IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 514/10
5307231

	BETWEEN	STUART KENNETH HANDLEY, Applicant
	AND	RODNEY DISTRICT COUNCIL, Respondent

Member of Authority:	James Wilson
Representatives:	Tom Skinner for the applicants Gemma Mayes for the respondent
Submissions received:	19 October 2010 from the applicant 6 October 2010 from the respondent
Determination:	17 December 2010

DETERMINATION OF THE AUTHORITY ON A PRELIMINARY ISSUE

Background

[1] By way of a letter dated 23 April 2010 Mr Stuart Handley ("Mr Handley") was dismissed from his position as an Environmental Protection Officer with the Rodney District Council ("the Council").

[2] On 26 April 2010 Mr Skinner, on behalf of Mr Handley, wrote to the Council saying:

> *Further to your letter of termination issued by you on 23 April 2010 on the grounds of serious misconduct to Mr Stuart Handley.*

> *Please be advised that we are of the view that he has grounds for a Personal Grievance on the grounds of an unjustified dismissal.*
>
> *Accordingly you should accept this letter as being formal notice that we will be filing a Personal Grievance claim on his behalf.*

[3] On 17 August 2010 Mr Skinner filed a statement of Problem in the Authority on behalf of Mr Handley, alleging that he had been unjustifiably dismissed and seeking wages lost as a result of his dismissal and compensation for the hurt and humiliation that that dismissal had caused him.

[4] In their statement in reply the Council argued that Mr Handley had not raised his grievance within the 90 day period required by section 114(1) of the Employment Relations Act (the Act) and declined to consent to Mr Handley raising his grievance out of time.

[5] In a telephone conference with the parties on 21 September 2010 it was agreed that I would consider the question of whether or not Mr Handley had raised his grievance in time as a preliminary issue "on the papers". The parties have now filed submissions in respect to that issue.

Discussion

[6] Firstly it is important to note this determination deals only with whether or not Mr Handley raised a personal grievance with his employer within 90 days in terms of section 114(1) and (2) of the Act. Mr Handley has not applied for leave in terms of section 114(3), and this determination does not address whether or not Mr Handley should be granted leave to raise his personal grievance outside the 90 day period in terms of that section.

[7] In their submissions both parties have relied on the Employment Court's judgement in *Creedy v Commissioner of Police* [2006] ERNZ 517. In particular Ms Mayes quotes the Chief Judges comments:

> *[36] Although the plaintiff, upon advice from his barrister, believed that the 4 April 2001 letter raised his personal grievance of unjustified disadvantage in employment, I have concluded that its*

> *contents did not do so. Case law under the previous Employment Contracts Act 1991 on what constituted the submission of a grievance (as it was called under that enactment) was codified and built on by Parliament in 2000 by s114(2). That provides that a grievance is raised with an employer "… as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address".*
>
> *[37] It is the notion of the employee wanting the employer to address the grievance that means that it should be specified sufficiently to enable the employer to address it.* ***So it is insufficient, and therefore not a raising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of the personal grievance as, for example, unjustified disadvantage in employment*** *as Mr Barrowclough did on Mr Creedy's behalf in this case. As the Court determined in cases under the previous legislation, for an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular formula of words needs to be used.* ***What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.***

[8] Mr Skinner argues that his clients case is different that that of Mr Creedy. He points out that Mr Creedy's representative merely wished to reserve the right to raise a personal grievance at a later date whereas his letter on behalf of Mr Handley *clearly stated the issues he wanted the employer to address and they were his unjustified dismissal for serious misconduct.* He says that as in *Creedy* the details of the issue were well known to both parties.

[9] Of particular relevance is the Employment Court's judgement in *Hawkins v Commissioner of Police* [2007] ERNZ 762 in which the Court found that Mr Hawkins had not properly raised a personal grievance by way of his solicitors letter which said:

> *Please note that you have been put on notice that Sgt Hawkins is raising a personal grievance against the New Zealand police*
>
> *Due to my recent instructions on this matter and the fact that I am in a High Court trail through until 1 October 2001, I am providing notification of Sgt Hawkins' intention to pursue a personal grievance …and will provide full particulars and details …when I return to my office.*

I note that Judge Shaw, in *Hawkins,* went on to grant leave to Mr Hawkins to pursue his grievance out of time.

Determination

[10] Mr Skinner's letter of 26 April 2010, purporting to raise a personal grievance on Mr Handley's behalf, does not meet the now well established criteria. It does not specify any particulars, other than that Mr Handley *has grounds for a personal grievance on the grounds of an unjustified dismissal*. The letter simply states that Mr Handley *will be* raising a grievance. The plain meaning of these words implies that at some future date he will raise a grievance. As was the case in both in *Creedy* and in *Hawkins* the letter put the Council on notice that Mr Handley intended to raise a grievance. Finally, the letter does not specify what remedies Mr Handley is seeking. **I find that Mr Handley did not properly raise his personal grievance with his employer within the 90 day time period specified in section 114(1) of the Act**

Costs

[11] Costs are reserved. If the parties are unable to settle the issue then the Council may file and serve a submission in respect to cost within 28 days of the date of this determination. Mr Handley will then have 14 days in which to file and serve a response

James Wilson
Member of the Employment Relations Authority