

Fitness for work

An employer does not have to hold a job open forever for an employee who is not fit for work, but how long does an employer have to wait before dismissing that employee? A fair and reasonable employer will take into account the particular circumstances including the role and the prospects of a successful return to work.

Mr Cooper was off work for nearly two months when he was dismissed by FJ Ramsey Investments Ltd. He had been a senior shepherd on a North Canterbury station and he had a history of cardiac issues. On 8 December 2012 he experienced sudden chest pains and was airlifted to hospital where he underwent urgent surgery. He was released from hospital a month later. There was an indication that his rehabilitation could take several months but Mr Cooper's employer claimed it could not hold the job open that long.

What would a fair and reasonable employer do in this situation?

- **Write to the employee**, expressing concern about how long they are likely to be away from work, letting them know that the job could not be held open for an extended period, and seeking a response and an up-to-date medical assessment about rehabilitation. Mr Cooper's employer sent a suitable letter, and Mr Cooper replied with a letter from his GP.
- **Hold a meeting** to discuss the situation. Mr Cooper was told there would be a meeting but his employer did not hold one.
- **Assess the impact of the absence**. Mr Cooper's employer claimed his absence put "severe pressure" on his boss and other staff, but the staff said they were managing fine.
- **Consider a return to light duties**. Mr Cooper was fit for light duties from 5 February 2013 – the day his dismissal took effect.
- **Take into account information provided by the employee**. Mr Cooper's employer believed that he had failed to disclose a pre-existing medical condition. Even though the GP explained that Mr Cooper's pre-existing condition did not impair his work performance and that this medical event was caused by an entirely new condition, the employer's decision was influenced by its belief.

The Employment Relations Authority decided that Mr Cooper's dismissal was unjustifiable. His employer was ordered to pay him \$12,500 in lost wages and \$6,000 in compensation for humiliation, loss of dignity and injury to feelings.