

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 112/09
5157343

BETWEEN PETER BARRIBALL
 Applicant

AND HIREQUIP LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Garry McLachlan for Applicant
 Ralph Webster for Respondent

Affidavits received: 22 July 2009 from Applicant
 16 June 2009 from Respondent

Telephone conferences: 8 June 2009 and 14 August 2009

Determination on the
papers: 17 August 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Barriball resigned from his employment with Hirequip Limited on 30 October 2007 and accepted terms offered by Hirequip to finish work on 2 November 2007.

[2] He says he tried to get information and advice about his resignation. He obtained the services of Mr McLachlan who wrote to Hirequip in a letter dated 28 January 2008. The letter was received by Hirequip on 1 February.

[3] The employment relationship was filed in the Authority on 31 March 2009. The statement in reply was received on 14 April 2009: it raised the 90 day issue and refused to consent to the personal grievance being brought out of time.

Issues

[4] Was Mr Barriball's personal grievance raised in time under s 114 (1) of the Employment Relations Act? If the personal grievance is out of time, does the application involve an application for leave to proceed?

Determination

[5] The personal grievance is out of time. The time from Mr Barriball's last day of employment on 2 November 2007 until Hirequip received Mr McLachlan's letter raising the personal grievance on 1 February 2008, was 91 days. The time from the date that Mr Barriball tendered his resignation and the terms agreed for him to leave his employment on 30 October 2007, until Hirequip received Mr McLachlan's letter, was 94 days. In both instances the time frame under s 114 (1) of the Act has not been met.

[6] For completeness, Mr Barriball's comment in his letter dated 30 October that he resigned as he felt he had no choice but to leave his employment was not sufficient to raise a personal grievance because there was an absence of sufficient detail provided by him on how he wanted the matter resolved. In any event, as I have said, the letter dated 28 January was received by Hirequip outside the time required to raise a personal grievance.

[7] Technically there has been no application for leave to extend the time required under s 114 (3) of the Act. Any such application would have to relate to exceptional circumstances and that the delay was occasioned by exceptional circumstances: (applying s 114 (3) and s 114 (4) of the Act). I have considered the reasons put forward by Mr Barriball, but have not taken the matter any further. Mr Barriball's reasons appear to be:

- That he struggled to obtain information and advice as to what he needed to do to help him make the right decision (Affidavit). Mr Barriball made an attempt to telephone a representative to get advice,

but had to leave messages and was never telephoned back (written statement dated 12 November 2007).

- That he was suffering headaches, tension and was at a loss on how to resolve the matter (Mr McLachlan's submission).
- That he was suffering high levels of stress and anxiety regarding pressure on him to resign (personal grievance letter dated 28 January 2007).

[8] Mr Barriball's employment relationship problem has never included any application with any reasons for exceptional circumstances and the cause of the delay.

[9] First Mr Barriball's difficulties in getting information would not meet the requirement of being an exceptional circumstance in this case because Mr Barribal did make an attempt to make some contact with somebody to help. There is no information available to me to suggest he had any problems with contacting another agency, and including the possibility of contacting the Department of Labour, through the department's web site and 0800 number. There has been no information provided as to whether or not Mr Barriball had an employment agreement and whether or not any agreement contained the explanation concerning the resolution of employment relationship problems as required under s 54 or s 65 of the Act.

[10] Secondly, no professional information and details have been provided to link Mr Barriball's failure to raise in time the personal grievance with any medical or other circumstances.

[11] Thirdly there has been no professional information linking any medical circumstances with Mr Barriball being unable to properly consider raising a personal grievance within the time required. Indeed he did obtain some assistance, and there is no explanation as to the gap between date he first spoke to Mr McLachlan, whatever that date was, and why Mr Barriball left it until 28 January 2008 to write to the company.

[12] I take those matters no further.

Orders of the Authority

[13] Mr Barriball raised his personal grievance out of time.

[14] Costs are to lie where they fall.

P R Stapp
Member of the Employment Relations Authority