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MacGregor v Bridge Communications Ltd AA 18/02 (Auckland) [2002] NZERA 472 (31 January 2002)

Last Updated: 13 December 2021

Determination Number: AA 18/02 File Number: AEA 669/01

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Janine MacGregor (Applicant)

AND Bridge Communications Limited (Respondent)

REPRESENTATIVES Applicant in person

James Steele, for Respondent **MEMBER OF AUTHORITY** W R C Gardiner **INVESTIGATION MEETING** 31 January 2002

DATE OF DETERMINATION 31 January 2002

DETERMINATION OF THE AUTHORITY

Brief comment concerning the name of the Respondent

The Company throughout Ms MacGregor's period of employment was called Bridge Communications Ltd. It is common ground that the Company is now called Communication Systems No 2 Ltd

Background

This matter was first filed in the Authority on 10 September 2001. At that time Ms MacGregor was represented by a professional advocate. Ms MacGregor claims to have been dismissed by her employer in the form that the law describes as a constructive dismissal. Ms MacGregor says that the dismissal was unjustified. The Respondent does not accept that Ms MacGregor was dismissed, constructively or otherwise.

In receipt of the Applicant's statement of problem, Mr Steele, representing the Respondent, advised the Applicant's advocate and the Authority that the Respondent's view was that the Applicant had not raised the personal grievance within the 90-day period (see [Section 114\(1\)](#) of the Act). Mr Steele also advised that the Respondent was not prepared to consent to the personal grievance being raised after the expiration of the 90-day period (see [section 114\(3\)](#) of the Act). While not opposed to mediation per se, Mr Steele advised that the Respondent was not willing to mediate on the grievance prior to any determination by the Authority that the grievance had been raised within the 90-day period as Ms MacGregor (through her advocate) contended that it had been.

Subsequent to a telephone conference call which I held with both representatives, I was given to understand that the representatives explored the possibility of a settlement, proposals were exchanged but settlement was not achieved. Following that, Ms MacGregor's representative advised the Authority that he was no longer acting for Ms MacGregor. Ms MacGregor then, in

response to an enquiry from the Authority, advised the Authority that she wished to proceed and would henceforth be representing herself.

Ms MacGregor filed an amended statement of problem. I then exchanged correspondence with Ms MacGregor, the purpose of which was to seek clarification from her concerning aspects of her case.

The Authority (and the Respondent) needed to be quite clear concerning her position regarding the 90-day issue. In particular, I required Ms MacGregor to make clear whether:

(i) She was claiming to have raised her personal grievance within the 90-day period;

or

(ii) Was seeking leave to raise the personal grievance after the expiry of the 90-day period;

or

(iii) Was seeking to do both (i) and (ii) above.

Ms MacGregor confirmed that of those options, Item (i) applied. That is to say, she was claiming to have raised her personal grievance within the 90-day period. Ms MacGregor did not separately or additionally seek leave to raise the grievance after the expiry of the 90-day period.

Ms MacGregor's position on the 90-day issue can conveniently be demonstrated from the following (J MacGregor letter to the Authority dated 14 November 2001):

"I believe that there is no 90-day issue as on my resignation (which was on 16/02/01) I stated that I was going to pursue a personal grievance."

On 5 December, following phone calls to Ms MacGregor and Mr Steele, I wrote the following letter to them both confirming how matters would then proceed.

"I consulted you both yesterday so as to put in place a date for the investigation meeting. Mr Steele advised me that he and his witnesses would be available on the date I suggested (31 January 2002) and Ms MacGregor also advised me that that date was acceptable to her.

Attached with this letter is the official notice of meeting. The meeting will commence at 9.30am, Thursday 31 January.

You are both aware that I have taken careful steps to identify what the issues are as far as the Applicant Ms MacGregor is concerned, particularly as regards the 90-day issue.

I now set out how the matter will be addressed on 31 January.

The investigation meeting will address a single issue. That issue is whether Ms MacGregor raised her personal grievance within the 90-day period. Ms MacGregor claims that she did raise the grievance within the 90-day period. Her former employer does not accept that that is so.

As I understand the case, Ms MacGregor claims to have raised her grievance in writing within the text of her letter of resignation. Her former employer, as I understand it,

does not accept that a personal grievance was raised via the words used by Ms MacGregor in her resignation letter.

Therefore, at the investigation meeting I will hear the oral evidence of the witnesses concerning what they say was contained in the resignation letter. Hopefully the parties will be in agreement as to what was said in the letter. If not, I will have to determine that from the evidence. I will then determine whether the words used in the letter did or did not raise the personal grievance. There can of course be no doubt that the resignation letter itself (containing whatever it was that was said within it) was given by Ms MacGregor to her former employer within the 90 day period.

If my determination is that the personal grievance was not raised within the 90-day period, Ms MacGregor's application before the Authority will be dismissed.

If my determination is that the personal grievance was raised within the 90-day period, I will immediately direct the parties to mediation. The Mediation Service (who are based in the same building as the Employment Relations Authority) have advised me

that a Mediator will be on standby on the morning of 31 January should he/she be needed.

Ms MacGregor, Mr Steele has advised me that I can expect to have received the Respondent's statement in reply at the end of this week. The Authority will then send a copy to you."

The Resignation Letter

Ms MacGregor tendered a written resignation on 16 February 2001 and ceased her employment that same day. Ms MacGregor did not retain a copy of her letter of resignation. Nor has the Respondent been able to locate the letter. It is appropriate to record here that the Respondent's assets were purchased on 31 March 2001 by Alstrom Ltd. I accept the Respondent's evidence which is that:

"As part of the purchase, Bridge Communications Ltd was required to change their name to Communication Systems (No 2) Ltd but that Company does not trade and cannot trade in terms of the sale agreement."

and

"Kevin Wilde has made a thorough search of all Bridge Communications Ltd's records, now in storage, and cannot locate [Ms MacGregor's] resignation letter."

What does the law require?

[Section 114\(1\)](#) of the [Employment Relations Act 2000](#) provides as follows:

"114 Raising personal grievance

(1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning 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 the later, unless the employer consents to the personal grievance being raised after the expiration of that period.

Determination of the Authority

It is an agreed matter that the resignation letter was hand-written and on plain paper, by which I mean not written on company letterhead – Ms MacGregor gave hearsay evidence to the effect that soon after her resignation her computer files were deleted from her PC. I only refer to that evidence here to make the point that her resignation letter had not been computer generated.

Ms MacGregor says she wrote the resignation letter on the 16th which was the day she tendered the letter and departed. The witnesses present on that day (Ms MacGregor, Messrs Bradley and Rollo) are agreed that Ms MacGregor was emotionally upset on that day. Ms MacGregor did not make a photocopy of the letter. In making that point, I am not being critical of her but I do need to make the point that the onus or burden of proof was on her in these proceedings.

Ms MacGregor claims that she stated in the resignation letter that "I will be pursuing a personal grievance." The three Respondent witnesses, all of whom saw and read the letter, say that the letter advised that she was considering a personal grievance.

I take into consideration the fact that Ms MacGregor was upset at the time and this would not create a good climate for remembering what she wrote. I note from Ms MacGregor's evidence that she is unable to be sure whether or not she made reference in the letter to what she calls the treatment she had received. The company wrote to Ms MacGregor soon after on 8 March and also issued her a reference dated 28 February. The text of neither document is reflective of parties in litigation.

I accept the evidence of the Respondent witnesses which was that because the words 'personal grievance' appeared in the letter, as managers they needed to and did discuss the letter. Their point being that it is for this reason that they have the memory that they do of the key words which were used.

I am required to determine this matter on the balance of probabilities. That means I have to determine which case, which evidence, is more probable and which less probable.

On the balance of probabilities, my determination is that Ms MacGregor did not state in the letter that she would be pursuing

a personal grievance. My finding is that she indicated that a personal grievance was something she was considering.

Ms MacGregor's personal grievance was not submitted to/raised with her employer within the 90- day period.

Ms MacGregor's application before the Authority is dismissed.

Any issue of costs, if they arise, should be addressed by memorandum.

W R C Gardiner Member

The Employment Relations Authority

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