

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Linda Tang (Applicant)
AND Willow Tree Produce Limited (Respondent)
REPRESENTATIVES Ling Yip, Counsel for Applicant
Lynda Lucas, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
DATE OF DETERMINATION 19 May 2005

DETERMINATION OF THE AUTHORITY

Application for leave

[1] The applicant Ms Linda Tang (“Ms Tang”) seeks leave to raise a personal grievance out of time. The personal grievance is an allegation that she was unjustifiably constructively dismissed from her employment with the respondent company Willow Tree Produce Limited (“Willow Tree”).

[2] The application for leave is opposed by Willow Tree. I apologise to the parties for the delay in issuing this determination. Much of that delay was caused by my efforts to obtain assistance from two medical specialists.

The issues

- [3] There are two issues to be determined:-
- (i) Whether there are exceptional circumstances; &
 - (ii) Whether it is just to grant leave.

These issues are discussed in turn.

Exceptional circumstances

[4] Ms Tang resigned from her employment on 13 March 2003.

[5] By her solicitors, she purported to raise a personal grievance with Willow Tree in July 2003. Willow Tree did not consent to the grievance being raised out of time.

[6] On 16 September 2003 Ms Tang lodged a statement of problem in the Authority alleging a personal grievance for unjustifiable constructive dismissal. On 8 October 2003, Willow Tree lodged its statement in reply.

[7] On 22 February 2003 Ms Tang was assaulted at work. She suffered bruising to her head, neck, legs and back. Ms Tang has produced evidence of those injuries to my satisfaction. It was that incident and the employer's handling and investigation of it that is the foundation for Ms Tang's alleged personal grievance.

[8] I am satisfied from the evidence produced to me that Ms Tang during the material period of 90 days after the action alleged to amount to a personal grievance arose, continued to suffer trauma from the assault and in particular, severe headaches, vomiting and pain. I accept too, from the medical evidence provided to me, that she was affected psychologically and physically.

[9] Most significantly, I accept the evidence that Ms Tang was diagnosed with Post-Traumatic Stress Disorder and mild Traumatic Brain injury. I also accept that Ms Tang had suffered significant psychological impairment as a result of the assault.

[10] Because of this medical evidence and the diagnoses, I conclude that Ms Tang was not in a position to be able to rationally consider the options available to her. On balance, I am persuaded that she was unable to properly consider raising the alleged personal grievance within the prescribed 90 day period.

[11] Additionally, I accept that the situation was further compounded by Ms Tang's limited command of English. Ms Tang is a Chinese national and her first language is Cantonese Chinese.

[12] I therefore find that Ms Tang's delay in raising her alleged personal grievance was occasioned by an exceptional circumstance.

The justice of the matter

[13] I note that Ms Tang was required to raise her grievance by 13 June. She did not do so until July. That delay in my view is not a significant delay and it is adequately explained.

[14] I am not persuaded of any prejudice to Willow Tree as a result of the grant of leave to Ms Tang.

[15] I consider it just that Ms Tang be permitted to proceed to have her alleged personal grievance investigated by the Authority and determined on its merits.

[16] For all the above reasons, I am satisfied that it is just to grant leave to Ms Tang. **Ms Linda Tang is granted leave to raise her personal grievance after the expiration of the prescribed 90 day period.**

Mediation

[17] In any case where the Authority grants leave http://www.brookers.co.nz/libraries/notes/browse.asp?libraries/contents/om_isapi.dll?clientID=30953771&headingswithhits=on&hitsperheading=on&infobase=ec.nfo&jump=a2000-024%2fs.114-ss.4&softpage=DOC - JUMPDEST_a2000-024/s.114-ss.4, the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance. Accordingly, **I now direct the parties to use mediation within 28 days of the date of this Determination to mutually resolve the alleged personal grievance.**

Leon Robinson

Member of Employment Relations Authority