

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 323/07
5090742

BETWEEN	JENNY GRIFFIN Applicant
AND	PETWORKZ ONLINE LIMITED First Respondent
AND	ANGELA MORLEY Second Respondent

Member of Authority:	Vicki Campbell
Representatives:	Simon Scott for Applicant Angela Little-Morley for First and Second Respondents
Investigation Meeting	19 September 2007 at Hamilton
Determination:	16 October 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Jenny Griffin raised a personal grievance with her previous employer outside the 90 days required by the Employment Relations Act. Her employer did not consent to the grievance being raised outside the 90 day period. This determination deals only with the application by Ms Griffin for leave to raise her grievance.

Application for leave

[2] Section 114(4) of the Employment Relations Act provides the discretion for the Authority to grant leave where the Authority:

- is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and
- considers it just to do so.

[3] Section 115 sets out four occasions on which exceptional circumstances will exist. This case is concerned with s.115(c):

- where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems that is required by section 54 or section 65, as the case may be...

[4] Initially Ms Griffin claimed that she was so traumatized and medically unfit that she was unable to progress her grievance, thereby relying on section 115(a) of the Act. However at the investigation meeting Ms Griffin informed the Authority that she was no longer relying on that section in her application for leave.

Employment terms and conditions

[5] The applicant was employed as a part-time employee on 15 May 2006. Ms Griffin was employed to work 22 hours per week and was paid \$16.00 per hour for each hour worked.

[6] A copy of a written employment agreement was provided to the Authority by the respondent, to support Ms Little-Morley's evidence that Ms Griffin received a copy of an employment which meets the requirements section 65 of the Act. Ms Griffin says she saw this document for the first time when Mr Scott gave her a copy as a result of the Authority's process.

[7] In support of Ms Griffin's evidence, Ms Julie Williams appeared at the investigation meeting and told me that she had also been employed by Ms Little-Morley and that she also, had never received a written employment agreement.

[8] Ms Little-Morley says Ms Griffin was given a copy of the document during her first week of employment but would not sign it. Ms Little-Morley says she found the agreement on the desk used by Ms Griffin, after Ms Griffin had left.

[9] In support of her evidence Ms Little-Morley told me she had a standard process whereby new employees receive a letter of confirmation and during their first week a written employment is provided for their signature. In response to Ms Williams's evidence, Ms Little-Morley told me that Ms Williams's employment ended in November 2000. As she had started prior to the enactment of the Employment Relations Act 2000 there was no legal requirement to provide Ms Williams with a written employment agreement.

[10] In the bundle documents provided to the Authority by Ms Griffin, a letter of appointment is included which sets out Ms Griffin's hours of work, hourly rate and confirmation that a detailed employment contract will be provided to her.

[11] I have concluded that it is more likely than not, given Ms Little-Morley's demonstrable understanding of her obligations as an employer, that she did

provide a copy of the employment agreement to Ms Griffin during Ms Griffin's first week of employment and that Ms Griffin simply put it to one side and never turned her attention to it.

[12] The employment agreement meets the requirements of s.65 of the Act including the provision of an explanation concerning the resolution of employment relationship problems together with the requirement to raise any personal grievance within 90 days of the action arising.

[13] Ms Griffin's application for leave is declined.

Costs

[1] Costs are reserved. While the respondent was unrepresented at the investigation meeting I am aware that prior to the meeting Ms Little-Morley had been in receipt of legal advice relating to this matter. Ms Morley and Ms Griffin are encouraged to discuss and resolve the matter of costs between them. If they are unable to do so, the respondent should file a memorandum of costs, including copies of any invoices paid, within 28 days of the date of this determination. Ms Griffin has a further 14 days from the date of receiving the respondent's memorandum in which to file a memorandum in response.

Vicki Campbell
Member of Employment Relations Authority