

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 502
3124695

BETWEEN JESSICA MACDONALD
Applicant

AND PATRICK ENGLISH
First Respondent

AND IRENE ENGLISH
Second Respondent

Member of Authority: Claire English

Representatives: Alex Beal, counsel for the Applicant
Barbara Buckett, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 5 August 2021 and 30 August 2022 from Applicant
27 August 2021 from Respondent

Determination: 4 October 2022

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant has raised personal grievance claims of unjustified disadvantage and unjustified dismissal, and claims that the respondent breached its duties of good faith towards her, and committed a breach of contract by failing to provide a safe and healthy workplace.

[2] The respondent's position is that the applicant did not raise her personal grievance claims within 90 days, and so the claims of unjustified disadvantage and unjustified dismissal must therefore be dismissed. The respondent denies that there has

been any breach of good faith, or any breach of contract. It says that no remedies should be awarded, and does not consent to the raising of claims out of time.

[3] This determination therefore records the Authority's preliminary determination as to whether or not the applicant's personal grievance claims of unjustified disadvantage and unjustified dismissal have been raised within time.

The Authority's investigation

[4] For the Authority's investigation written affidavits were lodged on behalf of the applicant from the applicant herself, and from Alex MacDonald. For the respondent, affidavits were lodged from Irene English and Michelle Peter, as Mr English has since passed away. The representatives also gave written submissions, and the matter was determined "on the papers".

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[6] For the avoidance of doubt, I record that, despite sharing a surname with the respondents, the respondents are unknown to me.

The issues

[7] The issues requiring investigation and determination were:

- (a) Did the applicant raise her personal grievance claims within time?

Background

[8] The applicant (Ms Jessica MacDonald) was employed by the respondents, Patrick and Irene English, to work at their business, Glenside Kennels. Her key duties were providing care for the dogs lodging at Glenside Kennels from time to time.

[9] On Monday 23 March 2020, it was announced that the country would be going into lockdown (Level 4) for the first time, from 11.59 pm Wednesday 25 March 2020.

[10] The applicant was at work on that Monday. She states that, after the final dog remaining at the premises was collected, she “closed up” as per usual, and made the short drive to Mr and Mrs English’s house to speak with them about what would happen next.

[11] Ms MacDonald states she spoke with Mr English, including that as there were currently no dogs at the kennels, she would not need to come into work.

[12] In response, she says that Mr English told her he had applied for the wage subsidy on her behalf, and that he wanted her to work by doing some maintenance on the property during the Level 4 Lockdown. Ms MacDonald says she refused, as in her view, this would not be a (permitted) essential service. She says that she offered to meet with Mr English again to discuss matters. She then left for home.

[13] Further discussions took place between Ms MacDonald and Mr English via text message, on 25 March 2020. Ms MacDonald has provided copies of 2 texts from Mr English on 25 March 2020, and a text from herself in response.

[14] In the first text, Mr English states that he had “called the police about the requirement for a travel to work letter. The officer on the enquires line said they don’t ask for any such thing at the moment”. In the second text, Mr English says “There’s an article on Stuff saying MBIE says there’s no need for a letter to authorise travel to work”.

[15] Ms MacDonald responded to these texts as follows:

Ok but I still won’t be into work at this stage unless there is a dog/dogs to look after, This is what I consider essential work. I’m sorry that I’m taking this lockdown very seriously and not willing to risk my health and risk of exposure for me and others unnecessarily. We will be in touch regarding a meeting between us all with a 3rd person to discuss everything further.

[16] Ms MacDonald says that “Text communication from Patrick [Mr English] stated he/they expected me to be at work during the lockdown, however, I disagreed...”¹.

[17] Mrs English has provided a hand-written note from Mr English dated 25 March 2020. This note is consistent with the text messages provided by Ms MacDonald. The

¹ Paragraph 5, Ms MacDonald’s affidavit sworn 5 August 2021.

note records Ms MacDonald saying that she didn't believe the kennels were an essential service, and that she "needed a letter from the government so she can travel to work". Mr English records "I undertook to seek advice on the essential services question". He did so, and notes that he was advised kennels were an essential service. The note then records that Mr English spoke with Ms MacDonald about 5.15 pm, and that "she is still unwilling to clear the driveway at this time".

[18] On 27 March 2020, Mr English provided Ms MacDonald a partial copy of her (or an) individual employment agreement (I make no comment on the broader disputes around this document at this stage).

[19] After speaking with Mr English on 27 March, Ms MacDonald agreed to walk round the kennels once a week to check everything was still okay. Ms MacDonald recalls that she did this "walk round" 7 times during March, April and May 2020.

[20] On Thursday 16 April 2020, Mr English emailed Ms MacDonald. This email stated:

Jess

I'm sending this by email in case you want to pass it on for advice.

As you are well aware, we are currently closed for the Covid-19 lockdown period, paying you with support from the current wage subsidy.

And as you are also aware, we believe we have to close temporarily but indefinitely [sic] after the lockdown due to my terminal liver disease and cancer diagnosis. While supporting me, Irene will not be able to keep up with the normal support activities that she undertakes: accounting and following up on unpaid amounts.

Therefore, we plan to give you 1 month's notice from the end of April. We will include outstanding leave in the final payment.

We will also have to arrange return of the bankcard, car keys, and house key.

[21] The following day on 17 April 2020, Mr English sent a text message to Ms MacDonald saying:

Jess, we sent you an email last night explaining our plans. Please confirm that you [sic] have received it.

[22] Ms MacDonald replied:

Hi Patrick, yes I received the mail thanks. How are you doing?

[23] Mr English replied:

My decline continues – can't be helped, I guess, but it will take quite a few months. Any thoughts on our plan?

[24] Ms MacDonald texted back:

Sorry to hear that Patrick, let me know if I can help in any way. The email is clear thank you. Could I ask for a reference at some stage please?

[25] Mr English replied “No problem.”

[26] On 20 April 2020, Ms MacDonald raised with Mr English (it appears, via phone) that the copy of her individual employment agreement that she had been provided on 27 March 2020 was missing the section regarding redundancy. Ms MacDonald recalls that Mr English said he was not aware that a section of the employment agreement was missing, but that he did say she was not eligible for redundancy compensation.

[27] On 29 April 2020, Ms MacDonald and Mr English met in person. Ms MacDonald states that this was “to discuss the missing redundancy section of the IEA”², and says they met “in the carpark”³.

[28] On Friday 8 May 2020, Mr English sent Ms MacDonald a further email, which stated:

Jess

As I have previously indicated, we are closing the kennels indefinitely, which means we must terminate your employment. This is due to my current terminal illness. As previously indicated, your last day of paid work will be 9 June 2020. We will include accumulated annual leave in the wage payment for that week.

I regret this turn of events and I am grateful for your service as manager of the kennels. I will separately send you a reference.

² Paragraph 18, of Ms MacDonald's affidavit sworn 5 August 2021.

³ Paragraph 19 of Ms MacDonald's affidavit in reply, sworn 19 September 2021.

[29] I note that a positive written reference was provided by email on 1 June 2020.

[30] Ms MacDonald's employment came to an end on 9 June 2020. It is this termination of her employment which she now says is unjustified.

[31] On 2 July 2020, Ms MacDonald met with Mr English again. Ms MacDonald says this conversation was when she raised her claim of unjustified dismissal.

[32] There is a transcript of this conversation, which is provided in evidence by Mrs English. The transcript records that Ms MacDonald raised the idea of redundancy compensation several times, and Mr English stated his understanding was that Ms MacDonald was not entitled to this. Ms MacDonald also told Mr English that she was going to need to apply for a benefit. She specifically and repeatedly asked Mr English to tell anybody from WINZ who inquired that the reason the business closed was because of a Covid-19 downturn, as well as due to Mr English's ill health, because Ms MacDonald believed this would entitle her to receive a higher rate of payment.

[33] Ms MacDonald also raised with Mr English that she had heard that the kennels was still operating. Mr English stated that Mrs English had taken on 4 dogs over the recent Queens Birthday weekend with the help of casual staff, but they had no regular stays and were not making any profit. Ms MacDonald asked why she had not been offered casual hours, and Mr English explained that there were not enough hours to support a regular person, and in any case, her contract had never been a casual contract.

[34] This was the last time Ms MacDonald spoke with Mr English, as his health continued to deteriorate.

[35] Mrs English states that in her view, Ms MacDonald did not raise a personal grievance with Mr English at this meeting, however, I note she was not present at this meeting.

[36] Nevertheless, on 8 August 2020, the English's son (Morgan, who was known to Ms MacDonald) contacted Ms MacDonald by text. Mr Morgan English did not give evidence, however, Mrs English states that in response, Ms MacDonald "mentioned

concerns about her employment termination” but “did not specify what those concerns were”⁴.

[37] Mrs English expresses the view that, by 8 August, she knew that Ms MacDonald had unresolved “concerns about her employment termination”, but that this was not a personal grievance claim.

[38] Mrs English appears to have viewed these unresolved concerns as being of some urgency and importance, and also as needing someone other than her son to progress them, because on 13 August 2020, she emailed Ms MacDonald advising that Mr English was in hospice care, and that she had asked Mr English’s sister, Ms Michelle Peters “to contact you to discuss your concerns on my behalf”.

[39] On 16 August 2020, Ms MacDonald received a phone call from Mr English’s sister, Ms Michelle Peters. During this call, Ms MacDonald says she raised her concerns regarding her unjustified dismissal. Ms Peters says that this entire conversation took place on a “without prejudice basis” at her instigation, and nothing said in it can be properly admitted in evidence. Ms MacDonald disagrees, saying that she and Ms Peters agreed to a discussion “in good faith”, and that she does not recall the words “without prejudice” being used at any point.

[40] Ms Peters emailed Ms MacDonald on 17 August. In this email, she sets out her understanding of the various concerns that Ms MacDonald had raised with her around the ending of her Ms MacDonald’s employment. Again, Ms Peters says that this email was sent on a “without prejudice” basis.

[41] Ms Peters and Ms MacDonald met on 18 August 2020. Again, Ms Peters maintains this entire conversation was “without prejudice” and therefore its contents are inadmissible.

[42] Ms MacDonald states they agreed to attend mediation. Ms Peters in her affidavit makes no comment on whether or not the parties agreed to attend mediation, either to confirm or deny this. Mrs English in her affidavit also makes no comment on whether she understood Ms Peters and Ms MacDonald agreed to attend to mediation at that point, or to refute Ms MacDonald’s statement that this was agreed.

⁴ Paragraph 24, of Ms English’s affidavit dated 27 August 2021.

[43] The applicant then sought legal advice. On 16 September 2020, Ms MacDonald’s lawyer emailed the respondents at their “Glenside Kennels” email address. The email stated “we have been instructed to act for Jessica MacDonald in relation to her personal grievance raised against Glenside Kennels in relation to her unjustified dismissal”. The email went on to indicate that the writer would arrange for mediation as had previously been agreed.

[44] On 30 September 2020, Mrs English instructed her lawyers to respond to Ms MacDonald’s lawyers, stating that “our client is unaware of any personal grievance having been raised by your client.” And, “Our client has never agreed to any mediation.”

[45] The matter then came before the Authority.

Findings

[46] In legal submissions filed for Ms MacDonald⁵, she states that:

- a. She raised a personal grievance for unjustifiable action causing disadvantage – health and safety, on 25 March 2020;
- b. She raised a personal grievance for unjustifiable action causing disadvantage – employment agreement, on 29 April 2020.
- c. She raised a personal grievance for unjustifiable dismissal – redundancy, on 2 July 2020.

[47] I will first consider whether and when Ms MacDonald raised her claims of unjustified disadvantage, and I will then consider whether and when she raised her claim of unjustified dismissal.

Unjustified Disadvantage re requirement to work

[48] This request to work in breach of the Level 4 lockdown occurred, by Ms MacDonald’s account, on 25 March 2020.

⁵ At paragraph 60 of those submissions, and clarified on 30 August 2022.

[49] Ms MacDonald has 90 days to raise her grievance in respect of this matter, as set out in section 114(1) of the Employment Relations Act 2000.

[50] By my calculations this timeframe came to an end by (at the latest) Tuesday 23 June 2020.

[51] Ms MacDonald does not directly state in her affidavit the date or dates on which she says she raised her personal grievance of unjustifiable disadvantage.

[52] In considering the question of when and whether Ms MacDonald raised a personal grievance claim with her employer in relation to a request that Ms MacDonald work during the Level 4 Lockdown, I have considered the various descriptions Ms MacDonald gives of the conversations she had with Mr English in March 2020 in her affidavit. Ms MacDonald does not in fact say that she raised this particular concern with Mr English at all. What she does say is that she “refused” to attend work on a full time daily basis during the lockdown.

[53] Mr English’s handwritten contemporaneous notes record that, on 25 March 2020, Ms MacDonald refused to clear the driveway, and Mr English undertook to seek advice regarding essential services, and get back in touch with Ms MacDonald. Ms MacDonald then says that the question of what work she would do during the lockdown period was discussed on 27 March 2020, and as a result, she agreed to check up on the kennels once weekly.

[54] Ms MacDonald further describes speaking with Mr English on 27 March at paragraph 15 of her affidavit. She records raising a concern that the copy of the employment agreement Mr English gave her on that date was not the original copy so she “insisted on getting the original copy”. Despite feeling able to challenge the accuracy of the document provided to the extent of “insisting” on getting the original version instead, Ms MacDonald makes no mention of raising any concern around the request that she visit the kennels once a week to “check up” on them during the conversation on 27 March 2020 either. Instead, she describes this as an agreement⁶ reached between her and Mr English after she had “refused to go in to work full time every day⁷”.

⁶ Paragraph 7 of Ms MacDonald’s affidavit sworn 5 August 2021, where she says “I agreed”.

⁷ Paragraph 23 of Ms MacDonald’s affidavit sworn 5 August 2021.

[55] Ms MacDonald's failure to explain in her affidavit when and how she believes she raised a grievance in respect of a request to attend work during Level 4 Lockdown is fatal to her claim to have raised such a grievance within time. According to her own evidence, she objected to being asked to work full time on a daily basis, and also objected to an alternative suggestion that she clear the driveway, which occurred on 25 March 2020. These concerns were discussed and then resolved by an agreement on 27 March 2020 between her and Mr English that she would do a once-weekly check of the kennels. Ms MacDonald then abided by this agreement, by performing the check-ups. Ms MacDonald's own affidavit does not refer to her raising this matter again once this agreement had been reached. Indeed, it appears the next time this was raised was in the Statement of Problem dated 16 November 2020, which is well out of time, and still does not specify when and how this grievance was supposedly raised.

[56] I find that Ms MacDonald did not raise a personal grievance of unjustified disadvantage in relation to being asked to attend work during the Level 4 lockdown within time.

Unjustified Disadvantage re employment agreement

[57] I have also considered whether Ms MacDonald raised a personal grievance regarding what she says is the provision of an incorrect and/or incomplete employment agreement. Ms MacDonald says she first requested a copy of her employment agreement on 25 March 2020. I note this date was when she was talking with Mr English about work arrangements over the lockdown period, and when Mr English first told her that he was terminally ill and it was likely that the kennels would be closed.

[58] Ms MacDonald recalls that Mr English provided her with a hard copy of her employment agreement on 27 March 2020, when they met again and reached an agreement that Ms MacDonald would check the kennels on a weekly basis.

[59] It was sometime after this that Ms MacDonald noticed that the employment agreement she had been provided was missing a section. She states that she called Mr English to discuss this on 20 April 2020, and she raised her concerns about this again on 29 April 2020 when she met with Mr English⁸.

⁸ Paragraphs 17 and 18 of Ms MacDonald's affidavit.

[60] Ms MacDonald says that 29 April 2020 was when she verbally raised her personal grievance concern, that she was missing a section of her employment agreement that related to redundancy, with Mr English. There are no contemporaneous documents recording this conversation. Mrs English says in her affidavit that she was not aware that Ms MacDonald met with Mr English on that date, and that she was working from home that day so she believes she would have been aware of any meeting⁹. In reply, Ms MacDonald says she and Mr English “ended up having a talk in the carpark.¹⁰”

[61] Ms MacDonald’s own affidavit is not entirely clear as to what Ms MacDonald recalls that she said to Mr English on 29 April 2020, nor does it suggest that she used any particular words. She recalls that she felt worried, but does not record what was said by her. It is also apparent that Mr English didn’t note this meeting enough to mention to his wife that he’d seen Ms MacDonald that day, let alone spoken with her about something important. The transcript on 2 July 2020 shows that Ms MacDonald did (at that point) clearly raise a concern that she had only been provided with a partial employment agreement, and that she needed the entire document to properly understand her contractual rights and obligations. There is no reference in the transcript to Ms MacDonald saying that she’d mentioned this to Mr English previously, or that she was following up on the conversation of 29 April and she had been waiting for Mr English to action something following on from 29 April.

[62] I am of the view that Ms MacDonald did raise her personal grievance claim regarding her employment agreement with Mr English on 2 July 2020. The transcript of this meeting shows that Ms MacDonald asked for a copy of her own signed employment agreement on this date, so she could understand what provision it made for redundancy, and Mr English said “We’ll have another look”. This was understood by Mrs English to be still outstanding in August 2020, when she had first her son Morgan English, and then her sister-in-law Ms Peters follow up on this point.

[63] However, Ms MacDonald was first provided with a copy of her employment agreement on 27 March 2020. This means that she had 90 days to raise any concerns around that agreement and/or its provision to her, which time I have calculated would

⁹ Paragraph 18 of Mrs English’s affidavit.

¹⁰ Paragraph 18 of Ms MacDonald’s affidavit in reply.

expire (at the latest) on 25 June 2020. Any concerns raised on 2 July 2020 were therefore already out of time.

[64] I find that it is more likely than not that Ms MacDonald did not raise a personal grievance of unjustified disadvantage regarding what she says is the provision of an incorrect and/or incomplete employment agreement with Mr English on 29 April 2020, and has therefore not raised such a claim within the requisite statutory timeframe.

Unjustified Dismissal grievance

[65] Ms MacDonald also raises a personal grievance claim for unjustified dismissal. There is no doubt that Ms MacDonald was dismissed. Her dismissal was proposed by email dated 16 April 2020, and it was confirmed by email dated 8 May 2020, and confirmed again in the reference dated 1 June 2020.

[66] In respect of her personal grievance for unjustified dismissal, Ms MacDonald's last day of employment was 9 June 2020. Ninety days from this date (being the latest of all possible dates she could raise this grievance, noting she was first told of her likely termination by email on 16 April 2020) is therefore Monday 7 September 2020.

[67] Ms MacDonald says by way of legal submissions filed on her behalf that she raised her personal grievance claim of unjustified dismissal with Mr English on 2 July 2020¹¹.

[68] I must therefore consider whether Ms MacDonald sufficiently raised the claim that she had been unjustifiably dismissed in her conversation with Mr English on 2 July 2020.

[69] Ms MacDonald describes this meeting in her affidavit. She says they discussed her concerns that she had been told the kennel was being closed indefinitely, but that she had heard from clients of the kennel that the kennel was still operating. She also says that she asked why she could not have been provided with what casual work there was available.

[70] I have considered the transcript of that meeting provided by Mrs English. During that conversation, Ms MacDonald made it clear to Mr English that she did not

¹¹ Applicant's legal submissions, paragraph 60(c).

accept the termination of her employment. She repeatedly raised the suggestion that she might be eligible for redundancy compensation, either by way of contract, or in recognition of her length of service. She repeatedly referenced that she had been told by Mr English that the reason for the termination of her employment was because the business was closing, however, she now understood that the business continued to operate, making it clear that she did not accept or agree with the reasons previously given for the ending of her employment in light of this new information. She also questioned why she had not been offered what work there was, and asked for other options to termination to be considered. Mr English confirmed that the business continued to operate, and that it was employing other staff to do so. Then he said that whether the business would continue to operate would be “Irene’s decision”¹². Ms MacDonald asked Mr English to get back to her about the missing page in her employment agreement, which was the portion of the agreement which covered redundancy so that she could consider her rights under it.

[71] It is clear that Mr English conveyed to Mrs English that there were unresolved employment matters with Ms MacDonald, because Mrs English thought this was important enough to get her son, Malcolm English, to contact Ms MacDonald on 8 August 2020, even though this was about the time Mr English was entering into hospice care.

[72] In response, Ms MacDonald texted Morgan English on 8 August 2020, saying:

I’ve been giving it as much time as I can to sort it between us in house but unfortunately there is also a time frame of 90 days to bring up these concerns I’m rising [sic] with Glenside Kennels and my employment termination.

[73] On receiving this text, Mrs English perceived Ms MacDonald’s unresolved concerns “with Glenside Kennels and [her] employment termination” were pressing enough that she needed to delegate Ms Peters to assist immediately. According to Ms Peters, all her communications with Ms MacDonald, including her initial phone call, were on a “without prejudice” basis, initiated by her. This indicates that both Mrs English and Ms Peters perceived that there was a serious dispute between themselves and Ms MacDonald, otherwise there would have been no need for urgency, or for Ms

¹² Page 5 of the transcript.

Peters to hold all her communications with Ms MacDonald including an introductory phone call on a “without prejudice basis”.

[74] When considering whether a personal grievance claim has been raised, the applicable principles are as follows:

A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee’s communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.¹³

[75] Standing back and taking all these matters into consideration, it is my view that Ms MacDonald did raise a personal grievance for unjustifiable dismissal with Mr English on 2 July 2020. In that conversation, she made it clear that she did not accept the stated rationale for her dismissal (eg that the kennels had not in fact been closed when she had been told they were), and she made it clear that she was looking to receive something more from Mr and Mrs English as a result, whether that be a redundancy compensation payment, or to be offered more/or casual hours of work, and that she was expecting Mr English to get back to her to continue their discussions. These actions by Ms MacDonald meet the requirements of section 114(2), which requires that an employee takes “reasonable steps” to make the employer aware “that the employee alleges a personal grievance that the employee wants the employer to address”¹⁴. In addition, the subject matter of the concerns raised by Ms MacDonald falls squarely within the definition of what alleged actions might constitute a personal grievance claim, as set out in section 103 of the Act.

¹³ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132, at [36]–[38].

¹⁴ *Clark v Nelson Marlborough Institute of Technology*, (2008) 5 NZELR 628, at para [35].

[76] Ms MacDonald's text to Morgan English stating that she'd been trying to resolve her concerns "between us in house" regarding her "employment termination" is consistent with her having already raised a grievance with Mr English.

[77] In the alternative, I find that this text would also be sufficient to raise Ms MacDonald's personal grievance claim for unjustified termination. This is because the text advises that Ms MacDonald considers that she had "concerns...with Glenside Kennels and my employment termination." This was in the context of text messages where Ms MacDonald was trying to arrange a further meeting with Mr English, following on from the discussion of 2 July 2020. Where there is a series of communications between the parties, the totality of those communications may constitute raising a grievance¹⁵.

[78] The content of the text falls within the definition of a personal grievance claim for unjustified dismissal (defined at section 103 of the Act). Ms MacDonald is not required to use any particular form of words¹⁶, she is simply required to convey the substance of her complaint to her employer¹⁷. The text states that she has a complaint was over her "employment termination", and was sent to her employer's cell phone number, and replied to by his son. The text raises an allegation that fits within the statutory definition of a personal grievance, that Ms MacDonald wanted her employer to address.

[79] On receipt of this text, Mrs English's and Ms Peter's prompt action and escalation of an attempted resolution process is also consistent with them understanding that Ms MacDonald had raised a personal grievance prior to the text of 8 August, and at the very latest, in this text. Indeed, it is difficult to see why either of them would have reached out to Ms MacDonald with the speed and in the manner that they did, if in fact they did not understand that Ms MacDonald had an unresolved employment relationship problem about the termination of her employment, even if the label "personal grievance" had not yet been used. Mrs English admits as much¹⁸.

¹⁵ *Ibid*, note 11, at para [36].

¹⁶ *Ibid*, note 11, at para [36].

¹⁷ *Ibid*, note 11, at para [37].

¹⁸ *Ibid*, note 4.

[80] For these reasons, I find that Ms MacDonald raised a personal grievance of unjustified dismissal in relation to the termination of her employment within time.

Outcome

[81] For the reasons set out above, I find that the applicant:

- a. has not raised her personal grievance claim for unjustified disadvantage in relation to being asked to attend work during the Level 4 lockdown within time;
- b. has not raised her personal grievance claim for unjustified disadvantage in relation to regarding what she says is the provision of an incorrect and/or incomplete employment agreement within time;
- c. has successfully raised a personal grievance of unjustified dismissal in relation to the termination of her employment within time.

Costs

[82] Costs are reserved.

Claire English
Member of the Employment Relations Authority