

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 131  
3124874

BETWEEN

GAELINE PETITJEAN  
Applicant

AND

HEALTHSOURCE NEW  
ZEALAND LIMITED  
Respondent

Member of Authority: Leon Robinson

Representatives: Applicant in person  
Kylie Dunn, counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 24 December 2021 from Applicant  
24 January 2022 from Respondent

Determination: 6 April 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Gaeline Petitjean (Ms Petitjean) applies for leave to raise a personal grievance out of time. Ms Petitjean wishes to challenge a first written warning given to her in July 2020 by her former employer Healthsource New Zealand Limited (Healthsource). Healthsource says Ms Petitjean did not raise her personal grievance within the time permitted for her to do so. It does not consent to the grievance being raised out of time and opposes Ms Petitjean's application now for the Authority's leave that she be permitted to raise it out of time.

[2] The parties were unable to resolve the problem by the use of mediation. Ms Petitjean asks the Authority to resolve it by granting her leave to raise her personal grievance out of time.

### **The Authority's investigation**

[3] The parties have provided the Authority with their evidence in the form of sworn affidavits together with written submissions for its consideration. The Authority did not require the parties to attend an investigation meeting and the matter has been considered on the papers.

[4] 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.

### **The issues**

[5] The issues requiring investigation and determination are:

- (a) did Ms Petitjean raise a personal grievance within the time permitted? and if not;
- (b) should leave be granted to raise the grievance out of time?
  - (i) because the delay in raising the personal grievance was occasioned by exceptional circumstances; &
  - (ii) the Authority considers it just to grant leave.
- (c) should either party contribute to the costs of any other party?

### **The facts**

[6] Ms Petitjean was formerly employed by Healthsource as a supply chain coordinator until 11 December 2020. The terms of the employment were those set out in a collective agreement between Healthsource and the Public Service Association.

[7] On 12 May 2020 Ms Petitjean was involved in an altercation with a security person and Healthsource decided to commence a disciplinary process arising out of Ms Petitjean's conduct in the altercation.

[8] Healthsource required Ms Petitjean to respond to allegations that:-

- (a) On 12 May 2020 at around 11.40am she engaged with a security person on duty at the North Shore hospital in a manner that was aggressive, threatening and abusive towards that person;

- (b) The altercation took place within view and hearing of members of the public and additional employees of the client, Waitemata District Health Board;
- (c) Ms Petitjean attempted to circumvent strict rules put in place by Waitemata District Health Board and the Regional Clinical Organisation that ensured the protection of staff and visitors against COVID-19 transmission during the current pandemic;
- (d) Ms Petitjean failed to follow reasonable instructions given by the security person.

[9] Ms Petitjean attended a formal disciplinary hearing meeting accompanied by a PSA Delegate on Wednesday 8 July 2020. The decision-maker present at the meeting for Healthsource and who heard Ms Petitjean's responses was Healthsource's Service Delivery Manager Mr Olivier Carle (Mr Carle).

### **The reasoning**

#### *Personal grievance not raised within 90 days*

[10] I find that Ms Petitjean provided Healthsource with responses to the allegations against her in the formal disciplinary hearing meeting held on Wednesday 8 July 2020.

[11] I find too that following an adjournment Ms Petitjean was advised that it was proposed that she be issued with a first written warning. I further find that Ms Petitjean was provided with an opportunity to comment on the outcome proposed. I find also that Ms Petitjean communicated her acceptance and comfort with the outcome proposed. I note Ms Petitjean does not give this evidence in her affidavit. She did not oppose or object to it and on the contrary, she enquired as to its duration. Having regard to her acceptance of it, the first written warning was confirmed and was to remain in force for 12 months from 8 July 2020.

[12] The outcome of the first written warning was confirmed to Ms Petitjean in writing by letter dated 13 July 2020. That letter dated 13 July 2020 was not given to Ms Petitjean until she returned from sick leave on Tuesday 21 July 2020.

[13] Ms Petitjean took legal advice and a barrister wrote by letter dated 8 October 2020 to Healthsource purporting to raise a personal grievance on Ms Petitjean's behalf.

[14] Healthsource by its solicitor's letter of 13 October 2020 advised that it would not consider the personal grievance because it had not been raised within 90 days of the alleged personal grievance arising. The solicitors also advised Healthsource was not consenting to the personal grievance being raised out of time.

[15] I have found that Healthsource's letter of 13 July 2020 served to record the salient events of the formal disciplinary hearing meeting held on Wednesday 8 July 2020. I find that in that meeting Ms Petitjean was invited to comment on a proposed outcome and once she indicated her acceptance of it by responding "Ok" it was then confirmed. I therefore find the first written warning was issued on 8 July 2020. The letter of 13 July 2020 was not the warning. The letter confirmed the warning that had already been given on 8 July 2020 and which Ms Petitjean had accepted.

[16] Ms Petitjean had 90 days to raise a personal grievance. That requirement is stipulated in the Clerical & Administrative Workers' Collective Agreement 6 June 2019 – 28 March 2021. The first written warning being issued to her on 8 July 2020, she was required to raise her personal grievance no later than 5 October 2020 (90 days later).

[17] Ms Petitjean's barrister's letter purporting to raise a personal grievance on her behalf was not sent until 8 October 2020. It was therefore out of time being sent on day 93 after the first written warning was given to her.

*Should leave be granted to raise grievance out of time?*

[18] The Employment Relations Act 2000 (the Act) provides that where the employer does not consent to a personal grievance being raised out of time, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of the 90 day period in which a personal grievance is required to be raised. Ms Petitjean makes this present application for the Authority's leave.

[19] The Authority may grant leave if it is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances and considers it just to do so.

[20] Ms Petitjean in her affidavit states that she was "truly thinking that the 90 days was starting from the date of the letter which was 13 July as it was the date of the official document, even (sic) I was only given the letter on 22 July". She and her barrister calculated the 90-day period to run to 11 October 2020. They had misjudged the date

of the first written warning. I find that this was actually the reason for Ms Petitjean's delay in raising her personal grievance. That delay however was occasioned by Ms Petitjean's own misjudgement. It was not occasioned by exceptional circumstances.

[21] I have given consideration as to whether any of the exceptional circumstances set out in section 115 of the Act might otherwise have occasioned Ms Petitjean's delay.

[22] I am unable to accept that Ms Petitjean was so affected or traumatised by the matter giving rise to the grievance that she was unable to properly consider raising the grievance within the required period. She does not state this. What she does say is that she was traumatised by the meeting on 8 July. She says she did not understand properly at the meeting. She says that she understood it to be a proposal of a warning, and she was very distressed about the possible impact a warning could have on her job as she was on a work visa linked to her employer.

[23] Ms Petitjean's evidence does not go so far as to demonstrate that she was so affected or traumatised as to be unable to properly consider raising the grievance within the required period. It is important to note in this regard that Ms Petitjean met with her legal advisor on 7 September 2020.

[24] I am satisfied that none of the other circumstances specified at section 115 of the Act assist Ms Petitjean either.

[25] On this analysis it is not necessary for me to consider the justice of the matter. I would however have taken the view it would not be just to grant leave having regard to the facts that the employment has long ended and that it was a first written warning with nothing material turning upon it.

### **The result**

[26] For the reasons set out above, I decline to grant Ms Petitjean leave to raise her personal grievance out of time.

### **The costs**

[27] The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so Ms Dunn may lodge and then serve, a memorandum on costs within 14 days of the date of this determination. From the date of service of that

memorandum Ms Petitjean will have 14 days to lodge and serve any reply memorandum. Costs will not be considered outside this timeframe without prior leave.

Leon Robinson  
Member of the Employment Relations Authority