

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 58  
5359210

BETWEEN                      ROBERT DAVID BROWN  
Applicant

A N D                              HAMILTON CITY COUNCIL  
Respondent

Member of Authority:      James Crichton

Representatives:           Allan Halse, Advocate for the Applicant  
Karina McLuskie, Counsel for the Respondent

Investigation Meeting:     On the papers

Date of Determination:    23 February 2015

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**SECOND DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] By Statement of Problem filed on 13 November 2014, Mr Brown raised a series of alleged personal grievances over the four year period of his employment with the respondent (Hamilton City Council or the Council).

[2] In the Statement in Reply filed in the Authority on 27 November 2014, the Council objected to some of the alleged personal grievances proceeding to investigation by the Authority on the footing that they were not raised within the justiciable period.

[3] Then, in a memorandum filed for the Council dated 9 December 2014, that position was reiterated.

[4] In a telephone conference that I convened with the representatives on 16 January 2015, I determined that those matters needed to be addressed as a preliminary issue and accordingly, I timetabled submissions from the parties so that the matter could be addressed.

[5] Those submissions have now come to hand and the consideration of them forms the basis for this preliminary determination.

[6] In the Statement of Problem filed on 13 November 2014, Mr Brown alleged there were five separate personal grievances. These are set out in the same way as they are in the Statement of Problem:

- 1.1 *A personal grievance based on disadvantage by unjustifiable actions throughout a 4 year period of employment.*
- 1.2 *A personal grievance based on disadvantage by unjustifiable actions culminating in dismissal that Bob's employment conditions is, or are or was (during employment that has since been terminated) affected to Bob's disadvantage by some unjustifiable action by the employer; bullying breach of good faith, discrimination, duress, collusion between HCC (the Council) staff to encourage Bob to resign.*
- 1.3 *Two personal grievances based on disadvantage by unjustifiable action have been raised by the Public Service Association (PSA) with the employer HCC (the Council) since 21 November 2011. This hearing is to cover both.*
- 1.4 *A personal grievance based upon disadvantage was raised by the Public Service Association on 21 November 2011 due to lack of investigations into bullying allegation as required by the employer's own employment relations policies and procedures, and a serious harm notification in accordance with the employer's health and safety obligations and procedures.*
- 1.5 *A personal grievance based on disadvantage was raised by the PSA on 13 February 2012 because the employer had failed to provide a safe working environment, had withheld salary and unfairly dismissed Bob.*

[7] Of those alleged personal grievances, it is the Council's submission that only the personal grievance recited at para.1.4 above has been raised within the justiciable period, although it accepted that a personal grievance for unjustified dismissal was also raised within time.

[8] I have to say that the submissions received from the advocate for Mr Brown, while extensive, in the main do not address the issue before the Authority at present. That is the question whether the personal grievances allegedly raised on behalf of Mr Brown and referred to in the Statement of Problem have in fact been raised within time.

[9] The law on the matter is clear; there is a window of 90 days from the point at which the events complained of happened or came to the attention of the grievant, within which the grievant may raise a personal grievance with the employer. I refer to that period throughout this determination as the justiciable period.

[10] The Council's contention, simply put, is that only one of the purported personal grievances, that contained at para.1.4 of the Statement of Problem, was raised within the justiciable period and the others were not.

[11] Hamilton City Council says that there were two separate letters raising two separate personal grievances. Both these letters were written by Chris Ollington, an official of the PSA, and the recipient in each case was the Chief Executive of Hamilton City Council.

[12] The first of those letters is dated 22 November 2011 and the Council accepts that that letter raises a disadvantage grievance on behalf of Mr Brown in relation to the allegation that Mr Brown was forced to take leave without pay from 20 September 2011 because, it is claimed, the Council failed to deal adequately with Mr Brown's serious harm complaint concerning bullying. The letter goes on to complain that Hamilton City Council has then proceeded to instigate a review of Mr Brown's role with the prospect of disestablishing it which the Union says is a continuation of further serious harm to Mr Brown.

[13] Put shortly, it is accepted by the Council that that letter raises a particular allegation of personal grievance by way of disadvantage to Mr Brown because of unjustified actions by the Council in allegedly forcing him to take leave without pay because of the Council's supposed failure to deal with Mr Brown's allegation of bullying. By common consent then, this is a viable personal grievance claim for disadvantage capable of being investigated by the Authority.

[14] Next, the Council accepts that a second letter from Mr Ollington to the Chief Executive of the Hamilton City Council dated 10 February 2012 also raises a personal grievance but this time the personal grievance raised is one of unjustified dismissal. It is apparent on the face of the letter that there is no allegation in that letter of an unjustified disadvantage grievance.

[15] It follows, according to Hamilton City Council, that the only issues that the Authority can investigate are first the bullying allegation contained in the Public

Service Association letter to the Council dated 22 November 2011 and second an allegation of personal grievance by unjustified dismissal as contained in the Public Service Association letter of 10 February 2012.

[16] I have to say that there is nothing before me on behalf of Mr Brown which encourages me in the view that any or all of the other grievances allegedly raised on Mr Brown's behalf were in fact brought to the attention of the employer within the justiciable period.

[17] The only evidence before me are the two letters that I have just referred to and those letters plainly raise, as to the first an allegation of personal grievance by unjustified disadvantage and as to the second, an allegation of personal grievance by reason of unjustified dismissal.

[18] The terms of the unjustified disadvantage grievance relate to the matters traversed in the relevant letter from the Public Service Association. The fact that there has been a raising of a personal grievance for unjustified disadvantage on behalf of Mr Brown does not entitle Mr Brown to raise a raft of other allegations which have never been put before the employer. The only matters that the Authority can properly inquire into are those matters that the employer is aware of and which the employer can properly respond to.

[19] The Council's position on this matter does not boil down to "*semantic legal argument*" as the advocate for Mr Brown maintains. The Council, as employer, is entitled to have put before it within the justiciable period personal grievance complaints from an employee in order that they can be addressed and responded to. The whole point of the law is to provide an opportunity for personal grievances to be addressed promptly and hopefully resolved by agreement. The employer cannot be expected to respond to personal grievances it knows nothing about and it is unfair and unjust to the employer to expect that.

[20] Nor is it right to describe the Council's out of time argument as "*irrelevant*" and appropriately "*disregarded*" as submissions for Mr Brown contend. The Authority's obligation is to apply the law as enunciated by Parliament and the parties' obligations are to engage with each other within the terms of the law. The provision requires personal grievances to be notified to the employer within the justiciable period so as to ensure that the parties have the best possible opportunity to resolve

matters by agreement close to the source of the problem. To suggest, as submissions for Mr Brown do, that those sensible practical rules in the legislation should simply be ignored, must be rejected by the Authority out of hand.

[21] The comment that the process has been “*hijacked by lawyers to obstruct natural justice*” in the submissions for Mr Brown cannot be allowed to go without comment. It is natural justice that requires proper notification to the employer of personal grievances raised by the employee; it is unfair and unjust to an employer party, whether a well-resourced large employer like the Hamilton City Council or a sole trader, to have to confront allegations in an Authority investigation which they have never had an opportunity of dealing with in the workplace.

### **Determination**

[22] The purpose of this determination is exclusively to identify the scope of the Authority’s subsequent substantive investigation into the employment relationship problem identified by Mr Brown with his former employer, Hamilton City Council.

[23] I am satisfied that the only personal grievances that were properly raised in accordance with the law are those raised respectively in the letters of 22 November 2011 (unjustified disadvantage) and 10 February 2012 (unjustified dismissal). The other generic complaints alleging other personal grievances relating to unjustified disadvantage are specifically excluded from the Authority’s substantive investigation as they have not been raised with the employer within the justiciable period, are therefore out of time, and cannot now be proceeded with.

[24] The Authority Officer will now organise a further telephone conference with the parties’ representatives to progress the substantive investigation meeting.

### **Costs**

[25] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority