

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 474  
5515687

BETWEEN                      GUY DESMOND MAGON  
                                         Applicant

A N D                              NZ CASTLE RESORTS AND  
                                         HOTELS LIMITED trading as  
                                         THE SPENCER ON BYRON  
                                         HOTEL  
                                         Respondent

Member of Authority:        T G Tetitaha

Representatives:              M Meyrick, Counsel for the Applicant  
                                         A Cook, Counsel for the Respondent

Date of Determination:       23 December 2015

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**INTERIM DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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**Orders**

- A.     The personal grievance was raised within 90 days pursuant to s.114 of the Employment Relations Act 2000.**
  
- B.     Costs shall lie where they fall.**

**Employment relationship problem**

[1]     Guy Desmond Magon was employed as an Assistant Engineer at The Spencer on Byron Hotel. The respondent company is the employer and owner of the Hotel. Mr Magon alleges he was unjustifiably dismissed.

[2]     There is a preliminary issue whether Mr Magon raised this personal grievance within 90 days with sufficient specificity.

[3] At a teleconference on 20 November 2015 the parties consented to the preliminary issue being dealt with on the papers.

### **Facts leading to dispute**

[4] Mr Magon was employed by the respondent for eight years. He drove to work on 8 June 2014 and parked his car in the Hotel carpark. He did not pay the \$5 per day parking fee. Upon his return his car had been clamped and he was directed to attend a disciplinary meeting.

[5] On 3 July 2014 Mr Magon attended a disciplinary meeting. Following that meeting he was dismissed.

[6] On 18 July 2014 the applicant's lawyer wrote to the respondent via its Hotel Manager raising a personal grievance. The relevant parts of the letter stated:

*Recently Mr Magon was dismissed for serious misconduct. Mr Magon is aggrieved. The dismissal is unjustified. This letter gives formal notice of personal grievance as required by the Employment Relations Act.*

*I understand there was a formal meeting to discuss the dismissal issue on 3 July 2014. Would you advise please:*

- *Who was present.*
- *Supply us with a copy of the Minutes of that meeting.*
- *Supply us with a copy of the notice of dismissal.*

[7] The same day the respondent sent a letter confirming Mr Magon's dismissal.

[8] Following receipt of the above letter dated 18 July 2014, the respondent sought specific details of the personal grievance by way of letter dated 29 July 2014 and received no response.

[9] On 30 September 2014 the applicant's lawyer sent an email to the respondent manager attaching a summary of the claim headed *this is a chronological event leading to my instant dismissal*. This set out Mr Magon's concerns about the reasons and process leading to dismissal.

### **The law**

[10] A grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer aware that the employee alleges a

personal grievance that the employee wants the employer to address (s.114(2) of the Employment Relations Act 2000 (the Act)).

[11] What is important is that the employer is made sufficiently aware of the grievance to be able to respond as the legislative scheme mandates.<sup>1</sup>

[12] There is a low threshold of information required to raise a personal grievance,<sup>2</sup> but it is insufficient to raise a grievance, where the employer is expected to deduce the grounds relied on for raising a personal grievance.<sup>3</sup>

[13] The level of detail required to raise a personal grievance is lower than that required to file a statement of problem in the Authority.<sup>4</sup>

### **Was the personal grievance raised within 90 days?**

[14] The respondent submits the applicant's personal grievance was not raised within the 90 day timeframe described in the Act because the applicant's lawyer's letter dated 18 July 2014 lacked sufficient details to make the respondent aware of the nature of the personal grievance and the remedies sought.

[15] It is clear the applicant was raising a personal grievance of unjustified dismissal in his counsel's letter dated 18 July 2014 (the PG letter).

[16] The respondent's letter confirming dismissal is dated 18 July 2014 (the dismissal letter). It appears this was sent at the same time as the PG letter. This may explain why the PG letter sought a copy of the notice of dismissal and Minutes from the meeting on 3 July. There appears to be a dispute about whether Mr Magon had been dismissed as a result of the 3 July meeting. The dismissal letter is unclear if it merely confirms a dismissal that occurred on 3 July or is confirming a dismissal as at 18 July. At the time the personal grievance was raised, Mr Magon seemed to have little if anything in writing about his dismissal given the content of his PG letter. The only matter he was certain about was that he had been dismissed. Accordingly there would have been little he could have provided other than a complaint about the dismissal being unjustified.

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<sup>1</sup> *Creedy v. Commissioner of Police* [2006] ERNZ 517 (EmpC) at [36]

<sup>2</sup> *Board of Trustees of Te Kura Kaupapa Motuhake o Tawhiuau v Edmonds* [2008] ERNZ 139 (EmpC) at [42].

<sup>3</sup> *Dickson v Unilever New Zealand Limited* (2009) 6 NZELR 463 (EmpC).

<sup>4</sup> See n2 at [57].

[17] Given the respondent had recently dismissed him, were in the process of confirming the reasons in a dismissal letter and had access to experienced employment Counsel, they would have had a high level of knowledge about what had gone on leading to Mr Magon's dismissal and potential remedies available to an employer. The threshold requirements for raising a grievance in this case would not be high.

[18] In my view the applicant had sufficiently raised the personal grievance of unjustified dismissal for the respondent employer to consider at that time. The events were fresh, it had access to legal advice and Mr Magon is not required to state his personal grievance with the specificity required for a statement of problem. His letter dated 18 July 2014 met the threshold for raising the grievance.

[19] Accordingly, the matter is set down for hearing on **29 February 2016 in Auckland commencing at 9.30am**. All other timetabling directions shall apply.

#### **Costs**

[20] I am not inclined to grant costs on this matter.

[21] The applicant failed to file its submissions on time. I have declined to consider them. In the circumstances costs shall lie where they fall.

**T G Tetitaha**  
**Member of the Employment Relations Authority**