



respondent but for the misaddressing of that correspondence by her agent<sup>2</sup>; and

- (ii) The respondent was constructively on notice of Ms Faith's personal grievance;

[3] The respondent says:

- (i) The "reasonable steps" ground is not available because Ms Faith's instructions to her agent were outside the statutory 90-day time period; and
- (ii) The "constructive notice" ground for leave is not available to Ms Faith because the issue of whether the letter of 18 September 2005 satisfies the requirements of section 114 has already been determined by the Authority.

[4] I have read and considered the submissions filed by the parties in support of their respective positions.

### **Determination**

[5] I accept Mr Stainton's submission that the section 115(b) ground is not available to Ms Faith. It is established on the evidence that Ms Faith's instructions to her agent were made after receipt of the respondent's request for particulars of the basis of her alleged constructive dismissal by letter dated 23 September 2005, four days after expiry of the 90-day period.

[6] I also accept Mr Stainton's submission that constructive notice of the raising of a personal grievance is not an exceptional circumstance for the purposes of section 115 but may be an issue for consideration as to whether a personal grievance has been raised within the 90-day period. That issue has been determined by the Authority.

[7] Notwithstanding, Mr Schlooz relies on correspondence between the parties which, he submits, amount to constructive notice of Ms Faith's personal grievance.

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<sup>2</sup> Section 114(4) Employment Relations Act 2000

The correspondence dates from June and March 2005 and cannot reasonably be read with her letter of 18 September 2005 to raise her personal grievance either actually or constructively<sup>3</sup>.

[8] Accordingly, Ms Faith's application for leave to raise a personal grievance out of time is declined.

**Costs**

[9] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority

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<sup>3</sup> *Coy v Commissioner of Police* CC23/07, Colgan CJ, 19 November 2007, para 15