

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 162
3023102

BETWEEN REBECCA SYGROVE
Applicant
AND CASTLEROCK DAIRIES LIMITED
Respondent

Member of Authority: Andrew Dallas
Representatives: Jenny Beck, counsel for Applicant
Janet Copeland, counsel for Respondent
Investigation Meeting: On the papers
Submissions received: 10 August 2018 for the Applicant
23 July 2018 and 20 August 2018 for the Respondent
Determination: 7 November 2018

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Rebecca Sygrove was employed as a herd manager by Castlerock Dairies Limited (Castlerock), a dairy farming operation based in Southland, in or about early January 2018. On 5 February 2018, she was dismissed.

[2] Ms Sygrove alleges the 90 day trial provision in her individual employment agreement is invalid and therefore her dismissal is unjustified. She also alleges she was subject to an

unjustified action to her disadvantage by Castlerock as the result of an unsupportive work environment which caused stress.

[3] Castlerock say Ms Sygrove's personal grievances were not raised within the statutory 90 day timeframe contained in s 114 of the Employment Relations Act 2000 (the Act) and it does not consent to these being raised out of time.¹

[4] Ms Sygrove has asked the Authority to find exceptional circumstances prevented her raising her grievances in time and says she should be granted leave to pursue these against Castlerock.² Principally, Ms Sygrove says her representative did not raise her personal grievances within 90 days, due to posting the letter raising these matters rather than using faster means such as email or a courier. Castlerock says no exceptional circumstances exist and leave should not be granted.

Issues

[5] The issue for determination is:

- (i) Should Ms Sygrove be granted leave to raise personal grievances against her former employer Castlerock outside the 90 day statutory limitation period?; and,
- (iii) Should either party contribute to the costs of representative of the other?

The Authority's investigation

[6] The Authority resolved to deal with the jurisdictional question of Ms Sygrove raising personal grievances against Castlerock outside of the 90 day statutory limitation as a preliminary issue on the papers.

¹ Employment Relations Act, s 114(3)

² Employment Relations Act, s 115

[7] Initially Ms Sygrove's representative did not engage with the Authority's processes by providing submissions. Castlerock provided its submissions and in response to these, Ms Sygrove's representative was given one further opportunity by the Authority to provide submissions. Upon lodgement and service of these, including a statement from an employed solicitor of the representative, Castlerock was provided with a further opportunity to respond.

[8] I note for completeness that while I have not set out all of the submissions advanced, or countered, by the parties in this determination, I have fully considered them.

The respective position of the parties

Ms Sygrove

[9] Ms Sygrove said the delay was caused by an error made by a solicitor working for her representative. This was confirmed by the representative and a law clerk, now solicitor, working on the file.

[10] The statement provided by the law clerk confirmed Ms Sygrove provided instructions "with ample time" to raise personal grievances on her behalf within 90 days.

[11] Evidently the solicitor, who is no longer employed by Ms Sygrove's representative, advised the law clerk, erroneously, that a personal grievance letter could only be received by post but not by other means including email. Due to delays delivering the letter via post, presumably as a result of NZ Post's changed delivery model, the letter was not received within the statutory 90 day time limit by Castlerock.

[12] After Castlerock's representative advised that it would not consent to the raising of Ms Sygrove's personal grievances outside this timeframe, the representative lodged a statement of problem in the Authority seeking leave to raise the personal grievance outside of 90 days.

[13] Ms Sygrove’s representative said she should not be disadvantaged due to an error on its part.³ Ms Sygrove’s representative also submitted her personal grievances should be allowed to be raised as this would be consistent with “natural justice” and the “principle of the Act”,

[14] In support of these submissions, Ms Sygrove’s representative referred to decisions of the Court in *Arkmpat v Thai Chilli Co Ltd*⁴ and *Ball v Healthcare New Zealand Ltd*.⁵

Castlerock

[15] Castlerock said that Mr Sygrove’s situation did not fit within the definition of “exceptional circumstances” as set out in s 115(b) of the Act. Castlerock referred to the decision of the Court in *Telecom New Zealand v Morgan*⁶ where the Court observed that if an employee had not made reasonable arrangements to have a grievance raised this would not constitute “circumstances” for the purposes of s 115(b).

[16] Castlerock said, in summary, the information provided by Ms Sygrove’s representative – for which it also noted there was a substantial and largely unexplained delay in its provision – did not sufficiently disclose reasonable arrangements being made by Ms Sygrove to have grievances raised on her behalf.

[17] Castlerock said “natural justice” and the “principle of the Act” cut both ways and its own position and, presumably, resultant prejudice if leave to Ms Sygrove was granted, should be considered by the Authority.

³ See, Employment Relations Act, 115(b)

⁴ [2011] NZEMpC 101

⁵ [2012] NZEmpC 91

⁶ [2004] 2 ERNZ 9

[18] Castlerock, referring to decisions of the Court and Authority in *Newfield Supermarket v Bogle*⁷ and *Kilpatrick v Air New Zealand Limited*⁸, submitted, in effect, delays in the postal system could not be relied on and alternative methods existed for raising personal grievances, including electronic means and personal service.

Outcome

[19] Having carefully considered the respective positions of the parties, I find this is a clear case of representative error. Indeed it is hard to envisage a more obvious example. I find Ms Sygrove made reasonable arrangements to have her personal grievances raised by her representative. To visit the effects of a representative's error on Ms Sygrove would simply be unjust.

[20] Ms Sygrove has made out a case of exceptional circumstances for raising her personal grievances outside the 90 day statutory period. I exercise my discretion under s 114(4) of the Act to grant leave to Ms Sygrove for her to pursue her grievances against Castlerock.

[21] I make no assessment of the merits of Mr Sygrove's claims nor is it appropriate to do so at this early stage. However, the Authority imposes the following conditions on the grant of leave:

- (i) The parties are directed to attend mediation. An Authority Officer will contact the parties shortly to make arrangements for this to occur as soon as possible;
- (ii) In the event mediation is unsuccessful, Ms Sygrove's representative is to advise the Authority if she wishes to proceed with her application; and
- (iii) If so, Castlerock will have 14 days from the date of such an advisory to lodge and serve an amended statement in reply, if it so wishes.

⁷ [1999] 1 ERNZ 788

⁸ [2013] NZERA Auckland 150

Costs

[22] Costs are reserved.

Andrew Dallas
Member of the Employment Relations Authority