

Directors:  
Jeff Goldstein



[jeff@emplaywers.co.nz](mailto:jeff@emplaywers.co.nz)

Linda Ryder



[linda@emplaywers.co.nz](mailto:linda@emplaywers.co.nz)

Website:

[www.emplaywers.co.nz](http://www.emplaywers.co.nz)

Phone:

03 343 4419

Location:

Level 1, 4 Leslie Hills Drive  
Riccarton



## Goldstein Ryder News



Goldstein Ryder has welcomed a new Legal Secretary, Chloe l'Anson, to the team. Chloe will be responsible for the daily management of client files and providing support to Linda and Jeff. Welcome Chloe!

### *Roach v Nazareth Care Charitable Trust*

The Employment Court has recently issued an important judgment regarding trial periods: *Roach v Nazareth Care Charitable Trust*.

Mr Roach was offered and accepted a job as the Business Manager at Nazareth Care Charitable Trust in June 2016. He signed an employment agreement and agreed to start work on 10 October 2016. At the end of August 2016, before Mr Roach started work, the Trust asked Mr Roach to apply for a role as General Manager. In September 2016 Mr Roach signed another employment agreement for the role of General Manager. Both employment agreements contained 90-day trial periods.

Mr Roach started work on 10 October 2016. On 28 November 2016 Mr Roach was called into a meeting with the Trust's Regional Project Manager, the Christchurch-based Sister Superior, and the Trust's Chairman. Prior to the meeting Mr Roach was not given a reason for the meeting. At the meeting he was told that he was being dismissed under the 90-day trial provision in his employment agreement. The Trust did not give any explanation for Mr Roach's dismissal. He was told that he would be paid one week's pay in lieu of notice. He was then escorted from the premises.

Mr Roach raised a personal grievance for unjustified dismissal. He argued that the trial period was invalid because he had been previously employed by the Trust, and therefore the Trust could not rely on the trial period to dismiss him. He also argued that, alternatively, if the trial period was valid, then the Trust failed to give him notice in accordance with the employment agreement and therefore could not use the trial period to justify his dismissal.

The Court held that Mr Roach had not previously been employed by the Trust when he signed the employment agreement as a General Manager. This meant that he was able to be employed on a trial period for this new position. However, the Trust did not comply with the notice provisions of Mr Roach's employment agreement.

**Senior Solicitor:**  
Jane Taylor



[jane@emplawyers.co.nz](mailto:jane@emplawyers.co.nz)

**Solicitor:**  
Deborah Hendry



[deborah@emplawyers.co.nz](mailto:deborah@emplawyers.co.nz)

**Website:**  
[www.emplawyers.co.nz](http://www.emplawyers.co.nz)

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The Court held that the Trust intended to end the employment relationship immediately and had summarily dismissed Mr Roach. The Court held that there were no grounds to summarily dismiss Mr Roach, and that the Trust had breached his employment agreement by paying Mr Roach in lieu of notice. Because the Trust had failed to comply with the notice provisions of Mr Roach's contract, the Trust was unable to rely on the trial period to dismiss Mr Roach. This meant that the Trust had to show that Mr Roach's dismissal was justified.

Mr Roach was dismissed after concerns were raised with senior management about his work performance. Mr Roach was not told about any issues with his performance prior to his dismissal. The Court held that the deficiencies in the Trust's process were significant and that they resulted in Mr Roach being treated unfairly. The Judge said that, "Relying on unsubstantiated concerns in emails without further inquiry, or attempting to discuss them with Mr Roach, was not what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal. It follows that Mr Roach was unjustifiably dismissed."

Mr Roach was awarded the following:

- 12 months' lost wages, totalling \$115,000;
- Interest on lost wages; and
- \$25,000 compensation for hurt, humiliation, loss of dignity and injury to feelings.

**Lessons to be learnt from this case:**

- Always ensure you comply with the notice provisions in your employment agreements;
- If your employment agreement does not allow you to pay in lieu of notice then do not pay in lieu of notice;
- Seek legal advice prior to dismissing an employee under a trial period—getting it wrong can be very expensive!

**If you need assistance with termination of employment please call us on 03 343 4419. You can also contact us for advice about:**

- Employment agreements;
- Trial periods;
- Collective bargaining;
- Disciplinary investigations;
- Restructuring and redundancy;
- Dismissal claims
- Workplace policies
- And more...