

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 316/09  
5274458

BETWEEN      JAN TOVELL-SOUNDY  
                         Applicant  
  
AND              PERMACLEAN 95 DRYCLEANING  
                         LIMITED  
                         Respondent

Member of Authority:    Leon Robinson  
  
Representatives:        Mark Nutsford, Advocate for Applicant  
                              Adrian Tayler, Advocate for Respondent  
  
Investigation Meeting:    On the papers  
  
Submissions Received:    27 August 2009  
                                  28 August 2009  
  
Determination:          4 September 2009

---

**DETERMINATION OF THE AUTHORITY ON PRELIMINARY MATTER**

---

**The problem**

[1] The parties dispute whether a personal grievance has been properly raised. I have agreed to determine the matter on the papers.

**The facts**

[2] The applicant Ms Janet Tovell-Soundy ("Ms Tovell-Soundy") was formerly employed by the respondent Permaclean 95 Drycleaning Limited, a limited liability company incorporated on 19 October 1995 ("Permaclean"), as manager.

[3] It is not explicitly pleaded but I understand that Ms Tovell-Soundy's employment ended on 6 March 2009.

[4] Ms Tovell-Soundy wrote by letter dated 25 May 2009 to Permaclean as follows:-

*Dear Neville*

*I wish to advise you I am taking a personal grievance against you regarding the way my redundancy was handled. Please note my representative will be in contact with you.*

[5] Permaclean's representative wrote to Ms Tovell-Soundy by email of 11 June 2009 and advised:-

*Hello Jan*

*We note that you have not raised your grievance within the 90 day time limit. Accordingly, the file has been closed.*

[6] Ms Tovell-Soundy lodged a statement of problem in the Authority on 24 July 2009.

[7] Permaclean lodged a statement in reply first in the Authority at Wellington but then correctly at Auckland on 11 August 2009. Permaclean says:-

*The applicant has not raised a personal grievance with the respondent pursuant to s114 of the Employment Relations Act 2000. Accordingly, the authority has no jurisdiction to investigate the matter.*

## The merits

[8] The issue to be determined is whether a personal grievance has been properly raised for the purposes of the *Employment Relations Act 2000* ("the Act").

[9] Section 114 of the Act provides:-

### *114. Raising personal grievance*

*(1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.*

*(2) 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.*

*(3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.*

*(4) On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority—*

*(a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and*

*(b) considers it just to do so.*

*(5) In any case where the Authority grants leave under subsection (4), the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance.*

*(6) No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.*

[10] Permaclean says that the letter dated 25 May 2009 is nothing more than notification that a personal grievance will be raised in the future which is supported by the last comment *"Please note my representative will be in contact with you"*. On that basis, it maintains that *"no grievance has been raised at all, let alone properly"* and that the Authority has no jurisdiction to hear the substantive matter.

[11] Mr Nutsford says in reply, that Ms Tovell-Soundy's advice *"regarding the way my redundancy was handled"* is clear enough that there was something about the redundancy that she was not happy about. He says too that the email of 11 June 2009 evidences a lack of good faith on Permaclean's part in that it could have sought more details but failed to do so. Mr Nutsford further points out that Ms Tovell-Soundy is completely unassisted and is *"an average New Zealander"*. He also submits that section 114 of the Act does not require detail.

[12] 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.

[13] It is undesirable that essentially every-day practical legislation such as the Act, should be interpreted in an esoteric way. If conceivably every action by an employer

can potentially be the subject of a personal grievance, there ought be nothing mysterious about how a personal grievance is initiated. It must be the substance of the communication that matters, not the form that it takes.

[14] The cases establish that an employer must know what it is being asked to address. This requires the employee's communication to be sufficiently specified.

[15] In this case, I conclude that Ms Tovell-Soundy communicates to her former employer that she is aggrieved about the way her redundancy was handled. That seems clear enough in my view to inform the employer of what it is being asked to address.

[16] I consider the first sentence is enough to communicate the substance of the correspondence. The second sentence does not qualify the substance and I do not agree that the whole communication indicates only that a personal grievance will be raised in the future.

### The determination

**[17] For the reasons outlined above, I determine that Ms Tovell-Soundy raised a personal grievance with her employer by the letter dated 25 May 2009.**

Leon Robinson  
**Member of Employment Relations Authority**