



Balancing fairness at work

A few weeks ago, while our union was appearing before the Government's Industrial Relations Select Committee to oppose its proposed new employment laws, we got to listen in on a debate between another submitter, the New Zealand Human Rights Commission's Dr Judy McGregor and Government MP Allan Peachey. Dr McGregor was opposing the Government's new laws. Mr Peachey, conversely, was suggesting that so far the debate over the proposed laws was focused too much on the fact that employees were losing their rights. He wanted to know how we should balance those rights against the rights of employers who, as he put it, also risked losing their jobs, livelihoods and houses if things went wrong.

Dr McGregor stated that the Human Rights Commission's view was that, when balancing rights, one has to lean toward protecting the rights of the most vulnerable – that is young, and marginalised workers or workers who are likely to suffer discrimination.

That's a value judgement about whose rights matter most; one that I agree with, but a value judgement nonetheless.

However, before we even need to make that judgement there is one more point to consider. The New Zealand Government's proposed new legislation aims to remove some of the rights workers have when they are unjustifiably dismissed. These rights include

both process rights, such as how unfair dismissal cases are heard and what representation workers are entitled to, as well as substantive rights around what actually constitutes unfair dismissal. One proposal is that employers be allowed to put all workers in their first ninety days of employment on a fire-at-will trial period where the employees lose virtually all their rights relating to dismissal. Workers can effectively be fired without reason, or for a bad reason. But even workers not covered by the 90-day no-rights provision lose some unjustified dismissal rights.

Mr Peachey was arguing that his hypothetical employer who is at risk of losing her or his house should be able to dismiss employees to stave off this impending financial ruin.

This is different however from dismissing workers without reason. Dismissing workers because of financial pressures is not only legitimate, it is commonplace. It is called redundancy and workers suffer from it all the time – not just when they work for employers who are suffering financially, but also at the hands of employers who are doing well financially, but want to do even better.

Mr Peachey's colleague, Select Committee chairperson David Bennett, later noted that employers sometimes need to get rid of workers who interview well, have a strong CV, but then fail to come into work five days a week. Again, such a dismissal is already currently legitimate under existing legislation. Employers are allowed to dismiss workers who do not come into work, or fail to perform

for any number of other reasons – they do need to be able to justify why they are dismissing someone though.

What this proposed new legislation does is something altogether different. It allows employers to dismiss workers where they (the employers) do not have a reason, have a bad reason, or are not willing to give a reason. This opens the door for those employers who wish to discriminate against groups of workers or individual workers. It effectively rewards bad employers by reducing the compliance costs associated with dismissing workers unfairly.

All this raises the question, under what circumstances could a good employer want to dismiss a worker and yet not have a reason?

As we noted in our submission to Parliament the focus on letting employers off the hook for unfair dismissal will be particularly harmful for academics. Money is not an adequate compensation for many academics with specialised areas of study, given the harm that unfair dismissal would cause to their careers. They want to keep their jobs, not take a payout.

Many academics in specialised areas of study have very few places that they can seek work. A specialist academic in agricultural sciences, for instance, cannot simply take the money and go onto another job, as there may only be one or two such jobs in the entire country. Even if there is work available in their field it could be in an entirely different part of the country, which would mean leaving friends and relocating their family.

Unions here in New Zealand are running a significant campaign to stop these proposals before they become law. Much of that campaign is modelled on Australia's 'Your Rights at Work' campaign. With 80 per cent of New Zealanders now opposed to the Government's planned changes to dismissal laws, we hope to succeed. **A**

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