



# New Zealand Employment Relations Authority Decisions

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## Johnson v S T L Linehaul Limited (Auckland) [2017] NZERA 288; [2017] NZERA Auckland 288 (15 September 2017)

Last Updated: 2 October 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 288  
5642279

BETWEEN PAUL JOHNSON Applicant

A N D S.T.L LINEHAUL LIMITED Respondent

Member of Authority: Nicola Craig

Representatives: Rae Tupaea, Advocate for Applicant

Alwyn O'Connor, Counsel for Respondent

Investigation Meeting: 19 June 2017 at Auckland

Date of Determination: 15 September 2017

#### PRELIMINARY DETERMINATION OF THE AUTHORITY

- A. **Mr Johnson raised a personal grievance claim with STL regarding days off work in time.**
- B. **Mr Johnson's grievance claims regarding his September 2016 suspension and dismissal were raised in time.**
- C. **Mr Johnson did not raise his other grievances in time and has not established exceptional circumstances to raise them late.**
- D. **Costs are reserved**

#### Employment relationship problem

[1] Paul Johnson was employed by S.T.L Linehaul (STL or the company), as a storeman and then a foreman. Mr Johnson worked for STL on an on-and-off basis for

some 25 years. STL is a trucking company which is owned by two brothers. One of the brothers, Robert Pearson, is the manager of the Auckland branch of the operation where Mr Johnson worked.

[2] In September 2016 Mr Johnson was stood down or suspended, and then dismissed by STL. Mr Johnson's statement of problem focused on his suspension and dismissal, but also referred to a number of other issues, including work stress, hours of

work and working conditions.

[3] Mr Johnson is represented by his partner Rae Tupaea. Over the course of three telephone conferences I attempted to clarify whether Mr Johnson was solely pursuing the suspension and unjustified dismissal claims or whether he wished to pursue the other issues as well.

[4] Amended statements of problem were filed on Mr Johnson's behalf. However, in a number of instances the amended statement of problem did not provide details of the facts alleged, including when events were said to have occurred. The [Employment Relations Authority Regulations 2000](#) require the problem or matter and the facts giving rise to it, to have details stated fully, fairly and clearly<sup>1</sup>.

[5] STL's representative then informed the Authority that there was no consent from STL to the bringing of the now advanced grievances out of time.

[6] A further telephone conference was held on 19 May 2017. There it was clarified that Mr Johnson's suspension and dismissal claims were not the subject of any complaint by the company regarding being raised out of time. Mr Johnson is able to pursue those grievances.

[7] However, the other matters raised by Mr Johnson (which I will refer to as the other grievances) were objected to by STL on the basis that they were not raised as required by [s 114](#) of the [Employment Relations Act 2000](#) (the Act). On Mr Johnson's behalf an application was then made for the Authority to grant leave to raise any grievances out of time in the event that the Authority found that they had not been

raised within the requisite period.

1 [Employment Relations Authority Regulations 2000](#) Form 1 Application to Authority

## **The Issues**

[8] An investigation meeting was held on 19 June 2017 to deal solely with the preliminary issues of whether the other grievances had been raised in time and, if not, whether Mr Johnson should be granted leave to raise them late under [s 114\(4\)](#) of the Act. This determination deals solely with those issues. I heard evidence from Mr Johnston and Mr Pearson.

[9] Mr Johnson raised claims which I describe broadly as being good faith or due process issues, and about breaches of his privacy. These largely concerned the suspension and dismissal period and so can be raised as part of those grievances which are to be dealt with subsequently.

[10] Mr Johnson's other grievances which I must consider as regards [s 114](#) of the

Act are:

- (a) Not getting proper days off work;
- (b) Health and safety concerns regarding the loading of trucks;
- (c) Privacy issues regarding personal work matters being discussed in front of or with others, by Mr Pearson and his secretary;
- (d) Assaults on workmates and Mr Johnson himself;
- (e) Being bullied to sign off on loads which Mr Johnson had not loaded himself;
- (f) Duress to leave his partner;
- (g) Accusation of theft of money, which was later proved to be untrue;
- (h) Being required to do things outside of his job description, particularly hiding of motorcycles belonging to a rival gang and being Mr Pearson's driver when Mr Pearson was unable to drive for a period due to loss of licence;
- (i) No recognition of workplace stress;
- (j) No information on human resource officer; and
- (k) Drinking and drugs culture at company premises.

[11] As permitted by [s 174E](#) of the Act this determination has not recorded all the evidence and submissions received from the parties but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

## **Limitation issues**

[12] For the sake of completeness, I note the prospect of there being limitation issues with a number of Mr Johnson's other

grievances. In a few instances Mr Johnson was able to be somewhat specific in terms of referring to a month and year in relation to when incidents occurred, if not an actual date. However, regarding other incidents Mr Johnson was unable to be more specific than to say that they had occurred from around 2010 to 2016. Occasionally he went further back than 2010. However, he is largely relying on events that he says occurred after his most recent appointment with STL in January 2010.

[13] Under s 114(6) of the Act no action may be commenced in the Authority in relation to a personal grievance more than three years after the date on which the personal grievance was raised. Mr Johnson's claim was filed in December 2016. He is therefore prevented by that limitation period from pursuing any grievances raised prior to December 2013.

[14] I do note that some of the other grievances are of a continuing nature in which case I could hear evidence of events which occurred outside the period as long as they were connected with evidence of events within the period so as to establish a course of conduct that could be evaluated as the basis for the grievance.<sup>2</sup>

### **Section 114 of the Employment Relations Act**

[15] I now look at the legal framework. Under [s 114\(1\)](#) of the Act employees who wish to raise a personal grievance must do so within a period of 90 days beginning on the date that the action amounting to the grievance occurred, or it came to their notice, whichever is the later. Employers may consent to the raising of grievances after the expiry of that period, but here STL has not consented.

[16] [Section 114\(2\)](#) of the Act states that a grievance is raised as soon as the employee has made, or has taken reasonable steps to make, the employer or its

*2 Premier Events Group Limited v Beattie (No 3) [2012] NZEmpC 79*

representative aware that the employee alleges a personal grievance claim that he or she wants the employer to address.

### **The raising of a grievance**

[17] The raising of a grievance has been described as the conveying of the substance of the complaint sufficiently.<sup>3</sup> There is no requirement that the words "personal grievance" are used so, for example, a statement that an employee wanted to make an "official complaint" about the build-up over time of her supervisor's "unprofessional and unjustified" treatment, was sufficient to amount to a raising of a grievance.<sup>4</sup>

[18] The matter should be specified sufficiently for an employer to be able to address it.<sup>5</sup> A low threshold of information is needed to raise a grievance.<sup>6</sup>

[19] An oral protest can be sufficient. In the present case there is no suggestion of any written communication of the other grievances until well after Mr Johnson's dismissal therefore he must rely on his oral protest, if any.

[20] It does not matter what the employee intends their complaint to be or their preferred course of dealing with it at the first instance, and equally, it does not matter whether the employer recognised the complaint as a personal grievance or not.<sup>7</sup>

### **Exceptional circumstances**

[21] Where the employer does not consent to a personal grievance being raised outside the required time, the employee may apply to the Authority for leave to raise a

grievance late.<sup>8</sup> Leave may be granted if I am satisfied that the delay was occasioned

<sup>3</sup> *Clarke v Nelson Marlborough Institute of Technology* (2008) 8 NZELC 99 483 at [37]

<sup>4</sup> *Gates v Air New Zealand Limited* (2009) 7 NZELR 41 at [17]

<sup>5</sup> *Creedy v Commissioner of Police* [2006] NZEmpC 43; [2006] ERNZ 517 at [36]

<sup>6</sup> *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] ERNZ 139 at [42]

<sup>7</sup> *Clarke v Nelson Marlborough Institute of Technology* (2008) 8 NZELC 99, 483 at [37]

<sup>8</sup> S 114(3) of the Act

by exceptional circumstances and it considers it just to do so.<sup>9</sup> Exceptional circumstances are described in s 115 of the Act as including where the:

(a) employee has been so affected or traumatised by the matter giving rise to the grievance that he or she is unable to properly consider raising the grievance...; or

(b) employee has made reasonable arrangements to have the grievance raised ... by an agent ... and the agent unreasonably

failed to ensure that the grievance was raised ...; or

(c) employment agreement does not contain the explanation concerning the resolution of the employment relationship problems ...; or

(d) employer has failed to comply if the obligation ... to provide a statement of reasons for the dismissal.

[22] It was common ground that sub-sections (b), (c) and (d) do not apply in this case. Mr Johnson made no arrangements with an agent to raise grievances, his employment agreement does contain a provision about resolution of employment relationship problems and these other grievances do not concern a dismissal.

[23] If I find that Mr Johnson has not raised some or all of the other grievances, he must rely on there being exceptional circumstances under sub-section (a) or of some other nature. The list in s 115 of the Act is not exhaustive. 10

[24] Exceptional circumstances have been described as meaning unusual, the exception to the rule.<sup>11</sup> The exceptional circumstances must have “occasioned” the delay, which has been seen as being a wider description than “caused” the delay.<sup>12</sup> In a number of cases the Employment Court has rejected ignorance of the law as constituting exceptional circumstances.<sup>13</sup>

[25] The inability to “properly consider” raising the grievance, under s 115(a) of the Act, requires the employee to suffer the inability for the entire 90-day period.<sup>14</sup>

<sup>9</sup> s 114(4) of the Act

<sup>10</sup> *Austin v Silver Fern Farms Limited* [2014] NZEmpC 30 at [34]

<sup>11</sup> *Creedy v Commissioner of Police* [2006] NZEmpC 43; [2006] ERNZ 517

<sup>12</sup> *McClutchie v Landcorp Farming Limited* [1993] 1 ERNZ 388.

<sup>13</sup> See, for example, *Muggeridge v Miden Construction Co Ltd* [1992] 1 ERNZ 232

<sup>14</sup> *Telecom New Zealand Limited v Morgan* [2004] NZEmpC 37; [2004] ERNZ 9

## **Workplace**

[26] Mr Johnson worked at STL for a very long period. It was clear from his evidence that there were aspects of the workplace which he is now unhappy about. Some of these appear to be things which he has subsequently come to recognise were not healthy for him.

[27] In deciding whether Mr Johnson raised his other grievances I make no finding as to the legitimacy of any of his concerns. If I find that he can pursue some or all of the other grievances, further investigation will be required to decide whether Mr Johnson was subject to unjustifiable actions by his employer to his disadvantage, thus meeting the requirements of s 103(1)(b) of the Act.

## **Mr Johnson’s evidence**

[28] Mr Johnson struggled to be specific about when events had occurred and when he raised them as concerns with Mr Pearson. There were very few written records from during his employment with STL, to assist him.

[29] The position submitted on behalf of Mr Johnson was that all of the other grievances were raised at the time with Mr Pearson, although Mr Johnson’s own evidence did not always establish that, as I set out below. He acknowledged that he did not ring or contact anyone at the company’s head office, which is based in Christchurch. STL has a despatch manager based in Auckland, but Mr Johnson focused on having raised his concerns with Mr Pearson.

[30] There is something of an inconsistency between two significant aspects of Mr Johnson’s evidence. He asserts as regards most of the other grievances that he raised them with STL through Mr Pearson. He emphasises that he had done that on more than one occasion with several of the grievances, in some cases on many occasions, although he did not refer to them as personal grievances.

[31] However, in relation to questions concerning the possibility of exceptional circumstances existing, Mr Johnson emphasises that he was scared or fearful of Mr Pearson and what he described as Mr Pearson’s gang connections. This is used as a reason why he was unable to raise grievances.

[32] I turn now to look at each of the other grievances individually.

## **Days off**

[33] In summary Mr Johnson’s first grievance claim is that he attempted to get proper days off work and did not receive them. He says that his work hours at STL had stressful effects on him and not help his family life.

[34] Mr Johnson's written employment agreement with STL, in place from 2010, states that he was employed on a full-time basis which involved a minimum of 50 hours work based on a five-day week. Mr Johnson was paid a salary rather than an hourly rate. The agreement does not specify which days of the week were to be worked.

[35] Mr Johnson acknowledges that there was a mutual agreement for him to work some Saturdays but then Sundays were introduced and effectively he was only allowed or able to go home for a few hours on a Sunday and then had to come back to work on the Monday. The problem with not having days off worsened when Mr Johnson was given the foreman role in 2014.

[36] It seems that the STL business had been operating on a six day a week basis until sometime in 2016 when it began operating seven days a week as a result of gaining another customer. Mr Johnson says that he was the only person who worked all seven days. He could not be certain which Sundays he worked, at one point saying that he pretty much worked all of them and then shortly afterwards saying that he did not work all of them.

[37] There are no written rosters showing Mr Johnson's work hours as his hours depended on how much work was required to be done. There was no evidence of a system in place to record the hours which he worked.

[38] Mr Johnson says that he discussed his issue about not getting days off with Mr Pearson saying that he needed some time off, and asking Mr Pearson to give him some. Mr Johnson says that in 2014, Mr Pearson promised him that he could have Mondays off. However, he says that did not happen.

[39] After that discussion Mr Johnson got told at times that he was "stood down", in the sense that he was not at work and was not allowed to go into work. He says that being stood down happened all the time. Mr Johnson's impression was that being stood down was a bad thing, rather than him getting a day off work in a positive way. Mr Johnson says that he spoke to Mr Pearson on a number of occasions about that issue as he was not happy with being stood down. Mr Pearson's response was said sometimes to be hurling abuse at Mr Johnson, telling him to leave; to stand down. Mr Johnson was not happy with Mr Pearson's standing him down.

[40] Mr Pearson described the way in which work was undertaken at the STL premises. He considered that Mr Johnson usually only worked around 35 hours a week (seven x five).

[41] Mr Pearson says that weekend work was voluntary and he would ask the storemen if they were available. Mr Johnson was not required to work on Sundays but staff were sometimes encouraged to work on Saturdays. They got an additional payment for Saturday work which was usually for five hours in the morning. When questioned, Mr Johnson was initially uncertain whether he had been paid initial money for weekend work but then accepted that he had been.

[42] Mr Pearson says that he quite often said to Mr Johnson "why don't you go home". Mr Pearson accepts that Mr Johnson asked to have Mondays off, but that Mr Pearson did not agree to that. Mr Pearson says that Mr Johnson had not come to him saying that he was stressed as such. However, I am satisfied that Mr Johnson expressed his dissatisfaction to Mr Pearson with not getting days off.

[43] Mr Johnson was living in a spare room at the STL yard on-and-off for some years. The yard was a long way from his home. Mr Pearson knew that Mr Johnson sometimes needed to go home and get away from the company premises.

[44] Mr Pearson says that he had to stand Mr Johnson down at times so he would go away for a couple of days' break. Mr Johnson was paid for that time. Mr Pearson's view was that Mr Johnson did not have good delegation skills and thus ended up doing a lot of work himself at times. This was particularly once Mr Johnson became foreman in 2014. Mr Pearson acknowledges that Mr Johnson asked him if he could have days off and that Mr Johnson took those days when he wanted to. There were no annual leave applications.

[45] Mr Pearson acknowledges that Mr Johnson may have felt stressed with too much work. Also, that there was a risk that Mr Johnson would "go around the twist" as he was sometimes living at the job. Mr Pearson had also lived on site for a time and acknowledged that it was stressful.

[46] Although it is finely balanced, I am satisfied that from 2014 onwards Mr Johnson raised with Mr Pearson a personal grievance claim about not getting days off and that he can pursue that grievance with the Authority.

### **Loading the trucks**

[47] Mr Johnson's next issue is a health and safety concern that he was consistently being told to load goods on his own in the storeroom or load them dangerously. He says this occurred at least 100 times from 2010 to 2016. He says that he told Mr Pearson that there should be someone there to give him a hand and that the response was that he should simply get on with it.

[48] Mr Johnson says that he certainly expressed his concern each time that he had part of his body "squashed" on at least 10 occasions from 2010 to 2016. He also says the last time was May 2015 and after that he refused to ever climb up on the top deck of the trailer and manually guide steel or timber into place.

[49] Mr Johnson says that he would report something like "you just squashed my hand" and Mr Pearson would reply something

like “man up”.

[50] Mr Pearson’s evidence is that Mr Johnson did not have to unload trucks by himself, and that that was against company policy. He considers that Mr Johnson should have refused to unload on his own. A truck driver should help Mr Johnson to unload the truck which he brought in. Mr Pearson denies knowing anything about Mr Johnson’s hand or leg being squashed.

[51] There may well have been operational discussions about the work but I do not accept that Mr Johnson raised these concerns in a way which is required by s 114 of the Act.

### **Privacy issues**

[52] This claim concerns Mr Pearson and his secretary either passing on information, or speaking about Mr Johnson in front of others. Privacy concerns regarding the search of Mr Johnson’s personal belongings in September 2016 can be dealt with as part of the suspension and dismissal grievance claims.

[53] There was no evidence of Mr Johnson having raised other privacy issues with Mr Pearson or anyone else from STL, therefore the requirement in s 114(1) of the Act is not met.

### **Assaults**

[54] Mr Johnson claims that Mr Pearson assaulted him and others. As Mr Johnson’s personal grievance claim must relate to himself I will focus on alleged assaults against him. There appears to be no written record of any workplace injuries of Mr Johnson.

[55] Mr Johnson says that some assaults were attempted rather than actual. At the investigation meeting his evidence was that Mr Pearson grabbed him by the arm a couple of times. Mr Pearson denies having assaulted Mr Johnson. There was no evidence that Mr Johnson had raised this matter as a grievance with STL.

### **Signing off loads**

[56] Mr Johnson claims that Mr Pearson got staff to sign off loads which he had loaded himself. Mr Johnson was not happy to sign when he had not loaded a truck personally. Mr Johnson’s evidence is inconsistent on whether he had raised this issue as a concern.

[57] Mr Pearson accepts only that there was a sign on process for loading dangerous goods. He says that when a load was unloaded, the manifest would be signed but that usually nothing had to be signed when loading on.

[58] I cannot be satisfied on the basis of Mr Johnson’s evidence that this issue was raised as a grievance with Mr Pearson or STL.

### **Pressure to leave his partner**

[59] Mr Johnson says that Mr Pearson always wanted him to leave his partner which Mr Johnson did not consider was any of Mr Pearson’s business. Mr Pearson says that Mr Johnson started discussions about his partner and Mr Pearson tried not to pass judgment.

[60] There is no evidence that Mr Johnson had raised his dissatisfaction with Mr Pearson’s involvement in this regard with STL. Therefore I am not satisfied that any personal grievance on this issue was raised.

### **Accusation of theft**

[61] Mr Johnson says that Mr Pearson had a sum of cash at work and forgot where he had put it. He rushed into the drivers’ room where Mr Johnson was sleeping and accused Mr Johnson of stealing the money. Another staff member was also accused. Mr Johnson later arranged for security camera surveillance to be checked and it was discovered that Mr Pearson himself had hidden the money away. No disciplinary process was started on this matter.

[62] Mr Pearson says that he had discovered the missing money shortly before he had to leave for the airport and was stressed by trying to find it. He accepts that he went into Mr Johnson’s room and asked him whether he had seen anyone go into Mr Pearson’s office. He denied that he had accused Mr Johnson of stealing.

[63] Again, there was no evidence of Mr Johnson raising this matter in a way that would give an indication that it was in the nature of a complaint which the employer needed to address. I am not satisfied that this grievance was raised.

### **Work outside job description**

[64] Mr Johnson complains about two matters where Mr Pearson required him to do things which were not within his job description. The first concerns two motorcycles which he says that Mr Pearson wanted him to put away in order that people who might come to get them, could not find them. Mr Johnson told Mr Pearson that he did not want to do it, that it was Mr Pearson’s problem not his.

[65] Mr Pearson says that he owned both bikes. He says that Mr Johnson was paying one of them off from his pay packet but that he had got behind so Mr Pearson put the bike in storage. He says that Mr Johnson did put the bikes away. This appears to have been somewhere within the STL premises. Mr Pearson says that if Mr Johnson had a problem then he did not need to do it or one of the other staff could have done it.

[66] I am not satisfied that Mr Johnson raised this matter in a way which would make it sufficiently clear to the employer that he had an issue which he wanted the employer to address.

[67] The second job which Mr Johnson complains about is having to be a driver on a few occasions for Mr Pearson. He says that he did not want to drive Mr Pearson around and that he found it stressful. This work was done in work time. Mr Johnson says that he did not complain to anyone about it.

[68] I find that Mr Johnson did not raise the driving as a personal grievance while he was working at STL.

### **Stressful work environment**

[69] Mr Johnson says that the work environment was stressful. Although it is not entirely clear, the essence of Mr Johnson's complaint seems to be that there were "hard men" in the workplace and that he found it difficult to deal with that. He says that he talked to Mr Pearson about it and said that it was not good. However, Mr Pearson was the main one and would sometimes take his unhappiness out on Mr Johnson. He would then apologise later.

[70] Mr Pearson says that the other storemen were men in their early twenties who were in the process of being trained. He did not accept that the environment was uncomfortable or threatening.

[71] Part of Mr Johnson's claim about stress relates to hours of work and I have found that he is able to pursue that grievance. I am not satisfied that Mr Johnson raised a grievance about the people in the work environment.

### **No information about a human resource officer**

[72] Mr Johnson complains that he did not know anything about a human resource officer being available within STL. He knew that a woman called Lynn from the Christchurch office was the health and safety officer but did not know that she was also involved with human resources. Mr Johnson says that despite knowing that Lynn was a health and safety officer he did not talk to her regarding his health and safety concerns.

[73] There is no evidence that Mr Johnson raised concerns about the absence of human resource assistance with STL. There was a possible link suggested between there being no recognition by STL of the stress that he was under and having no information on the human resource officer. However, Mr Johnson accepts that he knew that Lynn was a health and safety officer and did not approach her on the matter of stress which he saw as a health and safety issue.

[74] I am not satisfied that Mr Johnson raised this matter as a personal grievance during his time at STL.

### **Drinking and drug culture**

[75] Mr Johnson complains that there was a drinking and drug culture at STL and suggested that that had not been good for him. He accepts that he did not see that as a problem when he was working there. Mr Pearson accepted that he would provide beer for the workers after work on Fridays.

[76] I find that Mr Johnson did not raise this as an issue whilst he was employed at STL.

### **Exceptional circumstances**

[77] With the exception of the days off issue, I have found that Mr Johnson did not raise his other grievances within the 90-day period required by s 114 of the Act. Therefore I go on to consider whether to grant Mr Johnson leave to raise some or all of the remaining grievances late.

[78] On Mr Johnson's behalf, it was suggested that he was fairly reticent and fearful of repercussions had he put his various concerns in writing and raise them with Mr Pearson.

[79] Mr Johnson raises various reasons for any failure to raise his grievances:

- (i) the dangerous nature of the workplace;
- (ii) his fear of losing his job if he raised his concerns;
- (iii) not wanting to tell other people his problems and what was happening at work; and
- (iv) a belief that nothing would be done by STL, or rather Mr Pearson in particular, if he had raised grievances.

[80] The circumstances which Mr Johnson claims to be exceptional relate to all of his other grievances, rather than any individual one.

#### *Dangerous nature of the workplace*

[81] Mr Johnson described the workplace as dangerous and reference was made to Mr Pearson allegedly having gang connections. There were few specifics provided about either.

[82] To rely on s 115(a) of the Act Mr Johnson needs to establish that he was so affected or traumatised by the events that he was unable to properly consider raising the grievance. He is effectively relying on indications of fear for his physical safety as regards these events. I accept that fear of physical safety could be seen as an

exceptional circumstance and that the examples in s 115 are illustrative rather than exhaustive. However, the absence of particular evidence is problematic.

#### *Fear of losing his job*

[83] Mr Johnson talks about being worried that he would lose his job if he raised concerns with Mr Pearson, although he did not provide any specific rationale as to why he was concerned in that way.

#### *Not wanting to tell people his problems*

[84] Mr Johnson says that he did not want to tell others about his problems in his workplace. While that may be understandable, the Act's scheme does require grievances to be raised with the employer in order to be resolved and some sense of embarrassment or discomfort about disclosure cannot be seen as exceptional.

#### *Belief nothing would happen*

[85] It was suggested that Mr Pearson would not acknowledge a grievance raised or take action on it. Mr Johnson says that Mr Pearson's standard response to concerns being raised was either to ignore them or to make comments such as "man up" or "harden up".

[86] Mr Johnson believes that if he did raise grievances (in writing) the letter would only end up in the rubbish bin as he witnessed on occasions with other staff members' forms or letters. Mr Pearson acknowledges that he does not have time to deal with staff issues like leave, and so would tend to not deal with those requests but tell staff to talk to the head office in Christchurch. He says that Mr Johnson was on occasion in contact with Christchurch.

[87] While it may be understandable that issues are not raised if an absence of acknowledgment or action by the employer is seen as being the likely result, I do not see that as being an exceptional circumstance. That is particularly so when there was the prospect of Mr Johnson going to the head office, rather than having to deal only with Mr Pearson.

#### *Conclusion on exceptional circumstances*

[88] The other grievances cover a long period of time and I must be satisfied that any circumstances which could be seen as exceptional continue until the filing of Mr Johnson's claim with the Authority.

[89] On the basis of the available evidence I am not satisfied that there were exceptional circumstances which would justify Mr Johnson not raising the issues and therefore leave is not granted for these grievances to be raised late.

#### **Costs**

[90] Costs are reserved and will be dealt with after the substantive determination.

Nicola Craig

Member of the Employment Relations Authority