

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 99/2019  
[2019] NZSC 130

BETWEEN CALIN IOAN  
Applicant

AND SCOTT TECHNOLOGY NZ LIMITED  
Respondent

Court: Winkelmann CJ, Glazebrook and Ellen France JJ

Counsel: Applicant in Person  
G D Bevan for Respondent

Judgment: 19 November 2019

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B Costs of \$2,500 are awarded to the respondent.**
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**REASONS**

[1] Mr Ioan applies for leave to appeal against a decision of the Court of Appeal that s 67B(1) of the Employment Relations Act 2000 applied to the termination of his employment with Scott Technology NZ Ltd (Scott Technology).<sup>1</sup>

**Background**

[2] Mr Ioan started work on 1 August 2016 with Scott Technology. His employment was subject to a 90-day trial period. Mr Ioan was informed by letter on

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<sup>1</sup> *Ioan v Scott Technology NZ Ltd* [2019] NZCA 386 (French, Brown and Collins JJ) [CA judgment].

7 October 2016 that his employment would end “effective immediately”. The letter went on to provide an explanation for the termination and then said:

Your notice period, as outlined in your employment period, is four weeks however we have decided you will be paid in lieu of working out your notice period. Therefore, your effective last day of work is today.

### **The legislation**

[3] Section 67A of the Employment Relations Act sets out the circumstances in which an employment agreement may contain a 90-day trial period. Section 67B in relevant part provides:

#### **67B Effect of trial provision under section 67A**

- (1) This section applies if a small-to-medium-sized employer terminates an employment agreement containing a trial provision under section 67A by giving the employee notice of the termination before the end of the trial period, whether the termination takes effect before, at, or after the end of the trial period.
- (2) An employee whose employment agreement is terminated in accordance with subsection (1) may not bring a personal grievance or legal proceedings in respect of the dismissal.
- ...
- (4) An employee whose employment agreement contains a trial provision is, in all other respects (including access to mediation services), to be treated no differently from an employee whose employment agreement contains no trial provision or contains a trial provision that has ceased to have effect.

### **Leave application**

[4] Mr Ioan wishes to reprise the argument made in the Court of Appeal (and the Employment Court and Employment Relations Authority) that s 67B(1) was not complied with because no proper written notice of termination was given. Instead, the letter of 7 October 2016 provided for termination with immediate effect.

## Court of Appeal decision

[5] The question of law submitted for determination by the Court of Appeal was:<sup>2</sup>

Whether s 67B(1) of the Employment Relations Act 2000 applied to the termination of the appellant, in circumstances where that termination was advised to him within the trial period, but the employer paid the employee in lieu of work for the notice period, in a manner permitted by his employment agreement?

[6] In agreement with Judge Holden in the Employment Court,<sup>3</sup> the Court of Appeal held that, in accordance with general law, “notice of termination” in s 67B:<sup>4</sup>

... includes a situation where the employer gives the requisite period of notice but does not require the [employee] to work out the notice, instead making a payment for the period of notice.

The question of law was therefore answered in the affirmative.

## Our assessment

[7] We do not consider the criteria for leave are met.<sup>5</sup> The issues Mr Ioan wishes to raise relate to the particular facts of this case. Further, in the circumstances, we do not consider there is a risk of a miscarriage of justice.<sup>6</sup>

## Result

[8] The application for leave to appeal is dismissed.

[9] Costs of \$2,500 are awarded to the respondent.

Solicitors:

Gallway Cook Allan, Dunedin for Respondent

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<sup>2</sup> At [18].

<sup>3</sup> *Ioan v Scott Technology NZ Ltd (t/as Rocklabs)* [2018] NZEmpC 4, (2018) 15 NZELR 723.

<sup>4</sup> CA judgment, above n 1, at [30].

<sup>5</sup> Senior Courts Act 2016, s 74(2).

<sup>6</sup> For civil cases, the miscarriage of justice ground (s 74(2)(b) of the Senior Courts Act) allows this Court to review errors of fact “or on questions of law which are not of general or public importance, in the rare case of a sufficiently apparent error, made or left uncorrected by the Court of Appeal, of such a substantial character that it would be repugnant to justice to allow it to go uncorrected in the particular case”: *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].