



a regular newsletter for clients of
mcphail gibson & zwart ltd

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Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

Retirement - or forced leisure?

The last month has been a strange one for MGZ. In addition to the fact that we have, like everyone else, had to rearrange our working lives and systems to meet the constraints of the Pandemic, we have also celebrated (in a virtual way) 25 years as a company, welcomed a new member of the team, Jane Taylor, and (again virtually) wished Raewyn goodbye and good luck for the future.

So we have taken a light-hearted approach to this month's issue of *The Advocate* and we look at the recent case ***Gibson v MGZ Ltd***, which examined the issue of whether an apparent retirement was in fact forced leisure.

The Facts

Ms Gibson was a long (and tall) serving worker at MGZ Ltd, a firm dealing in long morning teas (with cheese, green tomato relish and crackers), even longer lunches and nothing much after afternoon tea. The firm was also known to dabble occasionally in employment law when breaks allowed. Ms Gibson served the firm faithfully for 25 years, providing sound (quite loudly sometimes) advice to her clients. Difficulties arose when Ms Gibson left the firm, ostensibly to pursue a life of unbridled leisure. However, Ms Gibson raised a claim that her retirement amounted to forced leisure, and raised grievances, some historical, about her treatment at MGZ Ltd. She claimed:

1. A previous worker (Mr "M") who left under similar circumstances had continually harassed her by doing rabbit impressions outside her office.
2. Mr "Z", an existing worker at MGZ, had similarly harassed her by talking loudly on conference calls and disagreeing with her when she was seeking a second opinion, despite her never being wrong.
3. Mr "K", a recently returned worker at MGZ (with a shady previous track record) had set up a bike shop in his office and had been seen in lycra.

4. Ms "T", a new worker, had followed her around for the last 2 months of her employment and had taken all of her clients.
5. Mrs "P", Administration Manager at MGZ, had pretended to be deaf when receiving orders on occasions.

Ms Gibson claimed that all these factors had led her to make the decision to choose forced leisure.

The Authority Determination

The Employment Relations Authority member, Ms Yodel, examined Ms Gibson's claim and said:

"[13] Ms Gibson gave detailed evidence in support of her claims, producing a thousand pieces of paper with scribbles and lines drawn on them, which unfortunately the Authority could not decipher.

[14] MGZ Ltd countered with a number of allegations including:

- a. *That Ms Gibson had a shadowy past that included an incident that involved a skinned rabbit and a local restaurant.¹*
- b. *That Ms Gibson was wholly unreliable, having failed to attend her first day of work in Christchurch, and failing to attend her final day of work for MGZ Ltd.*
- c. *That Ms Gibson had a fearsome reputation in the marketplace, with certain unions referring to her as the 'ball-breaker'².*

¹ The rabbit was not called to give evidence.

² No evidence of this was adduced.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Peter Zwart, Dean Kilpatrick or Jane Taylor.**

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[15] As I understand MGZ Ltd's case it considered that in light of the egregious³ behaviour of Ms Gibson, it was happy to see her adopt a new lifestyle of leisure, but did not force her to do so."

Ms Yodel considered all of the evidence went on to say:

"[67] While in 95% of cases I would be happy to find against the employer, regardless of the facts, this case stands out as one where the employer, MGZ Ltd, was, regrettably, wholly entitled to allow Ms Gibson to leave to pursue a life of leisure.

[68] I take particular account of the hearsay evidence regarding the rabbit and also Ms Gibson's fearsome reputation. I have personally encountered a number of union officials who have dealt with Ms Gibson and will never be the same again.

[70] I find that there is no element of coercion in her decision to adopt a leisurely lifestyle and that there is no element of forced leisure. Her claim must fail.

[71] Having said this, MGZ Ltd is not blameless in this matter, in fact it must have been difficult for Ms Gibson to work with some of the nut-jobs at MGZ Ltd, and on this basis I decline to award MGZ Ltd any costs⁴."

This case illustrates the importance of careful selection of workers. One mistake, 25 years earlier, can lead to an exemplary career littered with good advice and representation and prodigious amounts of paperwork and can come back to haunt an employer. Notwithstanding the recent litigation, MGZ Ltd hopes Ms Gibson will continue to come back and haunt it and MGZ Ltd will provide the occasional drink in exchange for a jar of green tomato relish.

All joking aside, as a founding member of the team Raewyn will be sorely missed by all those who she has worked for, with and also those who have been on the opposite side of the table. Raewyn is a straight shooter who works tirelessly for her clients and friends.

She has a prodigious knowledge of the law, after representing employers for approximately 33 years, and within the firm remains the 'go to' person for all things related to the Holidays Act – fondly referred to as "The Holiday Pay Queen".

We wish Gibby and Bruce all the best for their future 'leisure' together. From the Team at MGZ; past, new and long term.

³ Egregious is quite a big word. I like big words!

⁴ I love footnotes! I must do this in all my determinations.

Employment Relations Practice Course

Due to the current Covid-19 situation we are unable to schedule our next Employment Relations Practice Course at present, however are taking expressions of interest from clients who wish to attend.

Topics covered include:

- Pre-employment
- Dealing with absences from the workplace
- Discipline and Termination
- Performance Management
- Holidays Act/Parental Leave
- Negotiations and Good Faith
- Redundancy and Restructuring
- Introduction to Health and Safety
- Policies
- Legislative Updates

Email your details to carey@mgz.co.nz



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