



A-Z OF EMPLOYING

CONTRACTUAL REMEDIES ACT 1979

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CONTRACTUAL REMEDIES ACT 1979

The Contractual Remedies Act 1979 is applicable to all types of contract, including employment agreements. Both the Employment Relations Authority and the Employment Court have the jurisdiction to make orders under this Act in respect of employment agreements.

This Act provides remedies for misrepresentation, repudiation and breach of contract.

Misrepresentation, put simply, is a statement of past or present (not future, unless it is a promise that forms part of the contract) fact (not opinion or law) made by, or on behalf of, another party to a contract that induces the other party to enter the contract.

Repudiation means a refusal to perform a contractual obligation, or an expressed intention to perform a contract in a substantially different way from which the parties contemplated. It may be by words or conduct.

A breach of contract may be actual or anticipatory, and is conduct that cuts through either an implied or express term on the contract.

In *NZ Amalgamated Engineering etc IUOW v Vehicle Assemblers of NZ Ltd* [1990] 3 NZILR 792 the Labour Court found that VANZ had been entitled to cancel Mr Treen's contract of employment under section 7 of the Contractual Remedies Act 1979 on the grounds of misrepresentation when it found that, in spite of a declaration that the information provided by him would be true and that he could be liable for dismissal if it was found to be otherwise, Mr Treen had told VANZ that he had been employed by a previous (fictional)

employer for five years when he had been employed by five different employers and had been dismissed by the last of those for supplying false information on his application form. The Court agreed that VANZ had been entitled to consider that Mr Treen's deceit had irretrievably damaged the essential trust between himself and it, and to infer a propensity for dishonesty, and that the misrepresentation by Mr Treen had been material, because he would not have been offered the job if he had told the truth.

In *Loh v Pauanui Publishing* (Unreported) WC 43/01; 4 October 2001, Goddard CJ held that Mr Loh's confirmation of his intention to take three weeks' unpaid leave in the face of his employer's ultimatum (that if he took the leave that he would not have a job to return to) in the circumstances, did amount to repudiation on the part of Mr Loh on the basis of the doctrine of anticipatory breach. That confirmation had been so serious so as to go to the heart of the employment contract entitling the employer to treat the contract as repudiated giving it the option to cancel or affirm; it had exercised its right to cancel when it had told Mr Loh (incorrectly) that he was "deemed to have resigned".

In the Pauanui case, the employer cancelled the contract before the employee had actually taken the ungranted leave; the cancellation was on the ground of Mr Loh's anticipatory breach which was capable of repudiating the contract.

The Contractual Remedies Act 1979 provides that a party to a contract shall not be entitled to cancel the contract if, with full knowledge of the repudiation or misrepresentation or breach, they have affirmed the contract.

The Act provides that where a party to a contract is entitled to cancel it then it may do so and seek the following additional remedies:

- ▶ Damages;
- ▶ Order for relief by:
 - The transfer or assignment of the property that was the subject of the contract or the consideration for the contract;
 - Directing a party to do or refrain from doing an act that the Court thinks just.

The Act specifies that cancellation does not take effect until the other party had been notified of the cancellation and that it only effects unperformed obligations; cancellation does not have a retrospective effect.

When seeking to terminate an employment agreement under these conditions, an employer must still meet the requirements to act as a fair and reasonable employer under the duty of good faith.

For more information on these requirements please see A-Z Guides on **Good Faith** (Under Employment Relations Act), **Discipline** and **Termination of Employment**.

You can contact one of our employer advisors for telephone advice and assistance: **0800 800 362** or email the Business Central AdviceLine at info@businesscentral.org.nz

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