

grievance but says there is an employment relationship problem and seeks a meeting to try and resolve it. There is another clause that refers to the raising of a personal grievance. In any event, at this stage the dismissal had not taken place so a grievance regarding the dismissal could not have been raised. The dismissal took place on 23 August 2006.

[4] The Rotorua Community Law Centre wrote to the Council on 13 March 2007 raising personal grievances relating to unjustified dismissal and discrimination.

[5] In a reply to the Rotorua Community Law Centre dated 26 March 2007 Ms Holden stated that the Union had not supported taking a personal grievance as Mr Morrison did not have medical clearance to return to work. She said that leave would need to be sought.

[6] On 20 August 2009 a Statement of Problem was filed, seeking leave to raise a personal grievance.

[7] On 16 February 2010 the Authority received a copy of a letter dated 19 January 2010 from Mr Rimmer. Mr Rimmer said he had been visited by Mr Morris who had asked him to put in writing the reasons why the Union would not represent him. Mr Morris had asked the Union to pursue a personal grievance but had been told it would be fruitless unless he had a date for the resumption of the full range of his duties. Mr Morrison had contacted the Union Secretary who had spoken to Mr Rimmer and he understood the Secretary had then communicated with Mr Morrison.

[8] Two witnesses for the Council said that they had been told by Mr Rimmer that the Union would not be taking a personal grievance. They are Mr Mark Cooke, a delegate for the Union of ten years' standing, and Mr Leonard Williams, who was the Foreman for Utilities and Works at the time of Mr Morrison's employment and dismissal.

[9] Section 114 provides that the Authority may grant leave, subject to such conditions (if any) as it thinks fit, if the Authority is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances; and considers it just to do so.

[10] Section 115 (b) provides where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time, exceptional circumstances will exist.

[11] Mr Morrison said he did not know about the 90 day period until he went to the Community Law Centre. However, the Collective contains a provision setting out the 90 day period.

[12] I am satisfied that Mr Rimmer told Mr Morrison that the Union was not intending to pursue the personal grievance. If Mr Morrison believed the Union had given an assurance that it would pursue the grievance it is strange that he did not follow up with the Union and that his course of action was, instead, to go the Community Law Centre.

[13] The explanation Mr Rimmer provided in his letter of January 2010 is consistent with the explanation Ms Holden said had been given by the Union when she responded to the Community Law Centre in 2007.

[14] Even if I had found that exceptional circumstances existed, I would still have to consider whether it would be just to allow the grievance to proceed. Given that the dismissal took place in 2006, the Community Law Centre was consulted in March 2007 and no action has taken place until the filing of the Statement of Problem – and no explanation for that long delay has been provided – it is doubtful that that criterion would have been satisfied.

[15] There was no evidence regarding Mr Morrison's claim that he had been so traumatised by the dismissal that he could not raise the grievance within 90 days; and his assertion that he asked to Union to pursue the claim is at odds with that.

[16] There were no exceptional circumstances. Leave to raise the personal grievance is refused.

Costs

[17] If costs are an issue, the respondent should first endeavour to resolve the matter with the applicant. If that is unsuccessful, the respondent should file a memorandum within 28 days of the date of this determination. The applicant is then to file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority