

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 646
3067583

BETWEEN SONIA MOANA MAXWELL
Applicant

AND DISABILITY RESOURCE
CENTRE TRUST
Respondent

Member of Authority: Rachel Larmer

Representatives: Stan Austin, Advocate for Applicant
Danny Jacobson, Counsel for Respondent

Investigation Meeting: On the papers

Submissions [and further 19 September 2019 from the Applicant
Information] Received: 15 October 2019 from the Respondent
17 October 2019 from Applicant
18 October 2019 from Respondent
1 November 2019 from the Applicant

Date of Determination: 8 November 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination deals with two issues:

- (a) Whether Ms Maxwell raised her personal grievance with Disability Resource Centre Trust (DRCT) within the 90 day time limit prescribed by s 114(1) of the Employment Relations Act 2000 (the Act).
- (b) If not, whether the Authority should grant her leave under s 114(4) of the Act to raise her personal grievance after the expiry of the 90 day time limit.

Parties' claims

[2] DRCT dismissed Ms Maxwell for serious misconduct. Her dismissal was given verbally during a disciplinary meeting held on 20 February 2018, then confirmed in writing by DRCT in its letter dated 22 February 2018.

[3] Ms Maxwell seeks to pursue a dismissal grievance against DRCT.

[4] DRCT says the Authority does not have jurisdiction to investigate Ms Maxwell's dismissal grievance, because she failed to raise her personal grievance claim for unjustified dismissal within 90 days, as required by s 114(1) of the Act.

Raising of personal grievance

[5] Ms Maxwell raised her dismissal grievance in an email to DRCT on 17 May 2018. This stated:

I refer to your recent decision to dismiss me from my employment with DRCT.

I consider that your decision in that regard was unfair and unjustifiable and I want remedies in accordance with the Employment Relations Act 2000.

Please advise how you would wish to proceed to resolving my concern.

Case law

[6] The Employment Court in *Chief Executive of Manukau Institute of Technology v Zivaljevic* was the most recent case to consider the application of s 114 of the Act.¹

[7] The Court summarised the key principles that it had developed regarding the s 114(1) of the Act requirement to raise a personal grievance within 90 days of it occurring or coming to the notice of the employee, whichever was the later. The Authority has applied that cited case law.

Outcome

[8] Having regard to those key principles, the Authority is satisfied that Ms Maxwell has complied with the requirement in s 114(1) of the Act to raise her dismissal grievance within 90 days of her dismissal.

¹ [2019] NZEmpC 132

[9] Ms Maxwell's personal grievance letter:

- (a) Identifies that she considered her dismissal was "*unfair and was unjustifiable*";
- (b) Claims remedies under the Act; and
- (c) Asks DRCT to advise her how it wished to resolve her concerns.

[10] This information, considered in conjunction with her responses to the disciplinary concerns and objections she raised to the findings DRCT made as a result of the disciplinary process, gave DRCT sufficient information to understand that she;

- (a) Believed her dismissal was in breach of the statutory justification test in s 103A(2) of the Act; and
- (b) Was seeking remedies under s 123 of the Act.

[11] Ms Maxwell was aware of the 90 day time limit so acted to ensure she had complied with it. The content of the letter she sent was provided to her by her advocate for her to send to DRCT.

[12] While it would have been preferable for Ms Maxwell's personal grievance letter to have contained more detail about the facts she relied on, her failure to do so is not fatal, because DRCT knew what the letter was referring to because she had advised it during the meeting on 20 February why she had not engaged in serious misconduct and why dismissal was unfair and unjustified.

[13] The totality of these communications means that the Authority is satisfied that DRCT had sufficient information to enable it to understand the nature and substance of her personal grievance, so it was in a position to be able to take steps to resolve it, had it wanted to do so.

Summary

[14] The Authority does have jurisdiction to investigate Ms Maxwell's dismissal grievance. Accordingly, DRCT's challenge to jurisdiction does not succeed.

Costs

[15] Ms Maxwell as the successful party is entitled to a contribution towards her actual legal costs. However, costs will be determined once the substantive claim has been resolved.

Rachel Larmer
Member of the Employment Relations Authority