

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 360
3006271

BETWEEN RAN DENG
Applicant

AND DIGITAL JUNGLE (NZ)
LIMITED
Respondent

Member of Authority: TG Tetitaha

Representatives: Applicant in person
Catherine Zhao, for Respondent

Investigation Meeting: On the papers

Submissions received: 21 September 2017 from Applicant
No submissions from Respondent

Determination: 21 November 2017

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A. Ran Deng raised a personal grievance within 90 days of the date of her dismissal. The personal grievance of unjustified dismissal shall proceed to a substantive hearing.**
- B. The parties are to meet their own legal costs because Ms Deng was self-represented.**

Employment Relationship Problem

[1] Ran Deng alleges she was unjustifiably dismissed on 9 December 2016 for non-performance. Digital Jungle Limited accepts her employment was terminated but alleges it was justified in doing so.

[2] A preliminary issue has arisen about whether Ms Deng has raised a personal grievance within 90 days of her dismissal. If not, the unjustified dismissal grievance must be dismissed.

Determination

[3] It is accepted Ms Deng was dismissed on 9 December 2017. To raise a grievance of unjustified dismissal requires proof she raised her concerns within 90 days of the date of the dismissal. This was not certain from the statement of problem she has filed. She was invited to provide further information which she has now done so.

[4] Both parties were asked if the matter required a hearing or could be dealt with on the papers. Both have taken no issue with resolving this issue on the papers and have provided further information in support of their respective views.

[5] Ms Deng filed a series of emails she submits brought her concerns to the attention of her employer. The emails were exchanged between the parties in December 2016. The first email dated 13 December 2016 to her manager Stephen Schwalger states:

Hi Stephen,
I will call Employment Relations Authority later today to find out more information about my rights as an employee.
I believe it is unfair and unreasonable for employer to address performance issue and dismiss employee on the same day.
I will reply you after I consult the authority.
Cheers,
Ran

[6] Ms Deng followed this up with a further email to on 19 December 2016 to Mathew McDougall that stated:

Matt,
Firstly, it is clear DJ is not prepared to undertake efforts to help improve by performance, which was only raised as an issue on the 9th of December. There has been no efforts taken to support my employment. This is very disappointing, and I will need to consider my options with regard to this issue.

Secondly, it is clear that today is the effective date for giving me notice, not the 9th of December. The attempted notice on the 9th of December was invalid for the reasons you have stated below. DJ has taken six days to determine such, therefore, the effective date should be one month from today. This has been confirmed with the Employment Relations Authority.

By the way I couldn't check in on salesforce. I assume you have already closed my account.
Regards,
Ran

[7] The company has not filed any further information than that set out in their statement of reply. Their information did not deny the receipt or content of the above emails.

[8] In my view the above information sufficiently raised a personal grievance with her employer of unjustified dismissal on or about 19 December 2016. She was clearly concerned about her dismissal that occurred at the same time issues of her performance were raised. She believed this was unjustified. She sought remedies by time to improve her performance which was not acceptable to the respondent. This information, albeit spread over a series of correspondence is sufficient to raise a personal grievance. This occurred within 90 days.

[9] Ran Deng raised a personal grievance within 90 days of the date of her dismissal. The personal grievance of unjustified dismissal shall proceed to a substantive hearing. The parties are to meet their own legal costs because Ms Deng was self-represented.

[10] This matter may be appropriate for a fast track hearing with all evidence to be led orally at hearing. A telephone conference shall be set down by the Registry. Parties are to advise their availability for a hearing date in January 2018.

TG Tetitaha
Member of the Employment Relations Authority