

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 227/09
5149659

BETWEEN GRANT DOUGLAS
Applicant

AND FRANKLIN PLUMBERS AND
BUILDERS SUPPLIES
LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Ian Davidson, advocate for Applicant
Ross Henderson, advocate for Respondent

Submissions Received 23 June and 3 July 2009

Consideration of Papers: 6 July 2009

Determination: 6 July 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The question to be answered by the Authority in this determination is whether Mr Grant Douglas raised, within 90 days of his dismissal by Franklin Plumbers and Builders Supplies Limited, a personal grievance in relation to that action of his employer.

[2] I find that a grievance was raised on behalf of Mr Douglas after his dismissal was notified to him on the same day.

[3] Mr Douglas was given little more than 12 hours notice of a disciplinary meeting early on 15 September 2008 he was instructed to attend. Following that meeting he was requested to attend another one on 19 September.

[4] Before then, on 17 September through his representative Mr Ian Davidson, he requested the company to desist from taking further disciplinary action and asked it instead to use a facilitative way of resolving a problem between Mr Douglas and his manager.

[5] In his letter Mr Davidson challenged the justification for taking any disciplinary action against Mr Douglas and warned that proceedings would be taken if the company went ahead on that course.

[6] On 18 September 2008 on behalf of the employer, Mr Ross Henderson wrote to Mr Davidson advising:

... the company has decided to terminate Mr Douglas's employment effective immediately and with no notice.

[7] Almost immediately on the same day Mr Davidson wrote back directly to the employer making the following requests and representations on behalf of Mr Douglas:

*We ask you to reconsider a constructive resolution of this matter.
.....His conduct does not justify summary dismissal.*

.....

... ..We believe you should reconsider the whole issue and reflect further on the process that has led to Mr Douglas's dismissal.

[8] The Authority is satisfied that a personal grievance was adequately raised on behalf of Mr Douglas by Mr Davidson through his letter of 18 September 2008, the first day of the 90 day period allowed for this under s 114 of the Employment Relations Act. Mr Davidson in his letter expressly complained that the summary dismissal of Mr Douglas was not justified, meaning that it was not in accordance with justice and fairness. The letter also referred to an increase in the existing “unfairness,” and the employer was expressly requested to reconsider its actions concertedly with employee to resolve the “whole issue.”

[9] Mr Davidson's letter must be read in the context of the very recent earlier correspondence between the parties, including Mr Davidson's letter of only the day before challenging the employer's actions and putting it on notice of possible proceedings if Mr Douglas was dismissed.

[10] I am satisfied that the objectives of raising a grievance under s 114 of the Act were met by Mr Davidson's letter of 18 September and the advice given in it. The correspondence gave sufficient information to the employer for it to be able to address the grievance, or to respond to the grievance on its merits with a view to resolving it quickly, informally and at the lowest level possible; see *Creedy v. Commissioner of Police* [2006] 1 ERNZ 517.

[11] The employer was requested in consultation with Mr Davidson and/or Mr Douglas to review its decision to dismiss. It declined to do so.

[12] The employer was opposed to attending mediation until the 90 issue had been determined. Now that it has been, the parties must attend mediation before there will be an investigation meeting. Directions to mediation have been issued separately by the Authority.

A Dumbleton
Member of the Employment Relations Authority