

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 49  
5338656

BETWEEN

GEORGE REHUA  
BROOKING  
Applicant

A N D

IDEA SERVICES LIMITED IN  
STATUTORY  
MANAGEMENT  
Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person  
Paul McBride, Counsel for Respondent

Investigation Meeting: On the papers

Date of Determination: 8 February 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant, Mr George Brooking, says that he was unjustifiably dismissed by the respondent, Idea Services Limited. That company is in statutory management.

[2] The respondent says Mr Brooking has not raised his personal grievance within the 90 day period.

[3] Mr Brooking was summarily dismissed effective from 10 March 2011. Pursuant to s114 Employment Relations Act 2000 Mr Brooking needed to raise his personal grievance by 8 June 2011.

[4] On 10 March 2011 an employment advocate wrote to the respondent stating that a personal grievance would be raised with the Department of Labour Mediation Services for unjustified dismissal. The letter did not set out any remedies.

[5] The respondent's counsel replied saying "*While reserving all of Idea Service's rights, if contact is made by the Mediation Service in relation to employees or former employees, ordinarily Idea Services is prepared to discuss genuine issues in mediation.*"

[6] Mediation took place on 20 April 2011.

[7] Mr Brooking filed a Statement of Problem on 14 June 2011. The Statement did not set out remedies. What was sought was access to information held by Idea Services.

[8] Mr McBride responded on 15 June 2011 stating that the respondent had been placed in statutory management on 5 October 2010 and accordingly would not be filing a Statement in Reply.

[9] On 1 July 2011 the Statutory Manager granted leave for Mr Brooking to continue with his application to the Employment Relations Authority.

[10] On 5 August the respondent filed a Statement in Reply asserting the applicant had not filed his personal within time and that it did not consent to the personal grievance being raised out of time.

[11] The applicant relies upon the letter of 10 March from his advocate to demonstrate that his grievance was filed within time.

[12] The respondent says a letter stating a grievance will be raised at some point in the future does not validly raise a grievance: *Hawkins v Commissioner of Police* [2007] ERNZ 762.

[13] In *Hawkins* Shaw J stated at para [14] that the test was objective and required a communication sufficient to enable the employer to address and remedy the grievance or for the parties to settle it in discussion. At para [15] she noted that the letter in question in that case referred to the raising of a grievance in the future and did not constitute the giving of proper notice of a grievance.

[14] For similar reasons, the letter sent by Mr Brooking's advocate does not constitute the raising of a personal grievance.

[15] The Statement of Problem was filed in the Authority six days after the 90 day period had expired. The filing of the Statement of Problem does not raise a personal grievance, not only because it was outside the 90 day period but also because the only remedy sought was the provision by the employer of additional material.

[16] Mr Brooking did not raise his personal grievance within the 90 day period. He has not made an application for leave.

[17] I am unable to hear Mr Brooking's personal grievance.

### **Costs**

[18] If the parties are unable to resolve the issue of costs, the respondent should file a memorandum within 28 days of the date of this determination. The applicant is to file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King  
Member of the Employment Relations Authority