

[3] Mr Hughes, being firmly of the view that both grievances had been raised within the 90 day period, did not at that time apply for leave for an extension of time within which to raise the grievance.

[4] Mr Hughes has now applied for leave to raise his personal grievance of unjustified dismissal outside of the 90 day timeframe and Mr McPhail has responded to that application and advised that he opposes, on behalf of his client, the application for an extension of time within which to raise the grievance.

[5] Section 114(4) of the Employment Relations Act 2000 provides:

On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority –

(a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and

(b) considers it just to do so.

[6] I have considered in determining this matter both Mr Hughes' application for leave and the statement in reply opposing leave against the background set out fully in Determination CA 209/09.

[7] In my determination CA209/09, I found that the dates for raising the personal grievance of unjustified dismissal ran from 8 May 2009 with the final day, within the 90 day timeframe, being 5 August 2009. The personal grievance was raised when Herron's Four Square was served at its registered office with a statement of problem on 6 August 2009.

[8] Mr Hughes says in his application for leave that he contacted the Department of Labour immediately after 8 May 2009 to arrange a mediation with Herron's Four Square but there was no agreement to mediation by Mr and Mrs Herron. It is clear from matters before the Authority that Mr Hughes was of the view that the Herron's would have been well aware in terms of arranging mediation that there was a personal grievance that he was unjustifiably dismissal. I could not be satisfied on that matter in my earlier determination.

[9] Mr and Mrs Herron, the directors of Herron's Four Square, were then overseas from approximately late June or possibly early July 2009 (not too much turns on that)

until, as I understand it from a letter to the Authority from Mr McPhail dated 26 August 2009, 14 August 2009.

[10] Within the 90 day timeframe, Mr Hughes duly lodged his statement of problem with the Authority by mail. As to when he did that, I am able to ascertain that it was in all likelihood between 23 and 29 July 2009. The first date is the date of the cheque he posted with the statement of problem to the Authority.

[11] Mr Hughes sent his statement of problem to the street address of the Authority and not the post office box number and that caused a short delay.

[12] On 29 July 2009 (the second of the two dates), the Senior Support Officer wrote to Mr Hughes returning his application and cheque dated 23 July 2009 for the following reasons which I have set out in abbreviated form below:

1. *The respondent is highly likely to be the company as above rather than the Herrons personally themselves.*
2. *Two copies of the application and supporting documents are required by the Authority's regulations which are set by Government regulations. Please therefore copy your material before relodging.*
3. *Page 3 of the form relating to your contact details have not been completed. It is also of assistance that the contact name and phone contact details of the respondent party as well.*
4. *Form 2 is not necessary. Your claim makes it clear you are not seeking interim or even permanent reinstatement.*

[13] The Senior Support Officer also noted that Mr Hughes should not use the street address but the box number because mail sent to the street address was often delayed, as was the case here.

[14] I find that Mr Hughes must have promptly attended to the matters required by the Senior Support Officer because he re-lodged his statement of problem, confirmed by the Authority's date stamp, by 5 August 2009. A support officer promptly sent the statement of problem for service to Herron's Four Square in Twizel at its registered office. I am satisfied that it was served on the company on 6 August 2009. The letter that accompanied the statement of problem was addressed to Mr and Mrs Herron care of Herron's Four Square Limited.

[15] Mr and Mrs Herron were as set out away overseas at the time and did not receive the statement of problem until 14 August 2009. There was some communication and correspondence at or about that time and the Authority agreed to extend the time in all the circumstances for a statement in reply to be lodged and served on behalf of Herron's Four Square.

[16] The examples of exceptional circumstances given in s.115 of the Employment Relations Act 2000 are not intended to be exhaustive – *McMillan v. Waikanae Holdings (Gisborne) Ltd* [2005] 7 NZELC 97,859.

[17] Mr Hughes, an unrepresented party, lodged his statement of problem comfortably within the 90 day period with the Authority. There were some matters within the statement of problem that concerned the Senior Support Officer and he did not accept the statement of problem for filing and returned it to Mr Hughes with the filing fee of \$70. Mr Hughes could not have foreseen that his documents would be rejected in the sense of the Authority not accepting them for filing and service and thereby returning them to him. Mr Hughes had accompanied the statement of problem with the correct filing fee.

[18] I find that there were two exceptional circumstances in this case that occasioned the delay in raising the personal grievance. The first was that Mr Hughes sent his statement of problem to the Authority's street address which caused a short delay in the receipt of that statement of problem by the Authority. That is an understandable approach on the part of an unrepresented applicant who may not be familiar with issues of postage to businesses. If Mr Hughes had sent his statement of problem to the Authority at its post office box, then the timeframe as I have set out above was such that even if the Support Officer had returned the documents, in all probability they would have been re-lodged by Mr Hughes and the statement of problem raising the personal grievance served on Herron's Four Square within the 90 day timeframe.

[19] The other exceptional circumstance that I find occasioned the delay in raising the personal grievance was that the documents were not accepted for filing by the Authority's Senior Support Officer but were returned to Mr Hughes for correction. Mr Hughes resides in Twizel and this would have inevitably caused some delay before they were re-lodged for filing.

[20] These matters together, I find, constitute exceptional circumstances.

[21] I consider, in all the circumstances, that it is just to grant the application for leave to raise the personal grievance of unjustified dismissal in these exceptional circumstances outside of the 90 day period. I find Mr Hughes did his best to raise his personal grievance within the 90 days by lodging a statement of problem. It was not a case where he simply left matters but rather he acted and took steps. Further, there is no prejudice to Herron's Four Square if the application is granted in terms of the one day delay because the directors of Herron's Four Square were out of the country until 14 August 2009. Further, Mr and Mrs Herron asked for and were granted an extension to lodge a statement in reply to the statement of problem and were not disadvantaged in that respect.

[22] In circumstances where I have granted leave for Mr Hughes to pursue his unjustified dismissal under s.114(4), I am required to direct Mr Hughes and Herron's Four Square Limited to attend mediation to seek to mutually resolve the personal grievance of unjustified dismissal and the personal grievance of unjustified action causing disadvantage that I have already determined was raised within the 90 day period.

Costs

[23] Mr Hughes is unrepresented and in the ordinary course of events would not be entitled to claim costs. I do, however, reserve any issues as to costs that may be put before the Authority to be dealt with at a later time.

Helen Doyle
Member of the Employment Relations Authority