

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 537
3161721

BETWEEN CHRISTINE TORRENS
Applicant

AND HILLGROVE TRUST
First Respondent

AND ARCHIBALD BRUCE
TORRENS
Second Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person
Alexandria Till, counsel for the Respondents

Investigation Meeting: 22 September 2022 by audio-visual link

Submissions received: 21 July 2022 from Applicant
12 August and 27 September 2022 from Respondent

Determination: 18 October 2022

PRELIMINARY DETERMINATION OF THE AUTHORITY

- A. Christine Torrens' personal grievance of unjustified dismissal was raised within the 90-day period of s 114 of the Employment Relations Act (the Act).**
- B. Archibald Bruce Torrens is removed as a second respondent to this proceeding. The employment relationship problem is between Ms Torrens and Hillgrove Trust (the Trust).**
- C. Costs regarding the 90-day s 114 preliminary determination are to lie where they fall. Each party shall carry their own costs.**

Employment Relationship Problem

[1] Ms Torrens was employed by the Trust as the operations manager of a dairy farm in Waihi. The Trust is a family trust in which Archibald Bruce Torrens, Ms Torrens' father, and Darryl Gilmour, are trustees. While it is not clear when Ms Torrens commenced working for the Trust (it has been alleged that she was not provided with an individual employment agreement), her employment came to an end on 23 December 2020 following a restructuring process initiated in November 2020. The outcome of the restructure was the farm being leased out to a third party and the disestablishment of Ms Torrens' role.

[2] By letter of 12 January 2022, Ms Torrens raised a personal grievance with the Trust in which she alleged that her father had disclosed to her daughter for the first time that the restructure was allegedly brought about with the main purpose of ending Ms Torrens' employment. The conversation between the daughter and Mr Torrens occurred on 22 December 2021 and was secretly recorded by the daughter without Mr Torrens' knowledge or consent.

[3] On 1 February 2022, Ms Torrens lodged her statement of problem with the Authority which is supported by various documents that make clear that she has now come to believe that the restructure process was not genuine and that the disestablishment of her employment was predetermined.

[4] Whether this is in fact the case is not a matter that can be resolved at this early stage in the proceedings. However, before the Authority can investigate matters further, it must first be satisfied that Ms Torrens raised her personal grievance with the Trust within the 90-day timeframe required by s 114 of the Act.

The Authority's investigation

[5] On 23 June 2022, a case management conference was held to discuss the 90-day issue. Timetabling directions for the filing of written submissions were made by agreement with Ms Torrens and Ms Till, the respondents' counsel. Submissions were duly filed and, on Thursday 22 September 2022, a submissions hearing by audio visual link was held.

[6] On 27 September 2022, the Authority was provided with a written transcript from the Trust regarding the recorded conversation between the daughter and Mr Torrens.

[7] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Relevant law

[8] Section 114 of the Act sets out what is required of an employee to raise a personal grievance. The section relevantly states:

114 Raising personal grievance

- (1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.
- (2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.
- (3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.
- (4) 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.

...

Discussion

[9] On 15 February 2022, the Trust filed its statement in reply to Ms Torrens' statement of problem. Among other things, the statement in reply records that Ms Torrens was made redundant in December 2020. It was submitted that if Ms Torrens

was concerned about the legitimacy of the Trust's restructure of the farm, s 114 of the Act required her to have raised her personal grievance with her employer within 90 days of the restructure being finalised which she failed to do. The Trust does not consent to the personal grievance being raised now.

[10] It is noted that Ms Torrens notified the Trust of her personal grievance on 12 January 2022 which was 13 months after her last day of employment on 23 December 2020. In explanation for the delay, Ms Torrens submitted that, unbeknownst to her at that time, she learnt of the real purpose behind the restructure only later.

[11] I initially considered that Ms Torrens needed to argue exceptional circumstances under s 114(4) for the late raising of her grievance. However, having listened to the audio recording between the daughter and Mr Torrens, and having considered the transcript, I have come to appreciate Ms Torrens' case under s 114, which is that she did not have actual knowledge of the essential facts of her personal grievance until her daughter's conversation with Mr Torrens. For the reasons that follow, it is not necessary that I consider exceptional circumstances for the delay in raising the grievance within 90 days as there was no delay.

[12] The recorded conversation between the daughter and Mr Torrens occurred on or about 22 December 2021, approximately one year after Ms Torrens was made redundant. The transcript of the recording contain the following exchanges between the daughter (DD) and Mr Torrens (MT) (emphasis added):

MT: Ok, that's ok. I haven't been happy about having to sell the house down there. What happened, and it made my heart sink was that *\$250k dairy company shares, that was meant to go to debt but your mother [Ms Torrens] spent it.* Quite a chunk of money to spend wasn't it?

DD: Yeah

MT: What she was doing here, the heifers were supposed to be here you see but she had steers and bulls here and the heifers were grazing elsewhere and it cost thousands of dollars. *She was actually sabotaging the business.*

DD: She doesn't work on the farm anymore.

MT: *I know I sorted that.* I leased the farm out because Don Fraser told me that is what we needed to do. *Once Christine started swearing at me*

I um I'm not going to employ someone who swears at me. I am pretty sure I give everyone a fair go and I have done over the years...

[13] Ms Torrens submits that the restructure was brought about with the main purpose of ceasing her employment. Having regard to the excerpt above, it could be argued that there is a *prima facie* case to answer for the Trust. However, this preliminary determination has been determined on the papers and consequently my view of the transcript may or may not change once the evidence is heard following an investigation meeting.

[14] I note that Ms Torrens raised a personal grievance in writing to the Trust by letter of 12 January 2022 which states:

Mr B Torrens has disclosed to the third party [the daughter] that in fact the restructure was brought about with the main purpose of ceasing my employment. Mr B Torrens disclosed that he engaged Don Fraser, a consultant to “get rid of Christine” stating that “I sorted that” (being the end of my employment). Therefore, the restructure was not genuine and with a predetermined outcome.

[15] In terms of s 114(1) of the Act, a personal grievance must be raised within 90 days of the relevant event occurring or when it “came to the notice of the employee, whichever is the later.” Here, Ms Torrens alleges that she has only recently come to learn that her dismissal was not genuine on or about 23 December 2021. On 12 January 2022 she raised her personal grievance with the Trust.

Conclusion

[16] The Authority finds that when Ms Torrens did not have actual knowledge of the essential facts to her personal grievance until 23 December 2021 following a conversation she had with her daughter about the daughter’s recorded discussion with Mr Torrens the day before. Having raised her personal grievance with the Trust in writing on 12 January 2022, the Authority is satisfied that Ms Torrens has complied with the 90-day timeframe of s 114 to raise a personal grievance.

[17] A case management conference shall be convened to progress this case to an investigation meeting.

Costs

[18] Ms Torrens is the successful party with respect to the s 114 preliminary determination. Ordinarily costs follow the event however as Ms Torrens is self-represented, costs shall lie where they fall.

Mr Torrens removed as a respondent

[19] Ms Torrens has included her father, Archibald Bruce Torrens, as a second respondent in her statement of problem. However, it is common ground that she was employed by the Trust and not Mr Torrens in his personal capacity.

[20] To more effectually dispose of this matter before me, and relying on s 221 of the Act which deals with joining or striking out parties to an employment relationship problem, Mr Torrens shall be removed as a second respondent as he is not the employer. He is a trustee of a family trust and it is noted that Mr Gilmour, another trustee, was not originally joined to the proceedings either.

[21] I consider the resolution of this supplementary issue a necessary preparatory step for the substantive matter to progress to an investigation meeting. For this reason, I make no order for costs.

Peter Fuiava
Member of the Employment Relations Authority