawings that were substantially accurate.

To rectify the poor work it took MDS's senior draughtsperson 150 hours to redraw all Mr Bettany's plans. The Court considered it would have been more cost efficient to correct Mr Bettany's plans rather than start from scratch.

The Court considered that if the draughtsperson had only corrected the errors this would have taken approximately 100 hours. On this basis, the Court awarded MDS \$12,000, being 100 hours at \$120 per hour.

The Court concluded that it was foreseeable that if an employee such as Mr Bettany produced such poor quality work, it would both need to be rectified and there would be at a cost to the employer. That cost was due to Mr Bettany's breaches of his employment agreement and because it was reasonably foreseeable that such breaches would result in the loss suffered MDS was entitled to reimbursement.

### ***The Moral of the Story***

Employees can be held accountable for their work.  
Employees have a duty to perform their duties with all

reasonable skill and diligence. There are two relevant key implied duties in every employment relationship:

- an employee impliedly undertakes, having applied for a job, that he or she is competent to do that job; and
- an employee impliedly undertakes to take reasonable care in carrying out his or her work.

Significant case law exists that the breach of these duties may result in justified termination of the employment relationship. The Employment Court decision demonstrates that this can go further and that reasonable costs suffered as a result of foreseeable breaches of these duties may be recovered.