

Discontinuance giving notice the applicant was withdrawing his application in respect of Tasman Insulation.

[4] The representative for the respondent lodged a memorandum challenging the applicant's right to raise a personal grievance of unjustified action causing disadvantage. Specifically, Mr Thompson says this grievance was not raised within the 90 day period, that the respondent does not consent to the grievance being raised and requests the matter be struck out prior to the respondent incurring further unnecessary costs in defending the application.

[5] In effect, the applicant has discontinued his action for constructive dismissal against Tasman Insulation and Coverstaff and continues a claim of unjustifiable action causing disadvantage against Coverstaff alone.

[6] On 19 March 2009 Mr Riches replied to the respondent's memorandum submitting the Amended Statement of Problem simply rephrases the applicant's claim and defines it more precisely. The grievance claim is in fact reduced to one of unjustified actions giving rise to disadvantage. Further, it arises from the same facts.

[7] For the respondent, Mr Thompson objects on the grounds the grievance now pleaded is beyond the 90 period and thus requires leave be sought to lodge the application.

[8] The circumstances of this matter do not involve the lodging of an additional grievance to that previously placed before the Authority. The grievance now pleaded is in substitution of the more serious claim of unjustifiable dismissal. It is clear that as the employment arrangements of the applicant have been clarified, counsel for the applicant has, appropriately in my view, redefined the grievance. In such circumstances, leave is not required.

[9] A teleconference to arrange the Authority's investigation of the matter will be convened shortly.

Paul Montgomery
Member of the Employment Relations Authority