

statement of problem was stamped as received by the Authority on 8 February 2010 and the senior support officer sent a copy of the statement of problem under cover of letter dated 8 February 2010 to the respondent.

[4] The Authority then received a letter dated 12 February 2010 from the respondent advising that the statement of problem was the first time a personal grievance had been raised with it. The applicant's position had been declared redundant as from 5 October 2009 and the respondent said the statement of problem had therefore been lodged outside the time period for the raising of a personal grievance under s.114(1) of the Employment Relations Act 2000. The respondent did not agree to the personal grievance being raised outside of this period.

[5] Dr. Round deposed in an affidavit sworn 26 August 2010 that he had posted the letter attached to the statement of problem dated 14 December 2009 on or about 14 December to the respondent at the Post Shop at 65 Paul Matthews Road, North Harbour, Albany. The letter was addressed to the Chief Executive Brien Cree. He deposes to putting on the back of the envelope a return address. The letter itself, putting the issue of sending and receiving to one side, raises a personal grievance of unjustified dismissal.

[6] Mr Cree in an affidavit sworn on 16 August 2010 denies categorically receiving that letter and says that had he done so he would have forwarded it to the Chief Operating Officer, Wendy Turner. Ms Turner in her affidavit sworn on 17 August 2010 deposes to having never seen the letter before and that best practice dictates that all correspondence is acknowledged without delay.

[7] Dr Round deposes in his affidavit that he never received a reply from the respondent and the letter of 14 December 2009 was not returned to him.

[8] Kathryn Baynes swore an affidavit on 25 August 2010. Ms Baynes deposes to receiving an email from Dr Round, her representative, on or about 14 December 2009 with the proposed letter to the respondent that she was raising a personal grievance.

The email that was attached to Ms Baynes' affidavit from Dr Round provides as follows:

*Hi Donna,
I'm sorry that I didn't get the letter off to you last week. Could you please have a read of it and see if there are any glaring omissions or anything that you think needs to be added. I'm home next Wednesday which I'm looking forward to very much. How are your Christmas preparations going?*

[9] The email was attached as annexure A to the affidavit of Kathryn Baynes and showed a date it was sent of 15 December 2009 at 3.18pm. Ms Baynes deposes to ringing Dr Round on his cellphone from her cellphone and advising that she was perfectly happy for him to send the letter to the respondent. Ms Baynes deposed in her affidavit to not having any records of cellphone calls.

Submissions

The applicant

[10] The applicant submits that she raised her personal grievance within the 90 day time limit by taking reasonable steps to post a letter to the respondent and that such letter was never returned.

[11] The applicant also submits that, in the alternative, under s.114(3) and (4), the delay in raising the personal grievance is occasioned by exceptional circumstances, namely that the letter from the applicant's representative to the respondent was lost and that it would be just for the Authority to extend the 90 day time limit to the date the respondent received the statement of problem.

The respondent

[12] The respondent submits that it did not receive the letter and that the first the respondent knew that a personal grievance had been raised was some 123 days after the applicant's employment ended with the receipt of the statement of problem.

[13] The respondent submits that the applicant is unable to provide any evidence that the document was created or mailed on or about 14 December 2009 and that the applicant's representative failed to take reasonable steps to raise the grievance. Had the letter been sent at the time claimed, no follow up occurred and the filing in the Authority took place six weeks after the date of the letter, notwithstanding the contents of the letter stated if a reply was not received within 14 days then papers would be filed with the Employment Relations Authority.

[14] The respondent does not consider that there are exceptional circumstances for leave to be granted to raise the grievance out of time.

Determination

[15] On the basis of the affidavit evidence I accept that the respondent did not receive the letter dated 14 December 2009 raising the personal grievance. There are two possible explanations for that. The first is that it was never posted and, the second, that it was posted and for whatever reason did not arrive at its destination. I find therefore that the personal grievance was not raised with the respondent until after the expiration of 90 days.

[16] I turn now to the application for leave to raise the personal grievance after the expiration of that period. If the letter was never posted then I find exceptional circumstance arise under s. 115 (b) of the Employment Relations Act 2000 where Ms Baynes made reasonable arrangements to have the grievance raised by her agent Dr Round as she deposes in her affidavit by saying she was happy with the letter proposed and the failure by him then to post it was unreasonable.

[17] If the letter was posted but never reached the respondent then I am satisfied that that was occasioned by exceptional circumstances in circumstances where the letter was never returned and therefore lost. Although there was a delay in lodging proceeding it was not too excessive and the failure to follow up not unusual particularly taking into account the Christmas period.

[18] In both circumstances I consider it just to grant leave for the applicant in this case to raise her personal grievance after the expiration of the 90 day period under s. 114 (4) of the Employment Relations Act 2000.

[19] The parties have already attended mediation. The respondent did so without prejudice to the time limit issue. The matter remains unresolved. I am required to direct the parties to use mediation under s. 114 (5) because I have granted leave under s. 114 (4) of the Act.

Costs

[20] I reserve the issue of costs until after the substantive matter has been concluded.

Helen Doyle
Member of the Employment Relations Authority