

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 90
3004251

BETWEEN SIDNEY BRIMBLECOMBE
Applicant

A N D FRESH AIR WAIKATO
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Christine Cole, General Manager of Respondent

Investigation Meeting: 30 March 2017 at Hamilton

Date of Oral Determination: 30 March 2017

Written Record of Oral
Determination: 31 March 2017

**WRITTEN REOCD OF ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Mr Brimblecombe filed a Statement of Problem in the Authority on 22 March 2017 claiming he had been unjustifiably dismissed.

[2] Fresh Air Waikato Limited (Fresh Air) says the Authority does not have jurisdiction to investigate Mr Brimblecombe's dismissal grievance because he failed to raise it within 90 days of his dismissal.

[3] Mr Brimblecombe admits he raised his grievance on 22 February 2017 which was approximately 14 days outside the 90 day time limit. However Mr Brimblecombe says his then representative Simon Scott had advised him that the deadline for raising his grievance was 22 February 2017.

[4] When Mr Scott did not respond to Mr Brimblecombe's attempts to communicate with him about his grievance Mr Brimblecombe raised the grievance himself.

[5] Mr Brimblecombe seeks leave be granted to him under s.115(b) of the Employment Relations Act 2000 (the Act) to raise his grievance out of time on the basis he instructed Mr Scott to do that for him but that Mr Scott unreasonably failed to do so.

[6] Mr Scott is a practising lawyer based in Hamilton. Mr Scott attended the investigation meeting yesterday with his file and gave evidence that supported Mr Brimblecombe's account of events.

[7] I am satisfied from the evidence given by Mr Scott and Mr Brimblecombe together with the supporting documentation which was handed up at the investigation meeting, that Mr Brimblecombe did give Mr Scott clear instruction to raise a dismissal grievance on his behalf.

[8] I further find that Mr Brimblecombe made a number of attempts to follow up with Mr Scott regarding the progress of his grievance. Mr Scott's evidence is that there were some internal administrative issues that resulted in Mr Brimblecombe's instructions being overlooked and that situation was compounded by the intervening Christmas break. Mr Scott says his law firm was closed and that Mr Scott took some weeks off work so did not clear his emails as he would normally have done.

[9] Mr Scott also explains that an injury he suffered in January 2017 (which is apparently still adversely impacting him now) also impacted on his workload which meant he overlooked responding to Mr Brimblecombe's communications.

[10] Mr Scott acknowledged that he had given Mr Brimblecombe incorrect information regarding the date on which his dismissal grievance had to be raised with his employer. Mr Scott told the Authority that he accepted responsibility for the grievance not being filed on time and believed that the requirements of s.115(b) of the Act had been met.

[11] Fresh Air did not challenge any of the evidence given by Mr Brimblecombe or Mr Scott.

Outcome

[12] I consider this is an appropriate case in which to exercise the Authority's discretion under s.114(4) of the Act to grant leave to Mr Brimblecombe to raise his dismissal grievance after the expiration of the 90 day period on the basis he made reasonable arrangements with Mr Scott to raise the grievance within time but that Mr Scott unreasonably failed to do so.

[13] The parties are directed to mediation to occur within 28 days.

Costs

[14] Both parties represented themselves so there is no issue as to costs.

Rachel Larmer
Member of the Employment Relations Authority