



# Employment Court of New Zealand

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## Holland v OCS Limited [2020] NZEmpC 10 (21 February 2020)

Last Updated: 26 February 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 10](#)

EMPC 128/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	GILLIAN RUTH HOLLAND Plaintiff
AND	OCS LIMITED Defendant

Hearing: 21 February 2020  
(Heard via Audio Visual Link)

Appearances: Plaintiff in person  
No appearance for defendant

Judgment: 21 February 2020

### ORAL JUDGMENT OF JUDGE K G SMITH

[1] On 4 April 2019, the Employment Relations Authority dismissed a personal grievance claim by Gillian Ruth Holland against OCS Ltd.<sup>1</sup> In the Authority Ms Holland claimed that she was unjustifiably treated by the defendant. The details of the allegations are generally described in the Authority's determination but can be summarised for the purposes of this judgment as bullying, intimidation, physical abuse, unfair treatment and discrimination. These incidents were alleged to have occurred in August and October 2013. The last event relied on was said to have taken place on 16 October 2013 following which Ms Holland resigned.

<sup>1</sup> *Holland v OCS Ltd* [\[2019\] NZERA 200](#).

GILLIAN RUTH HOLLAND v OCS LIMITED [\[2020\] NZEmpC 10](#) [21 February 2020]

[2] Ms Holland raised a personal grievance with her former employer on 7 November 2013. According to the determination, the employer investigated Ms Holland's claims but concluded that it had not breached any duty owed to her and rejected the personal grievance claim.

[3] Eventually Ms Holland decided to pursue her personal grievance, but delayed lodging her proceeding in the Authority until 5 October 2018; that delay was nearly five years after her employer rejected her personal grievance claim.

[4] In dismissing Ms Holland's claim the Authority applied [s 114\(6\)](#) of the [Employment Relations Act 2000](#). That section reads:

(6) No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

[5] The Authority relied on the interpretation of the section in the recent full Court decision in *Blue Water Hotel Ltd v VBS* and held that Ms Holland's proceeding was outside the three-year time limit created by [s 114\(6\).2](#)

[6] The result was that Ms Holland's claim was dismissed.

[7] Ms Holland challenged the determination. The defendant has taken no steps and the proceeding was set down for a formal proof hearing today.

[8] This morning Ms Holland gave detailed evidence explaining her claim arising from what happened in 2013. It is not necessary to describe that evidence in any detail. In short, Ms Holland feels let down by what she says happened, and her subsequent treatment by her employer and professionals she turned to for assistance.

[9] Ms Holland's challenge is confronted with the same issues that led to the Authority's decision to dismiss her original claim, namely the limitation placed on issuing proceedings by [s 114\(6\)](#). In my minute of 9 December 2019, I drew to Ms Holland's attention the difficulties her claim faced because of that section. In the telephone conference that preceded the minute, I discussed these difficulties with her

*2 Blue Water Hotel Ltd v VBS* [\[2018\] NZEmpC 128](#).

and recommended she seek advice before committing herself to the costs of preparing evidence and attending a hearing. Despite being aware of the significance of the limitation period Ms Holland made it clear she intended to proceed.

[10] The evidence I heard this morning illustrated the sincerity of Ms Holland's concerns, and distress, over what she says happened. Ms Holland's desire to have some resolution of her dispute with her former employer is understandable, but the depth of her feelings cannot overcome the bar to litigation created by [s 114\(6\)](#).

[11] The Authority's determination correctly applied the law. The Authority had no alternative other than to dismiss Ms Holland's claim because it was out of time. It follows that this challenge cannot succeed.

[12] The challenge is dismissed.

K G Smith Judge

Judgment delivered orally at 9.07 am on 21 February 2020

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