IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

Determination Number:
WA 13B/07
File Number: 5046200

	BETWEEN	VAASA SEASO (Applicant)
	AND	NEW ZEALAND POST LIMITED (Respondent)

Member of Authority:	P R Stapp
Telephone Conferences:	24 August 2007 and 10 December 2007
Submissions received:	26 July, 13 September & 7 November & 10 December 2007 from the Applicant 9 August, 26 September & 10 December 2007 from the Respondent
Determination:	18 December 2007

NINETY DAY DETERMINATION OF THE AUTHORITY

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[1] Following earlier proceedings in the Employment Relations Authority the Applicant is pursuing a claim that a personal grievance for unjustified disadvantage was raised in the time required under the Employment Relations Act. The Respondent has rejected the claim.

[2] The Applicant says a grievance was raised in a meeting between the parties on 21 July 2006. The Applicant has relied upon the Respondent's notes of that meeting which she says plainly states that a grievance was raised by her representative at the time. Also, it was submitted on the Applicant's behalf that the Respondent's position on the word *"will"* is an overly technical argument.

[3] The Respondent says that Mrs Seaso is barred from bringing a personal grievance when she had the matter dealt with by the Authority as a dispute in the first place. It further contended that any grievance is now out of time. In other words the Applicant never raised her grievance in the

time required under the Act. The Respondent to cover its self did not accept that the Applicant was disadvantaged in her employment.

The Issue

[4] Was any personal grievance raised by the Applicant?

[5] The law that applies is: "*…the notion of the employee wanting the employer to address the grievance…means that it should be specified sufficiently to enable the employer to address it…"*: *Creedy v Commissioner of Police* EC 2006 1 ERNZ 517 and CA 2006 1 ERNZ 886 applied. Thus, did the employer know what to address and was the employer advised that the Applicant had a personal grievance? Was there an event that had occurred? Was the employer sufficiently aware of the grievance to address it?

The Facts

[6] The Applicant has relied upon a meeting held on 21 July 2006 during which she says a grievance was raised. That meeting was attended by Mrs Seaso, Paul Cresswell (Post Workers Union), and John Pellow, Operations Leader, Steve Turkington, Team Leader and a note taker. Mr Pellow's notes of that meeting state:

> *"…Paul[Cresswell] said it would be unfair dismissal, and will go to court, plus they will take a Personal Grievance."*

[7] The notes were signed by Mr Pellow (Employer's Bundle 111) and are not contradicted by a note produced by Mr Cresswell. Mr Pellow's notes record at the same meeting that the Applicant was given a first written warning. Subsequently Mrs Seaso was given a second written warning.

[8] The Applicant's representative then went straight to the Employment Relations Authority and lodged a statement of problem for a declaration on whether or not she had been properly consulted and whether she had any entitlement to redundancy pay.

[9] The Authority dealt with the matter as an employment relationship problem which involved what was required by her employer to meet the requirements to consult. New Zealand Post challenged the Authority's determination (WA 13/07 Dated 30 January 2007). The challenge was subsequently withdrawn.

Determination

[10] It is my decision that Mrs Seaso has not raised a personal grievance, although an event had occurred when she was given a first written warning on 21 July 2006. I have reached my conclusion considering the following:

- The Respondent recorded in its pleadings in the Employment Court WRC 5/07 a belief that a personal grievance had been raised (and sought an order "dismissing the [Applicant's] personal grievance claim in the Employment Relations Authority in file number 5046200"). It is common ground that was clearly an error because the nature of the employment relationship problem was pursued as a dispute in the Authority, which the applicant sought to have resolved by declarations. I have given no weight to this situation, but instead focussed upon whether a grievance was actually raised with the employer in the first instance.
- Further, in the Court, the Applicant's pleadings in response asserted (incorrectly) that no grievance had been raised. Again I have not given this any weight.
- Mr Pellow's file note records an intention by the Applicant's representative. I conclude that Mr Cresswell gave notice of an intention on the matter. There was nothing else in the file note that would convey that a Personal Grievance was being raised, although Mrs Seaso's representative was clearly not going to accept the situation. Moreover there was nothing else put in writing at that time by Mr Cresswell to follow up his notice of some action.
- The plain statement conveyed in Mr Pellow's meeting notes that he signed provided a clear notice of intention by the Applicant's representative to raise a personal grievance. The intention was conveyed by the words *"…Paul[Cresswell] said it would be unfair dismissal, and will go to court plus, they will take a personal grievance"*. Court action was threatened on the basis of the event of a dismissal (which never occurred).
- Next the Applicant went straight to the Employment Relations Authority for declarations on two particularised issues that related to the security of her employment and an issue about her entitlement to redundancy pay as a matter of enforcement. No personal grievance causes of action were raised and supported by personal grievance remedies. I accept that there may be occasions where there could be separate employment relationship problems pursed and it is not for me to try and second guess what happened here. This means that the employer was not informed

with sufficient specificity what the personal grievance involved to enable it to address it.

- The first time a remedy was claimed for a personal grievance (for compensation) was raised in the amended statement of problem in the Authority on 26 July 2007.
- The Respondent says its position is supported by the Union's words in the note dated 6 June (2006) (Employer's Bundle 105) to reasonably understand that the Union was only conveying an intention to raise a grievance and it never did so.
- Paul Cresswell says that on 6 June 2006 *"John [Maynard] raised a personal grievance and said PWU (Postal Workers Union) would be seeking mediation"*. (Statement of evidence para 37). What John Maynard says was that he would seek urgent legal assistance (paragraph 68). The notes of the meeting held on 6 June 2006 were produced by Mr Cresswell (Appendix B and Employer's Bundle 105). The notes fall short of identifying any personal grievance being specified sufficiently that the employer had to address. Certainly there was a dispute, and the parties' agreed to go to mediation before the matter was lodged in the Authority. Indeed, Mr Maynard referred to the matter as a dispute in his statement (paragraphs 56 &58).
- The Applicant has not relied upon lodging the employment relationship problem in the Authority on 26 July 2006 for raising her grievance. Indeed the issue raised there is consistent with the dispute being over a disagreement as to the Applicant's entitlement to redundancy pay put in the following way: "*The parties disagree as to whether in the circumstances the Applicant is entitled to redundancy pay*". That matter was not addressed because of the type of findings made by the Authority that involved a question of consultation in the first place, and would be dependent on what her position at work ended up being. That same document also referred to a heading: "*The facts giving rise to the grievance are…"*. As such the remedies being sought were not in the nature of a personal grievance consistent with that heading.
- Mr Maynard omitted to say anything about raising a personal grievance in his statements other than obtaining legal advice.
- Finally, the Applicant has requested that leave be granted to proceed pursuant to the justice requirements under s144 (4) (b) of the Act. It is not open to me to grant such leave in the absence of the full requirements of that section being relied upon, particularly because there has been no application to grant leave under s 114 (4) (a) of the Act.

[11] To summarise the situation I find that Mrs Seaso's representatives did not do enough to raise a personal grievance on 21 July 2006 on her warnings with sufficient specificity for the employer to address it. The employer would have known it was required to address the Applicant's start and finish times and consultation with her. However, the words of the meeting notes are consistent with an intention that never eventuated because there was no dismissal. Next the Applicant's representative lodged an employment relationship problem for declarations on consultation and entitlement to redundancy pay. Finally, there was no other follow up action by the Union to put the employer on clear notice of any personal grievance claim and remedies until almost a year later. It is entirely understandable that the employer could be forgiven for thinking that the employment relationship problem lodged in the Authority in 2006 was the matter being pursued in regard to a declaration on the consultation and whether or not the Applicant was entitled to redundancy pay. The absence of follow up by the Union and the lodging of an employment relationship problem in the Authority for declarations mean that the personal grievance was not specified sufficiently for the employer to address it.

[12] Now I would suggest and urge both parties to endeavour to try and resolve the employment relationship problem and bring some closure to the matter, even if that means going back to further mediation if that is necessary. Indeed now that the warnings have apparently been removed from the Applicant's file some basis of closure should exist.

[13] Costs are reserved as neither party commented on this as an issue.

P R Stapp
Member of the Employment Relations Authority