

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 770  
3215459

BETWEEN	ALAA ABDELMEGUID IMBARAK ABDELMEGUID Applicant
AND	NORTH SHORE ISLAMIC TRUST Respondent

Member of Authority:	Marija Urlich
Representatives:	Arunjeev Singh, counsel for the Respondent John Burley, counsel for the Respondent
Investigation Meeting:	On the papers
Information and submissions received:	5 December 2024, from the Applicant 13 December 2024, from the Respondent
Determination:	20 December 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] By application lodged on 27 September 2024, Mr Abdelmeguid seeks leave of the Authority to raise personal grievances for unjustified disadvantage outside the 90-day statutory timeframe. He provided a witness statement in support.

[2] North Shore Islamic Trust (NSIT) does not consent to the personal grievances for unjustified action being raised out of time and opposes the leave to raise application.

[3] This determination deals only with the preliminary jurisdictional issue of whether leave should be granted to Mr Abdelmeguid to raise personal grievances for unjustified disadvantage out of time. The factual basis of these disadvantages, it is

understood were ongoing through Mr Abdelmeguid's employment. The timeframe for raising would extend therefore to the period after his employment ended. This is relevant because Mr Abdelmeguid was able to raise a personal grievance for unjustified dismissal which is before the Authority for determination.

### **The Authority's investigation**

[4] By consent the investigation and determination of this employment relationship problem is made on the papers. The Authority has received information from the parties including a witness statement from Mr Abdelmeguid and affidavits of Mohamed Zaydul Abedin, a trustee of NSIT and Ali Kubba, the president of NSIT.

[5] As permitted by s 174E of the Employment Relations Act 2000 (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. In determining this matter the Authority has carefully considered all the material before it, including all information provided by the parties and their submissions.

### **Issues**

- [6] The preliminary issues identified for investigation and determination are:
- (i) whether leave should be granted to Mr Abdelmeguid to raise out of time personal grievances for unjustifiable disadvantage in his employment by the following actions of the Trust:
    - a. failing to maintain and provide wage and time records; and
    - b. failing to provide suitable accommodation?
  - (ii) if so, whether is it just to do so?

## Relevant law

[7] Section 114 of the Act provides that a personal grievance must be raised with the employer within a period of 90 days. The period begins 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 outside the statutory timeframe.

[8] The grievance is raised with the 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 the employee wants the employer to address.<sup>1</sup>

[9] Under s 114(4) of the Act the Authority has discretion, after giving the employer an opportunity to be heard, which has occurred, to grant an employee leave to raise a personal grievance out of time. This may be subject to any conditions the Authority sees fit to impose if it:

- (a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any one or more of the circumstances set out in section 115); and
- (b) considers it just to do so.

[10] Section 115 makes further provision regarding exceptional circumstances under s 114(4) as follows:

- (a) where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114(1); or
- (b) where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time; or
- (c) where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems that is required by section 54 or section 65, as the case may be; or
- (d) where the employer has failed to comply with the obligation under section 120(1) to provide a statement of reasons for dismissal.

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<sup>1</sup> Section 114(2) of the Act.

[11] Mr Abdelmeguid seeks to rely on the s 115 non-exhaustive list of the exceptional circumstances which occasioned the delay in raising his personal grievances for unjustified disadvantage and in particular s 115(a) where the employee has been so affected or traumatised by the matter giving rise to the personal grievance that he was unable to properly consider raising the personal grievance within the specified timeframe and s 115(c) where the employment agreement does not contain an explanation concerning resolution of the employment relationship problem as required, in this case by s 65.

[12] In *Telecom New Zealand Ltd v Morgan* the Court considered a grievance filed 9 days late.<sup>2</sup> The employee claimed the delay was caused by an exceptional circumstance related to post-dismissal trauma including clinical depression. The court refused leave as the employee had, in spite of the medical condition, functioned reasonably normally over that period:

I consider Parliament did not intend to alter, by relaxing, the tests for extending the limitation period when it enacted ss 114 and 115 in 2000. Had it so intended, it is logical that it would have changed what is now s 114 but it did not do so. Instead, it sought to exemplify, but not limit, situations that would amount to exceptional circumstances ... Parliament has established a high threshold for employees seeking to rely upon the effects on them of their dismissals or other matters giving rise to grievances.

[13] Commentary on s 115(c) includes that it may act as an indirect enforcement mechanism for the obligations imposed on employers to provide the information concerned and to ensure personal grievance rights are not defeated because the employee was not informed of their rights which includes notice of the 90-day period.<sup>3</sup>

## **Discussion**

*Was Mr Abdelmeguid so affected or traumatised by the circumstances of the matter giving rise to the unjustified disadvantages that he was unable to properly consider those personal grievances within 90-days?*

[14] Mr Abdelmeguid's evidence of the impact on him of the matters for which he seeks to raise personal grievances for unjustified disadvantage out of time does not meet the high threshold required by law. He accepts he did not raise concerns about the

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<sup>2</sup> *Telecom New Zealand Ltd v Morgan* [2004] 2 ERNZ 9.

<sup>3</sup> Mazengarb's Employment Law (NZ), s 115 further provision regarding exceptional circumstances under section 114.

accommodation with NSIT within the statutory 90-day period. He says issues occasioned by the accommodation caused him embarrassment and inconvenience and he was vulnerable as a migrant worker who was dependent on his employer for accommodation. What is unclear on his evidence is how these matters have prevented him raising a personal grievance for that issue within the required timeframe which continued after his employment ended and during which time he raised a personal grievance for unjustified dismissal. As to the wage and time records, he says the failure to raise this personal grievance was caused by his lack of understanding of the law, his inability to access legal advice because he was overseas and his shock and upset at his dismissal. Again, this claim of negative effect, in the absence of clear evidence of significant and distinct impact, is not easy to tease out from the fact Mr Abdelmeguid was able to raise a personal grievance for unjustified dismissal.

[15] For these reasons, this ground of exceptional circumstance is not made out.

*Does the relevant employment agreement contain a resolution explanation?*

[16] No. NSIT accepts the material employment agreement(s) do not contain the requisite plain language explanation for the resolution of employment relationship problems, including a reference to the mandatory 90-day period for raising a grievance for the purposes of, in this case s 54 of the Act. Mr Abdelmeguid's claim for leave on this ground is stronger. This failure, undisputed occasions an exceptional circumstance.

*Is it just to do so?*

[17] Having found an exceptional circumstance exists, the next question I must consider is whether it is just to grant leave to Mr Abdelmeguid to raise the personal grievances for unjustified disadvantage out of time.

[18] NSIT submits that taking everything into account, the Authority should not exercise its discretion and grant leave because it would not be just to do so given the following and relying on Mr Abdelmeguid's evidence:

- (i) Mr Abdelmeguid (and his associates) was significantly involved in and primarily responsible for the preparations of the various employment agreements signed by the parties from 2019;

- (ii) NSIT had minimal input to the employment agreement documents due to its lack of experience, Mr Abdelmeguid being its first and only employee;
- (iii) given this there can be no reasonable basis to find NSIT deliberately failed to include the requisite explanation knowing that it was a compulsory requirement; and
- (iv) it is self-evident both parties overlooked that particular provision due to their relevant and equal inexperience of these matters.

[19] It is wholly accepted NSIT had limited experience in drafting and concluding employment agreements and that the failure was not intentional. However, the failure to include the s 65 requirement is difficult to understand given the ready availability of free employment agreement builders and NSIT's ability to engage with the relatively complex parallel process of sponsoring Mr Abdelmeguid's visa to work in New Zealand.

[20] A further and, I find a compelling factor, is Mr Abdelmeguid's evidence that the failure to have an employment agreement which contained a plain language explanation of services available to resolve employment relationship problems negatively impacted on his ability to conceptualise the work issues he now seeks to raise as unjustified disadvantages in that context.

[21] In assessing whether it is just to grant leave, consideration has been given to the delay in raising these grievances and what if any prejudice that may occasion to NSIT. The affidavits do not specifically address this matter likely because NSIT says Mr Abdelmeguid did not raise any concerns at the time which is a matter to weigh in an assessment of the substantive merits. I have also considered the argument that the leave issue should first have been raised with NSIT but find that invites a too restrictive interpretation of the relevant statutory language.

[22] The obligation was NSIT's to offer a compliant written employment agreement, it has failed to do so and for the above reasons it is just to grant leave as sought.

## **Outcome**

[23] Leave is granted for Mr Abdelmeguid to raise the personal grievances for unjustified dismissal outside the statutory timeframe.

## **Costs**

[24] Costs are reserved.

Marija Urlich  
Member of the Employment Relations Authority