

the jurisdiction challenge SCL raises relates to the personal grievances described at paragraph 1f of Ms Mala's statement of problem.

[3] This determination deals only with the preliminary jurisdictional issue of whether Ms Mala has raised all the personal grievances she seeks to bring before the Authority within the statutory 90-day timeframe.

The Authority's investigation

[4] By consent the investigation and determination of this employment relationship problem is made on the papers. The Authority has received information from the parties including submissions. No affidavit evidence has been filed.

[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 information received. In determining this matter the Authority has considered all the material before it, including all information provided by the parties and their submissions.

Issues

[6] The preliminary issues identified for investigation and determination are:

- (i) Did Ms Mala raise personal grievances for unjustified action within the 90 day timeframe?¹

Relevant law

[7] Section 114 of the Act provides that a personal grievance must be raised with the employer within a period of 90 days. The period begins 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 outside the statutory timeframe.

¹ Ms Mala has not applied for leave to raise personal grievances out of time.

[8] The grievance is raised with the employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance the employee wants the employer to address.²

[9] In relation to s 114(2) and how a grievance is raised the Employment Court said in *Creedy v Commissioner of Police*:³

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 personal 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. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular 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.”

[10] In *Chief Executive of Manukau Institute of Technology v Zivaljevic* Judge Holden summarised the applicable principles:⁴

The grievance process is designed to be informal and accessible. 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 it is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

² Section 114(2) of the Act.

³ *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].

⁴ [2019] NZEmpC 132, at [36]–[38].

Ms Mala's position

[11] Ms Mala says:

- (i) from 14 June 2023 she raised concerns either herself or through her representative about matters which were negatively impacting her at work;
- (ii) this was done in writing and responded to by SCL in particular letters of 3 and 21 August 2023;
- (iii) that the words “personal grievance” may not have been used is of no matter because the substance of the employment relationship problem was drawn to SCL’s attention;⁵and
- (iv) she says the totality of communications can have left SCL in little doubt as to the issues raised.⁶

Spectrum's position

[12] SCL submits:

- (i) paragraph 1f of the statement of problem refers to five unjustified disadvantage grievances which are said to be specified in the 21 August letter;
- (ii) four of the five were not raised in the 21 August namely – Ms Mala’s return to work by reference to 31 July 2023; no actions to assist Ms Mala; failure to inform Ms mala of actions taken to investigate; and, attempt to unilaterally alter Ms Mala’s place of work; and
- (iii) SCL does not consent to the raising of these personal grievances out of time.

Discussion

[13] The focus of SCL’s challenge to jurisdiction is paragraph 1f of Ms Mala’s statement of problem. On 21 November 2024 Ms Mala filed a response to the

⁵ *Clark v Nelson Marlborough Institute of Technology* [2008] EmpC 12/08.

⁶ *Ovation New Zealand v Puhia* [2011] EmpC11.

jurisdiction challenge raised by SCL. The response describes the personal grievances in the statement of problem at paragraph 1f as:

Claims raised that Spectrum failed to assist Preeti to make a safe return to work including taking no action to return her to the roster and claim that Spectrum unilaterally attempted to change Preeti's permanent work location.

[14] The response then refers to the 21 August letter and that Ms Mala raised a personal grievance about SCL's inaction in returning her to work from a period of suspension. She then refers to page 3 of the 3 November personal grievance letter which she describes as having "clearly laid out Preeti's claim Spectrum had attempted to unilaterally change her permanent work location".

[15] From this information I understand Ms Mala says, relying on the letters of 21 August and 3 November, that she has raised personal grievances for unjustified disadvantage in respect of SCL's alleged failure to take reasonable steps to return her to work following a period of suspension and changing her work location.

[16] The 11 August email from Ms Mala's previous representative raises an unjustified disadvantage personal grievance in relation SCL's actions or inactions in facilitating her return to work. This personal grievance was raised.

[17] The 21 August letter does not raise a personal grievance for unilateral change of work location. This standalone issue is not sufficiently teased out from the expressions of Ms Mala's concern about her return to work in that letter that it could be considered to have communicated such a personal grievance to SCL. Similarly, the 3 November does not raise a personal grievance for unilateral change of work location.

[18] The balance of the concerns raised by SCL arise from repetition of the unjustified disadvantage personal grievances raised in the 3 August.

Summary

[19] The following personal grievances are before the Authority to investigate and determine:

- (i) unjustified disadvantages in respect of SCL's disciplinary investigation by way of the following alleged actions:
 - a. a poorly managed disciplinary process;
 - b. bias in favour of the complainant;
 - c. failing to provide all relevant information to Ms Mala; and
 - d. unreasonably delaying the disciplinary investigation meeting;
- (ii) unjustified action in respect of Ms Mala's return to work (letter 11 and 21 August 2023); and
- (iii) unjustified constructive dismissal;

Costs

[20] Costs are reserved.

Marija Urlich
Member of the Employment Relations Authority