

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Alistair Galpin (Applicant)
AND UNITEC (Respondent)
REPRESENTATIVES Tracey Wotherspoon, for Applicant
Sean Williams for Respondent
MEMBER OF AUTHORITY Ken Raureti
INVESTIGATION MEETING 3 December 2004
DATE OF DETERMINATION 9 February 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem.

[1] Mr Galpin was employed by Unitec as a part-time academic staff member to do some lecturing at its School of Landscape and Plant Sciences. He says that he was offered part-time lecturing work for a period of about two years, however three months later his employment was terminated because Unitec told him there was no more work for him. Mr Galpin says that his termination is not a genuine redundancy and therefore he has been unjustifiably dismissed.

[2] UNITEC denies that Mr Galpin was unjustifiably dismissed; *in fact, it denies that he has been dismissed at all*. UNITEC says that Mr Galpin's alleged personal grievance is outside of the 90 day period specified in s.114 of the Employment Relations Act 2000 and it does not consent to the grievance being raised.

Background.

[3] On 6 August 2002, UNITEC made a written offer of employment to Mr Galpin to be appointed as a part-time academic staff member to lecture in the School of Landscape and Plant Science. The written offer explained that the work of the position is covered by a multi employer collective agreement of which it is a party. A copy of the applicable agreement was attached, and it covered all of the employer's obligations in respect of employing a new employee who is not a member the union as per s.62 of the Act.

[4] The letter sought further information from him in respect of a bank authority for his wages to be paid into, a tax code declaration, originals of his qualifications, and a completed signed medical statement. An appendix was attached to the letter which went into detail about the Course name, Course number, Job title, Rate per hour, Authorised maximum hours and the start date. Mr Galpin accepted the offer and evidenced it by signing the letter, and he commenced lecturing on that same day.

[5] Mr Galpin is an immigrant to New Zealand. In early September 2002 he was attempting to obtain the appropriate immigration papers surrounding his living and working in NZ. To that end he prepared a letter for his employer to sign which stated he was a member of UNITEC's permanent staff. The Head of School, Dr Large wouldn't sign the letter because it contained a number of inaccuracies, so he forwarded it on to the HR Department. HR prepared a letter for the Immigration Service correcting the inaccuracies, and clarifying the nature of his employment.

[6] In November 2002 the classes Mr Galpin was assigned to teach were coming to an end, and on 12 November 2002, Dr Large told Mr Galpin that the classes he was assigned to teach had finished and there were no other hours available to him. 12 November 2002 was Mr Galpin's last day as a part-time academic staff member with UNITEC.

[7] On 8 July 2003, Mr Galpin wrote to UNITEC notifying it of his alleged personal grievance for an unjustifiable dismissal.

[8] The law in respect of raising a personal grievance is covered by s. 114 of the Act which provides

- (1) *Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 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 later, unless the employer consents to the personal grievance being raised after the expiration of that period.*
- (2) *For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.*
- (3) *Where the employer does not consent to the personal grievance being raised after expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.*
- (4) *On an 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); and*
 - (b) *considers it just to do so.*
- (5) *In any case where the Authority grants leave under subsection (4), the Authority must direct the employer and employee use mediation to seek to mutually resolve the grievance.*
- (6) *No action may be commenced in the Authority or the Court in relation to a personal grievance more than 3 years after date on which the personal grievance was raised in accordance with this section.*

[9] Mr Galpin is seeking leave to raise his personal grievance after the expiration of the 90-day statutory period on the grounds that he says are *exceptional circumstances* under s.115 (a) of the Act. He says the exceptional circumstances were generated by conflicting actions and statements of UNITEC during his period of employment in that he was of the view that his employment was for about a 2 year period. He relies on verbal statements he said were made to him by Dr Large and Ms Ennis when he was employed. He says that he honestly believed that the hours offered by UNITEC and its tenure were for a period of up to two years.

[10] He says that it was never stated to him that he was on a casual short term contract rather than the part-time fixed contract he believed he was on. The whole thrust of the *exceptional circumstances* he has sought leave for relate to him not understanding the terms of his employment.

[11] Mr Galpin says that another reason he did not raise his personal grievance was that he did not realise his employment had been terminated until 4 June 2003, which is when he was denied access to UNITEC's library as his staff library card had been cancelled.

[12] Section 115 of the Act provides

For the purposes of section 114(4)(a), exceptional circumstances include—

(a) 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); or

(b) where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time; or

(c) where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems that is required by section 54 or section 65, as the case may be; or

(d) where the employer has failed to comply with the obligation under section 120(1) to provide a statement of reasons for dismissal.

[13] Mr Galpin said that he made financial and tenancy commitments based on his understanding of a two year term. It is my view that if Mr Galpin genuinely believed he was employed for a period of about or up to 2 years, and he made financial commitments based on those expectations that would suggest to me that he would be even more likely to raise a protest about having his employment terminated 3 months into the 24 month period. I also find it hard to accept that Mr Galpin, an Academic staff member employed as a lecturer only realised that his employment had ended when his library card was cancelled some seven months later, in June of the following year. He was not lecturing any classes during that period, he was not being paid by UNITEC during that period, and he had secured another job in the canteen on the campus during that period.

Determination.

[14] I have reviewed the letter of offer, the collective agreement and the appendix detailing Mr Galpin's position. The letter states that his employment is part-time and refers his conditions of employment as being those of the applicable CA. The collective agreement defines three categories of appointment being, *(a) tenured (permanent) – full time or proportional, (b) limited tenure (fixed*

term) – full time or proportional and (c) part-time hourly paid. The appendix reinforced the part-time position, the hourly rate of pay and the authorised maximum hours. Each of those documents clearly set out the detail of his engagement. Mr Galpin signed the letter evidencing his understanding and acceptance of the terms of employment.

[15] For the reasons stated earlier, I do not accept that Mr Galpin only fully realised that his services/employment as a lecturer ended when his library card was cancelled. It is my further view that Mr Galpin does not meet any of the exceptional circumstances of s.115 of the Act to warrant granting of leave under that heading. Mr Galpin's application for leave to raise a personal grievance outside of the 90-day limitation period is declined.

Costs.

[16] Costs are reserved.

Ken Raureti
Member of Employment Relations Authority