

[2] This is the case here. The material before me involves a family owned company employing several children. Siblings and a parent have fallen out. There have been allegations of violence and drug addiction. This has led to the applicant's personal grievance alleging he was unjustifiably dismissed as the result of a violent altercation with a sibling.

[3] The employment matters have been largely secondary to other proceedings in the criminal and family courts. The consequence of those proceedings has been the complete breakdown of this family's relationship. The employment matters have finally surfaced following three years of proceedings in these other jurisdictions.

[4] The parties need to be aware any orders I make will be incapable of addressing the family's relationship. I cannot repair any damage, nor offer services or assistance. My role is prescribed by law to deal with the employment relationship problem only. There are services within their community who are better placed to assist such as Strengthening Families. It is hoped the parties shall access these services irrespective of my decision.

Issues

[5] There are three preliminary jurisdiction issues that must be determined by me before this matter can proceed to substantive hearing. These are:

- (a) Did the applicant sufficiently raise his personal grievance within the 90 day time limit application period pursuant to s.114 of the Employment Relations Act 2000 (the Act)?
- (b) If no, are there exceptional circumstances for the Authority to grant leave to the applicant to raise his personal grievance outside of the 90 day time period?
- (c) If yes, given the application was lodged in the Authority outside of the three year limitation from the date of the personal grievance, can and should the Authority extend the three year time limitation?

Background

[6] The applicant, Jason Rika (Jason), was employed as a truck driver by Beulah Services Limited. The respondent is a family company. The directors are the brothers and parents of the applicant.

[7] On 12 November 2010, the applicant and one of his brothers, Caleb Rika, were involved in a fight. The Police were called. It appears the applicant did not return to work thereafter. There is some disagreement whether he was dismissed or abandoned his employment.

[8] On 17 November 2010 the applicant's parents and respondent directors, Len and Roberta Rika, sent a letter confirming Jason remained employed, raising concerns about the 12 November incident which could lead to termination of employment, confirming investigations were ongoing, and a further disciplinary meeting would be organised for him and his support person.

[9] On 29 November 2010, Jason sent the below letter to the respondent (the applicants letter):

OFFICIAL GRIEVANCE

From Jason Rika to Managers of Beulah Services – Jarrod & Jade Rika

I would like a fair, honest and unbiased (sic) ruling for my piece (sic) of mind.

Thank you

Yours sincerely

Jason Rika

[10] On 30 November 2010 the respondent sought to organise the disciplinary meeting with Jason and his support person for 2 December 2010.

[11] Between 2010 and 2013, Jason was involved in criminal and family court applications. During this period the family relationship further deteriorated.

[12] On 3 February 2011, the applicant contacted the Ministry's call centre requesting mediation. Mediation services asked him to provide an outline of his

problem before further arrangements would be made. They received no reply and closed his file.

[13] On 5 July 2011 the applicant again contacted the Ministry's call centre again seeking mediation. The matter was referred to a mediator on 27 July 2011. Mediation was held on 12 October 2011. This was unsuccessful. There is a dispute about what occurred at the mediation and whether it can form part of the applicant's grievance.

[14] On 12 December 2013 the applicant filed a personal grievance application in the Authority. Further mediation was directed. This was also unsuccessful.

[15] It came before me at a teleconference on 5 May 2014. The above preliminary issues were identified to the parties. Directions were made for the filing of further information.¹

[16] A further minute was made confirming the above preliminary issues and giving the parties an opportunity to file submissions and any other information.² The matter is now for determination on the papers.

Did the applicant sufficiently raise his personal grievance within the 90 day time limit application period pursuant to s.114 of the Employment Relations Act 2000 (the Act)?

[17] A grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer aware that the employee alleges a personal grievance that the employee wants the employer to address (s114(2) of the Act).

[18] What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.³

[19] The applicant's letter does not indicate the nature of the complaint, its grounds or the remedy he seeks from the respondent.

¹ Minute 5 May 2014

² Minute 19 May 2014

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

[20] The statement of problem alleges the applicant was unjustifiably dismissed. He also alleges mental, emotional and spiritual abuse at the mediation held in October 2011. There is an issue whether the alleged abuse during mediation can be referred to at all in this proceeding because s148 of the Act prohibits this occurring except in certain circumstances. I deal with this below.

[21] None of the grounds in the Statement of Problem are set out in the applicant's letter. The letter falls well short of the legislative requirements in s114. On its own, it would have been insufficient to raise the personal grievance.

[22] However there was evidence in November 2010 of the applicant verbally raising his grievance of unjustifiable dismissal with the respondent. The respondent's letter dated 17 November 2010 refers to Jason's belief he had been dismissed.

[23] There is also a letter dated 10 October 2011 from the Strengthening Families Co-ordinator, Patrick Dixon, stating he was approached by Len Rika in July 2011. Len Rika told him Jason's employment had been terminated "*as a result of obstructive and potentially dangerous behaviour by Jason.*"

[24] Given Len Rika's position as an owner and director, the above evidence indicates the respondent was aware of Jason's personal grievance of unjustifiable dismissal in November 2010. The fact of when dismissal or termination occurred and whether it was justified or not can be determined at hearing.

[25] In the circumstances the Authority determines the personal grievance was raised within the 90 day period pursuant to s.114 of the Act.

[26] As a result, the second issue about granting of leave to raise a personal grievance outside of the 90 day time period does not require determination.

If yes, given the application was lodged in the Authority outside of the three year limitation from the date of the personal grievance, can and should the Authority extend the three year time limitation?

[27] The application was filed in the Authority outside of the three year time limit in s.114(6) of the Act. The Employment Court has confirmed the Authority has the

discretion to extend the three year time limitation under s.219.⁴ Section 219 allows the Authority the discretion to make an order extending the time within which things may be done.

[28] The relevant factors in determining whether to exercise that discretion to extend time include the reason for the omission to act within time, the length of delay, any prejudice to any other person, the effect on the rights and liabilities of the parties, subsequent events and merits.⁵

[29] The applicant does not give any reason for his delay in filing. It is inferred work pressure and appearances in criminal and family court may have contributed to the delays.

[30] The last day for filing his application was 29 November 2013. He filed the application on 12 December 2013. The length of the delay is 13 days.

[31] The parties have been dealing with this matter for some time. There are Police witness statements about the incident from the time it occurred that have been filed with the Authority. There is correspondence between the parties about this employment relationship from the relevant period. Witnesses from the family are available to give evidence. Given the personal nature of this grievance, it is unlikely people's memories have dimmed with the passage of time.

[32] Since the incident, the applicant took steps to arrange mediation, which was held in 2011.

[33] There is also an apparent admission Jason was dismissed. There is a prima facie case to answer by the respondent as a consequence. It is for the respondent to show the dismissal was justified. The above factors favour the exercise of my discretion.

[34] In the circumstances, the Authority makes an order extending the time for the filing of the application for personal grievance to 12 December 2013 pursuant to s.219 of the Act.

⁴ *Roberts v. Commissioner of Police* EmpC Auckland AC33/06, 27 June 2006

⁵ *Day v. Whitcoulls Group Limited* [1997] ERNZ 541 (EmpC); *Stevenson v. Hato Paora College Trust Board* [2002] 2 ERNZ 103 (EmpC) at [8]; *McDonald v. Raukura Haurora o Tanui* [2003] 2 ERNZ 322 (EmpC) at [15]; *Jack v. Faithfull Funeral Services Limited* EmpC Auckland, AC 38/06, 12 July 2006 at [14]; *An Employee v. An Employer* [2007] ERNZ 295 (EmpC) at [9]; *Ball v. Healthcare of New Zealand Limited* [2012] NZEmpC 91 at [21].

[35] There shall be no order about costs as the parties were self-represented.

Next steps

[36] Given the applicant's success in overcoming the preliminary issues, this matter needs to be set down for hearing at the Whakatane or Tauranga District Courts.

[37] The sole issue for hearing is whether the applicant was unjustifiably dismissed by the respondent.

[38] The applicants issue about being abused and lied to at mediation cannot proceed, unless the respondent consents to the Authority hearing evidence about what occurred during the course of mediation as required by s148 of the Act. Otherwise that issue remains outside of my jurisdiction to determine and cannot form part of the evidence before me.

[39] The parties are to advise their availability for a two day hearing to the support officer by **3pm Monday 23 June 2014** on the following dates:

- 28 July to 1 August 2014
- 1 to 5 September 2014
- 8 to 12 September 2014

[40] The support officer shall set down a hearing date thereafter in Whakatane or Tauranga District Courts. Timetabling directions for filing any further evidence shall be made thereafter.

Tania Tetihaha
Member of the Employment Relations Authority