

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 159/10
5301527

BETWEEN FRANK CHEN
 Applicant

AND KVB KUNLUN NEW
 ZEALAND LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Jo Douglas for Respondent

Determination: 7 April 2010

DETERMINATION OF THE AUTHORITY

[1] On 30 March 2010 Mr Chen lodged a statement of problem seeking an Authority investigation of what he describes as “*improper and unjustified actions*” by KVB Kunlun New Zealand Limited. He says those actions “*triggered*” serious mental illness leading to his hospitalisation in 2008. The remedies sought refer to a dismissal although no act of dismissal is set out in the facts stated in the application.

[2] KVB Kunlun New Zealand Limited is owned by a company registered in the British Virgin Islands called KVB Kunlun Holdings Limited. The latter company also owns another New Zealand registered company, Banclogix Limited which operates out of the same offices in Auckland as KVB Kunlun New Zealand Limited. The end of Mr Chen’s employment with Banclogix Limited has already been the subject of Authority investigation into whether leave should be granted for him to raise a personal grievance out of time. A written determination issued on 19 March 2010 (AA128/10) resolved not to grant leave.

[3] For reasons set out below, it would not be proper for the Authority to now investigate and determine Mr Chen's application against KVB Kunlun New Zealand Limited.

[4] For administrative reasons the Authority did serve Chen's statement of problem on KVB Kunlun New Zealand Limited's representative but indicated in an accompanying Minute that no statement of reply was required. Neither have I needed to hear further from Mr Chen. He was represented by legal counsel in the Authority's investigation of his application against Banclogix Limited but is acting in person in his latest application.

Determination

[5] The Authority declines to investigate Mr Chen's application against KVB Kunlun New Zealand Limited for the following reasons:

- (i) Mr Chen's application identifies his employment relationship with KVB Kunlun New Zealand Limited as preceding his employment with Banclogix Limited. It states that "*[a]fter July 2003 or August 2003 the grievant was not (sic) longer employed by KVB Kunlun New Zealand Limited*". Mr Chen's earlier application against Banclogix Limited included a copy of his employment agreement with that company, apparently signed by him and identifying his employment as having started on 1 August 2003.
- (ii) Mr Chen's application neither alleges he has ever raised a personal grievance with KVB Kunlun New Zealand Limited nor seeks leave to do so out of time for exceptional circumstances. Section 114 of the Employment Relations Act 2000 requires such leave to be sought.
- (iii) The Authority has already investigated and determined that were not sufficiently exceptional circumstances for Mr Chen to be granted leave to raise a belated personal grievance against Banclogix Limited.
- (iv) Mr Chen's statement of problem discloses no potential difference of evidence such that there would be a different finding in respect of KVB Kunlun New Zealand Limited.

- (v) It would be an abuse of process to subject KVB Kunlun New Zealand Limited to a repeat of an Authority investigation which has already determined what is – on any common sense measure – the same issue.
- (vi) There is no lack of justice to Mr Chen as the substance of his application for leave has already been investigated – over several hours on 9 March 2010 the Authority heard from him and two witnesses (a hospital social worker and a psychiatric registrar) on his behalf. However if Mr Chen believes Authority determination AA 128/10 about his application for leave is wrong, that determination is still within the 28 day period in which he is able to file a challenge in the Employment Court. He may also file a challenge in the Court against the present determination.

Robin Arthur
Member of the Employment Relations Authority