

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Chris Edward King (Applicant)  
**AND** Onyx Group Limited (Respondent)  
**REPRESENTATIVES** Mark Henderson, Counsel for Applicant  
Robert Thompson, Advocate for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**INVESTIGATION MEETING** 21 March 2006  
**DATE OF DETERMINATION** 21 March 2006

ORAL DETERMINATION OF THE AUTHORITY

[1] In support of his application, Mr King has relied on three exceptional circumstances which he says in this case need to be considered by the Authority. They are that he was so affected by the matters giving rise to the grievance that he was unable to properly consider raising the grievance within the specified time period. He also submits that he instructed a solicitor once he became aware of his right to make application for leave and that that solicitor failed to ensure that the grievance was raised or that an application was made for a hearing out of time. Thirdly, Mr King relies on section 115 (c) where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems as required by the Act.

[2] In considering the evidence I have heard in the submissions from the representatives I have first looked at the case cited by Mr Thompson of *Telecom v Morgan*, AC38/04, Colgan, J. I think that case can safely be distinguished in that at paragraph 15 of the decision Judge Colgan says *In this case section 115 (a) is at issue. Mr Morgan's application relies on it exclusively. It includes as an exceptional circumstance where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the specified period in section 114 (1).* So that case relates specifically to the illness of the applicant.

[3] In coming to a determination on this matter I have considered that section 115 (c) is sufficient in its force to enable me to grant the application. I have considered the other two submissions. I am uncertain as to the strength of section 115 (a) in the light of some concerns raised by the respondent's representative and likewise in regard to section 115 (b), I am unclear as to whether or not specific instructions were taken, although I am of the view that it is highly likely that they were.

[4] I have also, in determining this matter, looked at a case *David Jackman and Certus Consulting Limited*, WA9/03, Paul Stapp, the relevant section of which I will copy to the representatives following this determination. The Member says at paragraph 19 of that determination *I am satisfied given the real nature of the employment relationship that the parties' contract was an employment*

*agreement that was defective and in that regard made no provision as required to either dispute resolution services available and the 90 day time required to raise the grievance. Therefore Mr Jackman has established, I hold, that exceptional circumstances exist under section 115 (c) of the Act. For the sake of completeness the relevant requirement in this matter is set out in section 65 of the Act.*

[5] 65 (2) makes it clear:

*However, the individual employment agreement-*

*(a) must include-*

- (i) the names of the employee and employer concerned; and*
- (ii) a description of the work to be performed by the employee; and*
- (iii) an indication of where the employee is to perform the work; and*
- (iv) an indication of the arrangements relating to the times the employee is to work; and*
- (v) the wages or salary payable to the employee; and*
- (vi) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised ....*

[6] Accordingly, leave is granted.

[7] Costs are reserved.

Paul Montgomery  
Member of Employment Relations Authority