

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 138/10  
5295938

BETWEEN                      ELENI DIAKAKI  
Applicant

AND                              GREEK ORTHODOX  
COMMUNITY OF  
WELLINGTON INC  
Respondent

Member of Authority:        P R Stapp

Representatives:             Paul Chen and Lois Gilmour, Counsel for the Applicant  
Tim Cleary, Counsel for the Respondent

Investigation Meeting:      18 August 2010 at Wellington

Determination:                31 August 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Eleni Diakaki filed a statement of problem in the Employment Relations Authority on 16 February 2010 seeking leave from the Authority to lodge a personal grievance out of time. On 22 April 2010, her representative, Paul Chen, filed an amended statement of problem raising additional employment relationship problems that include:

- (a) An arrears of wages claim;
- (b) A breach of employment agreement;
- (c) Breach of the Employment Relations Act 2000;
- (d) A claim of alleged misleading and deceptive conduct in terms of s.12 of the Fair Trading Act 1986; and

- (e) A breach of the obligation to deal in good faith under s.4 of the Employment Relations Act 2000.

[2] The amended statement of problem provided details of the alleged personal grievance as both a constructive dismissal and unjustified disadvantage claim. In addition, the details as to the applicant's request for leave from the Authority were provided.

[3] The respondent has not consented to the claim for personal grievance being raised out of time.

### **The legal issues**

[4] Should leave be granted to raise the personal grievance out of time?

[5] In giving consideration to the request to raise the grievance out of time, the Authority is required to consider the following:

- (a) Do exceptional circumstances under s.115 (b) of the Employment Relations Act 2000 apply?
- (b) If so did the exceptional circumstances occasion the delay?
- (c) Is it just to grant leave?

### **The facts**

[6] Eleni Diakaki is a Greek national and accepted a part-time teaching role with the Greek Orthodox Community of Wellington Inc by letter dated 8 May 2007. She signed an employment agreement specifying her terms and conditions of work, including her hours of work. In addition, that employment agreement (SOP 1) provided a term at clause 12 for resolving employment relationship problems. The term included information about raising a personal grievance within 90 days.

[7] Upon arriving in New Zealand, Ms Diakaki and her husband arranged for a variation of the hours of work to suit their personal circumstances and this was agreed to by the respondent.

[8] In a letter dated 26 August 2008, Ms Diakaki sought to reduce her hours and an agreement was subsequently reached.

[9] On 26 September 2008, Ms Diakaki gave notice of her intention to leave her employment (SOP 15). That letter read as follows:

*As per s.11.1 of my contract of employment handbook, I wish to give notice of my intention to leave my position as a Greek teacher at the Greek School after Friday 26th September 2008.*

*To begin with, I have been very happy working at the school and I admit that I found my job challenging and enjoyable. However, as you know, there has been a personal and family problem that leads me to make a different decision as far as my working income is concerned.*

*You see, when I decided to come to New Zealand I was promised that I would be able to make a decent living with the 20-hour part time job I was offered at the school in combination with my ex-partner's working income.*

*I'd like to let you know that my decision to resign was not an easy one and took a lot of consideration. Provided I did not have financial difficulties, I would very much like to offer the Greek community my six teaching hours voluntarily because for me it is really moving to see children of Greek descent learning the Greek Language.*

*Unfortunately, since my hours have been reduced to six hours per week, I find it really hard to do another job which could be combined in timing with my teaching position. However, it is now time for me to move on and I have accepted a full time job, which I am confident that it will help me cope financially.*

*Secondly, I understand that my notice period is two weeks but I would like to join my new full time job at the Barnados Early Childhood Centre as soon as possible. Therefore, I would like to request that you waive this termination notice.*

*Third, I would like to express my feelings about my working experience as a teacher at the Greek School of the Greek Orthodox Community of Wellington. I was lucky to work among an absolutely capable, understanding, and well-organised teaching staff that contributed to my teaching experience in a remarkable way.*

*My headmaster as well as the other colleagues of mine always worked in a fantastic team spirit no matter what we did together.*

*Forth (sic), I believe I have done my best to keep my students motivated and learning the Greek Language in the most tireless and enjoyable way.*

*Even though there were problems due to the fact that the students do not have many chances of practising the Greek Language, I used every means that could expand their learning. I will never forget my attempt to teach them a simple but effective way about what we honour on National or Religious Celebrations in Greece.*

*Neither will I forget their happiness in learning about Easter Holiday in Greece using books, drawings or even arts and crafts in the*

*classroom. All the parents and grandparents were thrilled and expressed their pleasure and satisfaction to see the children's (sic) enthusiasm in making something themselves that reminded them so much of Mother Greece.*

*Last but not least, I would like to thank and express my gratitude to the Executive Committee who trusted me and gave me the opportunity to gain even more knowledge as well as to contribute to the maintenance of the Greek Culture, Language and Religious Traditions in this incredibly warm, hospitable country, New Zealand.*

*Yours sincerely,  
Eleni Diakaki*

[10] Although the applicant mentioned that she would have liked to join a new full time job at the Barnados Early Childhood Centre, this apparently did not eventuate.

[11] The applicant has provided a sworn affidavit deposing evidence of her inability to raise a personal grievance within the required 90 days. The details relating to the exceptional circumstances are:

- (a) Family matters, including preparing and attending Court hearing for parenting and protection orders;
- (b) Harassment involving her ex-husband causing her anxiety, stress and depression;
- (c) Domestic violence, including attending counselling for mental and psychological abuse;
- (d) Physical and psychological health issues suffered due to domestic abuse and an operation for pancreatitis allegedly exacerbated by a lack of support of family and friends;
- (e) Daughter's health problems involving common colds to distress and anxiety caused by the family situation;
- (f) The applicant's father's health problems caused her further stress, anxiety and guilt knowing that her personal situation contributed to his ill health;
- (g) Limited understanding of New Zealand customs and employment rights compounded by a broken marriage, and no family or friends to provide support;

- (h) A lack of availability of documentation from the Immigration Service that the applicant requested to support her understanding about conditions of her employment with the respondent;
- (i) No support systems in New Zealand to turn to that was compounded by a broken marriage, all of her family residing in Greece, and allegations that her friends that she had made during her employment were being undermined by the respondent;
- (j) Issues with Immigration New Zealand regarding work permit status, revocation and application of work permits. She says she received inaccurate advice from Immigration New Zealand regarding work and was subject to interference in her immigration affairs;
- (k) An inability to find a job despite sustained searching;
- (l) Financial difficulties and struggling to cope and becoming dependent on her father for money. She says it became a matter of survival for her and her daughter as they could barely afford the necessities of life;
- (m) The applicant says she feared reprisals from the respondent as the respondent had told her previously that it had connections and influence with people of status and importance in the community.

[12] The applicant says that there would be no prejudice to the respondent for leave to be granted despite the delay. The lapse of time has not resulted in any loss of documentation or information. She has submitted that the justice of the matter requires her substantive grievance to be heard and determined.

[13] The respondent has opposed the request for leave. It is not necessary for me to repeat the submissions but I will refer to them as I need to in my determination.

### **The Law**

[14] Section 114 (4) of the Employment Relations Act (the Act) provides that:

*On the application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority-*

*(a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115);...*

[15] Section 115 (a) of the Act is relevant, which reads:

*Where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114 (1)...*

### **Determination**

[16] There is no doubt that the applicant suffered a number of matters in her life at the time she decided to resign and over the 14 months before she raised her personal grievance. Her resignation letter did not clearly signal that there were problems in her employment that made it foreseeable that she would resign over them. The first the employer heard about any of them came to light in the applicant's statement of problem, applying for leave to raise her personal grievance out of time. The delay between her resignation and filing her personal grievance, which was the same time she purported to raise it with her employer, was some 14 months delay.

[17] The numbers of matters she has relied upon that have purportedly occasioned the delay in raising her personal grievance are not exceptional circumstances, I hold. I have reached this finding because:

- (a) The applicant was able to consult with a family lawyer, made a complaint to the New Zealand Police, visited a doctor, prepared for proceedings in another jurisdiction that included updating an affidavit and attended a hearing on that matter, consulted Immigration Services, got engaged, and looked for work. This was despite the existence of emotional matters that would be consistent with causing trauma. However the trauma is not directly linked to the matter giving rise to the personal grievance, as it must be under section 115 (a) of the Act.
- (b) The family matters, effects of domestic violence and the applicant's father's health problems were associated with the applicant's physical and emotional health. It does not follow that

the matter giving rise to her personal grievance caused her to be affected or traumatised, especially considering her resignation letter and the delay in raising her personal grievance.

- (c) It is not an exceptional circumstance to have a limited understanding of New Zealand customs and employment law. In the applicant's case she had an employment agreement signed off and that agreement contained a dispute resolution clause that the applicant could reasonably understand, I hold.
- (d) All of the factors relied upon in submitting exceptional circumstances relate to the family matters existing at the time and the others that related to matters after her resignation.
- (e) The timing of the different matters relied upon by the applicant has been different for each of the matters during the time of the delay. I am not satisfied that each of them prevailed continuously during the delay and or for that matter that each of them accounts for the full time of the delay.

[18] The applicant's claim is affected by her filing a claim that may have had more to do with her being refused membership with the respondent about the same time. No other grounds for exceptional circumstances exist.

[19] Therefore, it is my decision to decline the application for leave to bring a personal grievance out of time.

[20] Costs are reserved.

[21] The support officer will contact the parties in due course to arrange a case management telephone conference to put in place arrangements to investigate the other claims made in the employment relationship problem.