

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Daniel Jensen (Applicant)
AND Dallas Motors Limited (Respondent)
REPRESENTATIVES Simon Scott, Counsel for Applicant
The Managing Director, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 12 May 2006
DATE OF DETERMINATION 12 May 2006

(ORAL) DETERMINATION OF THE AUTHORITY

[1] The applicant Mr David Jensen (“Mr Jensen”) seeks leave to raise a personal grievance out of time. The personal grievance is an allegation that he was unjustifiably dismissed from his employment with the respondent company Dallas Motors Limited (“Dallas Motors”).

[2] The application for leave is opposed by Dallas Motors.

[3] There are two issues to be determined:-

- (i) Whether there are exceptional circumstances; &
- (ii) Whether it is just to grant leave.

These issues are discussed in turn.

[4] Mr Jensen was dismissed from his employment on 11 July 2005.

[5] By his solicitors, he purported to raise a personal grievance with Dallas Motors on 17 November 2005. Dallas Motors did not consent to the grievance being raised out of time.

[6] On 20 January 2006 Mr Jensen lodged a statement of problem in the Authority alleging a personal grievance for unjustifiable dismissal. On 14 February 2006, Dallas Motors lodged its statement in reply.

[7] Mr Jensen was dismissed on 11 July 2005. He raises three grounds in seeking leave to raise his personal grievance out of time. These are:-

- that he was traumatized and suffered concussion as he was hit from behind in an incident;

- that he relied on incorrect advice from the Hamilton Community Law Centre in progressing his grievance;
- that he did not receive during his employment the explanations required by section 65 of the Act relative to the resolution of employment relationship problems.

[8] With respect to the first ground, I am not persuaded that Mr Jensen was traumatised or suffered concussion for the entire duration of the period in which he was required to raise his personal grievance.

[9] With respect to the second ground I am persuaded by Mr Jensen's evidence that he was not informed of the statutory period in which he was required to raise his personal grievance.

[10] But it is the final ground that is the most substantial. I am persuaded by Mr Jensen's evidence that he was not provided with an employment agreement advising him that a personal grievance must be raised within 90 days.

[11] I therefore find that Mr Jensen's delay in raising his alleged personal grievance was occasioned by an exceptional circumstance.

[12] I am not persuaded of any prejudice to Dallas Motors as a result of the grant of leave to Mr Jensen.

[13] I consider it just that Mr Jensen be permitted to proceed to have his alleged personal grievance investigated by the Authority and determined on its merits.

[14] For all the above reasons, I am satisfied that it is just to grant leave to Mr Jensen. **Daniel Jensen is granted leave to raise his personal grievance after the expiration of the prescribed 90 day period.**

[15] In any case where the Authority grants leave, the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance. Accordingly, **I now direct the parties to use mediation within 28 days of the date of this Determination to mutually resolve the alleged personal grievance.**

Leon Robinson
Member of Employment Relations Authority