

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 158
3177052

BETWEEN

MATTHUE GERA
Applicant

AND

HERTZ NEW ZEALAND
LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
Laura Appleton and Alicia Humffray for the respondent

Investigation: On the papers

Determination: 29 March 2023

DETERMINATION OF THE AUTHORITY

A. Matthue Gera is out of time to pursue a personal grievance or a claim for a breach of his employment agreement. Mr Gera's application to the Authority is declined.

B. Costs are reserved.

Employment relationship problem

[1] Matthue Gera worked for Ace Rental Cars (a business operated by Tourism Enterprises Limited) from 29 April 2013 until he resigned for health-related reasons on 21 October 2013. His employment therefore ended on 21 October 2013 or, if a four week notice period in his employment agreement should have applied, by no later than 18 November 2013.

[2] On 30 March 2022 Mr Gera notified Hertz New Zealand Limited (Hertz) of a personal grievance about his employment.

[3] Hertz had taken over the business of his previous employer soon after 2013. It did not accept Mr Gera had grounds to raise a grievance more than eight years after his employment had ended.

[4] Mr Gera then lodged an application in the Authority seeking orders for compensation for failure to pay him for the notice period and for not providing him with a phone, laptop and health insurance during his employment.

[5] In its statement in reply Hertz said Mr Gera was out of time to raise a personal grievance or to pursue those matters separately as breaches of his terms of employment. Hertz said its wage and other employment records had been destroyed after the statutory period of six years that it was required to keep such information and it could not fully answer Mr Gera's allegations.

[6] The Authority directed the parties to mediation. The direction provided some information about the limitation periods that applied to raising and pursuing personal grievance and arrears claims.

[7] The matter was not resolved in mediation. Mr Gera asked the Authority to continue with an investigation of his claim but provided an amended statement of problem narrowing his claim to one point. He said Hertz had not provided health insurance for him and his two daughters that was promised in his employment agreement and should be ordered to pay him \$600 for the cost of doing so now for a six month period. He said he had "only noticed and became aware" in March 2022 that the health insurance benefit referred to in his agreement had not been provided. On that basis he said he was within time to pursue either a grievance or an arrears claim about failure to pay for that benefit to him during his employment in 2013. Hertz maintained its opposition to that claim on the same basis – that Mr Gera was well past the limitation periods set by the Employment Relations Act 2000 (the Act).

[8] During a case management conference by telephone held on 27 March 2023 the parties agreed Mr Gera's application could be determined 'on the papers' – that is on the basis of the amended statement of problem and the amended statement in reply each party had lodged along with relevant documents. Those documents included the employment agreement Mr Gera had signed on 23 April 2013, an email sent to him on 19 April 2013 which set out some of the terms of his employment and a revised "notice of personal grievance" he had sent the company on 30 January 2023. Mr Gera's earlier notice of personal grievance, dated 30 March 2022, and his first application to the

Authority, in July 2022, had included a claim for a payment of the “service” of health insurance which he had not received while working for the company.

Act sets limitation periods

[9] A personal grievance must be raised with the employer within 90 days of the action said to be grounds for the grievance or within 90 days of when that action came to the notice of the employee.¹ A grievance may only be raised outside that 90 day period if the employer consents or the Authority grants leave to do the grievance because of some exceptional circumstances.²

[10] An application to the Authority for investigating a grievance must also be lodged by no later than three years after the date on which the grievance was raised.³

[11] For claims which are not personal grievances, such as a separate claim for a breach of the terms of an employment agreement, any action must be lodged in the Authority no later than six years after the date on which the cause of action arose.⁴

[12] Sections 219 and 221 of the Act provide some powers for the Authority to make orders extending the time within which something must be done. However, principles of statutory interpretation, developed through case law, establish those sections cannot be used to override the limitation periods set for pursuing arrears claims and, unless leave is sought and granted on the grounds of exceptional circumstances, for personal grievances.⁵ As explained by a full bench of the Employment Court in one case:⁶

The possibility of extension of time under ss 219(1) or 221 would defeat Parliament’s intention with regard to the imposing of precise time limits, which it introduced in respect of personal grievances (three years) and all other actions (six years) in 2000. Were the general powers of extension to be available, there would be no time limits at all. Time limits are just that; if they are to be open to extension, express language is required.

Mr Gera’s claim is outside the limitation periods

[13] Mr Gera said he “only noticed and became aware” in March 2022 that the health insurance benefit referred to in his 2013 agreement had not been provided. He said his focus at the time of resigning in 2013 was very much on his serious health concerns and

¹ Employment Relations Act 2000, s 114.

² Section 114(4) and s 155.

³ Section 114(6).

⁴ Section 142.

⁵ *Maharaj v Wesley Wellington Mission Inc* [2016] NZEmpC 129 at [61]

⁶ *Hotel Ltd v VBS* [2018] NZEmpC 128 at [96]. See also at [98] and [99].

it had not crossed his mind to check whether the health insurance benefit was being provided.

[14] However, the employment agreement and an email exchange about the terms he would be provided at the start of his employment in 2013 clearly identified the provision of the health insurance benefit. It was not likely, on the balance of probabilities, that he was not aware of and interested in that provision at the time or could not have raised any concern about whether the company had taken the necessary steps to activate policy cover if in fact that had not been done.

[15] Accordingly, Mr Gera was well beyond the limitation period for raising a grievance on those grounds. Even if the matter was treated as a separate claim for breach of an employment agreement, it was also well beyond the six-year limitation period. On both counts, therefore, the Authority did not have jurisdiction to investigate Mr Gera's application.

Costs

[16] Costs are reserved. Where relevant criteria are met, the Authority may award a contribution towards any costs of representation incurred by a successful party.⁷ If the parties cannot resolve any matter of costs between themselves and an Authority determination is needed, Hertz may lodge a memorandum by no later than 28 days after the date of this determination. Mr Gera would then have 14 days to lodge a memorandum in reply. Any award of costs for a matter determined 'on the papers' would be based on a significant downward adjustment of the Authority's usual daily tariff and be for a modest amount only.

Robin Arthur
Member of the Employment Relations Authority

⁷ www.era.govt.nz/determinations/awarding-costs-remedies