

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 722
3345500

	BETWEEN	ALEX SEEGER Applicant
	AND	INSTANT FINANCE LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Alexander Brown, advocate for the Applicant David France, counsel for the Respondent	
Investigation Meeting:	On the papers	
Submissions and/or further evidence	10 October 2025 from the Applicant 20 October 2025 from the Respondent	
Determination:	11 November 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Alex Seeger, claims he was unjustifiably dismissed by the Respondent, Instant Finance Limited (Instant Finance), on 15 July 2024.

[2] Instant Finance denies that Mr Seeger was unjustifiably dismissed and claims he was justifiably dismissed after having received a number of warnings.

[3] Mr Seeger did not raise a personal grievance within the requisite 90 day time limit for raising a personal grievance. This determination addresses as a preliminary issue whether leave should be granted to Mr Seeger to raise the personal grievance after the expiration of the statutory 90-day time limit set out in s 114 (1) of the Employment Relations Act 2000 (the Act).

The Authority's investigation

[4] An affidavit was provided by Mr Brown, advocate for Mr Seeger.

[5] Written submissions on the preliminary issue were received from Mr Brown for the Applicant and from Mr France for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[6] 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.

Brief Background Facts

[7] Instant Finance is a personal loan company with branches throughout New Zealand. Mr Seeger was employed as a Credit Controller on 17 October 2022, initially at Instant Finance's Support Office and subsequently at the Clendon Branch and then the Papakura Branch.

[8] Mr Seeger was provided with an individual employment agreement (the Employment Agreement) which at clause 19 included a clause on punctuality. The Employment Agreement also set out a Resolution of Employment Relationship Problems provision which included a notification that a personal grievance must be raised "within 90 days of when the incidents that give rise to the grievance ... come to your attention."

[9] Following Mr Seeger's commencement at Instant Finance, he was late to work on a number of occasions. Mr Seeger, who had personal issues at that time, worked late on these occasions. Mr Seeger did not have management approval to work late and Instant Finance addressed its concerns about his punctuality with Mr Seeger.

[10] A continuation of the lateness resulted in a meeting held on 27 March 2023 and a verbal warning was issued. Mr Seeger was also provided with access to employer provided EAP sessions which he attended.

[11] Two further incidents of late attendance at work by Mr Seeger resulted in a meeting held on 9 June 2023. Mr Seeger provided reasons for his lateness on the two occasions. Instant Finance accepted one explanation but not the other, and a written warning was issued to Mr Seeger on 9 June 2023. The warning letter advised that a further incident might result in a final warning.

[12] In September 2023 Mr Seeger, who was then working at the Clendon branch was invited to a disciplinary meeting in relation to a number of instances of lateness which had taken place during July, August and September 2023. A subsequent meeting was scheduled for Mr Seeger to provide his responses to the allegations.

[13] A final written warning was issued to Mr Seeger on 5 October 2023 with the advice that it was valid for a 12 month period.

[14] In July 2024 Mr Seeger was invited to a meeting to discuss “your ongoing lateness at work and time keeping”. In the letter setting out the allegations, Mr Seeger was invited to attend a meeting to be held on 8 July 2024 and was advised that if the allegations were substantiated, termination of his employment might result.

[15] After the meeting Mr Seeger was provided with time to consider his response to the allegations. Following a resumption of the meeting held on 15 July 2024 Mr Seeger was advised that his employment was being terminated and he would be paid a month’s salary in lieu of notice.

Steps taken by Mr Seeger to raise a personal grievance following his dismissal

[16] In accordance with the statutory 90-day time limit, Mr Seeger had until 3 October 2024 to raise his personal grievance.

[17] Following his dismissal Mr Seeger contacted an advocate (the First Advocate) by 22 August 2024 to seek assistance in raising a personal grievance. In an email response the First Advocate wrote:

As I mentioned on the phone, I think that your employer acted unreasonably and you have a case for unjustified dismissal. I intend to assist you with this.

Could you please contact HR the invitation to the final meeting as well as the outcome letter? If you can get the entire HR file, that would be good as well.

[18] On 6 September 2024 the First Advocate informed Mr Seeger by email that he was too busy and unable to help, but advised that his colleague, Mr Brown, would contact him.

[19] Mr Brown stated in his untested affidavit evidence that he contacted Mr Seeger on 10 September 2024 and they arranged to have a discussion on 11 September 2024. At that time Mr Brown stated that he had personal issues which had affected his concentration and he did not, as arranged, call Mr Seeger on the following day, 11 September 2024.

[20] Mr Seeger and Mr Brown spoke on 18 September 2024. On 19 September 2024, Mr Brown confirmed by email that he would act for Mr Seeger:

After speaking with you and reading the documents you have provided, I believe you have solid grounds to raise a personal grievance for unjustified dismissal.

[21] Mr Brown invoiced Mr Seeger for his services on 24 September 2024.

[22] The statutory 90-day time limit expired on 13 October 2024.

[23] On 30 October 2024 Mr Seeger emailed Mr Brown asking : “Haven’t heard back from you, are we still looking to proceed?”

[24] The personal grievance was raised in writing on 15 November 2024, 123 days after Mr Seeger’s dismissal, and 34 days after the expiry of the 90 day time limit.

[25] On 20 November 2024 Instant Finance advised that it would not accept the personal grievance as it had been raised outside the statutory time frame and that it would not consent to it being raised out of time.

[26] On 10 December 2024 Mr Seeger raised a Statement of Problem seeking leave to raise the personal grievance and acknowledging that the grievance had been raised outside the statutory 90 day time limit.

Submissions of Mr Seeger

[27] Mr Brown submits that Mr Seeger made reasonable arrangements to have the personal grievance raised on his behalf, and the lateness of the raising of the personal grievance arose from his own miscalculation of the relevant dates.

[28] This miscalculation Mr Brown attributes to the fact that he was experiencing a period of personal upheaval and health strain. It is submitted that the error was solely attributable to the actions of him as Mr Seeger’s advocate and not attributable to any actions on the part of Mr Seeger.

Submissions of the Respondent

[29] Mr France, on behalf of Instant Finance, submits that the onus is on the applicant to establish that he made reasonable arrangements for his advocate to raise a personal grievance on his behalf within the 90 day period.

[30] It is submitted that the evidence supplied on behalf of Mr Seeger does not support a determination that he provided sufficiently definitive instructions or directions (expressly or by implication) to his advocate to file a personal grievance on his behalf.

[31] It is submitted that the email evidence shows minimal interaction between Mr Seeger and Mr Brown. While Mr Brown states in the email to Mr Seeger on 19 September 2024 that he believes he has “solid grounds to raise a personal grievance”, there is no evidence of communications between them within the 90-day period. The next email communication is on 30 October 2024 when Mr Seeger emails Mr Brown and asks “are we still looking to proceed?”

[32] It is submitted that Mr Seeger had been provided with the information that a personal grievance must be raised within 90 days of the grievance first coming to his attention in Schedule C of the Employment Agreement. Therefore he knew, or ought to have known, that to raise a personal grievance he needed to ensure that he made reasonable arrangements with his advocate to raise a personal grievance within the 90 day period, or otherwise sought to ensure his advocate had taken steps to do so.

[33] It is submitted that the 30 October 2024 email supports that no reasonable steps had been taken to raise a personal grievance, rather it is a request for information on whether they are still “looking to proceed” with a personal grievance. In contrast it is submitted that Mr Seeger was sufficiently capable to make Privacy Act requests of Instant Finance in August and September 2024.

Should Mr Seeger be granted leave to raise his personal grievance?

[34] An employee who has failed to raise a personal grievance within 90 day time limit and the employer has refused to grant leave for it to be raised out of time, may apply to the Authority to raise a personal grievance out of time as set out in s 114 (3) of the Act. The Authority may grant leave pursuant to s 114(4) of the Act if it :

- a) is satisfied that the delay in raising the personal grievance is occasioned by exceptional circumstances
- b) considers it just to do so

[35] The meaning of exceptional circumstances was set out in *Wilkins v Field & Fortune* as being those which are “unusual, outside the common run, perhaps something more than special and less than extraordinary”¹.

[36] The Supreme Court in *Creedy v Commissioner of Police* addressed the definition of ‘exceptional circumstances’ stating:²

[31] In *Wilkins & Field*, the Court of Appeal treated ‘exceptional circumstances’ as those which are ‘unusual, outside the common run, perhaps something more than special and less than extraordinary’. This formulation appears to combine two different meanings, the first being that of being unusual (the ‘exception to the rule’) and a second and more stringent interpretation of somewhere between special and extraordinary. For a number of reasons, we prefer the first meaning.

[37] The exceptional grounds upon which Mr Seeger seeks to rely on those set out in s 115(b) of the Act which states:

¹ *Wilkins v Field & Fortune* [1998] 2 ERNZ 70.

² *Creedy v Commissioner of Police* [2008] NZSC 311 ERNZ 109

115 Further provision regarding exceptional circumstances under section 114

For the purposes of section 114(4)(a), exceptional circumstances include-

- (b) where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time

[38] There are two limbs to the test in s 115 (b) of the Act. The first limb is concerned with whether the applicant had made reasonable arrangements to have the matter raised by an agent on their behalf, and the second limb is whether the agent unreasonably failed to ensure that the grievance was raised within the requisite time limit.

First limb: The Employee made reasonable arrangements

[39] In *Davies v Dove Hawkes Bay Inc* the Chief Judge considered a claim brought by an Applicant pursuant to s 115(b) of the Act, and stated at paragraph [29]:³

If a dismissed employee engages a qualified, knowledgeable, and experienced agent to advise on and protect the grievant's interests following a dismissal with which the former employee is dissatisfied, it is reasonable to expect such an agent to do so. The grievant's steps to have the agent raise the grievance must be reasonable but that reasonableness must be judged in light of the grievant's inexperience with such matters, the agent's corresponding expertise, and the sufficiency of the information provided to the agent to enable the agent to take those protective steps.

[40] I find that Mr Seeger was a person inexperienced in employment law matters, and therefore sought to rely on the advice of his advocate.

[41] In *Melville v Air New Zealand* the applicant sought leave under s 115(b) of the Act to raise her personal grievance outside the 90-day time limit.⁴ In that case the Employment Court found that she did not provide explicit instructions to her representative to write to her employer regarding her dismissal, instead she expressed a desire to take the matter to court. The Court held that s 115(b) did not apply because:⁵

The plaintiff's failure was not to have made reasonable arrangements to ensure that her grievance was raised in time, as opposed to her more general and broad instructions to the union to take the necessary steps to pursue her grievance.

³ *Davies v Dove Hawkes Bay Inc* [2013] NZEmpC 83.

⁴ *Melville v Air New Zealand* [2010] NZEmpC 87

⁵ *Melville* above n6 at [11].

[42] The Court of Appeal confirmed the Employment Court’s decision and found that the discussions between the applicant and her representative were contingent and lacked ‘such a degree of definiteness’ that would amount to reasonable arrangements to have the grievance raised.⁶

[43] *McMillan v Waikanae Holdings (Gisborne) Ltd* concerned a similar case in which the applicant sought initial information regarding whether or not he had valid grounds to raise a personal grievance, but although he made one or two attempts to follow up with his representative for an update, took no further steps to progress the matter.⁷

[44] Mr Seeger had contacted an advocate to seek assistance with raising a personal grievance by 22 August 2024. After the First Advocate informed him that he was unable to act, Mr Brown made contact with Mr Seeger and following a slight delay caused by Mr Brown, they spoke on 19 September 2024.

[45] After that call Mr Brown emailed Mr Seeger and advised him that he believed he had “solid grounds to raise a personal grievance for unjustified dismissal.” Following the call and email Mr Seeger provided Mr Brown with documents and information. Mr Seeger was provided with an invoice on 24 September 2024 by Mr Brown for his services.

[46] Despite Mr Brown’s advice regarding the viability of raising a personal grievance and the invoice on 19 September 2024, there is no evidence after that date to support Mr Seeger having instructed Mr Brown to proceed with raising the personal grievance.

[47] I accept that Mr Seeger was inexperienced in employment law matters, however he had been provided with Schedule C of the Employment Agreement containing the Resolution of Employment Relationship Problems provision and an explanation that a personal grievance had to be raised within 90 days, On that basis by 19 September 2025 he should have been aware that the 90-day time limit was due to expire in early October.

[48] Despite having knowledge of the time limit expiry date, I find that Mr Seeger failed to instruct Mr Brown to proceed with raising the personal grievance. I find support for this view in Mr Seeger’s email dated 30 October 2024 in which he enquires of Mr Brown “are we still looking to proceed” .

[49] In *Telecom New Zealand Limited v Morgan* the Court observed in relation to s115 (a) that:⁸

⁶ *Melville v Air New Zealand* (2010) 8 NZELR 190 at [29].

⁷ *McMillan v Waikanae Holdings (Gisborne) Ltd* [2005] 2 NZELR 402 at [26]

⁸ *Telecom New Zealand v Morgan* [2004] 2 ERNZ 9 at [22]

Parliament has established a high threshold for employees seeking to rely upon the effects on them of their dismissals or other matters giving rise to grievances

[50] Mr Seeger seeking leave on the basis of exceptional circumstances must be able to establish that during the whole of the 90 statutory time period he was unable to consider raising a personal grievance.⁹ If an applicant is shown to have been able to undertake actions during that period that indicate that he or she was able to process information and make rational decisions accordingly, that will mitigate against the proposition that exceptional circumstances affected the applicant's ability to raise a personal grievance during the whole of the 90 day statutory period.

[51] In this case Instant Finance submits that Mr Seeger was able to make Privacy Act requests during the 90 day period. This confirms that Mr Seeger was capable of confirming with Mr Brown that he had taken the necessary steps to raise the personal grievance with Instant Finance.

[52] In the circumstances of this case, I find that Mr Seeger failed to make reasonable arrangements for Mr Brown to raise his personal grievance.

Second limb: The agent unreasonably failed to ensure the grievance was raised within the required time

[53] Mr Brown advised Mr Seeger on 19 September 2024 that he had 'solid grounds' for raising a personal grievance. Mr Seeger did not instruct him to proceed with doing so after that date. Accordingly I find that there was a lack of "such a degree of definiteness" that would amount to reasonable arrangements.

[54] I determine that neither both limb of the test in s 115(b) of the Act have been met, and the delay in Mr Seeger raising his personal grievance within the 90 day statutory time limit pursuant to s 114 of the Act was not occasioned by exceptional circumstances lasting at least the whole of the 90 day period.

Just to grant leave

[55] When considering this issue there are a number of relevant considerations. The first consideration concerns the length of the delay in filing proceedings and the reason for the delay.

⁹ *Telecom* above n 10 at [24].

[56] It is submitted on behalf of Mr Seeger that it would be just to grant leave on the basis that the delay in lodging the Statement of Problem was short, (approximately one month). Mr Seeger acted diligently in securing representation within weeks of dismissal and by providing information when asked to do so.

[57] It is further submitted that Instant Finance was on notice of a live dispute and of Mr Seeger's intention to seek advice. As such any prejudice to Instant Finance from the brief delay is minimal and can be managed through case management whereas refusing leave would shut out an arguably meritorious claim contrary to the natural justice imperative in s 157 of the Act.

[58] It is submitted on behalf of Instant Finance that the delay in raising the personal grievance is relevant. The 90-day time limit is a strict requirement and Instant Finance is entitled to some certainty in knowing that if a dismissal has occurred and the employee has not raised a grievance within the 90 days that no action is being taken.

[59] It is submitted that this was a case in which there was minimal engagement between Mr Seeger and his advocate Mr Brown with initial contact on 10 September and the grievance being raised on 15 November 2024. This does not support a view that Mr Seeger was pressing for a grievance to be raised.

[60] It is submitted for Instant Finance, which had no indication prior to the 90 days that Mr Seeger was going to challenge his dismissal, should be entitled by strict application of the 90 day rule to the certainty that comes if a grievance is not raised within 90 days.

[61] I am not persuaded that Instant Finance had no indication, or at least suspicion, that Mr Seeger was intending to raise a personal grievance about his dismissal:

- i. the First Advocate, in his email dated 22 August 2024, requested that Mr Seeger obtain documents relevant to the dismissal, namely the invitation to the final meeting and the outcome letter. It was also suggested that he request the entire HR file;
- ii. In the email Mr Brown sent to Mr Seeger on 19 September 2024 he refers to having read "the documents you have provided" which I think it is more likely than not were the documents referred to in the 22 August 2024 email from the First Advocate; and
- iii. Mr Seeger also made Privacy requests. While the Authority has no knowledge of the exact nature of these requests, I find that Instant Finance should have had some indication from these requests that Mr Seeger might be contemplating a claim in relation to his dismissal.

[62] It is also the case that the delay outside of the statutory time limit was not lengthy. I also take account of the fact that Mr Seeger contacted a representative in a timely manner following his dismissal.

[63] It is noted that whilst I consider it just to grant leave to Mr Seeger to raise his grievance outside the statutory 90-day time limit, this is not to be taken as an indication of the merits of his substantive claims in which some significant hurdles will need to be overcome..

[64] In accordance with s 114(5) of the Act I direct the parties to use mediation and attempt to mutually resolve the grievance.

Costs

[65] Costs are reserved pending the final resolution of the matter.

Eleanor Robinson
Member of the Employment Relations Authority