

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 166
5366121

BETWEEN

SACHA PETERSON
Applicant

A N D

JOHN ANDREW REGINALD
COX t/a BLOMKAMP
SOLICITORS
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
Respondent in person

Investigation Meeting: On the papers

Submissions received: 15 March 2015 from the Applicant
7 April 2015 from the Respondent

Date of Determination: 11 June 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Peterson) alleges that she was unjustifiably dismissed, discriminated against and suffered a breach of good faith by the respondent (Mr Cox). Those allegations are denied by Mr Cox but Mr Cox also raises a preliminary issue of whether the personal grievance was raised in time.

[2] By agreement between the parties, that preliminary issue was to be dealt with by me first and on the papers. This determination is concerned exclusively with that issue.

[3] The issue turns exclusively on a proper construction of a personal grievance letter drafted by Ms Peterson's then counsel, Eska Hartdegen, dated 6 December 2011.

[4] The notice of redundancy by which Ms Peterson had her position disestablished is dated 14 November 2011. It is accepted that the letter purportedly raising the personal grievance is dated 6 December 2011 and was received on that date.

[5] Mr Cox quite properly accepts that the 90 day period within which the personal grievance could legally be raised (the justiciable period) commenced on 14 November 2011 and concluded on 12 February 2012. On that basis then, there can be no question that the personal grievance letter of 6 December 2011 was received within the justiciable period.

[6] Mr Cox concedes as much; his argument proceeds exclusively on the footing that the letter does not properly raise a personal grievance, essentially because he disagrees with the factual matrix set out in the letter. He says the 6 December 2011 letter does not contain “*sufficient information to constitute the raising of a personal grievance*”.

[7] Mr Cox relies on *Creedy v. Commissioner of Police* [2006] ERNZ 517 as authority for that proposition.

[8] Mr Cox’ particular concern appears to relate to the failure of Ms Hartdegen’s letter to specify the basis of all of the claims made on behalf of Ms Peterson.

[9] Moreover, it is said that the factual matrix set out in the letter from Ms Hartdegen is mistaken.

[10] It is also made clear that Mr Cox does not consent to the raising of the grievance out of time, that Ms Peterson had counsel acting for her at the relevant time and so was perfectly able to raise a grievance that was efficacious in accordance with the law and that notwithstanding that, she failed to raise a valid personal grievance within time.

[11] Submissions for Ms Peterson deal exclusively with the question whether the personal grievance was prosecuted within the three year timeframe required by s.114 of the Employment Relations Act 2000 (the Act). That is not an issue raised by Mr Cox whose submission proceeds on the footing that the grievance was not initially raised within the justiciable period.

Determination

[12] I have not been persuaded that there is any deficiency in the personal grievance letter drafted by Ms Hartdegen for Ms Peterson and dated 6 December 2011. I have carefully reviewed that letter and I am satisfied that it contains all the elements one would expect of a personal grievance letter.

[13] First, it identifies the nature of the grievance or grievances, second it sketches the factual matrix as counsel understood them, and third it indicates what the employer needs to do in order to put matters right.

[14] I accept without reservation that there are differences between the parties as to the material facts; that is a commonplace in this jurisdiction. But I think there is sufficient material in the letter to enable the grievance to be addressed by the employer to the point of resolution, if that was what the employer sought to do.

[15] There may be limited material in the letter about some of the claims for relief but again that would not be a unique situation; the factual matrix on which the letter proceeds (albeit allegedly mistaken) is there with sufficient particularity to enable the employer to quarrel with it and put it right.

[16] If I am mistaken in my conclusion that the grievance letter of 6 December 2011 contains sufficient particularity to comply with the law, then it seems to me Mr Cox has condoned the putative failure of the letter by going for mediation on 14 December 2011 and presumably trying in good faith to resolve matters by agreement.

[17] For the sake of completeness, I observe that if the point about the three year timeframe to prosecute the grievance in terms of s.114 of the Act is to be taken, then if as appears to be the case that Ms Hartdegen's letter was faxed to Mr Cox at 12.05pm on 6 December 2011, and the statement of problem was filed in the Authority on 5 December 2014, then that is within time.

[18] It follows from the foregoing that I am satisfied Ms Peterson has successfully raised a personal grievance with Mr Cox and has commenced the prosecution of that personal grievance within the three year period required by law. It follows that the Authority will need to arrange with the parties to hear further evidence about the

substantive grievance. My Authority officer will contact both parties to arrange a telephone conference.

[19] For the avoidance of doubt, I want to be very clear that the fact that I have been persuaded that the personal grievance has been raised within time ought not to be read by either party as evidence for the view that I have reached any conclusion about whether the personal grievance is made out or not. I have heard no evidence on that point and until I do will not be able to make any determination on the substantive issue.

Costs

[20] As both parties act for themselves, there is no issue as to costs.

James Crichton
Member of the Employment Relations Authority