

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 465
5289913

BETWEEN

MARK TAITUHA
Applicant

AND

CHENERY CONTRACTING
LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: Lindsay Raki, Advocate for Applicant
Geoff Schunselaar, Advocate for Respondent

Investigation Meeting: 14 June 2011

Determination: 28 October 2011

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Mark Taituha, lodged a Statement of Problem claiming that he had been unjustifiably dismissed by the respondent, Chenery Contracting Limited (“the company”).

[2] Mr Taituha’s employment was terminated on 14 December 2006 on the grounds of redundancy. He was given notice on 7 December 2006.

[3] On 15 March 2007 Mr Raki wrote to the company notifying a personal grievance.

[4] On 20 March 2007 Mr Paul Tremewan responded, saying the grievance letter was received on 19 March, the grievance was outside the 90 day period and the company did not consent to the matter being raised out of time.

[5] No further action was taken until a Statement of Problem was lodged on 11 December 2009.

[6] On 23 December 2009 the company filed a Statement in Reply saying it did not consent to the grievance being heard out of time.

[7] The sole issue for determination is whether the grievance was notified within the 90 day period.

[8] In the course of correspondence with the Authority Mr Raki maintained that the grievance had been submitted within the 90 day period and that once he had documentation to that effect he would submit it.

[9] In April 2010 Mr Raki faxed to the Authority a statement by Mr Todd Douglas, an organiser with the Northern Amalgamated Workers' Union ("the Union"). This was to the effect that Mr Douglas had contacted the company on 19 December 2006 and told Mr Lance Craigie, the General Manager, that the dismissal was unjustified and Mr Taituha had a personal grievance.

[10] Mr Taituha was not a member of the Union but a personal friend of Mr Todd's.

[11] Mr Darrell Mcleod, the Managing Director of the respondent at the time, deposed that he had taken a call from Mr Douglas on 14 December 2006. Mr Douglas said he was representing Mr Taituha, that he was currently at a conference and would call in the following week to discuss Mr Taituha's redundancy. There was, however, no further contact. Mr Mcleod produced his work diary in evidence. There had been no mention of a personal grievance.

[12] I asked Mr Douglas how he was able to recall what had happened on a specific day some years previously. He said he had looked at his work diary. I asked him to produce the diary. Mr Douglas had changed employers and his diaries with still with the Union.

[13] I asked Mr Douglas to obtain the diary and provide it to the Authority. On 23 June 2011 an email was received from Mr Douglas stating that the Union was looking to see if the diary still existed. Nothing further has been heard from Mr Douglas. I do

not, therefore, have any substantiating evidence regarding the phone call Mr Douglas says he made.

[14] I asked Mr Raki why, if he was aware, as he said he was, that Mr Douglas had notified the company of the grievance, he had not responded to Mr Tremewan's letter; and why he had not told the Authority or the respondent of Mr Douglas's contact with the company prior to his production of Mr Douglas' letter in April 2010. Mr Raki said he had replied to Mr Tremewan saying he disputed the fact that the claim had not filed within the 90 day period. He was unable to produce such a letter. Mr Raki then said he may have written such a letter.

[15] In the absence of Mr Douglas' diary, I accept the evidence from the company. This is the oral evidence of its witnesses and Mr Craigie's diary entry.

[16] On the balance of probabilities I find that there was no notification to the company of a personal grievance prior to Mr Raki's letter, which was outside the 90 day period.

[17] Mr Taituha is unable to proceed with his personal grievance claim.

[18] There is no issue of costs.

Dzintra King

Member of the Employment Relations Authority