

# Employer wins!

An employer must have genuine reasons based on reasonable grounds for proposing a fixed term arrangement. **Paul Robertson** considers a recent case where an employee challenged whether this was so in her situation.



## IN MY FINAL ARTICLE FOR

*Employment Today* I report on a win by an employer.

The Employment Relations Authority has upheld a fixed term arrangement that was challenged by the employee who alleged that the fixed term was not reasonable.

## FIXED TERM APPOINTMENTS

Pursuant to section 66(1) of the Employment Relations Act, an employee and an employer can agree that the employment will end on a specified date. However, the employer must have “genuine reasons based on reasonable grounds” for proposing a fixed term arrangement and the rationale for the fixed term must be recorded in writing at the beginning of the contract.

Most decisions of the Authority focus on disputes over whether the rationale has been appropriately recorded, even where the employer has genuine and reasonable grounds. In a recent decision of the Authority, the fixed term arrangements were well documented, but the employee challenged whether

the arrangement was genuine and reasonable.

## THE FACTS

The employee was a teacher aide at an Auckland school who had been working on a year-to-year and, more recently, on a term-to-term, fixed term basis. In each of the appointment letters, the school explained why the contracts were for a fixed term referring to the precarious nature of funding for the employment of teacher aides.

The argument of the teacher aide was that, in effect, her contract had been “rolled over” for a number of years so it could reasonably be inferred that ongoing funding would be available.

Not so said the school, explaining that funding for teacher aides was allocated on a variable basis. The funding depended on such things as: the level of a student’s needs, whether the child remained at the school, the year-to-year roll of the school (which in turn affected the operations grant), other money recovered from the Ministry of Education in relation

to a range of funding sources, how much the school could afford to pay out of school fundraising activities and similar.

Even when funding from the Ministry of Education was confirmed, there was a delay between the money being confirmed, and money being received, which the board had to fund. Commonly the amount paid by the Ministry of Education was less than the actual rate paid to the teacher aides.

The collective agreement was unhelpful in that there is no provision for reducing the hours to accommodate the loss of funding, emphasising the need for a fixed term arrangement.

The Authority Member reviewed an earlier decision involving Red Beach School, where the Authority had found that the fixed term arrangements for teacher aides in that school were genuine, but were not reasonable. That was because the Authority concluded that the roll at Red Beach School was steady and there was a waiting list of students in need of teacher aides to enrol

at the school. For that reason, it held that teacher aides could be treated as permanent staff because they could be transferred between one student and another as necessary.

In the instant case, the Authority concluded that the school had established that it had genuine reasons for employing the teacher aide on a fixed term basis. In addition:

“I am also satisfied that an impartial observer would conclude that the school’s decision was a reasonable one in all of the circumstances taking into account its limited funding, the variable nature of that funding, the need for flexibility to accommodate the changing needs of students, and the importance of it remaining able to sustain payments for its day to day needs.”

Best wishes to all my readers and adieu.

**L’Isle v BOT of Glamorgan School [2019] NZERA 198** 

**PAUL ROBERTSON** is a partner at Heaney & Partners in Auckland. Visit: [www.heaneypartners.com](http://www.heaneypartners.com)

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**PAUL ROBERTSON | Partner:** direct dial: (09) 367 7004 email: [paul.robertson@heaneypartners.com](mailto:paul.robertson@heaneypartners.com) [www.heaneypartners.com](http://www.heaneypartners.com)  
Phone: (09) 3030 100 Fax: (09) 3677 009 Level 13, PwC Tower, 188 Quay Street, Auckland PO BOX 105391, Auckland. 1043. DXCP18503