

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 200
3041413

BETWEEN GILLIAN RUTH HOLLAND
Applicant

AND OCS LIMITED
Respondent

Member of Authority: Tania Tetitaha

Representatives: G Holland in person
K Takarua for the Respondent

Investigation Meeting: On the papers

Submissions Received: 5 October 2018 and 12 March 2019 from the Applicant
22 March 2019 from the Respondent

Date of Determination: 4 April 2019

DETERMINATION OF THE AUTHORITY

A. The application for personal grievance is dismissed.

B. There is no order for costs because the parties were self-represented.

Employment Relationship Problem

[1] Gillian Ruth Holland alleged she was injured whilst working during her employment with the respondent. The incidents are alleged to have occurred on 31 August, 9, 10 and 16 October 2013. She subsequently resigned.

[2] Ms Holland raised a personal grievance about those incidents with her employer on 7 November 2013. The personal grievance was investigated.

[3] On 15 November 2013 the employer informed Ms Holland that it had concluded:

... In our view and on the strength of the information you have provided us with, you have not been subjected to bullying, intimidation, verbal or physical abuse, unfair treatment or discrimination. Further, based on the information you provided in our investigation into it, we have concluded that OCS has not breached our duty to maintain a health and safety work environment. We believe you have resigned your position of your own volition.

On this basis we do not accept your grievance. Should you wish to pursue this matter further, I advise that you contact MoBIE or a legal representative for further advice.

[4] Ms Holland does not appear to have done anything further about her personal grievance until 2018. She sought resolution through mediation arranged by the Ministry of Business Innovation and Employment (MBIE) in September 2018. This was declined by the respondent. She subsequently filed a statement of problem in the Authority on 5 October 2018.

[5] The delay in filing this matter with the Authority has given rise to an issue about my jurisdiction to hear this matter. There are strict time limitations for filing personal grievances. Failure to meet those time limitations has resulted in grievances being struck out.

Time limitations

[6] Section 114(6) of the Employment Relations Act 2000 (the Act) states:

No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

[7] The Employment Court has considered whether the three year time limit referred to in s 114(6) of the Act is absolute and whether that period is capable of being extended under s 219(1) or 221. The Court determined that the powers of the later sections could not be used to extend the three year time limitation provision under s 114(6) of the Act.¹

[8] Ms Holland's application was filed outside of the three year time limitation. As signalled to her at the telephone conference on 12 March 2019, there is no power to extend the time for filing a personal grievance application in the Authority beyond the three years.

¹ *Blue Water Hotel Limited v VBS* [2018] NZEmpC 128.

[9] Ms Holland filed her personal grievance application nearly five years after the date she raised it with her employer on 7 November 2013. Pursuant to s 114(6) of the Act I must dismiss her application.

[10] In the circumstances the application for personal grievance is dismissed. There is no order for costs because the parties were self-represented.

TG Tetitaha
Member of the Employment Relations Authority