

[3] The parties agreed to the Authority determining this issue based on the Statements of Problem and in Reply and on submissions from the parties.

Background Facts

[4] Mr Puhia was employed by BMNZL for approximately 8 years. On 16 November 2008 Mr Puhia visited the site of BMNZL on what was a non-work day for him, and deposited 2 Pak'n'Save grocery bags in a non-food skip located on BMNZL's premises. After this action, Mr Puhia left the premises.

[5] The following day, Mr Puhia attended work as normal and was spoken to by his supervisor, Mr Chico Takarua, on the matter of the disposal of the grocery bags on the respondent's premises. Mr Puhia was then referred by Mr Takarua to the Plant Manager, Mr Sean Naden. As a result of a discussion with Mr Naden, Mr Puhia was suspended from work.

[6] On 18 November 2008, Mr Puhia met with Mr Naden, Mr Takarua and Union Delegate, Ms Peti Koia. Mr Puhia was not happy for Ms Koia to represent him on behalf of the Union and chose instead to be represented by Crete White. At the conclusion of the meeting, Mr Puhia was summarily dismissed for having placed the rubbish bags in the non-food skip, as this was held to be an act constituting serious misconduct. A dismissal notice was provided to Mr Puhia.

[7] On or about early January 2009 Mr Puhia sent an undated handwritten letter to Mr Naden requesting a written statement setting out the reasons "*how you came about these elegations for my Dismissal.*" In the same letter Mr Puhia said he "*would like to take a personal grievance against Bernard Mathews Gisbourne New Zealand.*"

[8] Mr Naden replied by letter dated 15 January 2009, acknowledging receipt on 6 January 2009 of Mr Puhia's undated letter. In response to Mr Puhia's request for a written statement, the letter referred to enclosed copies of the dismissal notice, and the reasons for his dismissal, as provided to Mr Puhia and his chosen representative at the meeting on 18 November 2008. The letter concluded by stating: "*Your comment that you would like to take a personal grievance against Bernard Mathews New Zealand is*

noted.”; and further suggested that Mr Puhia obtain advice from his Union before proceeding.

[9] After receiving this letter, Mr Puhia faxed a copy of the dismissal notice to Mr Graham Cooke, Aotearoa Branch Secretary of the Union. On the bottom of this notice, Mr Puhia wrote: “*ATTENTION GRAHAM COOK PERSONAL GRIEVANCE ASAP PLEASE*”.

[10] It is not clear exactly when Mr Cooke was informed about Mr Puhia’s wish to have the Union pursue a personal grievance on his behalf or received the faxed dismissal notice. However on 13 January 2009, Mr Cooke wrote to Mr Naden. The letter stated that Mr Puhia was dismissed on 18 November 2008 and that the Union believed this dismissal to be unreasonable. The letter went on to state that the union submitted a grievance to BMNZL on behalf of Mr Puhia “*so as to enable the employer to remedy the grievance rapidly and as near as possible to its point of origin*”.

[11] Mr Naden responded by undated letter, acknowledging the letter from the Union and enclosing “*notes and records relevant to this grievance*”. The letter concluded with an offer from Mr Naden for representatives from BMNZL to meet to assist Mr Cooke or Mr Puhia “*to gain a further understanding of the seriousness of the events on Sunday, 16 November 2008*”.

Determination

[12] Section 114(2) of the Act states:

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 a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.”

[13] The leading case on the interpretation of this section of the Act is *Creedy v Commissioner of Police*.¹ In this case, Chief Judge Colgan stated:

¹ *Creedy v Commissioner of Police*[2006] ERNZ 517

[36] It is the notion of the employee wanting the employer to address the grievance that means 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 Mr Barrowclough did on Mr Creedy's behalf in this case. 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.

[14] Whether the grievance has been specified sufficiently to enable the employer to address it, is to be assessed objectively i.e. from the standpoint of an objective observer².

[15] Mr Puhia's handwritten undated letter requested a written statement of the reasons for his dismissal. A request for reasons for dismissal of itself does not constitute the raising of a grievance³. However, Mr Puhia also stated in that letter that he: "... would like to take a personal grievance against Bernard Mathews ..". Assessed objectively, the request for information on the dismissal in conjunction with the desire to take a personal grievance would appear to advise BMNZL that Mr Puhia is raising a personal grievance related to his dismissal.

[16] In his response to this letter on 15 January 2009, Mr Naden acknowledged the personal grievance but did not request further details as to the nature of the grievance, as would be expected had there been any uncertainty on his part as to the grounds of the grievance.

[17] Following Mr Puhia's undated hand written letter, there was a letter from Mr Cooke to Mr Naden dated 13 January 2009. This letter was headed "*Personal Grievance of Mr C Puhia*". It referred to Mr Puhia's dismissal, stated that the Union believed this dismissal to be unreasonable and further, that the Union wanted the employer to "*remedy the grievance rapidly*".

² *Winstone Wallboards Ltd v Samate* [1993] 1 ERNZ 503

³ *Houston v Barker (t/a Salon Gaynor)* [1992] 3 ERNZ 469,478

[18] In his undated letter of response, Mr Naden referred to the Union sub-branch secretary Ms Koia being invited to all the meetings with Mr Puhia and to the company consequently keeping Ms Koia informed throughout “*the reporting, investigating and disciplinary processes.*” That letter continued by referring to the incident on 16 November 2008 and concluded with the offer to meet with Mr Cooke and Mr Puhia.

[19] I note that Mr Naden again did not request information on the nature of the grievance. It would be reasonable to expect that an employer who received a letter with a headline stating a personal grievance, consistently with a duty of good faith and the requirement to be ‘responsive and communicative’ pursuant to s4(1A)(b) of the Act, to have requested specific details if unsure of the nature of the grievance. However the letter from Mr Naden appears to indicate that he was aware that the personal grievance related to the dismissal of Mr Puhia on 16 November 2008 for serious misconduct.

[20] The handwritten letter from Mr Puhia standing alone might not have sufficed as the raising of a grievance. However in *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds*⁴ Chief Judge Colgan cited the case of *Liumahetau v Altherm East Auckland Ltd*⁵ as authority for the proposition:

... that where there has been a series of communications, not only would each be examined as to whether it might constitute a submission, but the totality of those communications might also constitute a submission.

[21] In respect of the raising of a personal grievance by Mr Puhia, taken together I find that the undated handwritten letter from Mr Puhia and the letter from the Union form a totality of communications. The letter from the Union does not specify in the detail later set out in the Statement of Problem the facts upon which the grievance is based nor the exact nature of the remedies sought but as observed in *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds*⁶

⁴ *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] ERNZ 139

⁵ *Liumahetau v Altherm East Auckland Ltd* [1994] 1 ERNZ 958,963

⁶ At [24] per Colgan CJ

Although what is raised must be more than bare advice of a personal grievance or even the type of grievance, the requirement is certainly not for the sort of detail that may be required subsequently when lodging a statement of problem with the Authority.

[22] The representatives in their submissions disagree as to the nature of the meeting which was subsequently held on 21 April 2009. I do not find that it is necessary for me to address this issue as I determine on the basis of the totality of communications between the parties, that Mr Puhia had specified sufficiently the personal grievance to enable BMNZL to address it.

[23] For this reason I determine that Mr Puhia has raised his personal grievance within time. A conference will be arranged shortly to progress the Authority's investigation.

Costs

[24] Costs are reserved.

Eleanor Robinson
Member of the Employment Relations Authority