

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 267  
3021491

BETWEEN                      AHMED ALKAZAZ  
   Applicant  
  
AND                                SPECTRUM CONSULTING  
   LIMITED  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Applicant in Person  
   Aishleen Sluiters for Respondent  
  
Investigation Meeting:      22 August 2018  
  
Oral Determination:        23 August 2018  
  
Record of Oral  
Determination:              23 August 2018

---

**RECORD OF ORAL PRELIMINARY DETERMINATION OF THE  
AUTHORITY**

---

- A.      Mr Alkazaz did not take reasonable steps to raise his personal grievances for unjustified actions leading to disadvantage within the statutory 90 day time limit.**
- B.      The application for leave to raise the personal grievances is declined.**
- C.      Costs are reserved.**

## **Employment relationship problem**

[1] Mr Alkazaz worked for Spectrum Consulting Limited from May to September 2017. During the employment relationship Spectrum became concerned about possible misrepresentations made by Mr Alkazaz during the recruitment process. That matter was addressed but then further concerns became apparent to Spectrum which resulted the termination of Mr Alkazaz's employment.

[2] Mr Alkazaz claims one or more conditions of his employment were affected to his disadvantage as a result of unjustified actions by Spectrum. He also says his dismissal was unjustified, that Spectrum breached its statutory obligations of good faith, the Employment Relations Act 2000 (the Act) and the employment agreement between the parties.

[3] Spectrum claims Mr Alkazaz did not raise a personal grievance for unjustified actions causing disadvantage within the requisite 90-day period. This is disputed by Mr Alkazaz who says he did raise his personal grievance within the statutory time frame.

[4] This determination addresses only the preliminary issue of whether Mr Alkazaz raised his personal grievance for unjustified actions causing disadvantage within the statutory time limits.

[5] As permitted by s 174E of the Act this determination has not recorded all the evidence and submissions received from Mr Alkazaz and Spectrum but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

### **Was the disadvantage grievance was raised within the statutory time frame?**

[6] Mr Alkazaz claims he has a personal grievance for unjustified actions leading to his disadvantage. There are three elements to Mr Alkazaz's claim for unjustified disadvantage:

- a) Demotion and reduction in salary;

- b) Inducement, coercion and pressure from Spectrum to sign a fixed term employment agreement; and
- c) Failures to comply with ss 63A, 66 and 68 of the Act.

[7] Section 114 subsections (1) and (2) of the Act deal with the timeframe for the raising of personal grievances in the following terms:

**114 Raising personal grievance**

- (1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.
- (2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

[8] Section 114(2) makes it clear that a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

[9] What s 114(2) requires is that there should be a sufficient specification of the employee's concerns as to enable the employer to be able to address that grievance. To do so, the employer must know what to do.<sup>1</sup> There is no formality involved in notifying a grievance to an employer.<sup>2</sup>

[10] It is not enough to simply say the employee considers they have a personal grievance. In order to properly raise a personal grievance the employee needs to have conveyed to the employer enough information, so that the employer is in a position where it is able to respond on the merits of the alleged grievance, with a view to resolving it at an early stage.<sup>3</sup>

---

<sup>1</sup> *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].

<sup>2</sup> *GFW Agri-Products Ltd v Gibson* [1995] 2 ERNZ 323.

<sup>3</sup> Above n 1.

***Demotion and reduction in salary***

[11] Mr Alkazaz was employed by Spectrum following a series of interviews in March and April 2017. After accepting a written offer of employment he started working for Spectrum on 8 May.

[12] Mr Alkazaz had correctly recorded in his CV that he had worked for Deloitte Limited and that this employment ended in August 2016. That is where his employment history ended. During the interviews in March and April Mr Alkazaz was questioned about the gap in his employment history. He told Spectrum that he had travelled and been involved in organising his wedding in Egypt.

[13] Through another employee at Spectrum Mr Grant McKenzie, the then CEO, was advised that Mr Alkazaz had worked for another firm, Enterprise IT Limited, after leaving Deloitte's.

[14] On 19 May 2017 Mr Alkazaz was invited to attend a disciplinary meeting to discuss allegations that he had misrepresented his employment history in his CV and that the skills set out in his CV did not match his performance to date. Spectrum was concerned Mr Alkazaz did not hold the skills and attributes it had relied on when offering Mr Alkazaz the role of Oracle Database Technical Consultant.

[15] Mr Alkazaz was advised both matters were viewed seriously and that dismissal may be a possible outcome.

[16] The parties met on 23 May 2017 to discuss the allegations. Mr Alkazaz held the view that it was a simple misunderstanding and denied he had misrepresented himself. Spectrum says that at a previous meeting on 19 May 2017 Mr Alkazaz accepted he had misrepresented his pre-employment history and accepted that the misrepresentations seriously undermined the employment relationship between him and Spectrum.

[17] As a result of the meeting on 23 May Mr Alkazaz was offered and accepted a different position on a much reduced salary. The offer was made in writing by way of a covering letter setting out the background leading to the new role and an individual employment agreement which is purportedly for a fixed term of one year.

[18] Mr Alkazaz says the new position was a demotion and he was coerced to accept the salary reduction which are unjustified actions leading to his disadvantage. Spectrum says it terminated Mr Alkazaz's employment because it found he had materially misrepresented his employment history but offered Mr Alkazaz a second chance by offering a new position at a reduced salary which he accepted by signing a new employment agreement.

[19] Mr Alkazaz signed the new employment agreement on 29 May 2017. Mr Alkazaz was advised that he had a right to engage with Spectrum if he wished to clarify any aspect of the new agreement. The covering letter advised Mr Alkazaz he should sign the agreement if he was happy with it and wished to accept it. When signing the agreement Mr Alkazaz acknowledged and confirmed that:

- a) He had the opportunity to obtain independent advice on Spectrum's letter dated 19 May and the matters discussed in the meeting on 23 May;
- b) He agreed with the contents of the 29 May letter;
- c) He had been given adequate opportunity to seek independent advice before signing the new employment agreement;
- d) He had read and understood the terms of the new agreement; and
- e) He agreed to terminate the current employment agreement and be bound by the new agreement.

[20] From 30 May Mr Alkazaz undertook his duties under the new agreement.

[21] In early June 2017 Mr Alkazaz contacted RWA People Limited (a recruitment agency) on at least two occasions to discuss his situation. Mr Alkazaz had been recruited into his job at Spectrum through RWA. On both occasions Mr Alkazaz expressed his unhappiness with his current salary level. During one of the calls Mr Alkazaz requested RWA raise his concerns about his pay with Spectrum. The information was passed onto Mr McKenzie.

[22] On 30 August 2017 Mr Alkazaz emailed Mr McKenzie and requested that his salary be adjusted. In his email Mr Alkazaz sets out his reasons why he should receive an increase to his previous salary and that it should be backdated to the date of the reduction.

[23] In his email Mr Alkazaz acknowledges that he agreed to the new salary and the new employment agreement. Mr Alkazaz raises questions about the fairness of him being on the salary given his recent efforts and sets out the concerns he has about supporting his wife and soon to be born child.

[24] On 17 October Mr Alkazaz advised Spectrum through his lawyer that he was raising personal grievances for an unjustified action causing disadvantage and for unjustified dismissal. Attached to the email is an unsworn affidavit that sets out in full Mr Alkazaz's view of the events leading up to and including the change of role and reduction in salary.

[25] Contrary to the email notification, the statement of problem lodged in the Authority on 20 October did not specify a claim for unjustified disadvantage. Its focus was on a claim for unjustified dismissal and an application for interim reinstatement. However the remedies set out in the statement of problem included a claim for payment of his salary at the pre-30 May level.

[26] An amended statement of problem setting out a claim for unjustified disadvantage was lodged in the Authority on 1 February 2018. This was the first occasion on which Spectrum became aware of the extent of Mr Alkazaz's dissatisfaction with the actions occurring in May.

***Inducement, coercion to sign a fixed term agreement and breaches of the Act***

[27] Mr Alkazaz claims he was induced into accepting the new employment agreement by undue influence or duress and when offering the agreement Spectrum breached aspects of the Act. He says these actions by Spectrum were unjustified and resulted in him being disadvantaged. These claims were first raised when he lodged an amended statement of problem in the Authority on 1 February 2018.

### ***Conclusion***

[28] The disadvantage grievances relate to the actions of Spectrum on 29 May 2017 when Mr Alkazaz signed an employment agreement for a different role and at a salary that was significantly less than the salary applying to the role he was originally employed into. The 90-day period for raising a personal grievance expired on 27 August 2017.

[29] Mr Alkazaz told me he raised his grievance with Mr McKenzie on 24 and 25 May. Mr Alkazaz signed the new employment agreement accepting the new role and reduced salary on 29 May which took effect on 30 May. Even if Mr Alkazaz did make his unhappiness known to Spectrum on 24 and 25 May, this would have been a pre-emptive raising of a grievance because the new role and reduction in salary did not occur until 30 May and then only after Mr Alkazaz had signed the employment agreement accepting the offer. As stated by the Employment Court:<sup>4</sup>

Given that the scheme of the legislation is to allow an employer to remedy the personal grievance as soon as possible after being notified of it, it would be a nonsense to permit the notification of an event that might or might not occur.

[30] I am not satisfied that the discussions Mr Alkazaz had with RWA in June where he made a specific request to have his concerns about his salary passed on to Spectrum was enough to raise a personal grievance. Mr Alkazaz needed to provide enough information to allow Spectrum to respond to the merits of his grievance. What he told RWA was that he was unhappy with his new salary but he did not specify what it was he wanted done about it.

[31] RWA contacted Spectrum and advised Mr McKenzie of Mr Alkazaz's telephone discussion about his salary. As far as Spectrum was concerned Mr Alkazaz had accepted the offer of the new role at the proffered salary level. It was not aware of the claims Mr Alkazaz now makes that he was coerced into signing the agreement.

[32] I am not satisfied Mr Alkazaz has taken reasonable steps to raise his unjustified action personal grievances within the 90 day period. The first raising of his claims that he was subject to disadvantage was in the email on 17 October which is 50 days outside the statutory time limit.

---

<sup>4</sup> Ibid at [30].

## **Application for leave to raise a personal grievance outside the statutory timeframe**

[33] Spectrum does not consent to the raising of the grievances outside the 90-day period. For that reason, Mr Alkazaz has applied for the leave of the Authority to raise his grievance out of time pursuant to s 114 subsection (3) and (4) and s 115 of the Act which states:

- (3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.
- (4) On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority—
  - (a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and
  - (b) considers it just to do so.

### **115 Further provision regarding exceptional circumstances under section 114**

- (1) For the purposes of section 114(4)(a), exceptional circumstances include—
  - (a) where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114(1); or
  - (b) where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time; or
  - (c) where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems that is required by section 54 or section 65, as the case may be; or
  - (d) where the employer has failed to comply with the obligation under section 120(1) to provide a statement of reasons for dismissal.

[34] Mr Alkazaz relies on two grounds for his application for leave. They are that exceptional circumstances occasioned the delay and it is just to grant leave. Both limbs must be established.

[35] Mr Alkazaz says he was so affected or traumatized that he could not properly consider raising the grievances within the 90 days. For the following reasons I do not accept Mr Alkazaz could not properly consider raising the grievances.

[36] At the time the events giving rise to his claim occurred he was involved in litigation with a previous employer. He was in regular contact with his specialist employment lawyer regarding that matter and did raise with his lawyer the prospect of raising a personal grievance against Spectrum for its actions in May. His lawyer told me that they discussed the prospect of raising a personal grievance but agreed they would not pursue one at that time.

[37] Mr Alkazaz worked in the new role and by all accounts considered he was doing a good job which led him to request a review of his salary on 30 August. Further, during the 90 day period following 29 May, Mr Alkazaz was undertaking secondary employment. The hours he was working in his second job were not insignificant. I have also taken into account that Mr Alkazaz did not seek any medical intervention for trauma and nor did he take any sick leave in the 90-day period from 29 May.

[38] Mr Alkazaz also seems to rely on s 115(b) to support his application for leave. Mr Alkazaz spoke to his lawyer about the actions in May. His lawyer advised him he could raise a personal grievance. Mr Alkazaz initially told his lawyer to go ahead and do that, but following a discussion they both agreed not to take any action at that time.

[39] I find it is more likely than not that at this time Mr Alkazaz wanted to continue working for Spectrum and was keen to prove to Mr McKenzie that he was worth a higher salary. While there was a discussion about raising a personal grievance I find on balance it is more likely than not that Mr Alkazaz made a conscious decision not to make any arrangements to raise a personal grievance within the 90 day period.

[40] I find no exceptional circumstances exist and Mr Alkazaz's application for leave is declined.

### **Next steps**

[41] At the investigation meeting Mr Alkazaz advised me he was withdrawing his claim for reinstatement. In order for the substantive matters to be progressed efficiently a case management call will be convened within the next 14 days to discuss timetabling for the investigation of the outstanding claims.

**Costs**

[42] Costs associated with this preliminary matter are reserved and will be dealt with when dealing with any costs issues following determination of the substantive matters (if that is necessary).

Vicki Campbell  
Member of the Employment Relations Authority