



cullings is the newsletter of
**Cullen – the Employment
Law Firm**

Level 8
Kirkcaldies North Tower
45 Johnston St, Wellington
Phone 04 499 5534
Fax 04 499 7443
enquiries@cullenlaw.co.nz
www.cullenlaw.co.nz
PO Box 10 891, The Terrace
Wellington 6143
New Zealand

Peter Cullen

Partner
peter@cullenlaw.co.nz

David Burton

Partner
david@cullenlaw.co.nz

Rachel Burt

Associate
rachel@cullenlaw.co.nz

Charles McGuinness

Solicitor
charles@cullenlaw.co.nz

Genevive Vear

Law Clerk
genevive@cullenlaw.co.nz

DISCLAIMER: This newsletter is intended to provide our clients with general information. While all statements are believed to be correct, no liability can be accepted for incorrect statements. Readers should not act or rely on this general information without seeking specific legal advice.

That's it – I've had enough! **(How to handle tricky resignations)**

All employment relationships come to an end at some stage. Some are more problematic than others.

Receiving an employee's resignation can seem the simple solution to a problem. Sometimes they are not. Resignations arising out of an employee getting emotional or angry and resigning in the heat of the moment should be handled with caution.

When the employee has time to calm down and reflect on their actions the employee can often regret their impromptu actions and wish to return to work. Significant case law exists that in such a situation there is an obligation for the employer to allow a 'cooling off period' when an employee resigns.

Recent case

Take the case of *McDonald v Speciality Fashion Group New Zealand* decided by the Employment Relations Authority. Ms McDonald was employed as a store manager in Speciality Fashion's New Lynn shop. Ms McDonald's regional manager Ms Shannon telephoned Ms McDonald at the store and informed her she had received a complaint about Ms McDonald. A discussion of the complaint proceeded, culminating in Ms McDonald stating that Ms Shannon "could stick the job" and that she wasn't "putting up with this anymore she wasn't paid enough for this crap". This statement was made in the heat of the moment.

Ms Shannon appreciated that the comments were made in the heat of the moment and gave Ms McDonald the opportunity to think about it overnight because she knew Ms McDonald was making a rash decision. This was the correct approach.

The following day Ms McDonald attempted to resile from her earlier resignation. Ms Shannon made no statements accepting this retraction, however she did commit to making a number of enquiries which Ms McDonald invited her to make, including contacting another employee. This was consistent with Ms McDonald's desire to remain in employment.

Ms Shannon made these enquiries but they were unfavourable to Ms McDonald. The following day Ms Shannon informed Ms McDonald she had accepted Ms McDonald's resignation and would not accept a retraction. The Authority found

that in the circumstances it was unreasonable not to allow Ms McDonald to resile from her resignation, particularly given Ms Shannon herself appreciated the resignation was given in the heat of the moment as an ill-considered reaction. It was determined that Ms Shannon's actions were not those of a fair and reasonable employer and constituted a dismissal. Ms McDonald was awarded \$8,000 in compensation, reduced by 20% for her contributory conduct.

The case demonstrates that where a resignation occurs in the heat of the moment, an employer should give the employee a reasonable opportunity to reconsider their decision and should consider any attempt to retract the resignation in good faith. If not, it may not be the simple solution that the employer may otherwise think.

Where issues such as performance concerns are involved, these should be treated separately to any request to retract the resignation. If not handled properly there is a risk that an apparent resignation can amount to a dismissal.

Employment Court cautions

This case is by no means unique. The Employment Court has also cautioned employers that they cannot safely insist upon apparent words of resignation if it is obvious upon "inquiry made soberly once the 'heat of the moment' has passed and taken with it any 'influence of anger or other passion commonly having the effect of impairing reasoning faculties'" that the apparent resignation was an emotional reaction or outburst of frustration.

More directly, the Employment Court has also stated that 'there are situations where an employer simply cannot safely insist that an employee by words or acts has resigned'.

Comment

Where an employer encounters a resignation given in the heat of the moment (typically where the employee is worked up, emotional, upset or angry) the resignation should always be treated cautiously. The employer should allow a cooling off period and then take reasonable steps to ensure that the resignation is genuine. If the employee attempts to retract the resignation, this should be considered in good faith.