

Religious Law Trumps Dismissal

Date : September 6, 2017

The Supreme Court has confirmed the power of religious laws within employment contracts, in ruling that administrators of a Sydney synagogue wrongfully dismissed a high earning rabbi when they made him redundant. The court confirmed that his employment contract conferred lifetime tenure under Orthodox Jewish Law.

Employment Law – Facts

In essence:

- Administrators were called in to assist the Rose Bay synagogue over concerns about finances and declining congregation.
- In April 2017 the administrators sent the rabbi a “termination” letter after concluding they could no longer afford the rabbi’s remuneration package. The rabbi had earned over \$2million over the last three years.
- However, the rabbi claimed that his employment contract was bound by the Orthodox Jewish law principles of Halacha, which made a guarantee of lifetime tenure (Hazakah), a contractual term by incorporation or implication.
- The administrator argued that the principles of Halacha, including Hazakah, were not incorporated into the employment contract and they were entitled to end the rabbi’s contract.

Employment Law – Decision

Justice Brereton of the Supreme Court:

- held that the rabbi was unlawfully dismissed
- accepted that the rabbi’s employment contract included a guarantee of lifetime tenure (Hazakah), unless a religious court established there were reasonable grounds for dismissal under the Din Torah process of arbitration. This could include “fundamental non-performance of his rabbinical duties” under Jewish law (Halacha)
- confirmed, citing *Engel v The Adelaide Hebrew Congregation*, that “the parties to a contract governed by Australian law can incorporate into the contract, as terms of the contract, provisions of another system of law, including Jewish law. Alternatively, if not incorporated, then ‘Hazakah’ is an implied term of the contract”
- emphasised that it was “inconceivable” that the parties did not intend for Hazakah to be a term of the contract as any arrangement other than Hazakah, would have been antithetical to Orthodox Jewish life

The decision is available for you to read through the hyperlink:

[In the matter of South Head & District Synagogue \(Sydney\) \(Administrators appointed\) \[2017\]](#)



[NSWSC 823 \(22 June 2017\)](#)

Employment Law – Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- review this court decision
- be aware of the terms of an employee's contract which may be express or implied to avoid breaches
- ensure compliance with employment contracts and employment law policies
- seek the assistance of an employment lawyer to understand the impacts of this decision
- raise any employment law questions with an employment lawyer

Employment Law – More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635-7966** to speak with one of our employment lawyers.