Legal Update

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That's It, I Quit

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There has been a long-standing approach based on cases that if an employee resigns in the "heat of the moment", or as part of an emotional outburst of frustration, then relying on such resignations can be unsafe. In that situation the cases suggest an employer has a good faith obligation to enquire if the resignation was intended or to ask the employee to reconsider their resignation. So, if your employee says, "that's it, I quit" in the context of a tense and possibly heated exchange, an employer should provide them with some time to "cool-off" and reconsider their resignation. The previously accepted best practice was that the employer should offer the employee the option to retract their resignation.

But what happens if you have a difficult employee, and they resign in such circumstances? Most employers would want to rely on an employee's resignation.

RECENT CASES

In 2021, the Employment Court took a different approach to "cooling-off" periods with its decision in *Mikes Transport Warehouse Limited v Vermuelen* (***Mikes Transport***). In this case Vermuelen was asked to attend a performance management meeting. During the meeting he became visibly upset and resigned. Vermuelen argued that his resignation was in the heat of the moment, and he was not provided with a "cooling-off" period. Vermuelen failed with his claim that he had been unjustifiably dismissed from his employment.

A similar argument was raised in *Urban Décor Ltd v Yu* (***Urban Décor***). In this case, two employees were arguing with their employer and the argument led to the employees saying they quit. After verbally resigning, both employees gathered their property and left the workplace. The employees left abruptly and did not return for the rest of the day. They did not contact their employer until after work hours and even at that point there was no indication

CHANGES IN APPROACH

In *Mikes Transport*, the Court made these observations:

1. Resignations are a unilateral act, i.e. they do not require an employer to agree or accept the resignation.
2. Using an objective test, if the employee has clearly resigned, then there is no obligation for the employer to offer a "cooling-off" period or to allow the resignation to the withdrawn. This objective assessment is informed by the circumstances in play.
3. A resignation given in clear unequivocal terms is more likely to satisfy an objective assessment than words or a resignation expressed in an equivocal manner, or which is plainly not meant to be taken seriously. This can be the case even if an employee resigns in a moment of distress, anger, or frustration.
4. Concerns regarding the employer causing the employee to resign can be addressed through laws regarding constructive dismissal.

The difficulty that arises is whether an employee storming out will objectively amount to a resignation. In *Urban Décor* the Court applied the same principles as *Mikes Transport* but expanded on certain scenarios where a resignation would not satisfy an objective test. For example, if the employee stormed out of the workplace for a short period of time and returned, then this would indicate that the employee has an intention of continuing with their employment. In *Urban Décor* the resignation by both employees was unequivocal. Whilst the resignation may have been impulsive, both employees showed no indication of returning to the workplace.

KEY TAKEAWAYS

A resignation can come in any shape or form, so it can be verbal or written and with or without notice. The resignation does not need to be justified and well thought through. However, an objective test should be applied, as to whether a reasonable person outside of the situation would consider that the employee had ended the employment. Even if a resignation is given in a moment of distress, anger, or frustration, or given in the "heat of the moment", it will stand if an objective assessment indicates that the employee has resigned.

Employers are advised to be cautious where there is any doubt or ambiguity about an employee's intentions. And even more so if there are no witnesses able to support a manager's account of a conversation with a resigning employee.

An employer still has an obligation to act in good faith, which requires the employer to be communicative and fair and reasonable. The employer should clarify any ambiguous statements potentially taken as a resignation. If the employee has indicated issues with their employment, then even though the resignation is unequivocal, it may be advisable to engage with the employee over their reasons for resigning to head off a potential constructive dismissal claim. Therefore, benefits still exist to offering a "cooling-off" period, however there is no obligation to do so where a resignation is clear-cut.

If you need further advice on resignations or you are managing a difficult employee in the workplace, then please contact one of the Jackson Russell lawyers listed.

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