

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2020] NZERA 85
3060552

	BETWEEN	DALJIT SINGH Applicant
	AND	RELIANCE INDUSTRIES PRIVATE LIMITED First Respondent
	AND	RASVINDER SINGH Second Respondent
	AND	AAYUSH TANDON Third Respondent
	AND	UNIVERSAL COMMUNICATIONS GROUP NZ LIMITED Fourth Respondent
	AND	REGGIE NAIDOO Fifth Respondent
	AND	CHORUS LIMITED Sixth Respondent
Member of Authority:		Rachel Larmer
Representatives:		Nathan Santesso, advocate for the Applicant Rasvinder Singh, for the First Respondent and in person as Second Respondent Aayush Tandon in person as Third Respondent No Appearance by Fourth-Sixth Respondents
Investigation Meeting:		21 January 2020 at Auckland
Submissions and Further Information Received:		21 January 2020 from the First Respondent 24 January 2020 from the Applicant 31 January 2020 from the First Respondent 4 and 12 February 2020 from the Applicant
Date of Determination:		26 February 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Reliance Industries Private Limited (Reliance) has disputed the Authority's jurisdiction to hear Mr Singh's unjustified disadvantage and unjustified dismissal personal grievance claims.

[2] Mr Singh claimed he raised his personal grievances directly with his employer within the statutory 90 day time limit. Reliance denied that had occurred.

[3] This investigation meeting was held to determine the preliminary issue of whether or not Mr Singh raised his personal grievance claims with Reliance within the 90-day time limit, specified by s 114 of the Employment Relations Act 2000 (the Act).

Relevant law

[4] Section 114(1) of the Act says that, unless an employer consents to the raising of a personal grievance outside the 90-day time limit, and/or the Authority grants leave to raise a personal grievance after the expiration of the 90-day period, an employee must raise a personal grievance within 90 days of it arising or coming to the employee's attention, whatever is the later.

[5] Section 114(2) of the Act provides that a grievance is raised if the employee has taken reasonable steps to make the employer or its representative aware that the employee has a personal grievance that they want the employer to address.

[6] No particular form of words has to be used by an employee in order to raise a grievance. Nor does a personal grievance claim have to be raised in writing. The employment institutions assess the totality of the communications when determining whether or not a grievance has been raised.

[7] Mr Singh bears the onus of establishing on the balance of probabilities that he raised his disadvantage and dismissal grievances with Reliance within 90 days of them arising.

[8] Mr Singh is unable to proceed with his unjustified disadvantage grievance unless he raised his disadvantage grievance with Reliance by 1 November 2018, being 90 days of receiving the 2 August 2018 warning.

[9] Mr Singh was dismissed via email on 5 September 2018, so he was required to have raised his dismissal grievance by 4 December 2018, being 90 days from his dismissal.

Did Mr Singh raise a disadvantage grievance within 90 days of it arising?

[10] Mr Singh told the Authority that after he received the warning on 2 August sent an email back questioning it, because he believed he had been given permission to leave work early on the day in question.

[11] Mr Singh responded to his warning in an email dated 2 August 2018 that stated:

I'm not impressed with this warning letter. Can you please clarify what trouble I caused to my fellow techs and the company. So I can Avoid any problems.
(sic)

[12] Mr Singh told the Authority he meant "*convinced*" when he used the word "*impressed*." English is not Mr Singh's first language, which is Punjabi, so he used an interpreter at times during the investigation meeting.

[13] Mr Goswami responded to Mr Singh querying the warning by email on 3 August 2018, referring to complaints that had been made about Mr Singh by other technicians who had been working with him. Mr Goswami's reply email on 3 August 2018 to Mr Singh also stated that:

We may have to stop your work regarding the H and S issues with Vision Stream under Chorus Network. Vision stream had also banned you from working due to H and S non-compliant issues.

We will speak to UCG regarding this issue and inform you.

[14] Mr Singh subsequently had a phone conversation with Mr Goswami on 3 August 2018, during which Mr Singh said he told Mr Gaswami that the warning was unfair, because he (Mr Singh) had received permission to leave the worksite from his manager before doing so.

[15] Mr Singh did not appear to understand that the warning related to other issues such as not being punctual and use of his mobile phone on site while working, actions Reliance had claimed created a safety hazard for Mr Singh and others.

[16] During their phone conversation on 3 August Mr Goswami handed the phone to Rasvinder Singh, one of Reliance's directors. Mr Singh said he also told Rasvinder Singh (no relation) that he (Daljit Singh) was "*not impressed*" with the warning.

[17] This very limited information Mr Singh conveyed about the warning was insufficient to alert Reliance that he considered he had a disadvantage grievance, within the meaning of s 103 of the Act. Nor did Mr Singh convey the substance of his 'complaint' or concern about the warning to Reliance.

[18] Reliance therefore had insufficient information to be able to address Mr Singh's concern, other than what it did, namely responding to his query about why he had received a warning with an explanation of why it had been issued.

[19] Having received that explanation, Mr Singh did not take the matter further. Mr Singh did not pursue any other concerns he may have still had about the warning issued by Reliance, within 90 days of him receiving it. Mr Singh did not seek any remedies or other action after Reliance had explained to him why he had been warned.

[20] Reliance was therefore not put on notice that there was anything else it needed to do to address Mr Singh's concerns, if any had remained unresolved, about its warning after it had explained why the warning had been given to him.

[21] Mr Singh's first Statement of Problem filed on 7 May 2019 did not refer to a disadvantage grievance regarding the warning. Nor did Mr Singh's witness statement dated 7 October 2019, that had been prepared specifically to provide his evidence on the 90 day issue.

[22] These omissions support Reliance's claim that the disadvantage grievance was not raised with it.

[23] Mr Singh has been unable to discharge his onus of establishing that he did raise his disadvantage grievance over the warning with Reliance by 1 November 2018, being 90 days after it was issued to him.

[24] Accordingly the Authority does not have jurisdiction to investigate Mr Singh's disadvantage grievance regarding his 2 August 2018 warning, so that claim cannot proceed.

Did Mr Singh raise his dismissal grievance within 90 days of his dismissal?

[25] Reliance emailed Mr Singh on 5 September 2018 advising it had dismissed him without notice.

[26] As soon as Mr Daljit Singh received the email he called Rasvinder Singh and they spoke for 12 minutes about the dismissal. Daljit Singh informed Rasvinder Singh that he (Daljit):

- (a) Was very unhappy at his dismissal;
- (b) Considered his dismissal unfair because he told Reliance before it offered him employment that he had been banned by Visionstream from working on its sites;

- (c) Believed it was Reliance's job to fix the problem that Universal Communications Group NZ Limited (UCG) and/or Chorus Limited had also recently banned him from its worksites, when they became aware of the Visionstream ban, by getting those companies to lift their bans;
- (d) Wanted his job with Reliance back immediately.

[27] Mr Daljit Singh told the Authority that he definitely used the words "*personal grievance*", "*unjustified dismissal*" and "*unfair dismissal*" when speaking with Rasvinder Singh.

[28] Daljit Singh said he repeated a number of times to Rasvinder Singh that the decision to dismiss him was unfair, that Reliance needed to get the site bans lifted and that it should give him his job back.

[29] Daljit Singh made it clear to Rasvinder Singh that he wanted Reliance to change its mind about his dismissal, by allowing him to return to work immediately. He also wanted Reliance to take responsibility for getting its contractors to lift the bans that had been imposed on him.

[30] Rasvinder Singh's evidence about the phone call with Daljit was unclear compared to Daljit's evidence. Initially Rasvinder had no recollection of the twelve-minute phone call from Daljit, but after phone records were produced Rasvinder acknowledged that the call had occurred.

[31] Daljit's account of his telephone call with Rasvinder has been preferred.

[32] Daljit acted consistently over many months with what he said he communicated to Rasvinder in their phone conversations. The conversation was a matter of extreme importance to Daljit when he was speaking to Rasvinder, because Daljit was attempting to get his job back as quickly as possible, so the conversation was likely to have stuck in Daljit's mind.

[33] Under questioning Rasvinder Singh admitted to the Authority that he knew:

- (a) Daljit Singh was very unhappy about his dismissal;
- (b) Daljit believed his dismissal was unfair;
- (c) Daljit claimed he had told Reliance before he was employed that he had been banned by Visionstream from working for it;

- (d) Daljit claimed that knowing about that ban, Reliance had still offered him employment;
- (e) Daljit considered Reliance was responsible for getting bans on him by its contractors lifted;
- (f) Daljit had repeatedly asked for his job back;
- (g) Daljit wanted to work in any capacity for Reliance (even as a truck driver if necessary) because he was totally reliant on wages from Reliance to support himself and his family.

[34] In addition to communicating the above information to Reliance, Daljit Singh also acted consistently with this position. He did everything he could to try to get the ban by UCG lifted and also tried to get Reliance to help him with that. Mr Daljit Singh communicated with a range of people including UCG personnel and Reliance employees in an attempt to be reinstated to his job/role with Reliance.

[35] Mr Daljit Singh's text messages and phone calls that occurred after his dismissal show that he blamed Reliance for unjustifiably and unfairly dismissing him and that he wanted Reliance to reinstate him to his job.

[36] Reliance in its Amended Statement in Reply acknowledged that Mr Daljit Singh had raised an objection with it to the effect that he believed Reliance had made him non-compliant with both UCG and Visionstream, so it was Reliance's responsibility to overturn those bans from its related contractors.

[37] The totality of Mr Daljit Singh's communications (verbal and written) with Reliance (within 90 days of his dismissal):

- (a) Put it on notice that he believed his dismissal was unfair and unjustified;
- (b) Explained why he believed that; and
- (c) Identified what he wanted Reliance to do to fix the problem he had identified (reinstate him and get the bans from Reliance's contractors lifted).

[38] Mr Singh's communications obviously went beyond merely requesting information from Reliance. He was pressing it to act quickly to fix his problem by returning him to work for it.

[39] Mr Singh expressed that he did not believe he had been treated fairly. He did not believe he could be dismissed for being banned by Reliance's contractors from working on their worksites, when Reliance had known about the Visionstream ban before it had offered him employment.

[40] Mr Singh's communications about his concerns were specific, not generalised. He was conveying particularised information, not merely requesting information. He gave sufficient details to Reliance to enable it to respond to the substance of his concerns/complaint.

[41] Reliance had sufficient information to be able to address Mr Singh's dismissal grievance and it was in a position, as a result of the totality of the information Mr Singh had communicated to it, to be able to prepare its response to the substantive merits of his dismissal grievance claim, had it elected to do so.

[42] In these circumstances, an objective observer would understand that Mr Singh had raised a dismissal grievance immediately after he was dismissed, why he considered his dismissal was unjustified and that he was seeking the remedy of reinstatement.

[43] Mr Singh has discharged the onus of establishing that he raised his unjustified dismissal personal grievance with Reliance within 90 days of his dismissal, as required by s 114(1) of the Act.

[44] Accordingly, the Authority has jurisdiction to investigate Mr Singh's dismissal grievance, so that claim will now proceed in the normal way.

What costs should be awarded?

[45] Mr Singh as the successful party is entitled to a contribution towards his actual costs. However the Authority has decided to put an award of costs on hold until the substantive claims involving Reliance has been resolved.

Rachel Larmer
Member of the Employment Relations Authority