

**Attention is drawn to the  
order prohibiting publication  
of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 144/08  
5100632

BETWEEN

L  
Applicant

AND

ALLIANCE GROUP LIMITED  
Respondent

Member of Authority: Philip Cheyne

Representatives: The Applicant in Person  
Ken Smith for the Respondent

Investigation Meeting: 25 September 2008 in Invercargill

Determination: 26 September 2008

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**DETERMINATION OF THE AUTHORITY**

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**Introduction**

[1] L worked for Alliance Group Limited at one of its plants until she gave written notice of her resignation on 6 June 2007.

[2] L lodged a statement of problem with the Authority on 5 June 2008. The statement included two handwritten pages containing a list of incidents under the heading *Allegations*, said to have happened between February 1996 and March 2007. L asked for her problem to be resolved by *financial compensation \$62,000 plus redundancy*. Alliance's statement in reply referred to the delay in these allegations

being raised and said that it did not consent to any grievance being raised out of time. Alliance also said that L simply resigned from her employment for medical reasons.

[3] There had been mediation before these proceedings were commenced. My assessment was that further mediation was unlikely to assist and with the agreement of the parties a date was set for an investigation meeting.

[4] By agreement I make an order prohibiting the publication of the applicant's identity.

[5] To resolve the issues in the statement of problem I must first deal with the timeliness of the claims before assessing the merits of any issues that are properly before the Authority.

### **The allegations**

[6] The statement of problem included a list headed *Allegations* as follows: *Sworn at by Supervisor ...23 Jan 2004; Touching & raped by an employee ...July August 1998; Thrown out into cooling floor ...12 February 1996; Intimidated while sick ...1998 – 1999; Bullied by males ...1996 – 2007; Touching incident with supervisor ...23 March 2007; Intimidated by fellow employee ...7 March 2007.*

[7] The statement of problem does not include any grievance about the termination of the employment except perhaps by reference to redundancy. Nor does it include any grievance about warnings received by L in February and March 2007.

### **Time limits**

[8] There are limitation provisions in the Employment Relations Act 2000 that affect the ability of someone such as L to initiate legal proceedings about employment relationship problems. Section 142 deals with actions other than personal grievance claims. It says that no action may be commenced in the Authority more than six years after the date on which the cause of action arose. A similar limitation applied to causes of action arising prior to the Employment Relations Act 2000. Transitional provisions in the Act empower the Authority to deal with such residual claims. Application of this time limit means that the allegations dated *July/August 1998, 12 February 1996 and 1998-1999* cannot be part of the problem before the Authority for

investigation and determination. The same is true in respect of part of the allegation *Bullied by males ...1996-2007*.

[9] There are two parts to the personal grievance limitation provisions. First, Section 114(6) of the Employment Relations Act 2000 says that no personal grievance action may be commenced in the Authority more than three years after the date on which it was raised with the employer. There is some suggestion by L that she raised some of her concerns with the Union in 2004. Assuming that the Union did raise those matters as grievances with Alliance at the time, the present proceedings lodged in June 2008 related to those concerns falls foul of this limitation.

[10] There is a second limitation applicable to personal grievances. Before a grievance can be investigated and determined by the Authority, it must have been raised with the employer within 90 days of it arising or coming to the employee's attention: see s.114(1) of the Employment Relations Act 2000. There were two things done by L to raise her grievances: a letter dated 2 April 2007 and a letter dated 9 July 2007. The 2 April 2007 letter deals with only one part of the *Allegations* in the statement of problem while the 9 July 2007 letter refers to most of the *Allegations*. It is convenient first to consider the extent to which the matters canvassed by the 9 July 2007 letter are properly before the Authority.

[11] Because of the 90 day rule only grievances that arose or came to L's attention on or after 11 April 2007 could validly be raised with Alliance by the 9 July 2007 letter. All the *Allegations* mentioned in the two hand-written pages had happened and had come to L's attention before April 2007. It follows that L did not validly raise any grievance by her 9 July 2007 letter. Alliance has not consented to any grievances being raised out of time and L has not applied for leave to raise any grievance outside 90 days or otherwise enlarge time.

[12] Accordingly I find that almost all the allegations in the statement of problem were either not raised with Alliance within 90 days or the proceedings were not initiated within 3 years or 6 years.

[13] L did raise within 90 days part of the problem set out in the statement of problem. By letter dated 2 April 2007 L complained about events of 23 March 2007 involving her supervisor. I turn now to assess that grievance claim.

**The 23 March 2007 incident**

[14] On 21 March 2007 L received a final written warning for leaving her work place and for abusive or offensive language to others. The final warning related to an exchange between L and another employee on 7 March 2007. The warning is not challenged by way of a personal grievance.

[15] On 23 March 2007 there was an incident between L and her supervisor. On the supervisor's account, L swore at him. He considered this was a repeat of the conduct that caused the 21 March 2007 final warning. On L's account the supervisor swore at her. Both say that L then stormed off. This happened just before smoko. Soon after the incident the supervisor reported his version to the slaughterboard supervisor. After smoko, the slaughterboard supervisor convened a meeting in his office which included L's union representative. Alliance's investigations supported the supervisor's account so L was facing potential dismissal. However, the result of the exchanges that day was an agreement for L to transfer to another department.

[16] L attended work in accordance with this arrangement on Monday 26 March but was absent the next night. A medical certificate was provided covering her absence until 30 March 2007. There were further discussions between the Union and Alliance which resulted in an agreement for L to be placed in the pool labour department. L was based in the pool labour department for the remainder of her employment at Alliance.

[17] In evidence L confirmed both these agreements.

[18] On 2 April 2007 L alleged that her supervisor *raised a finger on my backside* as part of requiring her to attend the slaughterboard supervisor's office on 23 March 2007. Alliance initiated an investigation into L's allegation and there were several meetings. Eventually L withdrew her allegation.

[19] L was a seasonal worker and her season finished in early May 2007. L consulted a solicitor about that time who wrote requesting her personal file. On 28 May 2007 the solicitor asked for confirmation that L would be able to join the offal department next season, that having been discussed between L and Alliance. This correspondence did not raise any grievance. Alliance wrote back on 1 June 2007 confirming that there should be vacancies in that area. Despite that, L resigned on 6 June 2007 due to her health issues.

[20] L resigned and was not made redundant. There can be no redundancy compensation.

[21] There are two reasons why L does not have a personal grievance against Alliance arising from the 23 March 2007 incident between her and her supervisor. First, the whole matter was resolved by the exchanges between L, her union and Alliance. L avoided a potential dismissal and she withdrew her allegation against the supervisor. Second, having seen and heard both L and the supervisor I am not satisfied on the balance of probabilities that the supervisor behaved improperly in his exchanges with L either just before or just after smoko.

### **Summary**

[22] L's claims do not succeed.

[23] Costs are reserved.

Philip Cheyne  
Member of the Employment Relations Authority