



# Advice from Alan

## No genuine reason for fixed term

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The Employment Relations Authority (ERA) has held that

a fixed term without a genuine reason was unlawful and that an employee was unjustifiably dismissed by their employer. The employee had a very long (five-hour) interview and then signed an employment agreement that included a 90-day trial period. The employer terminated the agreement within the 90-day period, relying on the trial period clause. The employer then offered the employee a fixed-term contract while they sought a new job. The contract expired after two months.

The first unjustified dismissal claim related to the 90-day trial period clause. The ERA held that the trial period was valid as the employee had not worked for the employer before and the long unpaid interview was not work, but testing suitability.

The ERA then considered whether the dismissal based on the fixed-term contract was justified. Fixed-term contracts are not justified if the contract is intended to exclude or limit the rights of the employee

under the Employment Relations Act, establish the suitability of the employee, or exclude or limit the rights of an employee under the Holidays Act. There must also be a genuine business reason for the fixed term.

The ERA decided that the employer believed he had a “moral duty” to employ the employee while they found other work. However, the employer did not have a genuine business reason for employing the employee on a fixed-term basis rather than an ongoing basis, as the employer had a continuous need for someone to fill the employee’s role. The fixed-term contract was not justified and could not be used to terminate the employment. Therefore, the employee was unjustifiably dismissed.

The ERA ordered the employer to pay \$15,000 to the employee in compensation for hurt and humiliation. The employer was also ordered to pay \$2625 to the employee for lost wages. This case is an important reminder of the nuances which surround employment contracts and the need for a genuine business reason for a fixed term despite good intentions.