

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 368
5551213

BETWEEN RABAH BASHIR
 Applicant

A N D LADBROOK LAW LIMITED
 Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
 S J Neville, Counsel for Respondent

Date of Oral
Determination: 24 November 2015

Date of written
determination: 25 November 2015

ORAL DETERMINATION OF THE AUTHORITY

[1] Mr Bashir was employed as a law clerk by Ladbroke Law Limited in January 2014. He raised various personal grievances of unjustified disadvantage about conduct that appeared between himself and John Appleby, the respondent director. These were raised in a letter dated 28 November 2014. The unjustified disadvantages span a period from June to 28 November 2014. Mr Bashir was dismissed for redundancy on or about 2 December 2014.

[2] I need to determine if all of his personal grievances may proceed to hearing. The issue is whether all of these personal grievances have been raised with the respondent within the period of 90 days as set out in s.114 of the Employment Relations Act 2000 (the Act). A grievance is raised with an employer as soon as the employee has taken reasonable steps to make the employer aware that the employee alleges a personal grievance that he or she wants the employer to address¹.

¹ Section 114(2) Employment Relations Act 2000.

[3] It is accepted Mr Bashir's personal grievances were only raised on 28 November 2014. As a consequence this only covers personal grievances that arise 90 days prior to the date of the letter. Therefore the grievances covered are from 31 August to 28 November 2014.

[4] From the evidence I have heard from Mr Bashir this morning, four of his personal grievances were raised outside of the 90 day time limit. These are:

- An unjustified disadvantage arising from a pay rise/performance review in June 2014;
- Criticism about his performance in a trust lecture in June 2014;
- Comments by Mr Appleby to the applicant that he did not understand his *anglo-saxon ways* which occurred from June to August 2014; and
- An unjustified dismissal for redundancy which occurred on 2 December 2014 and was raised in a statement of problem filed on 24 April 2015.

[5] During hearing Mr Bashir indicated the unjustified dismissal for redundancy was no longer being pursued. He still wished to bring an unjustified disadvantage claim regarding the redundancy process leading up to 28 November 2014.

[6] Mr Bashir seeks leave to raise the remaining personal grievances out of time. The Authority may grant leave for grievances that are raised outside of the statutory time frame. I must be satisfied that the delay raising the personal grievance was occasioned by exceptional circumstances and that it is just to grant leave².

[7] Exceptional circumstances are "unusual":

... [Exceptional circumstances] describe something that is out of the ordinary course or unusual or special or uncommon. To be exceptional the circumstance need not be unique or unprecedented or very rare but it cannot be one that is regularly or routinely or normally encountered. The purpose of the 90 day limit is to ensure employers are properly and promptly notified of alleged grievances. Time should

² Section 114(4) Employment Relations Act 2000.

therefore be extended only if exceptional circumstances are truly established and in addition the overall justice of the case which includes taking account of the position of an employer facing a late claim so requires³.

[8] There is no evidence before me of exceptional circumstances. Mr Bashir tells me that I should grant leave because the earlier conduct was the starting point for the later unjustified disadvantages. However I accept the respondent counsel's submission that the earlier unjustified disadvantages are discrete issues and did not continue in that form beyond 31 August 2014.

[9] Mr Bashir submitted he failed to raise the unjustified disadvantages earlier because he *had a lot going on*. This does not provide an exceptional circumstance for his inability to meet the statutory timeframe. According to his own evidence he had access to legal advice. I can only assume it was competent and should have identified for him any statutory time limits that were operating at the time.

[10] Accordingly, I dismiss the application for unjustified disadvantage in respect of the events that occurred prior to 31 August 2014 in paragraph [4] above.

[11] I also dismiss the application for personal grievance in respect of an unjustified dismissal for redundancy, excepting the unjustified disadvantage arising from the events up to 28 November 2014 around redundancy. Costs are reserved.

[12] Therefore the matters going to hearing this afternoon and tomorrow are the following unjustified disadvantages:

- (i) Racial harassment comments about weaknesses in both languages for bilingual speakers;
- (ii) Blaming Mr Bashir for the actions of others;
- (iii) The lack of support given to Mr Bashir for conveyancing work;
- (iv) Alleged conduct by John Appleby towards Mr Bashir between 21 October and 5 November 2014; and

³ *Creedy v Commissioner of Police* [2008] NZSC 31, [2008] 3 NZLR 7, [2008] ERNZ 109 at [31] to [32] Supreme Court applied the definition of "exceptional circumstances" per Lord Bingham of Cornhill in *R v Kelly* [2000] QB 198; [1999] 2 All ER 13.

- (v) The unjustified disadvantage pertaining to the redundancy process up to and including 28 November 2014.

T G Tetitaha
Member of the Employment Relations Authority