Employment Court of New Zealand

Maharaj v Recon Professional Services Limited [2014] NZEmpC 114 (3 July 2014)

Last Updated: 4 July 2014

IN THE EMPLOYMENT COURT WELLINGTON

[2014] NZEmpC 114

WRC 7/13

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	ASHISH MAHARAJ Plaintiff
AND	RECON PROFESSIONAL SERVICES LIMITED Defendant

Hearing: 18, 19, 20 June 2014
(heard at Wellington)

Appearances: G Bennett, advocate for the plaintiff
J Evans, counsel for the defendant

Judgment: 3 July 2014

JUDGMENT OF JUDGE A D FORD

Introduction

[1] The issue in this case is whether the plaintiff, Mr Maharaj, raised a personal grievance against his former employer, the defendant, (Recon) within the 90-day period prescribed in s 114(1) of the Employment Relations Act 2000 (the Act). The Employment Relations Authority (the Authority), in a determination dated

14 March 2013, was prepared to accept that an employer may become aware that a personal grievance has been raised by receipt of a statement of problem sent by the Authority but found that Recon did not receive a copy of the statement of problem until five days after the expiration of the 90-day period.1 Accordingly, the plaintiff failed in his claim before the Authority. He now challenges that determination in this

Court.

1 *Maharaj v Recon Professional Services Ltd* [2013] NZERA Wellington 24 at [39].

[2] The plaintiff, acting in person, filed his challenge to the Authority's determination on 11 April 2013 but his statement of claim was defective and the Registrar urged him to obtain legal advice in the matter. An amended statement of claim was filed by Mr Bennett, advocate for the plaintiff, on 13 July 2013. A hearing was initially scheduled for the end of 2013 but that had to be vacated because of a priority fixture. A further hearing allocated for April 2014 was then unable to proceed because of an injury Mr Bennett had sustained. The parties have agreed that if Mr Maharaj fails in his challenge then that will be the end of the matter. If his challenge succeeds, the case will be referred back to the Authority for investigation.

Background

[3] Mr Maharaj, who is in his early 50s, told the Court that he has a Masters in Applied Social Work and a Certificate in Criminology from Victoria University, as well as a Masters in Philosophy with a Major in Social Policy from Massey University. Prior to his employment with Recon he worked as a specialist caregiver. Mr Maharaj commenced employment with Recon as a Mobile Security Officer on

23 November 2010. Recon is a security firm with its head office in Wellington. It has approximately 100 employees.

[4] Mr Maharaj's employment with Recon was not uneventful. On

21 February 2011 he received a written warning signed by the Managing Director, Mr Blair Malcolm, for "failing to follow procedures". The warning letter confirmed that there had been concern about his threatening behaviour towards another employee on 27 January 2011. As Mr Evans, counsel for the defendant, noted in his closing submissions, no personal grievance was raised within 90 days in relation to that written warning.

[5] On 27 May 2011, Mr Maharaj received another letter from Recon, this time signed by the Operations Manager, Mr Scott Murray. The letter is important because it led to Mr Maharaj's dismissal on 3 June 2011. It read:

Mr Ashish Maharaj

...

27 May 2011

NOTICE OF PERFORMANCE MANAGEMENT MEETING FOR SERIOUS MISCONDUCT

Dear Ash

This is a formal request to meet with you to discuss issues regarding your general performance, specifically:

1) Threatening and offensive language used to other recon staff members while conducting the Bravo patrol on Thursday 26th May 2011 because you were unhappy about the amended patrol run. Including words similar to "the changing of the run is all Nick's fault and that Nick is a fucking arsehole that needs to be smacked over". Telling the Duty Supervisor to "fuck off" before hanging up the phone to him. While on the phone to the Duty Supervisor saying that Blair can stick his job and you would be more than happy to tell him what you think of his fucking company.

I have arranged for a meeting to be held at Recon Head Office on Tuesday

31st May 2011 at 1330 hrs. It is recommended that you bring representation with you.

A possible outcome of the meeting could be that no further action is taken or you may receive a Written Warning. Depending on your report it is also possible you may have your employment terminated for Serious Misconduct.

Yours faithfully.

Scott Murray

Operations Manager

The disciplinary meeting

[6] The disciplinary meeting scheduled for 31 May 2011 was adjourned until

2 June 2011 in order to enable Mr Maharaj to have representation. Mr Maharaj had Mr Phil Dixon as his support person. Recon was represented by Mr Malcolm and Mr Murray. Some brief handwritten notes made by Mr Murray show that the meeting commenced at 1.00 pm and finished at 1.40 pm.

[7] It was common ground that at the disciplinary meeting, Mr Murray had with him documentation relating to the complaints against Mr Maharaj which he was not

prepared to disclose to Mr Maharaj or his representative. Mr Maharaj explained the situation in his examination-in-chief in these terms:

The meeting lasted about 30 minutes. Scott tried to get me to deal with the issues of the letter but I said that he had reports written on me and I said that he had papers in his hand that he was referring to. I said to him that it was a breach of my natural justice rights not to provide me with all the documents he had on me and I had a right to view all the documents before he queried anything on me. I kept requesting from Scott Murray the documents he had in his hand as he kept referring to them. Scott Murray continued to quote from the documents without letting me see the papers. I became increasingly incensed at his behaviour of not providing me with the documents as it was clearly aimed at winding me up to the point where I would explode and tell him to get fucked. Scott Murray still wanted me to answer his questions however I found that that it was intolerable as I wasn't allowed to see the documents and I felt like I was being asked to incriminate myself. I then lost it and told him that this meeting isn't going anywhere and you can go fuck yourselves as he wasn't letting me see or have copies of the documents that he had but was quoting from them. I said that this is all going to the Employment Courts as I was really pissed off with him. There was no doubt in my mind that Scott Murray was aware that I, in my way, was raising a personal grievance given his behaviour. When he did not give me the documents I then said that "this is all

bullshit, I am out of here". I and Philip Dickson both left.

[8] In his examination-in-chief, Mr Murray confirmed that Mr Maharaj had asked to see the documents he held in his hand. He told the Court that they comprised the original of the letter set out at [5] above plus two emails - one from Recon's Duty Supervisor, Mr Peter Aldridge, (containing approximately 480 words) and the other from Mr Greg Darragh, Mobile Senior Officer (containing approximately 230 words). They were both dated 27 May 2011 and timed at

12.44 am and 4.09 am respectively. They formed the basis of the complaint against Mr Maharaj. Mr Murray was then asked by Mr Evans what he did when Mr Maharaj asked to see the documents. The exchange is recorded in the transcript as follows:

Q. And what did you do?

A. I said I wasn't going to hand the other documents over to him because everything in them was included in the paragraph 1 of the letter that he had received.

Q. And what happened after that?

A. Mr Maharaj kept arguing that point for a while but then he would not answer any -- sorry the questions he did answer about the contents of paragraph 1 he just simply wanted to deny. He then accused myself and Mr Malcolm of being racist towards him.

Q. Why were you not prepared to give copies of those emails to

Mr Maharaj?

A. At the time the contents of the letters, of the emails as you can see, were about his behaviour and his threatening manner. I felt that by handing over that information and letting him see who had written these emails directly, even though he knew who they were, would've inflamed the situation more and I did have a responsibility towards the staff who provided me the information and keeping them safe.

[9] In cross-examination Mr Murray was asked by Mr Bennett about other documentation which was before the Court that had not been provided to Mr Maharaj. One of the documents was a one and a half page set of notes made by Recon's Operations Supervisor, Mr Heemi Mareikura, detailing a text message and telephone conversations he had with Mr Maharaj on 27 and 28 May 2011. Mr Murray confirmed that that document had not been given to Mr Maharaj but he said that it "was just a note to me to say that conversation had taken place" and it "wasn't even considered in the dismissal process". Another document was a one and a half page report from Mr Darragh relating to Mr Maharaj's conduct giving rise to the investigation which was dated 28 May 2011 at 7.47 pm. That document was headed "Statement about Ash". Mr Murray described the document as "an internal email" and he confirmed that it had not been shown to Mr Maharaj.

[10] Mr Murray denied that at the end of the disciplinary meeting Mr Maharaj had said that he was going to the Employment Court. Mr Murray's version of events was that as he tried to speak to Mr Maharaj he became "more enraged". Mr Murray continued:

I assured him that we would get further information from the people who had complained about him to compare it with his view of events. At this point he stood up and told Mr Malcolm and I to "go and fuck ourselves". He said he was "going on a hunger strike" and was "going to the press". The Plaintiff then stormed out of the office leaving Mr Malcolm and I with his representative.

[11] Mr Murray said that after the disciplinary meeting he obtained a written statement from Mr Aldridge and further details from Mr Darragh about the events giving rise to the complaint against Mr Maharaj. Both statements were reasonably detailed and were approximately one and a half pages in length. The evidence was that neither statement was shown to Mr Maharaj. The statement from Mr Aldridge

was dated 2 June 2011 at 3.45 pm. The statement from Mr Darragh was dated

3 June 2011 at 2.48 am. In cross-examination Mr Murray was asked by Mr Bennett about the statement he had obtained from Mr Aldridge after the disciplinary meeting:

Q. Why didn't you show him that document?

A. Because there was nothing different in there as to what was spoken about on the same day, in the meeting. The facts of what we wanted to speak to him about, the serious misconduct parts of that were exactly the same. That statement is just reaffirming what I'd already what I'd already been told by the person.

Q. Wouldn't it have been fair to give Mr Maharaj that document? A. I chose not to.

The dismissal

[12] Mr Maharaj told the Court that at about 9.18 am on 3 June 2011 he received a telephone call from Mr Murray who advised him that he had Mr Malcolm with him. He said that Mr Murray told him that he was terminating his employment for serious misconduct. Mr Murray confirmed making the telephone call to Mr Maharaj on his cell phone. He said that after he advised Mr Maharaj that the company had decided to terminate his employment for serious misconduct "being the language used, and threats made to staff and management", Mr Maharaj hung up. The telephone conversation lasted for less than a minute. Mr Murray and Mr Malcolm were asked if Mr Maharaj had made any comment during the phone call. The only comment the two men could recall Mr Maharaj making was "something about his dog".

[13] On the same day Recon sent a letter to Mr Maharaj signed by both Mr Murray and Mr Malcolm confirming his dismissal for serious misconduct. The letter repeated the allegations contained in the first paragraph of the letter of

27 May 2011 (see [5] above) and went on to state: "with the evidence we have obtained and the information you have provided we are required to terminate your employment immediately for serious misconduct." The evidence was that Mr Maharaj would have received the letter on either 6 or 7 June 2011.

[14] In a letter dated Tuesday, 7 June 2011, Mr Maharaj wrote to Mr Murray referring to his letter dated 3 June 2011 and requesting that he urgently provide a copy of "ALL documentations that are or have been in your possession or under your control containing all relevant/personal information about me (including personnel/employment file)".

[15] The letter, which was headed "Privacy Act 1993 Request for Personal

Information", concluded:

(6) Please provide this information without undue delay or in any event no later than 20 days after the receipt by you of this request as required under the Privacy Act 1993.

(7) In the interests of fairness & natural justice, once ALL the information request herein is received, and having had the chance to evaluate it, there will be further appropriate, applicable relevant response to your correspondence of 3 June 2011 which does not give sufficient details of the allegation contained therein.

Yours faithfully

...

[16] Mr Maharaj said that his letter was delivered to Recon on 8 June 2011.

[17] Mr Murray was asked by Mr Evans about his understanding of Mr Maharaj's letter. He answered: "That he wished to see information regarding his file, regarding his dismissal."

The telephone call - 16 June 2011

[18] At approximately 1.00 pm on Thursday, 16 June 2011 Mr Maharaj telephoned Mr Murray and said that he wanted to confirm that Recon had received his Privacy Act request. Mr Maharaj told the Court: "I also said that I was taking a personal grievance against Recon regarding my dismissal and all the bullshit of the unwarranted warning letters and the other issues that have occurred. This is why I asked for the information. He did not say much. I do believe that he Scott Murray was aware of the personal grievance as he made notes to that effect."

[19] In his evidence, Mr Murray said: "During the course of this brief conversation, the plaintiff mentioned that he may lodge a personal grievance, however, he did not state what that grievance would be about or what he required to be done by Recon." Mr Murray made a brief file note about the conversation which was dated "16.05.10". Mr Murray was unable to explain the incorrect date but he accepted that the correct date of the telephone call was 16 June 2011. The handwritten file note read:

16/5/10 - Ash called

1302 - Employment grievance personal - lodging

- Received - letter - within 20 working days.

- 4 July 2011.

1305 - [Mr Murray's signature]

[20] Mr Malcolm told the Court that he was unaware of the phone call Mr Maharaj had made to Mr Murray but he rejected the proposition put to him by Mr Bennett in cross-examination that in the course of the telephone conversation Mr Maharaj had advised Mr Murray that he was lodging a personal grievance. Mr Malcolm, in reference to Mr Murray's file note, said that Mr Maharaj was "suggesting he may lodge one, not that he is." Mr Malcolm also said that in order to raise a grievance, an employee needs to tell the employer "what resolution he wants to solve the problem" or "what outcome they want".

[21] On 29 June 2011, Mr Murray wrote to Mr Maharaj in response to his Privacy

Act request. His letter read:

Dear Ashish,

Thank you for your letter dated the 7th June 2011. We have sought advice from a lawyer and as a result you will find enclosed copies your personal file.

Yours faithfully

...

[22] After his telephone call to Mr Murray on 16 June 2011, Mr Maharaj consulted the Community Law Office for advice. He told the

Court that he was broke after his dismissal and he had to borrow money from a friend. Community Law referred him to Ms Katie Paterson, a solicitor with the law firm Thomas Dewar Sziranyi Letts. He said that he saw Ms Paterson and he "told her to file a personal grievance". On 22 June 2011, Ms Paterson wrote a letter on Mr Maharaj's behalf to Work & Income. The letter was produced in the Authority and before me. It stated:

ASHISH MAHARAJ

We have been instructed to act for Mr Maharaj in relation to an employment dispute.

Mr Maharaj has asked us to provide you with confirmation that he has instructed us regarding an employment dispute with his previous employer, Recon Professional Services. Mr Maharaj instructs that he wishes to pursue a personal grievance against his previous employer.

We hope this information is of assistance to you.

Should you have any questions in respect of the above, please feel free to contact the writer.

Yours faithfully

...

[23] Mr Maharaj explained in evidence that sometime over the following month Ms Paterson told him that it may be difficult for him to obtain legal aid and, at that stage she had said to him that the firm would require a retainer of $1,000. Mr Maharaj told Ms Paterson that he did not have $1,000 because he had lost his job and was on an unemployment benefit. It appears that thereafter no further action was taken by Ms Paterson on Mr Maharaj's behalf.

Proceedings

[24] Acting on his own behalf, Mr Maharaj commenced proceedings before the

Authority by lodging a statement of problem in the prescribed form on

31 August 2011. He said that he had to borrow money to pay the filing fee to the

Authority. The Authority forwarded a copy of the statement of problem to Recon by

courier under cover of a letter dated 1 September 2011. There was some evidence to suggest that delivery by the courier company would have been made on the next working day, namely 2 September 2011, which was a Friday, but the evidence from Recon was that the proceedings were not received until Monday, 5 September 2011.

[25] On 18 November 2011, Mr Murray sent a letter to the Authority confirming that Mr Maharaj's claim had not been received until 5 September 2011, "95 days after he was dismissed for serious misconduct." Mr Murray's letter went on to state:

At no time during this period did Mr Maharaj formally advise us that he had an issue with the dismissal process.

We believe that this matter should be dismissed due to the fact that the problem was not raised by Mr Maharaj with us within the required 90 days.

Submissions

[26] Mr Evans submitted that Mr Maharaj had "a very good understanding of what was required to raise a grievance and the time period in which to do it." I accept that he appeared to have some knowledge of personal grievances but it was limited and muddled. In answer to a question in cross-examination, Mr Maharaj stated: "It's my general understanding that most employment contracts you have 90 days in which to file a grievance or at least in which to notify or in which to reasonably notify an employer that a grievance is going to be raised." However, he appeared to equate the raising of a personal grievance with the commencement of an action. He was under the impression, for example, that he had 90 days in which to commence an action in the Authority, whereas under s 114(1) of the Act he had 90 days in which to raise his personal grievance and then under s 114(6) he had a further three years after the date on which his personal grievance was raised in which to commence an action in the Authority.

[27] Section 114 of the Act provides:

114 Raising personal grievance

(1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless

the employer consents to the personal grievance being raised after the expiration of that period.

(2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

(3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee

may apply to the Authority for leave to raise the personal grievance after the expiration of that period.

(4) On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority –

(a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include 1 one or more of the circumstances set out in section 115); and

(b) considers it just to do so.

(5) In any case where the Authority grants leave under subsection (4), the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance.

(6) No action may be commenced in the Authority or the Court in relation to a personal grievance more than three years after the date on which the personal grievance was raised in accordance with this section.

[28] In the present case, there is no question of the employer having consented to the personal grievance being raised after the expiration of the 90-day period. Nor, as Mr Evans submitted, has it been contended that any delay in raising the grievance was occasioned by exceptional circumstances and so I put to one side the provisions of subss (3), (4) and (5) of s 114.

[29] Mr Bennett made two principal submissions in relation to the raising of a personal grievance. First, he contended that the action amounting to a personal grievance, namely the dismissal, did not come to Mr Maharaj's notice in terms of the provisions of s 114(1) of the Act until he received the termination letter dated

3 June 2011. As the letter was not received until 6 June 2011, the submission was that the 90-day period would have expired on 5 September 2011 which was the date Recon acknowledged it received the statement of problem from the Authority. In response, Mr Evans submitted that Mr Maharaj was told in the telephone call on

3 June 2011 that his employment was terminated and that was the action that

amounted to the alleged personal grievance, not the subsequent receipt of the confirmation letter.

[30] I agree with Mr Evans's submission on this issue. Although Mr Maharaj may have been preoccupied with his dog at the time he received the telephone call from Mr Murray, he freely accepted in his evidence that Mr Murray had told him in the telephone call on 3 June 2011 that he was terminating his employment for serious misconduct. That was the action which triggered the personal grievance. In other words, the action allegedly amounting to a personal grievance was conveyed to Mr Maharaj on 3 June 2011 and the 90-day period commenced running as from that date.

[31] Mr Bennett's more substantial submission was that the combination of the letter Mr Maharaj wrote to Recon on 7 June 2011 under the Privacy Act requesting copies of all documents that Recon held on him, coupled with the telephone call Mr Maharaj made to Mr Murray on 16 June 2011 informing him that he was lodging a personal grievance were sufficient acts "in totality" to trigger the raising of a personal grievance under s 114(1) of the Act.

[32] Mr Evans accepted that "at various times" Mr Maharaj had stated that he was "taking a personal grievance" but counsel submitted that, on its own, such statements were insufficient to raise a personal grievance. Mr Evans further submitted that a grievance had to be "specified sufficiently to enable the employer to address it. The employer must be told what is required to be addressed by it." In support of his submissions in this regard, Mr Evans referred to the following oft cited passage from

the judgment of this Court in *Creedy v Commissioner of Police*:2

It is the notion of the employee wanting the employer to address the grievance that means that it should be specified sufficiently to enable the employer to address it. So it is insufficient, and therefore not a raising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of the grievance as, for example, unjustified disadvantage in employment ... As the Court determined in cases under the previous legislation, for an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. ... That is not to find, however, that the raising cannot be oral or that any particular

2 *Creedy v Commissioner of Police* [2006] NZEmpC 43; [2006] ERNZ 517 (EmpC) at [36].

formula of words needs to be used. What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.

Discussion

[33] In failing to provide Mr Maharaj with a copy of the various reports it had obtained relating to the serious misconduct charge against him, Recon acted in breach of its statutory good faith obligations. Section 4(1A)(c) of the Act provides:

4. **Parties to employment relationship to deal with each other in good faith**

...

(1A) The duty of good faith in subsection (1)–

...

(c) without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected –

(i) access to information, relevant to the continuation of the employees' employment, about the decision; and

(ii) an opportunity to comment on the information to their employer

before the decision is made.

[34] Whether Recon's failure to make the relevant documentation available to Mr Maharaj was sufficient to determine Mr Maharaj's dismissal unjustified is an issue which can only be determined at a substantive investigation or hearing. A further issue may arise as to whether Recon complied with the test of justification criteria outlined in s 103A of the Act. Suffice it to say, however, that the rules of natural justice and the good faith procedural requirements in the Act are intended to prevent the type of showdown that occurred at the disciplinary meeting in the present case when Mr Maharaj, feeling an undoubted deep sense of injustice, reacted in the way that he did by storming out of the meeting with a volley of threats and expletives.

[35] There are cases, particularly in the discrimination area, where an employee with a grievance will, for one reason or another, prefer to keep it to themselves and the employer, therefore, will have no knowledge of the breakdown in the employment relationship which may be unfolding. There will be other cases where

an employee takes the view that they have more than one grievance against the employer and the employer will be aware in general terms of the different types of grievances being alleged. In those situations the raising of a grievance will involve more than the mere assertion that the employee considers that he/she has a personal grievance. As the Court stated in *Creedy*, what is important is that the employer is made sufficiently aware of the grievance to be able to respond as the legislative scheme mandates. That is not to say, however, that, in order to raise a grievance, the employee must go as far as Mr Malcolm expressed it in the present case (see [20] above) and tell the employer "what resolution he wants to solve the problem" or "what outcome they want".

[36] In this regard, I respectfully agree with the observations made by Judge Inglis in *Idea Services Ltd (in Stat Man) v Barker*:3

[40] ... the informal, non-technical, nature of the personal grievance procedures relating to raising a grievance tells against an interpretation that requires an employee to specify the precise nature of the remedy or remedies they seek. The raising of a grievance is distinct from the more formal requirements attaching to the filing of a statement of problem, or a statement of claim. Both necessitate particularisation of the relief sought. That is not a requirement imposed under s 114(2).

[41] Ultimately, the issue of whether an employee has done enough to inform his/her employer of the nature of the alleged grievance that he/she wants addressed will be objectively determined having regard to the facts of each case. This may be reflected in a number of communications, and there is no requirement that it be reduced to writing. Nor is there a requirement for the level of detail that might be expected in, for example, a statement of problem.

[37] In the present case, I consider that through the totality of his actions at the time of and shortly after his dismissal, Mr Maharaj made, or at least took reasonable steps to make, Recon aware of the alleged personal grievance which he wanted Recon to address. At the disciplinary meeting, it would have been clear to everyone present that Mr Maharaj wanted access to the relevant documentation Mr Murray had in his possession relating to the serious misconduct charge he was facing. Recon refused to provide that information and it resulted in Mr Maharaj's dramatic storming out of the meeting. Then, immediately after he received the dismissal letter,

Mr Maharaj made a written request under the Privacy Act for all relevant

3 *Idea Services Limited (in Stat Man) v Barker* [2012] NZEmpC 112, [2012] ERNZ 454.

information on his file. Mr Murray correctly took this to be a request for information regarding Mr Maharaj's dismissal (see [17] above). Only a few days later, on 16 June 2011, Mr Maharaj telephoned Mr Murray to check that he had received his request under the Privacy Act and he confirmed that he was lodging a personal grievance.

[38] I do not accept Mr Murray's evidence that Mr Maharaj told him that "he *may* lodge a personal grievance".4 I have no doubt that Mr Maharaj would have told Mr Murray in his typical robust style that he was taking a personal grievance against Recon. He may not have used the precise words "raising a grievance" but I accept that what Mr Maharaj told Mr Murray, in the context of the other communications I have referred to, would have left him in no doubt that he was alleging a personal grievance which he wanted Recon to address. I find that the reasons why Mr Maharaj requested personal information under the Privacy Act was not to help

him decide whether to raise a grievance but to enable him to issue the proceedings he wrongly believed had to be issued within 90 days.

[39] In my view, it would have been very clear to Mr Murray from the totality of these communications that Mr Maharaj was raising a personal grievance in respect of his alleged unjustifiable dismissal. It would have been equally obvious to Mr Murray that the grievance was based on Recon's failure to make available to Mr Maharaj the relevant documentation which he had persistently sought throughout the disciplinary meeting. The evidence was that Mr Murray took legal advice in relation to Mr Maharaj's request under the Privacy Act. He could at that point have set in place mediation to seek to mutually resolve the grievance. He did not do so.

[40] When Mr Maharaj subsequently drafted his statement of problem which was filed in the Authority on 31 August 2011, he appears to have adopted what colloquially could be described as a scattergun approach. Apart from the unjustified dismissal allegations he also referred to other alleged unfair actions on the part of Recon, including the earlier events touched upon in [4] above which Mr Evans correctly submitted had not been the subject of a personal grievance. In his

submissions, however, Mr Bennett made it plain that the only personal grievance

4 Emphasis added.

Mr Maharaj seeks to rely upon is his claim that his dismissal was substantively and procedurally unjustified and, for the avoidance of doubt, I confirm that that is the only grievance I find that Mr Maharaj did, in fact, raise within time.

[41] For the foregoing reasons, I am satisfied that Mr Maharaj did, in fact, raise a personal grievance within the 90-day limitation period. The case is now referred back to the Authority for investigation. For the reasons, I indicated to the parties at the conclusion of the hearing, the investigation is to be conducted by another Authority member.

[42] I reserve the question of costs.

A D Ford
Judge

Judgment signed at 10.00 am on 3 July 2014
