PERSONAL GRIEVANCES: THE 90-DAY ISSUE

Recent decisions of the Employment Court confirm the importance of responding appropriately to letters setting out personal grievances. A careless answer may mean that the employer has consented to a claim that would otherwise be ineligible, says Paul Robertson.

THE EMPLOYMENT RELATIONS Act requires an employee to raise a personal grievance within 90 days of the matters complained of (section 114). The employee is required to give sufficient details to enable the employer to understand the nature of the grievance.

Two recent decisions emphasise that the Employment Court is taking a harder line when assessing whether a grievance has been properly raised within the 90 day limit, but that the employer must also take care. The Court or Authority can sometimes infer that the employer has consented to the grievance being raised out of time.

CASE ONE

The first case involves an Auckland resource teacher, learning and behaviour (RTLB) who, after being dismissed, raised personal grievances alleging unjustified dismissal, unjustified disadvantage and discrimination.

The RTLB and her union provided a few sentences explaining the claim for unjustified dismissal, but gave no details of the claim for unjustified disadvantage. The parties went to mediation which was unsuccessful.

The Employment Relations Authority, and later the Employment Court, reviewed all correspondence, and found that the grievances based on disadvantage and discrimination had not been raised within 90 days.

The RTLB relied in part upon correspondence where she purported to reserve her position in relation to "other causes of action." The Court held that this couldn't be done; an employee cannot reserve the right to raise a personal grievance at a later date.

THE SECOND CASE

In this decision, a lead visiting teacher for an in-home childcare service was dismissed. She alleged that she was subjected to unjustified disadvantage. Sometime later she raised complaints alleging grievances for workplace bullying and workplace stress.

The statement of problem contained another new allegation in relation to the "... unfair performance appraisal process."

The Authority refused to hear the additional personal grievances and that issue was put before the Employment Court.

The teacher argued that the other grievances formed part of the background context and should be considered accordingly. The Court disagreed and found that complaints about the process had been raised too late.

The teacher then alleged that the decision of the employer to attend two mediations, and its failure to object to the additional personal grievances, meant that the employer had consented to them being raised outside 90 days.

The Court said "no" in relation to the mediations. There were a number of alleged grievances, some but not all of which were within time, and "... it will be difficult to conclude that attendance at mediation signifies consent."

However, the absence of any reference to the 90 day issue in the statement in reply or in subsequent communications was telling, and for this reason the Court held that the employer had consented to them being pursued out of time.

THE LESSON IS ...

When responding to a letter or email raising personal grievances, take care to object whenever it appears that any of the complaints relate to incidents that took place more than 90 days earlier.

Marx v Southern Cross Campus Board of Trustees **[2016] NZEmpC 71 (10 June 2016)**

Ale v Kids at Home Limited **[2015] NZEmpC 209 (1 December 2015)**

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