

[3] MTS says the first it heard about the claim of justified dismissal was the filing of Mr Kiwikiwi's statement of problem in the Authority in June 2008. MTS says the Authority cannot hear this claim because it is well outside the 90-day statutory time frame and such a delay was not occasioned by exceptional circumstances.

[4] This determination deals with the preliminary issue as to whether Mr Kiwikiwi's personal grievance for unjustified dismissal was raised within the statutory timeframe or, in the alternative, whether that delay was occasioned by exceptional circumstances. By agreement this matter is determined on the papers. I have received affidavit evidence and submissions in support of the respective positions, which I have read and fully considered.

Was the personal grievance for unjustified dismissal raised within 90-days?

[5] Mr Kiwikiwi says MTS was on notice from early 2007 of his personal grievance. I have reviewed the correspondence and find that a personal grievance for unjustified action causing disadvantage was raised with MTS on Mr Kiwikiwi's behalf. A personal grievance for unjustified action is distinct from a personal grievance for unjustified dismissal. I do not accept that the cascading effect of unjustified actions can communicate and/or amount to an unjustified dismissal.

[6] Mr Kiwikiwi has not raised a personal grievance for unjustified dismissal within the statutory 90-day timeframe.

Was the delay occasioned by an exceptional circumstance?

[7] Mr Kiwikiwi relies on the section 115(c) of the Act:

...

where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems that is required by section 54 or section 65, as the case may be;

...

[8] I accept that Mr Kiwikiwi's contract contained no such explanation. Section 115(c) has been out.

[9] The next question is whether it is just to grant leave. Mr Kiwikiwi has satisfied the requirements to raise a personal grievance for unjustified action causing disadvantage. It must be taken from this that notwithstanding MTS's failure to comply with its section 65 obligations Mr Kiwikiwi had knowledge of the personal grievance procedures prior to the events which he says amount to an unjustified dismissal. This weighs against granting leave. The significant delay in Mr Kiwikiwi raising his personal grievance for unjustified dismissal is another factor which weighs against granting leave. The affidavits filed in support of Mr Kiwikiwi's application do not state that a personal grievance for unjustified dismissal was raised with MTS at or around time of judgement. If they had then Mr Kiwikiwi's application would be on stronger ground.

Determination

[10] Mr Kiwikiwi's applications in regard to the raising of a personal grievance for unjustified dismissal are declined.

Costs

[11] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority