

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 137/09
5276881

BETWEEN YANG LIU
 Applicant

AND KIAZ LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Yang Liu Applicant
 Aaron Tuwhangi for Respondent

Investigation Meeting: Telephone conference 18 September 2009

Determination: 18 September 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Yang Liu has an employment relationship problem about how she was dismissed from her employment. Yang Liu requested mediation, but the respondent declined to attend.

[2] The respondent says that the personal grievance was raised outside the time required under the Employment Relations Act. It has not consented to the personal grievance being raised out of time.

Issues

[3] Was Yang Liu's personal grievance relating to her dismissal raised in the time required under the Employment Relations Act? What are the circumstances involving the two letters dated 7 July and 7 August 2009? When did the cause of action come to Yang Liu's notice?

The facts

[4] There has been no mediation. I considered mediation as a process that the parties needed to participate in before any investigation meeting in the Authority. However, I decided that mediation would not contribute constructively to resolve the employment relationship problem because of the preliminary issue in the first place and the respondent has declined to have a mediator involved. It is the respondent's right to request the preliminary matter to be disposed of first, although in many instances employers will go to mediation without prejudice before an investigation meeting. In any event if the personal grievance is found to be raised in time then I would have no hesitation in persuading the parties to go voluntarily or a direction would be made to attend mediation.

[5] Yang Liu was employed by KIAZ Limited. In a letter dated 9 April 2009 the applicant was put on notice of the employer's allegation, the possibility that she faced dismissal if the allegation was established and the process for the employer's enquiry. Yang Liu was dismissed on 14 April 2009 after a hearing with the employer on the same day. This means that Yang Liu had until 12 July 2009 to raise her personal grievance with her employer.

[6] The respondent claimed that Yang Liu raised the personal grievance by email on 7 August 2009 that had a letter dated 7 August 2009 attached to that email. Yang Liu says she sent a letter dated 7 July 2009 to the employer. The respondent says that the letter was erroneously dated 7 July 2009, and sent in an envelope date stamped 10 August 2009. The two letters are much the same, except that the letter dated 7 August attached to the email referred to a hard copy to be sent.

Determination

[7] Yang Liu was put on notice on 9 April 2009 of an allegation and required to attend a meeting to be heard that took place on 14 April 2009. Yang Liu was dismissed on 14 April 2009. Yang Liu has accepted that she was dismissed on that date.

[8] There is insufficient evidence to support that the letter dated 7 July 2009 was received by the employer in 90 days under s 114 of the Employment Relations Act.

[9] Yang Liu had until 12 July 2009 to raise her personal grievance with her employer. The letter dated 7 July was signed and it was received by the employer in an envelope that was date stamped 10 August. It is likely that the letter if it was dated 7 July was not received by the employer until at least 10 August. It is also possible that it was wrongly dated.

[10] A letter dated 22 July 2009 was sent to immigration services about Yang Liu for immigration purposes. The letter contained no reference to a personal grievance being raised. It therefore is not very helpful.

[11] There was an email dated 7 August 2009 from Yang Liu to the employer with a letter dated 7 August 2009 attached, and that letter had a reference to a hard copy being sent. There has been no explanation as to whether or not a hard copy was received let alone sent. In any event the email and attachment were by this time outside the 90 days required to raise a personal grievance.

[12] There was another email dated 10 August 2009 from Yang Liu that requested the respondent to respond by 12 August 2009. Yang Liu wrote a letter dated 12 August 2009 with an explanation and her version of the facts when she did not receive a reply from her employer. This letter never referred to any of the previous letters.

[13] During the telephone conference Yang Liu accepted that her personal grievance on the dismissal was out of time.

[14] Yang Liu says that she became aware of a complaint that had been made by the employer to the Police, and she wanted that complaint withdrawn. On this basis she says she has raised a personal grievance when she became aware of the complaint made to the Police. Her claim does not relate to that cause of action but instead her claim relates to her dismissal and they are entirely separate matters. If the complaint that Yang Liu says she did not know about occurred during her employment then she would have grounds to rely upon it to raise a personal grievance from the point that she became aware of that complaint. If the complaint was made after her employment

ended then that would be an entirely different matter outside the employment relationship because Ms Liu's employment ended on 14 April. I have no further information to make any conclusions and therefore will not take that matter any further. It is open to Yang Liu to decide if she wants to pursue that as a separate cause of action on the file since the statement of problem referred to it.

Conclusion

[15] It is my conclusion that the employer received the letter raising a personal grievance on or about 10 August 2009. This is because the indicators all lead to the 10th of August and there is no evidence of the letter actually being sent or received on 7 July, despite that date being on one of the letters. Also there is another possible explanation for the personal grievance being raised that related to the complaint that had been laid with the Police that Yang Liu says she found out about. She referred to this in her letter dated 10 August for the first time.

[16] The personal grievance has been raised out of time in regard to the dismissal. Yang Liu has accepted that.

[17] The complaint to the Police is not the claim relating to the dismissal that Yang Liu has filed in her statement of problem. The applicant is not able to proceed with her claim of unjustified dismissal unless there are exceptional circumstances. That would require another application with details.

[18] There is no issue on costs to address. Yang Liu has not been successful and cannot be reimbursed the cost of her filing fee. No other costs have been identified. Costs are to lie where they fall.