

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 202
3061172

BETWEEN	ADRIAANUS WILFRED STRAAYER Applicant
AND	WORKSAFE NEW ZEALAND Respondent

Member of Authority:	Trish MacKinnon
Representatives:	Applicant in person Greg Cain and Katie Alexander, counsel for the Respondent
Investigation Meeting:	12 February 2021 at Wellington
Submissions Received:	Submissions orally and in writing on the day from both parties
Date of Determination:	12 May 2021

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Straayer brings a raft of claims against his former employer, WorkSafe New Zealand (WorkSafe), to the Authority for determination. They include a large number of claims of unjustifiable disadvantage and many claims relating to his dismissal for redundancy. Mr Straayer alleges breaches of good faith, bullying, disparity of treatment, and breaches of contractual obligations amongst others. The claims, which were made most recently in a 60 page amended statement of problem (ASOP), are extensive and include breaches of legislation outside the Authority's jurisdiction.

[2] WorkSafe denies all Mr Straayer's claims and has asked the Authority to issue a preliminary determination:

- (a) Dismissing those claims that are out of time, or otherwise outside the Authority's jurisdiction; and
- (b) Directing that evidence not be heard in the substantive investigation meeting (dealing with the unjustified dismissal and unjustified disadvantage claims), on those issues that:
 - (i) have been raised out of time (as part of the disadvantage claim), or are otherwise outside the Authority's jurisdiction; and
 - (ii) are not otherwise relevant by way of context.

[3] Mr Straayer opposes WorkSafe's application and objects to the dismissal of any matters relating to his unjustified disadvantage claims. His claim to have been unjustifiably dismissed was made within time.

[4] Having considered the large number of claims in the ASOP, I concluded that it would be helpful to my investigation of those matters that Mr Straayer had properly brought to the Authority to hold a preliminary investigation meeting with the parties. By "*properly brought*", I refer to matters that are within my jurisdiction to investigate and raised in accordance with the provisions of the Employment Relations Act 2000 (the Act).

[5] The focus of the preliminary investigation meeting that was held on 12 February 2021 was on defining the scope of the claims to be investigated.

Personal Grievances

[6] Section 114 of the Act provides that a personal grievance must be raised with the employer within a period of 90 days from the date on which the action alleged to amount to a personal grievance occurred, or came to the employee's attention, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.

[7] The grievance is raised with the employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

[8] Where the employer does not consent to the grievance being raised after the expiration of the 90 day period, the employee may apply to the Authority for leave to raise his or her personal grievance out of time. The Authority has the discretion to grant that leave, after giving the employer an opportunity to be heard, if it is satisfied that the delay in raising the grievance was occasioned by exceptional circumstances and if it considers it is just to do so.

[9] Section 115 of the Act sets out examples of exceptional circumstances. The list of examples in s 115 is not a comprehensive schedule of what may constitute exceptional circumstances, however, but will "*assist in determining when such circumstances exist and when they do not.*"¹

Background information

[10] Mr Straayer commenced employment with WorkSafe in March 2016. His role was Manager of the Certifications, Approvals and Registrations (CAR) business unit. Mr Straayer initially reported to the General Manager, Operations and Specialist Services, and later to the Acting Deputy General Manager Investigations and Specialist Services.

[11] In 2017 WorkSafe created a new Chief Operating Officer (COO) role, with the current Chief Executive of WorkSafe, Phil Parkes, being the initial incumbent. Mr Parkes initiated a comprehensive review process which led in July 2018 to the disestablishment of Mr Straayer's role. Mr Straayer's employment terminated on 6 October 2018 following an unsuccessful redeployment process.

[12] In the month between being given notice of the termination of his employment, and the termination date, Mr Straayer raised a personal grievance for "*constructive dismissal, bullying, discrimination, unjustifiable actions*" and for his employer's failure to comply with its obligations under the Act.

[13] In his letter of 7 September 2018 notifying the personal grievance, Mr Straayer stated his awareness that many of the behaviours outlined in his letter were outside the three month timeframe for lodging a personal grievance.² He noted these were not intended as the grievance and said:

¹ *Creedy v Commissioner of Police* [2008] NZSC 31 at [28].

² Section 114 of the Act.

"...they are referred to as they demonstrate a pattern of behaviour and the events that have lead up to the matters of wrong doing that the grievance is about."

[14] Mr Straayer's letter of 7 September 2018 itemised 57 matters under the heading of "*Bullying and other behaviours leading to Constructive Dismissal.*"

[15] On 26 September 2018 Mr Straayer raised further personal grievances in relation to his dismissal in which he claimed there was no genuine reason for the restructure and that he should have been redeployed. He also claimed an unjustified disadvantage relating to being paid in lieu of his notice period and not being required to work.

[16] On 23 October 2018, after his employment with WorkSafe had ended, Mr Straayer confirmed by letter that he still wished "*...to raise a personal grievance for constructive dismissal, bullying, discrimination, unjustifiable actions which have disadvantaged me, and WorkSafe's failure to comply with obligations under the (Act).*" At that time he also raised further grounds for his grievance in relation to the termination notice he had been issued, which he claimed contained a breach of his individual employment agreement (IEA) and in relation to WorkSafe's action of "*locking me out of my employment.*"

[17] Mr Straayer raised additional personal grievances by letters dated 7 November, 12 November and 15 November 2018. The 7 November grievance was for "*the bullying behaviours and abuses of power resulting from senior managers at WorkSafe not following policies and process and employment law.*" It concerned reviews of appointment requested by Mr Straayer for three roles for which he had unsuccessfully applied.

[18] The 12 November grievance was for "*not being fairly assessed and reassigned/redeployed*" to one of those three roles. The 15 November grievance was for "*not being fairly assessed and for my 2017/2018 Performance Review and the General Manager HR declining to accept my appeal against the rating and process followed.*"

[19] WorkSafe responded to those personal grievances by letter dated 7 December 2018, referring to the extensive communications between it and Mr Straayer over the past five months. The letter summarised WorkSafe's response to Mr Straayer's numerous claims.

[20] In relation to Mr Straayer's letter of 7 September 2018, WorkSafe denied his claims and noted that much of the material in his letter fell outside the 90-day timeframe for raising a personal grievance, making clear it did not consent to any of those matters being raised out

of time. It added that "...*WorkSafe does not accept that there is any pattern of behaviour and events leading up to events within the 90-day timeframe.*"

[21] On 14 May 2019 Mr Straayer commenced proceedings in the Employment Relations Authority by lodging a statement of problem (SOP), which at that time comprised 111 pages. He noted in that document that matters outside the 90 day time limit for raising a personal grievance were grievances for which he was not seeking a remedy. He reiterated what he had said in his letter of 7 September 2018, that those events were included to show a pattern of bullying behaviour to provide context for later events.

[22] In the course of a telephone conference with the Authority in July 2019, however, Mr Straayer stated he was in fact seeking remedies in respect of those out of time grievances. The parties had attended mediation in September 2018, before Mr Straayer's employment had terminated, and many of the matters in his SOP had been raised after that mediation. The parties were directed to mediation with the expectation that, even if they were not able to resolve all matters between them, they would agree on the issues for investigation.

[23] Mr Straayer lodged his ASOP in May 2020. Amongst the remedies he seeks is reinstatement or redeployment to one of the senior leadership positions created in the restructuring that resulted in the disestablishment of his position in 2018. He unsuccessfully sought interim reinstatement through proceedings commenced in November 2020 and determined in February 2021.³

The Preliminary Investigation Meeting of 12 February 2021

[24] The preliminary investigation meeting entailed a consideration of each of those of Mr Straayer's unjustifiable disadvantage claims that were alleged to be out of time and/or not relevant to grievances acknowledged to have been raised within the statutory 90 day period. Each party had the opportunity to speak to the inclusion or exclusion of those claims from the matters to be covered in the substantive investigation. Each party provided oral and written submissions.

[25] The focus of the preliminary investigation meeting was on the claims at paragraphs 2.21 to 2.89 of the ASOP. It would be cumbersome and impracticable to describe each and every one of those claims in this preliminary determination. I will go through only some of the claims

³ *A W Straayer v Worksafe New Zealand* [2021] NZERA 45.

in sufficient detail to illustrate the approach each party has taken and the basis for the conclusions I have reached.

[26] In the course of the meeting Mr Straayer withdrew some claims. He made submissions about others that he acknowledged had not been raised in time but which he wished to have included on the basis that leave should be given under the "*exceptional circumstances*" provisions of the Act. Alternatively, if the Authority declined to grant leave, Mr Straayer asked that those matters be considered as relevant contextual background, in particular in relation to his claims of bullying.

[27] Mr Straayer had not made an application to the Authority for leave to raise grievances out of time before the preliminary investigation meeting. He made the request both orally during the meeting and in pre-prepared written submissions handed to the Authority on the day.

[28] WorkSafe resists the application on the basis that Mr Straayer has provided no evidence of exceptional circumstances. It submits Mr Straayer first raised a personal grievance on 7 September 2018 and, therefore, any events identified in that letter that occurred before 9 June 2018 are out of time.

[29] During the investigation meeting Mr Straayer commented that he would be happy to drop his application for leave to raise personal grievances out of time and have those matters considered as part of the factual matrix for the matters that had been raised within the statutory 90-day period. As that was not reflected in his written submissions, I have taken a cautious approach and considered whether exceptional circumstances exist such that leave should be granted to Mr Straayer to raise those grievances out of time.

[30] If I find no exceptional circumstances, I will consider Mr Straayer's request in the alternative, i.e. that those matters form relevant background or context to those of his claims that were raised within time, such that they could be referred to for that purpose in the substantive investigation meeting.

[31] The table attached to this determination lists those matters set out in paragraphs 2.21 to 2.89 inclusive that will be investigated; those that will not; and those claims Mr Straayer withdrew at the preliminary investigation meeting. I have used the numbering of the ASOP for ease of reference for the parties. The table does not include Mr Straayer's claims at

paragraphs 2.91 to 2.233, most of which relate to his unjustifiable dismissal claims and will be investigated in the substantive hearing of his claims.

Discussion

[32] Many of the matters that Mr Straayer seeks to have included in the Authority's substantive investigation are personal grievances, raised outside the 90-day timeframe, that allege bullying behaviour by WorkSafe. It is Mr Straayer's contention that the bullying behaviours exhibited by managers towards him constituted a continuous cause of action that culminated in the restructure process and, ultimately, in the termination of his employment.

[33] In submissions, Mr Straayer said the essence of his personal grievance was that senior managers at WorkSafe engaged in a range of bullying behaviours designed to encourage him to leave and, when that did not work, his role was disestablished in a restructure. He has referred to the bullying behaviours as including mobbing, gaslighting, and abuse of power.

[34] Mr Straayer cited several well-known cases in support of his contention that matters he had not raised as personal grievances at the time were nonetheless relevant as they demonstrated a pattern of bullying behaviour towards him from approximately October 2017. Among the cases he cited were *Davis v Commissioner of Police*,⁴ which referred to a "continuum of conduct"; and *Premier Events Ltd v Beattie (No 3)*⁵, from which Mr Straayer quoted former Chief Judge Colgan as follows:

It is clear that the Court may consider evidence which provides background and context to an alleged personal grievance. In *Coy v Commissioner of Police*, the Court allowed evidence of events which occurred some 8 years before the personal grievance was raised to be admitted in an unjustified constructive dismissal claim. However, it also commented that, "the plaintiff is not entitled to rely upon events that occurred prior to 90 days before she raised the relevant personal grievances as independent disadvantage grievances." It cautioned that evidence of earlier events would have to be relevant to the justiciable grievances. [footnotes omitted]

And, at paragraph 20:

It cannot be right that an employee who alleges he or she is suffering an on-going disadvantage must raise a personal grievance every 90 days while the claim is considered and dealt with by the employer or the employment institutions. Rather, one raising of a personal grievance should be sufficient to cover one related and continuous cause of action, provided the events

⁴ [2013] NZEmpC 266.

⁵ [2012] NZEmpC 79.

complained of outside the 90 days all relate to events contained within the 90 day period and form a course of related conduct.

[35] According to Mr Straayer the bullying he claims to have experienced at WorkSafe began at the time Mr Parkes was appointed to the new COO role in October 2017. At paragraph 2.23 of the ASOP Mr Straayer claims to have been excluded from meetings and from participation in activities in other business units from that time. It is his submission that this was a form of bullying that continued in one form or another from throughout the rest of his employment with WorkSafe and therefore forms a "*continuous cause of action*" culminating in the personal grievances he raised within the statutory timeframe.

[36] In Mr Straayer's next claim, at paragraph 2.24 of the ASOP, he refers to a meeting he had requested with Mr Parkes when he commenced in his role as COO. The meeting did not happen for six weeks according to Mr Straayer, who said it was rescheduled several times and finally took place on 4 April 2018. Neither this event, nor the assertion about exclusion from meetings was raised with WorkSafe until after Mr Straayer had been given notice of the termination of his employment for redundancy on 6 September 2018.

[37] Another claim made by Mr Straayer that he views as part of a pattern of bullying behaviour, is that it took the COO three months to "*cross the floor*" to speak with him.⁶ Mr Straayer did not raise this matter in his letter of 7 September 2018 following his receipt of one month's notice of termination of employment for redundancy. It appears to have been raised for the first time in his ASOP of May 2020.

[38] At paragraph 2.29 of the ASOP, Mr Straayer claims the bullying continued after the decision to terminate his employment. He has referred to 64 emails he sent to the former and current Chief Executives of WorkSafe between 14 September 2018 and 31 January 2021, for which he received only two replies. He has also referred to sending an HR manager 38 emails between 16 October 2018 and 5 November 2019, for which he received no replies.

[39] Under the category of "*dismissive behaviour*"⁷, Mr Straayer made seven claims, three of which he withdrew at the preliminary investigation meeting,⁸ and three of which were

⁶ ASOP at paragraph 2.25.

⁷ A sub-category of Mobbing, a form of bullying.

⁸ N6 at paragraphs 2.30, 2.34, and 2.35.

acknowledged by WorkSafe to have been raised within the statutory 90 day timeframe for raising a grievance.⁹

[40] The one remaining claim under this category, at paragraph 2.31 of the ASOP, relates to an event alleged by Mr Straayer to have taken place on 4 April 2018, in which he says the COO cut the CAR Team budget without discussion with him. The alleged event occurred more than five months before Mr Straayer first raised a personal grievance on 7 September 2018. It was not listed as one of the 57 "*Bullying and other behaviours*" Mr Straayer itemised in his letter of that date to WorkSafe.

[41] Under the heading "*Undermining*"¹⁰ in the ASOP, Mr Straayer itemised five matters, one of which was raised within time;¹¹ one of which he withdrew at the preliminary investigation meeting;¹² and two of which he orally acknowledged as being raised out of time. WorkSafe conceded one of the out of time matters was relevant as context to a claim Mr Straayer raised regarding his dismissal,¹³ but opposed the other matters being considered in that category.¹⁴

[42] With regard to the matters raised out of time, Mr Straayer acknowledges none of the exceptional circumstances specified in s 115 of the Act applies. He submits, however, that bullying behaviour must be regarded as an *exceptional* circumstance under s 114(4). Mr Straayer cites WorkSafe's definition of bullying as "*repeated and unreasonable behaviour*" which is "*not one-off or occasional instances*". He submits that *Beattie* supports the proposition that it is unreasonable to expect an employee to raise a grievance about bullying every 90 days.

[43] WorkSafe submits there are no exceptional circumstances that would justify the Authority granting leave for Mr Straayer to raise personal grievances out of time and that he has provided no explanation for the delay in raising these events.

[44] I do not accept Mr Straayer's submission that the *Beattie* proposition he has cited supports his position. While he claims to have raised with his manager and with HR concerns

⁹ N6 at paragraphs 2.32, 2.33, and 2.36.

¹⁰ N7 refers.

¹¹ N6 at paragraph 2.41.

¹² N6 at paragraph 2.40.

¹³ N6 at paragraph 2.37.

¹⁴ N6 at paragraphs 2.38 and 2.39.

over bullying behaviour, the documents he references as supporting this, do not in fact do so. In the absence of those documents, there is no evidence to indicate that he raised those concerns until 7 September 2018.

[45] Both documents Mr Straayer relies on as evidence of raising the concerns with his manager at the time, and with Human Resources (HR), are emails. The first was dated 31 August 2017. In the email Mr Straayer referred to "*walking a very fine line... trying to balance staff welfare with workload demands*". The email discussed the micro-management approach suggested by a colleague and set out Mr Straayer's view of why that approach was not appropriate.

[46] I discern nothing in the email to suggest Mr Straayer was registering a complaint or doing anything other than keeping his manager informed of operational matters.

[47] The second email Mr Straayer referred to as evidence of having raised concerns or complaints was one that he sent to two members of WorkSafe's HR team on 18 October 2017. In the email, the subject line of which was "*Trying to manage in a hostile environment*", he thanked the two HR team members for the support they were providing him in dealing with staffing issues within the CAR team.

[48] Mr Straayer outlined, in the email, his perspective of the particular staff issues he was managing at the time and requested updates on actions HR was taking in relation to each of the named staff, referring to the "*more than welcome support*" the HR personnel were providing.

[49] It is clear from the email that Mr Straayer was having difficulty managing some of the employees who reported to him, and that he perceived that difficulty to be exacerbated by the behaviour of a colleague. He described the colleague's behaviour as posing an ongoing risk to his ability to effectively manage staff in his team.

[50] The email indicates Mr Straayer was struggling with the staff management component of his role, and with relationships with at least one colleague, but it does not constitute a complaint that he wished HR or his employer to address. It is more of an account and update of the issues he had discussed in a meeting with HR some weeks earlier that is referred to in the email.

[51] Neither email raised a personal grievance and neither supports Mr Straayer's claim to have been bullied. Both emails were put forward as examples of his raising concerns. While he may have other examples that were not provided, I find it more likely that Mr Straayer provided his strongest examples, rather than his weakest. Neither example provides support to his claim of a continuum of bullying from October 2017.

[52] After considering all of the above, and the submissions of the parties, I find there are no exceptional circumstances that make it just to grant leave to Mr Straayer to raise any of these personal grievances out of time. He has provided no explanation for not raising his concerns about bullying within 90 days of the occurrence of the events he has cited, other than by asserting that the two emails of 31 August 2017 and 18 October 2017 demonstrate that he registered those concerns. In my view they do not do that and Mr Straayer has not satisfied me that he brought any of his concerns about bullying to his employer's attention until after he had received notice of the termination of his employment for redundancy.

[53] In relation to Mr Straayer's claim that the bullying continued after the decision was made to terminate his employment, only those of the 64 emails he sent to the current and former WorkSafe Chief Executives between 14 September 2018 and 6 October 2018 are relevant. A failure to reply to emails sent post-termination of Mr Straayer's employment may evidence a lack of good manners but not of bullying during his employment. None of the 38 emails he sent to the HR manager were sent during his employment and all are excluded on that basis.

[54] Claims made by Mr Straayer at paragraphs 2.58, 2.59 and 2.60 of the ASOP about WorkSafe's conducting of reviews and investigations are out of time and will not be investigated. Claims relating to a review/investigation commenced within 90 days of 6 September 2018, at paragraph 2.61 are within time and will be included in my investigation.

[55] Of the disadvantage claims made under the heading of "*Public Discrediting and Humiliation*", WorkSafe concedes those at paragraphs 2.67 and 2.68 are relevant as to context. The claims at paragraphs 2.69 to 2.73 relate to the restructuring and redeployment and were raised in time. They will form part of my investigation. The claims at paragraphs 2.74 and 2.75 relate to events post-termination of employment and cannot be considered as grievances. The claim at paragraph 2.76 refers to an event in September 2018 and is in time.

[56] At paragraph 2.77.1 to 2.77.6 Mr Straayer raises matters he claims show bias and unfair treatment towards him in not affording him the same employment opportunities as other

employees. He acknowledged in the course of the preliminary investigation that three of those matters were out of time but submitted they showed a pattern of bullying behaviour. I consider all the matters to be out of time, some (those at paragraphs 2.77.2; 2.77.3 and 2.77.4) related to events in 2016 and 2017, and were not raised as concerns at the time, while none of the rest were raised within 90 days of Mr Straayer's letter of 7 September 2018 when he first raised the issue of bullying. Those claims will not form part of my investigation.

[57] The claim at paragraph 2.78 of the ASOP relating to the process for Mr Straayer's year-end performance review was raised within time and will be investigated. Claims made in paragraphs 2.79 and 2.82 are similarly in time and will be investigated. Paragraph 2.83 is a definition of gaslighting and does not require investigating, while all claims at paragraph 2.84 relate to matters raised within time and will also form part of my investigation.

[58] Mr Straayer's next claim relates to WorkSafe's lack of a bullying policy.¹⁵ As he acknowledged in the preliminary investigation meeting that he was now aware there was a policy, this does not appear to be an extant issue. At paragraphs 2.88 and 2.89 of the ASOP, Mr Straayer claims to have been unfairly disadvantaged by WorkSafe's failure to investigate his claims, particularly those relating to bullying, following receipt of his personal grievances. WorkSafe's position is that this claim was made for the first time in Mr Straayer's ASOP and is well out of time. I accept WorkSafe's submission on this and find no exceptional circumstances that make it just for leave to be granted for outside the statutory period.

Context

[59] Mr Straayer has requested that, if he is not granted leave to raise personal grievances beyond the expiration of the 90-day period, all those matters he has listed as grievances in the ASOP be treated as context for the personal grievances he raised within time. In other words he seeks to refer to them as part of the factual matrix for his validly raised claims relating to unjustifiable dismissal and unjustifiable disadvantage.

[60] WorkSafe submits that the out of time events are, on their face, unconnected to Mr Straayer's unjustifiable dismissal claim and also unconnected to those unjustifiable disadvantage claims that were made within time. In its submission, those matters should not be the subject of evidence on the basis that they are relevant as context.

¹⁵ N6 at paragraph 2.87.

[61] In written submissions WorkSafe takes the view that, in order for the investigation meeting to be manageable, the Authority should direct that evidence not be called in relation to matters outside the 90-day period. In the course of the preliminary investigation WorkSafe made some concessions and acknowledged that certain matters were relevant as to context for matters raised in time.

[62] Amongst the case law WorkSafe has referred to in support of its position of excluding, or at least minimising, the out-of-time matters that Mr Straayer can refer to in the substantive investigation of his in-time claims is an interlocutory judgment by Chief Judge Colgan, as he then was, in *Ramkissoon v Commissioner of Police*¹⁶ over the "*proper scope of the issues in the case and the evidence able to be called by the plaintiff.*"¹⁷

[63] Mr Ramkissoon had raised three personal grievances arising out of his employment as a former police officer, two being disadvantage grievances and one for constructive dismissal. As part of his grievances he sought to have the court consider and determine historical incidents. The Chief Judge found, in respect of the disadvantage grievances, Mr Ramkissoon was confined to matters that occurred or came to his attention within the period of 90 days before the grievances were raised. The situation was different for Mr Ramkissoon's grievance for constructive dismissal, but that is not relevant to Mr Straayer's proceedings.

[64] The Chief Judge referred to the Court of Appeal having confirmed that there can be no personal grievance liability imposed on an employer based on findings about out of time actions or events.¹⁸ That did not mean, however, there could be no reference made in evidence about those events. The directions Chief Judge Colgan made in his interlocutory judgment in *Ramkissoon* included the following:

It may be appropriate for relevant evidence to be adduced of historical events, for the purpose of providing background context (but not as a basis for making determinations about liability or remedies).

The extent of such contextual evidence will be determined by the Court during the hearing if it is objected to formally by the defendant.

[65] Rather than going through each piece of evidence and determining what may and what may not be referred to in the substantive investigation, which I do not favour, I have decided

¹⁶ [2013] NZEmpC 147.

¹⁷ N 16 at [1].

¹⁸ N 16 at [17] citing *Waikato District Health Board v Clear* [2010] NZCA 305 at [44] – [51].

to take a lead from former Chief Judge Colgan. I find a version of his approach, adapted to fit the Authority's role as an investigative body, to be the most pragmatic and fair means of managing those out of time, or historical, matters Mr Straayer has referred to in the ASOP.

[66] I will not place, in advance, any limitations on which of those historical matters Mr Straayer may refer to, but nor will I allow those matters to be a significant focus of the substantive investigation meeting. They may be referred for the purpose of providing background context only, but will not be considered in relation to the attribution of liability or remedies. As such, I do not anticipate such matters to feature prominently in the investigation of Mr Straayer's claims.

Allegations of legislative breaches

[67] Mr Straayer has raised allegations of legislative breaches against WorkSafe. The allegations concern the Official Information Act, the Privacy Act, and the Ombudsmen Act. Mr Straayer acknowledges these matters are outside the jurisdiction of the Authority.

[68] The Authority is a creature of statute and has no powers other than those provided to it under the Employment Relations Act. That Act provides no power to investigate alleged breaches of any of the three pieces of legislation Mr Straayer has cited. I will not be investigating the claims Mr Straayer has made at paragraphs 2.62; 2.234 and 2.235 of the ASOP.

Next steps and Costs

[69] This matter requires an investigation meeting. An Authority Officer will contact the parties presently to arrange a case management conference to progress the matter.

[70] I am not aware of any issue as to costs having been raised and, given the nature of the preliminary investigation meeting, that may be appropriate. In case I am wrong about that, I will reserve the issue for consideration after the determination of Mr Straayer's claims following the substantive hearing.

Trish MacKinnon
Member of the Employment Relations Authority

Table of Claims

Claims withdrawn by Mr Straayer on 12 February 2021	PGs raised within 90 days: will be investigated	PGs not raised within 90 days where no leave granted & matters post-termination of employment: will not be investigated
2.21 2.22 2.26 2.27 2.30 2.34 2.35 2.40 2.65	2.28 2.29 with exceptions ¹⁹ 2.32 2.33 2.36 2.41 2.61 2.69–2.73 2.76 2.78 2.79 2.82 2.84	2.23 2.24 2.25 2.31 2.38 2.39 2.58 2.59 2.60 2.74 2.75 2.77.1 - 2.77.6 2.88 2.89

¹⁹ As detailed in paragraph 53 of this determination.