

Giving Notice of Termination

It is common for employment agreements to include a clause that states employer or employee can terminate employment by giving the other party a certain period of notice.

A recent case, *Hobson v The Corner Store 2009 Limited*, considered an employer's actions after an employee had given 10 weeks' notice of resignation, when only two weeks' notice was required by the employment agreement.

On 20 February 2013 Mr Hobson resigned in writing effective 30 April 2013. He thought he was being helpful to his employer by giving a longer notice period. But on 1 March 2013 his employer told him he could finish immediately and they would pay him in lieu of two weeks' notice.

An employer cannot accept a resignation on different terms from those on which the employee resigned. The Employment Relations Authority held that the employer had dismissed Mr Hobson on 1 March.

That dismissal was unjustified because the decision was made without talking to Mr Hobson and discussing the options with him first.

This case confirms that:

- An employee is entitled to give a longer period of notice than is specified in the employment agreement.
- An employer must consult an employee about the reason why dismissal is being considered, providing a reasonable and genuine opportunity for the employee to respond.

The Authority did not need to consider whether it might have been open to Mr Hobson's employer to dismiss after consulting him, but we would add:

- An employer must have cause for dismissal. Common causes are misconduct, redundancy, continued poor performance, or a lengthy absence from work due to illness or injury. The fact that an employee has given a longer period of notice than required is not in itself cause for dismissal.

An employee is entitled to resign, and a resignation is not subject to acceptance by the employer. The employer has only the discretion to allow or invite the employee to reconsider.