



employment agreement, causing hurt humiliation distress chronic anxiety and depression.

[3] ACC has claimed that the matters the applicant has complained about before 9 March 2007 are time barred under s 114 (1) of the Employment Relations Act, which had to be raised by 6 March 2007. This included Ms Hobern's decision to resign and her complaints about her manager's, at the time, behaviour on 8 December 2006. The matters initially were considered by ACC to extend beyond even the 3 years time bar under s 114 (6) of the Act, but that is not at issue now. ACC has not consented to the raising of the personal grievance out of time. In all other respects ACC has denied the claims.

### **Issues**

[4] What are the facts relied upon by Ms Hobern raising her personal grievance?

[5] Does Ms Hobern have a personal grievance to claim compensation? What is the claim for personal grievance that must be in time under s 114 (1) of the Act? Has the personal grievance been properly raised under s 114 (1) in ninety days?

[6] Did ACC provide feedback on reports provided by Ms Hobern? Did her reports sufficiently raise concerns that a fair and reasonable employer would respond to in regard to her health?

[7] Was the personal grievance, raised on 21 February 2007, and received by ACC on 9 March 2007, extinguished when Ms Hobern gave consent to take another position on her return to work and or did Keith McLea, General Manger Product Pricing and Distribution reasonably conclude that her personal grievance had been extinguished?

[8] Have there been any breaches of Ms Hobern's employment agreement to claim damages in regard to any breach to consult and act in good faith and was the impact on Ms Hobern's work and her health and welfare in employment foreseeable to ACC?

**The facts**

[9] Ms Hobern has been employed by ACC since 1995. Her role changed during this time. During the course of her role in the Levy Management Unit (from March 2003) she raised concerns in regard to the integrity of underlying levy data between 2006 and 2007. Her concerns were about the unfairness about the data and what she called “the appalling state of the data”. She claims that she made recommendations to improve the quality of the data to enable her to discharge her duties and the duties of the Unit, but was ignored and there was no feedback and no consultation. She requested additional resources and complained about not being consulted on a decision to cease using one of her tools of work relating to the data base.

[10] The problems that she says she encountered and the decision not to accept her recommendations in late 2006 on the quality of data caused her to become stressed, sick and unable to work. This led to her writing directly to the Chief Executive on 8 December 2006. Her manager at the time subsequently raised with her that writing to the Chief Executive without her managers’ knowledge was inappropriate. She resigned, but her resignation was not accepted and she agreed to return to work. This led to her raising a personal grievance on 9 March 2007, when ACC received a letter dated 21 February 2007 from Ms Hobern’s lawyer.

[11] Ms Hobern returned to work at ACC on 3 January 2007, but she left again on 24 January 2007 over a decision taken by ACC not to proceed with a model she had been working on. She went on sick leave and did not return to work for 10 months. Although she says she obtained a doctor’s certificate ACC was not provided with any specific reason for her absence. The parties then engaged in mediation and a medical assessment was sought when the details of her health became apparent. Upon obtaining advice that a return to work programme should be implemented ACC and Ms Hobern met to discuss arrangements. Agreement was reached on a role that Ms Hobern accepted and her current remuneration and all other terms and conditions of employment remained the same. She commenced back at work on 12 December 2007.

[12] On 7 May 2009 Ms Hobern continued to pursue her personal grievance of 21 February 2007 and requested mediation. The parties attended further mediation and now require a determination from the Authority.

### **Determination**

[13] Ms Hobern's personal grievance is out of time, I hold. The events she has relied upon raising her personal grievance are outside the ninety days she had to raise her personal grievance. The personal grievance had to be raised by 6 March 2007, and it was not received by ACC until 9 March 2007. Thus, her complaint about her manager's behaviour on 4 and 8 December 2006 fall outside the ninety days. Likewise Ms Hobern's decision to leave on 8 December 2006 and to raise that as a personal grievance is outside the ninety days.

[14] It is not necessary for me to make any determination on the issue as whether or not Ms Hobern's acceptance of a new position extinguished her claim of personal grievance because the latter was out of time. However for clarity no other personal grievance was raised after the letter dated 21 February 2007. This employment relationship problem arises from that letter. However it was not until 16 March 2009 any grievance was pursued by Ms Hobern, and ACC informed Ms Hobern's lawyer that it understood that any grievance had been "parked" when Ms Hobern returned to work in the alternate role in December 2007. This was a reasonably reached understanding, I hold, because the focus had been with the parties arranging the return to work following the clarification of Ms Hobern's health problems. This conclusion is also supported by the ACC request for details of the nature of the issues relating to any personal grievance when the issues re-emerged again in 2009 and ACC's request for details around what remedies were being sought (24 March 2009).

[15] Ms Hobern claimed that her employment agreement and to act in good faith have been breached:

- (i) ACC allegedly failed to provide her with feedback on her reports.
- (ii) ACC allegedly failed to identify her cries for help.
- (iii) ACC allegedly failed to act in good faith.

- (iv) ACC allegedly failed to consult Ms Hobern on a decision to remove one of the tools of her job.

[16] I am satisfied from the evidence that Ms Hobern's reports were received by her managers and appropriately considered. In addition she was provided with sufficient feedback, but the difficulty has been that Ms Hobern did not accept and like the consideration and feedback provided by ACC. Mr McLea's evidence is sufficient to establish the ACC's position. This is supported by his personal knowledge, his contact with Ms Hobern's manager at the time and with the use of various documents.

[17] ACC could not be expected to know that Ms Hobern was calling for help in regard to an impact of her work on her personal health because it was not raised at the time. ACC would not have fairly known and identified that there was an issue until after she left again in January 2007. ACC's response is supported by the arrangements put in place for her to take up another position with her consent in late 2007. Indeed a number of other difficult personal issues in Ms Hobern's life must impact on her claim of workplace stress.

[18] From Mr McLea's evidence, I hold that ACC was acting within its rights to make decisions about the quality of data and Ms Hobern's work on the model. I am satisfied ACC attended to its responsibilities in regard to Ms Hobern's health and welfare after it had been discovered that there were problems with Ms Hobern's health and when agreement was reached on her return to work in late 2007. At the time ACC agreed to go to mediation on an employment relationship problem and immediately made available fully paid sick leave, referred Ms Hobern to EAP assistance, it endeavoured to try and clarify the nature of Ms Hobern's health problems, arranged and paid for a medical assessment and acted on advice in regard to a return to work programme.

### **Orders of the Authority**

[19] Ms Hobern's claim for a personal grievance is dismissed.

[20] Ms Hobern's claims that ACC has breached her employment agreement and good faith are dismissed. Her claim for compensation/damages for breaches is dismissed.

[21] Costs are reserved.

P R Stapp  
Member of the Employment Relations Authority