

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 37  
3177232

BETWEEN

JOURDAN PIACUN  
Applicant

AND

RAUKURA HAUORA O TAINUI  
TRUST  
Respondent

Member of Authority: Peter van Keulen

Representatives: Allan Halse, advocate for Applicant  
Shona-Ranai Fraser, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 21 November 2022 from the Applicant  
25 October 2022 and 5 December 2022 from the Respondent

Date of Determination: 26 January 2023

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Jourdan Piacun worked for Raukura Hauora O Tainui Trust. Ms Piacun says that during her employment with Raikura she was bullied and harassed. Ms Paicun says she complained

about this in 2018. Ms Paicun then raised a personal grievance in July 2019 for unjustifiable action causing disadvantage relating to these allegations.

[2] In the period following July 2019 there was some communication between Ms Paicun and Raukura about her personal grievance and the steps Raukura would take to investigate it and attempt to resolve it.

[3] It appears that nothing significant occurred in respect of the investigation and resolution of Ms Paicun's personal grievance. In the end Ms Paicun and Raukura attended mediation on 7 February 2020 but a resolution was not achieved.

[4] On 7 February 2020, following mediation, Ms Paicun resigned.

[5] There was no further communication between Ms Paicun and Raukura until Ms Paicun lodged a statement of problem in the Authority on 6 July 2022.

[6] In her statement of problem Ms Paicun claims a personal grievance for unjustifiable action causing disadvantage relating to her allegations of bullying and harassment, including that Raukura did not do enough to investigate and resolve her grievance. Also, Ms Paicun claims a personal grievance for unjustified dismissal arising out of her resignation – which she says was prompted by Raukura's failure to act on her complaint of bullying and harassment in a timely fashion.

[7] Raukura responded to Ms Paicun's statement of problem with a statement in reply which stated (amongst other things) that Ms Paicun did not raise a personal grievance for unjustified dismissal within the necessary time frame and therefore I do not have jurisdiction to deal with that claim.

[8] Raukura's argument is that Ms Paicun's letter of resignation did not raise a personal grievance for unjustified dismissal and as nothing further was received from her until her statement of problem, she failed to raise her unjustified dismissal personal grievance within the 90-day time period required by s 114 of the Employment Relations Act 2000 (the Act).

## **The Authority's investigation**

[9] The parties agreed that I would resolve the issue over whether a personal grievance for unjustified dismissal was raised within the necessary time frame as a preliminary matter.

[10] I investigated this preliminary issue by receiving written submissions from the parties' representatives and assessing those against the known facts relating to Ms Piacun's resignation.

[11] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination. I have set out the relevant facts and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

## **Issues for resolution of the preliminary matter**

[12] The starting point for this preliminary matter is sections 114(1) and 114 (2) of the Act. Section 114(1) of the Act requires any person wishing to raise a personal grievance to do so within 90 days of when the action giving rise to the grievance occurred or when it came to the notice of the employee.

[13] Section 114(2) sets out what constitutes the raising of a personal grievance:

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 employer wants the employer to address.

[14] The key principles for establishing if a grievance has been raised pursuant to s 114(2) of the Act have been addressed in various court decisions.<sup>1</sup>

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<sup>1</sup> *Creedy v Commissioner of Police* [2006] ERNZ 517 (EmpC) at [36]; *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] ERNZ 139; *Clark v Nelson Marlborough Institute of Technology* (2008) 5 NZELR 628 (EmpC) at [37]; *Idea Services Ltd (In Statutory Management) v Barker* [2012] NZEmpC 112; and *Chief Executive of Manukau Institute of Technology v Aleksander Zivaljevic* [2019] NZEmpC 132.

[15] Applying the relevant case law and the words of s 114(2) I summarise the key principles for raising a personal grievance as follows:

- (a) The personal grievance process is informal and accessible.
- (b) Personal grievances can be raised in writing or orally and by a series of communications. There is no particular formula of words to be used.
- (c) The communications, in whatever form, must allege a complaint that is in the nature of a personal grievance - the type of personal grievance is not required to be specified nor does the complaint even need to be labelled a personal grievance.
- (d) The communications must indicate that the employee wants the employer to respond to the complaint, although the employee does not need to identify its preferred process for dealing with the complaint in the first instance.
- (e) The communications must convey the substance of the complaint with sufficient information so that the employer knows what it is that the employee expects it to respond to. The employer must be able to respond by addressing the merits of the complaint with a view to resolving it.
- (f) It is insufficient for an employee to make a bland statement that it believes it has a personal grievance, even naming the statutory type, without specifying more.

[16] Ms Piacun says her letter of resignation raised her personal grievance. So, the issues are whether Ms Piacun's letter of resignation:

- (a) Alleges a complaint in the nature of a personal grievance.
- (b) Makes it clear Ms Piacun wants Raukura to respond to her complaint.

(c) Identifies the complaint with sufficient detail so that Raukura can respond appropriately.

**Did Ms Piacun raise a personal grievance for unjustified dismissal in her resignation letter of 7 February 2020?**

[17] Ms Piacun's resignation letter states:

I write to you to confirm my resignation from my position with Raukura Hauora O Tainui ("Raukura").

It is with as heavy heart that I am resigning from my employment with Raukura.

- However, based on Raukura's failure to act in a timely fashion on my complaint of bullying and intimidation which I raised in December 2018, I have been left with no option but to resign from my position with Raukura.

My resignation is effective immediately.

*Ms Piacun's position*

[18] The advocate for Ms Piacun says simply that this letter is clearly an unjustified dismissal personal grievance.

[19] The advocate also sets out additional and significant arguments about the appropriateness of the 90-day timeframe for raising personal grievances particularly in relation to bullying, expressing his view that this is a technicality used by employers to deny access to justice. I make no comment on the merits of this argument rather I record that this is not a matter for the Authority to resolve; there is no discretion about the 90-day time frame and all that the Authority can do is apply the legal requirements in line with Act and the relevant case law. This argument can only be addressed though legislative change if the government considers that appropriate.

*Raukura's position*

[20] Counsel for Raukura says the only communication that is relevant to the question of whether an unjustified dismissal grievance was raised is the letter of resignation. This is because:

- (a) Any communications relating to complaints or personal grievances that pre-date the resignation on 7 February 2020 cannot be construed as raising an unjustified dismissal personal grievance as the alleged dismissal was, at those times, a future event. Those events may form part of the unjustified personal grievance once it is raised but it can only be raised after the event giving rise to it – in this case the resignation.
- (b) After the letter of resignation there was no further communication from Ms Piacun to Raukura until the statement of problem lodged on 7 July 202.

[21] Counsel then says the letter of resignation does not raise a personal grievance for unjustified dismissal as it only expresses dissatisfaction with Raukura; the letter does not express any desire for Raukura to address any concerns, particularly any concerns about her resignation. Simply put, the letter of resignation, though implying dissatisfaction, does not make Raukura aware of any complaints Ms Piacun wants it to address.

*Analysis*

[22] I accept that the only communication relevant to the question of whether Ms Piacun raised a personal grievance for unjustified dismissal within the requisite time frame is her letter of resignation.

[23] On its plain interpretation the letter of resignation says Ms Piacun does not want to resign but she believes she has no choice as Raukura has not addressed her bullying complaint in a timely way. That is, the reference to the bullying complaint is to provide an explanation for the resignation and it is not immediately obvious that this is raising a complaint.

[24] At best the letter of resignation has an implied complaint in that explanation – you have not acted on my bullying complaint in a timely way. But that complaint relates to the timeliness of dealing with Ms Piacun’s bullying complaint; there is not necessarily a complaint about having to resign.

[25] Further it is not clear that letter of resignation indicates in any way that Ms Piacun requires or expects a response to a complaint about her resignation (if a complaint about resignation is evident in the letter):

- (a) It is primarily a letter of resignation and, as I have said, the complaint can logically be seen as providing the reason for Ms Piacun’s resignation.
- (b) The letter of resignation does not specifically refer to a claim, a complaint or a personal grievance, words which by their nature might indicate a response is expected; nor does the letter of resignation have any other language referencing a claim, which would indicate a response is wanted.
- (c) The letter of resignation does not ask for a response, a remedy or any kind of action to address Ms Piacun’s resignation.

[26] In all of the circumstances I do not accept that Ms Piacun’s letter of resignation raised a personal grievance for unjustified dismissal.

### **Conclusion**

[27] Ms Piacun’s personal grievance for unjustified dismissal was not raised within the required 90-day period and therefore, I do not have jurisdiction to proceed to investigate the claim for unjustified dismissal.

[28] I do however have jurisdiction to investigate and determine the claim arising out of the alleged unjustifiable action causing disadvantage personal grievance. An Authority officer will

now contact the parties' representatives to schedule a case management conference so that directions can be set for the investigation of that claim.

### **Costs**

[29] Costs are reserved.

Peter van Keulen  
Member of the Employment Relations Authority