

NOTE: An order prohibiting the publication
of a medical report appears at p 6

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Aroha Kingi (Applicant)
AND Statistics New Zealand (Respondent)
REPRESENTATIVES R Oldham, counsel for Applicant
R Searle, advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
**AFFIDAVITS, SUBMISSIONS
RECEIVED** December, January and February 2005
DATE OF DETERMINATION 15 April 2005

DETERMINATION OF THE AUTHORITY

[1] Aroha Kingi has raised personal grievances against her former employer, Statistics New Zealand (“Statistics NZ”). Statistics New Zealand says the grievances were not raised within the 90 day period set out in s 114(1) of the Employment Relations Act 2000, it does not agree to their being raised out of time, and there are no grounds on which the Authority should grant leave to raise the grievances out of time.

[2] This determination addresses as a preliminary matter whether:

- (a) the grievances were raised in time; and
- (b) if they were not raised in time, whether leave should be given under s 114(4) to raise them on the grounds that –
 - (i) any delay was occasioned by exceptional circumstances (including any of those set out in s 115 of the Act), and
 - (ii) it is just that leave be granted.

[3] Another issue arises out of s 114(1) of the Act, namely whether Statistics NZ has already consented to any late raising of the grievance.

[4] The investigation into the preliminary matter was conducted on the papers, by agreement. All evidence was provided by affidavit.

Raising the grievances

[5] By letter dated 21 April 2004 Ms Kingi’s solicitors formally and expressly raised her grievances. The letter asserted Ms Kingi had raised a personal grievance in 2002. It went on to say if that was not the case she was now entitled to do so because the delay was caused by ‘trauma’ she

experienced. Accordingly there were exceptional circumstances and leave to raise the grievances should be granted.

[6] Under the heading 'personal grievance' the letter identified at p 2 that Ms Kingi believed she had suffered disadvantage in employment by the unjustified actions of the employer in that:

- (a) the position she held at the time was advertised as grade 130, but that was not the grading she received on appointment; and
- (b) the employer failed to provide a safe place of work.

[7] It seemed from p 1 of the letter that the following additional grievances were also being raised:

- (c) lack of clarity about Ms Kingi's role and responsibilities as project leader;
- (d) difficulties with her immediate superior;
- (e) concerns about systemic failure and resource deficiencies.

[8] In her affidavit Ms Kingi said she had four grievances, namely:

- (a) her role and responsibilities were unclear, and requests for clarity were not acted upon;
- (b) she experienced tensions with her immediate manager;
- (c) her concern about her grading; and
- (d) she suffered work-related stress due to poor systems, inappropriate technology; inexperienced staff and/or insufficient staff members resulting in unrealistic deadlines and having to take work home.

[9] I will therefore do as the parties have done, and address the four grievances identified in Ms Kingi's affidavit.

1. Requests for clarity

[10] Ms Kingi has been employed by Statistics NZ and its predecessors since January 1990. On 5 December 2001 she was advised of her appointment to the position of Project Leader, Agriculture Development, on her current grade and salary. The position was associated with the conduct of an agricultural production survey being undertaken for the first time since 1996. The initial phase was developmental, and the intention was that 90,000 questionnaires be mailed in late June or July 2002.

[11] Further to Ms Kingi's allegation that her requests for clarity in the position of project leader were not acted upon, Ms Kingi summarised a number of discussions on the point. Indeed the summaries were just that and no detail was provided. Nothing in the affidavits was capable of indicating the discussions amounted to any more than the raising and discussing of concerns, complaints or general issues arising from the development of the survey, and in the ordinary course of employment.

2. Tension with immediate manager

[12] Peter Benzie was Ms Kingi's immediate manager. Further to Ms Kingi's allegation that she experienced tension with him, she detailed a number of disagreements and other concerns she had with him, as well as referring to occasions when he upset her. The relevant discussions occurred during 2002. There was no dispute that Ms Kingi raised concerns about Mr Benzie's style, and Mr Benzie's manager, Michael Moore, confirmed she did so with him.

[13] Indeed in late August 2002 Mr Moore sought Ms Kingi's comments for the purposes of conducting Mr Benzie's annual performance review. Apparently she gave them orally, but no-one provided an account of the relevant conversation. While I am prepared to assume Ms Kingi raised specific concerns, I am not prepared to infer that she did any more than provide feedback in the context of the performance review. As for the broader evidence about her difficulties with Mr Benzie, again nothing in the affidavits was capable of indicating that the discussions went beyond the raising and discussing of concerns in the ordinary course of employment.

3. Grading

[14] Immediately prior to her appointment to the project leader's position Ms Kingi's grade was 450 ('statistical services') and her salary was \$43,200. Her expectation was that, on appointment to the position, she would be graded 130 ('analytical and research') since that was the grade at which the position was said to have been advertised. Instead she was appointed at her existing grade and salary. The 400-stream grading was applicable to a survey statistician, while the 100-stream grading was applicable to an economic statistician. No real salary difference was identified in the affidavits – the concern about grading was portrayed more as one of career prospects and access to salary increases in future.

[15] Accordingly Ms Kingi sought a regrading to level 130. Mr Benzie supported the regrading, but it was not approved. Deborah Renton-Green, general manager human resources at the time, explained the reasons. She said while it was possible for an employee to move from a 400 to a 100 stream, there must first be an assessment of the person's capabilities against the competencies and criteria for the stream. Mere reassignment was not automatic, and Ms Kingi did not have the tertiary qualification expected of an economic statistician. Secondly the project leader's position was a fixed term position, and it was not Statistics New Zealand's practice to regrade a person for the length of a fixed term appointment. Ms Renton-Green expressed these views to Mr Moore. Nothing in the documentation reveals any formal response to Ms Kingi at the time, but it seems Mr Moore discussed with her the position Statistics NZ was taking. No-one provided an account of the content of the discussion.

[16] The affidavits indicated nothing more happened on the matter until Mr Moore reported to Ms Kingi, in an email dated 28 June 2002, on a discussion he and a colleague had recently with Mr Moore's manager, Ian Ewing. According to the message Mr Moore had raised the possibility of appointing Ms Kingi to an economic statistician's position, with the response being to raise the need for a tertiary qualification or units towards one. Mr Moore told Ms Kingi she had been appointed because, despite not meeting the criteria for appointment as an economic statistician, she had good agricultural knowledge and there was confidence in her ability to do the job.

[17] On 9 July 2002 Ms Kingi attended a meeting, together with her mother Pauline Kingi, to discuss regrading Ms Kingi's position. Mrs Kingi is a barrister and solicitor, and a senior public servant in another government department. She informed Statistics NZ of her qualifications and status.

[18] Mr Ewing conducted the meeting on behalf of Statistics NZ. There was a discussion about the availability of economic statistician's positions, and the need for tertiary qualifications. Ms Kingi also pointed out that her position had been advertised at a grade of 130, and she was carrying out the required duties. The outcome was that Mr Ewing would enquire about the relevance of Ms Kingi's existing work experience when evaluating her for an economic statistician's role, and would review the reason why Ms Kingi had been appointed as a survey statistician when her position was graded as an economic statistician's. He would also review why Ms Kingi had not received a

formal response to her request for a regrading. Finally, Ms Kingi would be given assistance in obtaining an economic statistician's skills.

[19] Mr Ewing provided information about a possible study plan by email message dated 16 July 2002. He also referred to other enquiries he was making. By email message dated 30 August 2002 Ms Kingi asked what process was being used to resolve the other issues discussed on 9 July. The evidence does not indicate what, if any, response she received.

[20] It seems the next communication on the point came when, by letter dated 14 November 2002, Ms Kingi was advised she was regraded as an economic statistician effective from 17 December 2001. Her actual grading was to follow an assessment of her skills and knowledge. In other words she was being regraded to the 100 stream, but the level was yet to be assessed.

4. Workplace stress

[21] Ms Kingi commenced paid sick leave on 9 September 2002, suffering from a major depressive episode. However there was no allegation in the affidavits to the effect that Statistics NZ was advised of this at the time, and I consider it likely it was not. Mr Benzie said he spoke to Ms Kingi on 11 September, that she sounded as if she had the flu, and advised she had not yet seen her doctor but expected to be back at work shortly after the end of that week. Unfortunately Ms Kingi's illness was far more serious than that.

[22] Subsequently Mrs Kingi provided medical certificates to the office services manager, and later to Vincent Galvin, the most senior executive in Auckland at the time. I was not provided with copies so do not know what information they contained. From the material available to me I assume they stated Ms Kingi was unfit for work, but did not say why. Mrs Kingi's covering notes, however, commented in general on Ms Kingi's progress towards recovery. It seems that she and Mr Galvin had discussions about Ms Kingi's progress in or about October 2002, but nothing in the affidavits indicated the discussions went any further than this.

[23] Ms Kingi's entitlement to paid sick leave ended in March 2003. In February 2003 Ms Renton-Green initiated contact with Mrs Kingi to discuss how that matter could be dealt with, as well as whether Ms Kingi could return to work on light duties.

[24] Mrs Kingi replied in April 2003. Under cover of a facsimile dated 4 April 2003 she provided a copy of a medical certificate dated 23 January 2003 in which Ms Kingi's doctor considered a clear precipitant for Ms Kingi's illness to be her work situation. He referred to a high workload, a feeling of being unsupported, pressure in her role, and interpersonal problems. For her part, in response to a request for formal confirmation that she had authority to represent her daughter, Mrs Kingi confirmed her view that she had been her daughter's representative since late the previous year. She went on to ask that Ms Kingi be placed on paid special leave rather than unpaid sick leave.

[25] At about the same time Ms Renton-Green asked Charles Smith, human resources programme manager, to prepare a report on Ms Kingi's illness. He was to look into the cause of Ms Kingi's absence, and look at what steps could be taken to alleviate the problems with particular reference to Ms Kingi's return to work.

[26] To that end Mr Smith spoke to Messrs Benzie, Moore, and Galvin. He also referred the medical information then available. On the basis of the material obtained he prepared a report entitled 'Investigation into factors leading up to Aroha Kingi being diagnosed with a severe major depressive episode and being placed on sick leave'. The report was dated 4 June 2003 and addressed factors including workload, lack of support and interpersonal relationships at work.

[27] A copy of the report was forwarded to Ms Renton-Green, and to Mrs Kingi. Mr Smith had discussions with Mrs Kingi regarding the possibility of Ms Kingi being made redundant, or being medically retired on the ground of her incapacity. His file note of a conversation with Mrs Kingi dated 13 June 2003 records Mrs Kingi as saying she had not yet read the report, but that she would do so with a view to deciding whether to litigate. Mrs Kingi did not dispute the accuracy of the content of the note – rather the fact that it was made – so I accept that she made that comment.

[28] On 25 June 2003 Mrs Kingi advised that she considered the report incomplete because it made no reference to the meeting with Mr Ewing of June 2002. Mr Smith obtained a copy of the minutes and had a brief conversation with Mr Ewing about the matter. There was no indication the point was taken any further.

[29] Because of Ms Kingi's extended absence, on 30 June 2003 Mr Smith contacted the chief financial officer, saying he was working through some 'employee relations issues' with Ms Kingi. He said it was unlikely the issues would be resolved before the end of the financial year. Accordingly he asked that a sum be transferred from that financial year to the next in case Ms Kingi's employment ended through a medical retirement.

[30] Discussions apparently continued with Mrs Kingi, because by fax dated 4 July 2003 Mrs Kingi sent Mr Smith her proposals for a 'final exit package for Aroha Mercedes Kingi'. I record that the parties originally regarded the content of the fax as being without prejudice. The matter was referred to another Authority member and the outcome was that the document has been produced. It included a request for a package including a redundancy contribution, 'compensation for workplace stresses that have contributed to her current health status', a set of measures relating to the regrading issue, and other matters relating to the termination of Ms Kingi's employment.

[31] On 5 September 2003 Mr Smith met with Mrs Kingi to discuss the options regarding Ms Kingi's future. On 3 October 2003 Mr Smith contacted Mrs Kingi for further feedback. Mrs Kingi advised there had been a serious setback in Ms Kingi's recovery. Mr Smith said he would keep in touch, while Mrs Kingi advised that Ms Kingi and her partner were considering their options.

[32] It seems the next contact occurred in December 2003, when Mrs Kingi sought the payment of Ms Kingi's outstanding annual leave. The payment was made.

Consent to raising the grievances out of time

[33] After that the next contact was from Ms Kingi herself. She said it was not until then that she felt physically, mentally and emotionally able to pursue matters with Statistics NZ. By letter dated 16 February 2004 she said:

"My financial situation has seriously deteriorated since I used up my Sick Leave and I need to have things finished if I am to fully move on. To do this, I need to know in my mind that I have tried to get all that I am entitled to as a Public Servant who is on unpaid Sick Leave from Statistics New Zealand.

I have provided medical certificates confirming my health position is such that I am unable to return to work at this time.

I now request a mediation hearing of my case."

[34] Mr Smith said he thought Ms Kingi was talking about her entitlements to sick leave, annual leave and medical retirement. He agreed to forward a request for mediation to the Department of Labour's mediation service.

[35] By letter dated 5 March 2004 Ms Kingi's solicitors advised of their instructions by Ms Kingi 'in respect of her employment matter.' Mr Smith thought that, if anything, the reference was to the

possible termination of Ms Kingi's employment whether by agreement or as a result of her incapacity.

[36] By letter dated 15 March 2004 Ms Kingi's solicitors sought a copy of Statistics New Zealand's personal grievance procedures.

[37] Mediation went ahead on 2 April 2004, and the 21 April letter raising personal grievances followed.

The current position

[38] Included in the remedies sought in the 21 April letter was a series of items concerned with the termination of Ms Kingi's employment by her resignation. By letter dated 15 September 2004 Statistics NZ advised that it would prefer Ms Kingi to return to full time employment, and sought a medical report to enable it to assess the likelihood of that. It said:

“If the specialist's position is that Aroha will be unable to return to her original position within a reasonable period and Statistics NZ is unable to find alternative work for her, we must advise that Statistics NZ would be unable to hold her position open. In those circumstances, Aroha's employment may be terminated for incapacity.”

[39] I am advised that Ms Kingi's employment was terminated on notice in March 2005. The delay in issuing this determination has been in part because I have discussed with the parties whether it might be more appropriate to address all of the matters covered in this determination in the context of the termination of the employment, rather than taking the intermediate step this determination represents. They have chosen not to proceed in that way.

[40] In addition I have been provided with a copy of a psychologist's written evaluation of Ms Kingi, in a medical report dated 6 January 2005. Neither the whole nor any part of the report may be published and I order accordingly.

Determination - whether the grievances were raised within 90 days

[41] Section 114(2) of the Employment Relations Act provides:

“... 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.”

[42] Here, Ms Kingi had to make her employer aware, or take reasonable steps to make it aware, that she believed her employment (or one or more conditions of employment) is or are or was affected to her disadvantage by some unjustifiable action by the employer.

[43] There are few authorities addressing the 'raising' of a personal grievance under the Employment Relations Act. One, however, is the decision of the Employment Court in **Ruebe-Donaldson v Sky Network Television Limited** (13 August 2004, Judge Travis, AC 44/04). The court found that in the context of that case 'raising' a grievance was virtually synonymous with 'submitting' a grievance under the Employment Contracts Act 1991. There is no reason to take a different approach here.

[44] Leading authorities under the Employment Contracts Act include **Winstone Wallboards Limited v Samate** [1993] 1 ERNZ 503, where the Employment Court said:

“It plainly is an important part of the Legislature’s intention that not only should the grievance procedure be initiated within 90 days but that, for the express purpose of early low level resolution of the grievance, it should be plain to an objective observer that the employee concerned has commenced an applicable grievance process, and has done so in a way that enables the employer to respond.” (p 511)

[45] In **Liumahetau v Altherm East Auckland** [1994] 1 ERNZ 958 the Court summarised a number of cases on the point, and said:

“Where, ... there have been a series of communications, ... whilst each individual item of communication can be examined to see whether in itself it constituted a submission, the Tribunal also ought to view the totality of the communications to determine whether a grievance has been submitted within the 90-day period.” (p 963).

[46] In **Farmers Trading Limited v Opuariki** [1998] 1 ERNZ 313 the Court said:

“A personal grievance is “a claim”: s27(1) [s 103(1) Employment Relations Act]. In all cases ... a grievance is required to be submitted within 90 days. That is an expression of the Legislature’s intent that personal grievances be dealt with promptly and, in the first instance at least, informally in exchanges between the employee and employer. It follows that, for a grievance to have been submitted to the employer, there must be something that the employer can respond to, whether in writing or orally. ... In this case advice of dissatisfaction with the dismissal coupled with advice that the grievant intended to seek assistance was not such that a meaningful response could have been made by the employer so that the employee’s claim of dissatisfaction could have been addressed as the statute intends.” (p 321)

[47] A little more recently, in **Goodall v Marigny (NZ) Limited** [2000] 2 ERNZ 60 the Court said:

“... there did not appear to be any real disagreement ... as to the correct test to be applied, namely whether to an objective observer the communication was sufficient to elicit a response from the employer. ... to this I would add the gloss that rather than eliciting a response, the communication must be such as to enable the employer to remedy the grievance, or for the parties to settle it in discussions.” (p70)

1. Request for clarity

[48] I have already indicated my view of the nature of the exchanges between the parties in respect of Ms Kingi’s concern about the lack of clarity in her role. Accordingly I conclude the concern was not raised as a grievance, in the sense that it amounted to a claim, within the 90-day period set out in s 114(1) of the Act.

2. Tension with immediate manager

[49] As above, I conclude this concern was not raised as a grievance, in the sense that it amounted to a claim, within the 90-day period set out in s 114(a) of the Act.

3. Grading

[50] I have some difficulty with the way this grievance has been framed. This is particularly so because the primary remedy sought is reimbursement of remuneration lost, calculated as if Ms Kingi were graded 130 from the outset and with the actual rate to be determined by the Authority. Such a remedy is consistent with the relevant disadvantage being the failure to place Ms Kingi on the appropriate grade and appropriate rate of pay. That suggests the possibility that the real problem is one of the application of the collective employment agreement binding on the parties. If that is so, then by virtue of s 103(3) of the Employment Relations Act the problem does not amount to a personal grievance, but can be pursued as a dispute about the application of the cea.

[51] I say this because the copy of the parties’ cea which was filed contains provisions about:

- . salary and grade on appointment to a position, including reference to meeting minimum entry criteria for a grade and general factors applicable to setting the rate of pay;
- . grading patterns and progression between grades, including reference to the need to meet competencies;
- . salary scales within grades, so that there are four scales within the 130 grade and the scales are directly related to whether competencies are met or not.

[52] I note further that the salary Ms Kingi actually received was greater than the 'minimum' rate on the 130 scale, and was very close to the 'meets competencies' rate for that scale.

[53] For the reasons indicated I am not at present satisfied that this problem can be appropriately addressed merely with reference to whether a personal grievance has been raised, or can proceed, in terms of s 114. Nor am I satisfied that, even if a grievance can proceed, the Authority can fix a salary and reflect that in remedies as Ms Kingi seems to contemplate it doing. On the other hand, if the problem is one of the correct application of the salary and grading provisions in the cea, then the Authority can hear argument about that matter, and make an order for the payment of monies owing depending on the result.

[54] I therefore reserve the determination of whether this grievance was raised in time or can otherwise proceed, pending further investigation and argument about whether the problem is a grievance at all. Accordingly my findings about the existence of exceptional circumstances, and whether there was consent to proceed with Ms Kingi's grievances, do not apply to this problem. However whether this problem is a grievance (which currently has a question mark over its ability to proceed) or a dispute (which can proceed), I recommend that Ms Kingi and her representatives reconsider what, if any, underpayment there was and what the Authority can do about quantifying it.

[55] I will discuss with the parties a procedure for addressing these points at a conference call to be convened when they have received this determination.

4. Workplace stress

[56] Under s 114(1) of the Act the 90-day period for the raising of the workplace stress grievance began 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.

[57] The evidence about the telephone conversation between Mr Benzie and Ms Kingi on 11 September 2002 indicates that Ms Kingi was not aware at the time that she was arguably suffering from a work-related illness. She had various concerns, which I have found were not raised with Statistics NZ as personal grievances. However I understood the grievance based on her work-related stress to be based on the cumulative effect of those concerns, which is a different matter. There was no indication she was aware of that cumulative effect, or that it had come to her notice, by 11 September 2002.

[58] Some time afterwards, and at the latest by the time of the preparation of the medical certificate of 23 January 2003, it must have come to her notice. Thus the latest date on which the 90-day period could begin was 23 January 2003. The latest date on which the 90-day period could have expired was at midnight on 23 April 2003.

[59] Mrs Kingi had contacted Statistics NZ on 4 April 2003. However while she could have raised a personal grievance on behalf of Ms Kingi in the course of that communication, she did not do so. Instead she requested that Ms Kingi be placed on paid special leave rather than unpaid sick leave. In doing so she made an election regarding the course to be followed at the time, and

particularly since she is not a lay person I am not prepared to read any more than that into her 4 April communication. Accordingly I find that the disadvantage grievance based on Ms Kingi's work-related stress was not raised within the 90-day period.

Determination - exceptional circumstances

[60] On its face the nature and extent of Ms Kingi's illness strongly supports a conclusion that exceptional circumstances existed, and occasioned the delay in raising her personal grievances.

[61] However that is not the only relevant matter. Ms Kingi's mother had represented her interests even before Ms Kingi became ill. She is a qualified lawyer. When asked to do so in April 2003 she confirmed that she was representing her daughter, and had been since the previous year. Her role was far more than merely conveying information about her daughter's absence from work and she actively participated in discussions about her daughter's rights as she saw them, as well as attempts to ensure they were observed.

[62] Because Ms Kingi's interests were represented to that extent, I am not satisfied that the delay in raising her personal grievances was occasioned by her illness. Accordingly I am not persuaded the delay was occasioned by exceptional circumstances.

Determination - consent to raising grievances out of time

[63] There was no suggestion that Statistics NZ expressly consented to the raising of Ms Kingi's grievances out of time. However there are several authorities to the effect that consent to a personal grievance being raised out of time can be implied from the parties' conduct: for example **Philips v Net Tel Communications Limited** [2002] 2 ERNZ 340 and **Jacobsen Creative Surfaces Limited v Findlater** [1994] 1 ERNZ 35.

[64] The following factors were relied on in support of the existence of implied consent to the raising of the grievances:

- . Statistics NZ's being made aware in April 2003 that Ms Kingi was suffering from work-related stress;
- . Mrs Kingi mentioning on 13 June 2003 that she would view Mr Smith's report with a view to deciding whether to litigate;
- . Mr Smith's statement of 30 June 2003 to the financial controller, referring to the working through of employee relations issues;
- . the discussions between Mrs Kingi and Mr Smith of June, July and September 2003;
- . Ms Kingi's request in February 2004 for a mediation hearing of her 'case'; and
- . the parties' proceeding to mediation.

[65] However there was far more to the parties' exchanges than that, and it is necessary to put them in their proper context.

[66] Statistics NZ was of course aware that Ms Kingi and Mrs Kingi had raised a number of issues associated with Ms Kingi's employment. By mid-2003 Ms Kingi had also been away from work for several months, and a date for her return was not known. Statistics NZ was considering how the ongoing absence should be managed, there had been negotiations about a possible termination of employment, and leave entitlements had been raised. Thus I regard the communication to the financial controller as nothing more than recognition of the existence of these matters, and the fact that financial provision would probably need to be made for them. It is not a recognition that any personal grievance had been raised, let alone that consent to proceed was being given.

[67] As for the exchanges between the parties, they covered a wide variety of matters and Mrs Kingi's approach during mid-2003 seemed to be aimed at securing an exit package for her daughter. It was impossible to say from that what was primarily a negotiating stance, and what if anything might be pursued as a personal grievance. Moreover while Mrs Kingi had earlier made reference to the possibility that litigation would be considered, nothing in the subsequent exchanges amounted to confirmation even that litigation was intended, let alone what form it might take.

[68] Similarly when Ms Kingi sought mediation in respect of her 'case', it was impossible to know what she meant by that. Her letter of 16 February 2004 referred to her need to move on and the gain all of her entitlements, as well as confirming that she was unable to return to work at that time. There was not enough in that to indicate that her 'case' included personal grievances based on her unclear role, her tensions with her manager, or her stress-related illness. Bearing in mind the history of the parties' discussions to then, Mr Smith was entitled to believe Ms Kingi was talking about her entitlements to leave and to medical retirement.

[69] Overall I find that, prior to 21 April 2004, there was too little precision about whether Ms Kingi was raising personal grievances, and if so what they were, to warrant an implication that Statistics NZ consented to proceed with those grievances despite their being out of time. All it knew was that a number of issues had been raised, and Ms Kingi had by then been absent from work for a significant time. Its conduct was, if anything, more consistent with seeking to address Ms Kingi's ongoing absence than with seeking to address her personal grievances as they have now been defined.

Summary

[70] The determination of whether Ms Kingi's grievance based on her grade can proceed is reserved pending further argument about whether the problem is a dispute or a grievance, as well as further consideration by the parties as to what underpayment there might have been in either event.

[71] None of the other three grievances was raised within the requisite 90 day period.

[72] With reference to those three grievances, Ms Kingi was represented before the commencement of her illness and during it, in circumstances where I am not satisfied that the delays in raising her grievances were occasioned by her illness. I am therefore not persuaded exceptional circumstances existed.

[73] With reference to those three grievances, I am not persuaded that Statistics NZ impliedly consented to the raising of the grievances out of time.

[74] I therefore decline leave to proceed with those grievances.

Costs

[75] Costs are reserved. The parties may agree on the matter themselves or approach the Authority for a determination of it.

R A Monaghan
Member, Employment Relations Authority