

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Linda Bessie Marama Dawson (Applicant)
AND Te Wananga O Aotearoa (Respondent)
REPRESENTATIVES Linda Bessie Marama Dawson, In person
Mark Hammond, Counsel for Respondent
MEMBER OF AUTHORITY Ken Anderson
INVESTIGATION MEETING 9 March 2006
SUBMISSIONS RECEIVED 17 March 2006
DATE OF DETERMINATION 10 April 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Ms Dawson claims that she was unjustifiably dismissed from her employment with Te Wananga O Aotearoa, at the Tokoroa Campus, effective from 18 March 2005. The substance of Ms Dawson’s alleged grievance is that on 21 July 2005, a position that is basically similar to the one that she held with Te Wananga O Aotearoa, was advertised on the intranet on 21 July 2005. She now says that the redundancy of her position was not genuine.
- [2] However, Te Wananga O Aotearoa (“TWOA”) says that the termination of Ms Dawson’s employment was on the grounds of a genuine redundancy, but in any event, because Ms Dawson did not raise her alleged personal grievance until 27 July 2005, she does not meet the 90 criteria provided by section 114 of the Employment Relations Act 2000 (“the Act”) and the employer does not consent to the grievance being raised after the expiration of that period.
- [3] Ms Dawson is unrepresented and in order to expedite matters, it has been agreed that the Authority should treat as a threshold matter, the issue of whether Ms Dawson raised the grievance with; [“her employer within the 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later”]¹

Background

- [4] At first glance, it appeared that Ms Dawson did not raise her alleged personal grievance within the 90 days as required by the Act, as from the date of the termination of Ms Dawson’s

¹ Subsection 114 (1) of the Act.

employment, that period expired on 15 June 2005. Therefore, because Ms Dawson did not raise her alleged personal grievance until 27 July 2005, it would appear that she is 42 days outside the required time frame.

- [5] However, the evidence of Ms Dawson is that at the time that her employment was terminated, she had no reason to believe that the redundancy of her position of *Placement Liaison Coordinator/Lecturer*, was other than genuine. However, upon becoming aware of the position of *Work Base Assessor* being advertised on the TWOA intranet on 21 July 2005, she compared the job description of that position with the position that she had been made redundant from, and reached the conclusion that there was very little difference. She then became doubtful about the genuineness of her redundancy.

The Issue

- [6] The threshold issue to be determined is: Is Ms Dawson barred from pursuing her alleged personal grievance by the 90 day provision of s.114 of the Act?

- [7] Subsection 114(1) of the Act provides that:

“Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the personal grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to be a personal grievance occurred **or came to the notice of the employee, whichever is the later**, unless the employer consents to the personal grievance being raised after the expiration of that period.”(Emphasis added.)

- [8] It is my conclusion that the action that Ms Dawson alleges to be a personal grievance, only came to her notice on 21 July 2005, when she discovered that the position of Work Base Assessor was advertised on the TWOA intranet, and then compared the requirements of that position with the one that she had been made redundant from.

- [9] The submission of Mr Hammond for TWOA is that the 90 period runs from 18 March 2005 when Ms Dawson’s employment was terminated, or perhaps even 18 February 2005, when Ms Dawson was given notice. It is also submitted that an advertisement at some time in the future of a position that may or may not be the same as previously held by the Applicant, cannot be grounds for a personal grievance as circumstances pertaining to an organisation can change, and if Ms Dawson’s argument is taken to the extreme, then in theory, an applicant could become aware of a new position that is similar, a year or two into the future.

- [10] While that submission appears to go to some extent to the substance of Ms Dawson’s alleged grievance, I do accept that in a “90 day” setting such as this one, clearly there must be some limit on what is reasonable as to when appropriate circumstances exist relating to when an employee becomes aware of a possible grievance.

- [11] However, in the circumstances applying to Ms Dawson, on the basis of the evidence available, it seems to me that it is entirely reasonable to conclude that Ms Dawson is the type of applicant that the words; “*came to the notice of the employee*” are intended to encompass.

Determination

- [12] I find that Ms Dawson raised her alleged personal grievance within the period of 90 days beginning from 21 July 2005 when the action of TWOA occurred, in that a position was advertised that Ms Dawson believes is substantially similar to the position that she was made

redundant from. It follows that Ms Dawson is now entitled to argue the substantive matter relating to her alleged personal grievance at a future investigation meeting to be duly set down.²

- [13] Because this was not an application for leave to raise a personal grievance, the Authority is not required to direct the parties to mediation pursuant to subsection 114(5) of the Act. I also accept the submission made by Mr Hammond on the day of the investigation meeting, that the parties have attempted mediation and given the subject matter of Ms Dawson's grievance, further mediation is unlikely to contribute constructively to its resolution.
- [14] In case there is any doubt, Ms Dawson should be aware that this determination only applies to her right to pursue her alleged personal grievance. The substance or otherwise of her claims remains to be decided by another Authority Member as a completely separate matter.
- [15] As Ms Dawson represented herself, no costs have been incurred and no order is made.

Ken Anderson
Member
Employment Relations Authority

² Subject of course to the right of the Respondent to challenge this determination.