IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2023] NZEmpC 235
EMPC 204/2023

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	PACT GROUP Plaintiff
AND	ROSEANNE SHERIDAN Defendant

Hearing:	1 December 2023 (Heard at Christchurch via Audio Visual Link)
Appearances:	M Couling and J Farrow, counsel for plaintiff P Cranney and E Griffin, counsel for defendant
Judgment:	20 December 2023

JUDGMENT OF JUDGE K G SMITH

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[1] Roseanne Sheridan was employed by Pact Group as a Community Support Worker until she was dismissed for medical incapacity. She pursued a personal grievance for unjustified dismissal which has given rise to a dispute about whether her claim was raised within time or was one day late.

[2] The outcome of this dispute depends on interpreting the notice period in the collective agreement covering Ms Sheridan's work and the dismissal letter Pact sent to her conveying the notice it was providing to end her employment.

[3] The collective agreement required two weeks' notice to be given.

[4] Pact wrote to Ms Sheridan on 28 July 2021, explaining the reasons for its decision and gave notice in the following sentence:

> Therefore, this letter is notice that your employment with Pact will end two weeks from today, which will be Tuesday 10 August 2021.

[5] Ms Sheridan's union, E tū, wrote to Pact on 8 November 2021 to raise a personal grievance.

[6] Whether the letter of 28 July 2021 provided contractual notice is critical because of the impact timing has on when a personal grievance could be raised as of right under the Employment Relations Act 2000 (the Act). If employment ended on 10 August 2021, as stated in Pact's letter, time expired on 7 November 2021 so that the union's personal grievance letter was a day late. If contractually the notice period meant the date of the letter was excluded, the notice did not end until 11 August 2021 and the personal grievance was raised in time.

[7] Ms Sheridan lodged a personal grievance claim in the Employment Relations Authority.

The determination

[8] The parties subsequently invited the Authority to resolve two preliminary issues.[1] The first issue was the date when Ms Sheridan's employment ended. The second and related issue was whether the union's correspondence was sufficient to raise a personal grievance.[2]

[9] The Authority held that the notice given on 28 July 2021 ran through to and included 11 August 2021 and that the union's correspondence was sufficient to raise a grievance.[3]

[10] Those conclusions meant Ms Sheridan's personal grievance could continue.

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1 *Sheridan v Pact Group* [2023] NZERA 239 (Member van Keulen).
2 At [11].
3 At [15].

The challenge

[11] Pact Group disagreed with the Authority about when employment ended and challenged that part of the determination. It did not challenge the Authority's conclusion on the second issue.

[12] In defending Pact's claim, Ms Sheridan advanced as an affirmative defence that exceptional circumstances existed within the meaning of ss 114(4)(a) and 115(c) of the Act to allow the personal grievance claim to proceed.[4]

[13] By agreement, evidence relevant to this challenge was presented by relying on affidavits filed in the Authority with the exhibits removed and assembled into a common bundle of documents. Neither party sought to cross-examine witnesses and, as in the Authority, there was no disagreement about what happened.

[14] A full copy of the collective agreement was filed after the hearing and admitted by consent.

The collective agreement

[15] Ms Sheridan's employment was covered by a collective agreement between E tū and Pact, operative from 30 September 2019 until 31 December 2023.

[16] Termination of employment was dealt with in paragraph [23] of the agreement which relevantly reads:

> 23 **Termination of employment**
>
> 23.1 Two weeks written notice shall be given by the employee or the employer. If the employee does not give full notice they will not be paid for any period of notice not worked. A lesser period of notice can be negotiated.

[17] There is no definition of "two weeks written notice" in the agreement.

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[4] The amended statement of defence required leave to be filed; that was granted by consent.

Plaintiff's submissions

[18] Pact's position was that Ms Sheridan's employment ended on 10 August 2021, when it unambiguously provided the contractually required two weeks' notice. From Pact's perspective notice began on 28 July 2021, the date of the letter, which succinctly stated that the employment will end in "two weeks from today". Mr Couling's submission was that the remainder of the sentence, "which will be Tuesday 10 August 2021", reinforced the statement that two weeks' notice was being given.

[19] Mr Couling acknowledged that Pact's approach meant the date of the dismissal letter counted as the first day of the notice period, but that was said to be logical, unexceptional and consistent with Pact's practice.

[20] In response to questions as to what was meant by two weeks' notice in the collective agreement, Mr Couling submitted that the only requirement was that the contractual notice must be given and that cl 23 should not have words added into it such as "a full two weeks' notice" or "clear days' notice". He was critical of arguments excluding the date of the dismissal letter from the calculation of time, because he considered such an approach equated to having to provide more than the contractual notice to ensure two full or clear weeks were allowed for.

[21] Mr Farrow supplemented this submission by observing that Ms Sheridan's position may be more tenable if it was shown that, in writing the collective agreement, the parties intended that a full 14 days were required for the notice. That might be apparent, for example, if the agreement read something like "not less than" two weeks' notice.

[22] Mr Farrow accepted that the word "from" used in the dismissal letter was capable of two interpretations, one including the date of the notice and the other excluding it. However, his submission was that the termination date of 10 August in the sentence removed any uncertainty.

[23] Mr Couling also criticised Ms Sheridan calling into question when the dismissal took effect. He referred to events that occurred after notice was given to illustrate that not only was the termination date known but that it was accepted by her. The submission stopped short of arguing that the parties' conduct subsequent to the ratification of the collective agreement was an aid to interpreting the meaning of cl 23 or amounted to some sort of acquiescence or estoppel. Instead, it was to suggest that her arguments were built on shifting sand and had an element of convenience attached to them.

[24] Mr Couling was referring to a letter from Ms Sheridan's union, dated 3 October 2022, in which it sought to pursue mediation. While the letter was critical of Pact's decision it contained a sentence that read:

> Although ACC accepted the claim on 19 July 2021 shortly afterwards Ms Sheridan was dismissed effective from 10 August 2021.

[25] The union's repetition of the termination date from Pact's letter was said to illustrate a clear understanding that the proper notice was given.

[26] Several decisions were referred to as illustrating that it was not uncommon to include the day on which notice was given as day one of any notice period. The first case was *Lane Walker Rudkin Hosiery Ltd v Daymond*.[5] The decision was about a redundancy contended to be an unjustified dismissal. In that case the letter of dismissal for redundancy was given on 12 February 1996 to take effect "4 weeks from today on 11 March".[6]

[27] The next case was an Authority determination: *Luan v Best Health Foods Ltd*.[7] In that case, the Authority was dealing with termination of employment relying on a probationary provision in the employment agreement. The employer provided a letter of dismissal on 3 July 2019 purporting to give three days' notice "effective from today"

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5 *Lane Walker Rudkin Hosiery Ltd v Daymond* EMC Christchurch CC16/99, 1 June 1999.
6 At 11. 1996 was a leap year, so this case is more helpful for Ms Sheridan than Pact's submissions suggests.
7 *Luan v Best Health Foods Ltd* [2021] NZERA 470.

before specifying the last day of employment would be "this Friday". The notice was given on a Wednesday and employment ended on Friday.[8]

[28] The third decision was *Space Industries (1979) Ltd v McKavanagh*.[9] In that case, on 23 March 2000, the departing employee gave notice "1 weeks notice from todays date" before nominating the last day of work as 29 March.

[29] Mr Couling acknowledged that none of those decisions involved an analysis of the relevant contractual notice period or the meaning of the words "from today". They were relied on to show how cases had been decided where day one was treated without criticism as the day notice was provided.

The defendant's submissions

[30] In contrast, Mr Cranney's submissions concentrated on applying the collective agreement where it specified two weeks' notice was required to be given. The phrase "two weeks" within cl 23 was submitted to mean a full two-week period commencing at midnight and ending at midnight and containing 14 full consecutive days.

[31] The submission was that Ms Sheridan was entitled to rely on the wording of the employment agreement and Pact could not take advantage of its own mistake.

[32] Mr Cranney accepted that there was some potential for the phrase "two weeks" to be open to a second interpretation, where time ran from the hour in the day on which notice was given so that the two weeks is 14, 24-hour periods thereafter. Using this method of calculation notice would expire part way through a day.

[33] Despite that concession Mr Cranney's preferred approach was that the agreement is not ambiguous. The second potential meaning, timing that began at some point during the day, was criticised in this instance as a strained interpretation of the collective agreement since there are no words in cl 23 that might support that approach.

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8 At [11] and [19].

9 *Space Industries (1979) Ltd v McKavanagh* [2000] 1 ERNZ 490.

[34] Mr Cranney did not accept the criticism that there is a difference between two weeks and a full two weeks or that Ms Sheridan's position would be stronger if the clause referred to "not less than" two weeks. His response to those points was that there is no difference between them because they have the same meaning; a period of a full 14 consecutive days.

[35] Using this analysis, the submission was that the operative aspect of the dismissal letter was the first part of the sentence stating that two weeks' notice was being given because that was the language of cl 23 and captured the contractual obligation. The date in the rest of the sentence did not alter or influence that attempt to give contractual notice, instead it resulted in an internal inconsistency because 10 August 2021 was only 13 days' notice.

[36] Mr Cranney drew support from a District Court judgment in *N/B v Accident Compensation Corporation* as illustrating how the exclusion of the date on which notice is given was a proper application of notices required by clauses like cl 23.[10]

[37] Mr Cranney did not accept there was any substance to the criticisms made of Ms Sheridan, or her union, over correspondence which occurred after the dismissal was effected. He submitted that whatever happened after the event could not relieve Pact of the obligation to give contractual notice or in some way alter the notice required to be given. Further, he did not accept that the union's correspondence bore the meaning attributed to it, because read in context all it did was repeat part of the notice given to Ms Sheridan on the way to inviting the employer to mediate. The point was that the correspondence did not set out to debate what the employer had done but was attempting to have the parties resolve the emerging employment relationship problem.

[38] As has already been indicated, Ms Sheridan advanced affirmative defences, including claims that notice may not have been given to her when the dismissal was directed (at her instruction) to the union until sometime after 28 July 2021 and that

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[10] *N/B v Accident Compensation Corporation* [2014] NZACC 135.

exceptional circumstances arose from the collective agreement allegedly not complying with s 54 of the Act.

[39] If accepted, Mr Cranney's analysis means that cl 23.1 has to be read as meaning a full two weeks commencing at midnight on the first day and ending at midnight on the final day and contains 14 consecutive days.

Analysis

[40] The principles relating to the interpretation of contracts generally apply to employment agreements.[11] The proper approach to interpretation is an objective one, the aim being to ascertain the meaning the document would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties in the situation in which they were at the time of the contract.[12]

[41] In this case the parties did not seek to refer to any part of the collective agreement other than cl 23. No background materials or evidence were relied on to provide context. The case turns entirely on ascertaining what notice period cl 23 requires and then, once that is established, considering if the dismissal letter of 28 July 2021 complied.

[42] No assistance was provided by the cases referred to for the simple reason that none of them were concerned with assessing the correct period of notice. None of them analysed whether the notices were properly given as required by the relevant contract or, for that matter, entered into the debate about what the word "from" might mean in the context in which the dispute arose.

[43] I consider that in ordinary usage a week is usually understood to be a period of seven consecutive days. Applied to cl 23 that suggests two weeks is a period of 14 consecutive days.

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11 *New Zealand Air Line Pilots' Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948.

12 *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432; affirmed in *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696.

[44] Pact's case was that essentially Ms Sheridan's approach required more than 14 days' notice which was wrong because that could only be achieved by importing into the collective agreement more than the parties had agreed.

[45] I prefer Mr Cranney's analysis that the notice refers to 14 full consecutive days. The collective agreement uses plain and well-understood references to time. To give two weeks' notice must entail 14 consecutive days not some lesser period. If the date of the dismissal letter is taken as day one, it follows that the period allowed is less than two weeks; rather, it would be 13 days and the balance of the fourteenth day measured from the time of that day when notice was given.

[46] It is also difficult to accept the proposition that "from today" as used in the letter must, on this occasion, be a reference to the date of the dismissal letter so that it is appropriate to count that day as part of the notice. I would ordinarily expect that expression to exclude the date on which the time is being stated.

[47] On this analysis, nothing turns on the fact that the parties may have treated 10 August 2021 as the date Ms Sheridan's employment ended until litigation was reasonably well advanced.

[48] This conclusion means it is not necessary to review the exceptional circumstances arguments raised in submissions and pleaded as affirmative defences.

[49] Finally, and for completeness, it has not been necessary to consider whether the Legislation Act 2019 might in some way be a useful interpretive tool. Mr Couling and Mr Cranney took a common position that reliance on that statute would not be of assistance. I agree.

Conclusion

[50] Pact Group's challenge to the Authority's preliminary determination is unsuccessful and it is dismissed.

[51] Costs are reserved. The parties are urged to agree on costs but if they cannot be agreed memoranda may be filed.

K G Smith
Judge

Judgment signed at 4.55 pm on 20 December 2023