

[3] I have received and considered the submissions filed by the parties.

3-year time limit

[4] Section 114(6) of the Employment Relations Act 2000 provides:

(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 first question for the Authority to consider is on what date did Ms Johansen raise her personal grievance with MAF?

[6] Attached to the statement of problem are documents tracing the history of Ms Johansen's personal grievance and the parties' attempts to settle that grievance. The document trail begins with a letter dated 15 November 2004 which advises that the PSA is authorised to represent Ms Johansen, that Ms Johansen has suffered a personal grievance due to (unspecified) unjustified disadvantage actions which have affected her trust in MAF, requests that this letter be treated as submission of a personal grievance and requests a meeting to discuss resolution.

[7] The date of this letter appears to be the date on which Ms Johansen's personal grievance was raised. However, this conclusion is not supported by the succeeding correspondence.

[8] The third letter in the trail, dated 18 March 2005, from solicitors now acting for Ms Johansen to MAF, states:

6.8 It is MAF's failure to address, or take seriously Ms Johansen's concern, which has resulted in her personal grievance for disadvantage under s103(b) of the Employment Relations Act 2000, as notified to MAF on 11 July 2004.

[9] The next letter, dated 25 May 2005, again from Ms Johansen's solicitors to MAF restates that the 11 July 2004 is the date on which her personal grievance was raised.

[10] Mr Pollak submits that the 15 November 2004 letter is only a formal indication that the PSA was acting for Ms Johansen and a formalising of her personal grievance which had already been raised in mid-2004. He submits that Ms Johansen is precluded from commencing a personal grievance in the Authority because the 3-year limitation period began when her personal grievance was first raised in mid-2004 and ended in mid-2007, some months before her application was filed in the Authority.

[11] There is no indication, in the statement of problem or the attached documents, that the 15 November 2004 letter refers to any personal grievance other than that raised by Ms Johansen in her 11 July 2004 correspondence with her employer. It follows that the earlier date must be the commencement date for the calculation of the 3-year time period; a personal grievance cannot be raised more than once.

[12] In her statement of problem Ms Johansen says the delay in filing her application was a result of waiting for advice from the PSA as to whether it would represent her in these proceedings. Where the 3-year time limit applies the grievant has an obligation to ensure that matters are being progressed². That Ms Johansen was waiting for advice from her representative does not remove this obligation or act to stay the 3-year time limitation.

[13] For the reasons set out above Ms Johansen is precluded from commencing a personal grievance in the Authority.

Marija Urlich

Member of the Employment Relations Authority

² *Miller v Sensation Yachts Ltd* 11/4/03 D King (member), AA98/03