

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 307
3296199

BETWEEN ROBERT CHANENGETA
Applicant

AND HEALTH NEW ZEALAND –
TE WHATU ORA
Respondent

Member of Authority: Jeremy Lynch

Representatives: Max Rusero, counsel for the Applicant
Rebecca Rendle and Pema Gyeltshen, counsel for the
Respondent

Investigation Meeting: On the papers

Submissions received: 23 December, 24 February and 17 March 2025 from the
Applicant
10 March 2025 from the Respondent

Date of Determination: 30 May 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Robert Chanengeta is a registered nurse. He was employed by Health New Zealand - Te Whatu Ora (Health NZ), in the role of Clinical Team Co-ordinator - Community Services, under the Mental Health and Public Health Nursing Collective Agreement. Mr Chanengeta was summarily dismissed from his employment for serious misconduct on 4 July 2024.

[2] Mr Chanengeta brings a number of matters before the Authority for resolution including personal grievances for unjustified disadvantage (including as to his suspension) and unjustified dismissal, together with claims that Health NZ breached

natural justice during its investigation process, and that it failed to correctly pay and/or provide his rest and meal breaks.

Personal relationship

[3] Mr Chanengeta says that for a period in 2023 he had a personal relationship with a colleague (the Colleague).¹ Health NZ says the Colleague describes the relationship as a "...friendship where she felt the need to support and encourage him".

[4] Although the Colleague predominantly worked in a different department, she would perform overtime shifts in Mr Chanengeta's department on a regular basis. When this occurred, she was accountable to Mr Chanengeta as his subordinate.

Unjustified disadvantage personal grievances

[5] Mr Chanengeta says his employment was disadvantaged by:

- Health NZ's failure to protect him and his family from "attacks" by the Colleague;
- the Colleague using 'racially discriminatory' language in making a complaint about him to the Police; and
- despite raising bullying complaints with Health NZ, the organisation failed to address his complaints (the preliminary matters).

[6] Although Health NZ denies all of Mr Chanengeta's personal grievances, it accepts that he has raised some of them within the statutory 90-day timeframe as required under the Employment Relations Act 2000 (the Act). Health NZ says Mr Chanengeta has not validly raised any grievances in respect of the preliminary matters set out above, and does not consent to Mr Chanengeta bringing these grievances out of time.

[7] Mr Chanengeta says all of his grievances (including the above preliminary matters) have been raised as required under s 114 of the Act, within the statutory 90-day timeframe.

[8] This determination deals only with the preliminary jurisdictional issue of whether Mr Chanengeta has raised personal grievances for unjustified disadvantage in

¹ This determination resolves the employment relationship problem before the Authority, without naming or identifying this person.

respect of the above preliminary matters, within the statutory 90-day timeframe.

The Authority's investigation

[9] By consent, this preliminary issue is determined on the papers.

[10] The Authority has received information, including submissions and supporting affidavit evidence from the parties, filed in accordance with timetabling directions.

[11] An affirmed affidavit was provided by Mr Chanengeta, together with an affidavit sworn by his co-worker, Elvis Makota.

[12] For Health NZ, an affirmed affidavit was lodged by Stephanie Lee, HR Business Partner for the Counties Manukau District. An affirmed affidavit was also provided by Health NZ's Acting Team Manager District Wide Services, Yahnina Hutchings.

[13] In accordance with timetable directions, both parties lodged written closing submissions. Mr Chanengeta also provided submissions in reply.

[14] In addition, and without leave of the Authority, Mr Chanengeta lodged a document purporting to be submissions at the same time as his affidavit (prior to Health NZ's evidence being lodged). Health NZ did not object to this. The Authority observes that notwithstanding the document's title, it is little more than a restatement of his grievances, and a list of documents relied on, all of which were already before the Authority.

[15] As permitted by s174E 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 the evidence and submissions received.

[16] In determining this matter, the Authority has carefully considered all the material before it, including all the information provided by the parties and their submissions.

Issues

[17] The issues requiring investigation and determination are:

- (a) whether within the statutory 90-day time period, Mr Chanengeta raised personal grievances for unjustified actions causing disadvantage in respect of:

- Health NZ failing to protect him and his family from attacks by his Colleague;
- his Colleague's use of racially discriminatory language;
- being bullied by Health NZ, and Health NZ failing to address his complaints raised in relation to this?

(b) Whether either party should be required to contribute to the other's costs?

Relevant law

[18] 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 the 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 of the statutory 90-day timeframe.

[19] A 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 that the employee wants the employer to address.²

[20] In *Chief Executive of Manukau Institute of Technology v Zivaljevic*, Her Honour Judge Holden summarised the applicable principles for raising a personal grievance:³

[36] The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there have been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

[37] It does not matter what an employee intended his or her complaint to be, or preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act, and if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

[38] It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information

² Employment Relations Act 2000, s 114(2).

³ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36]-[38].

to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

[21] Section 114(2) of the Act, and the issue of how a grievance is raised with an employer, was considered by the Employment Court in *Creedy v Commissioner of Police*:⁴

It is the notion of the employee wanting the employer to address the grievance that means it should be specified sufficiently to enable the employer to address it. So it is insufficient, and therefore not a raising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of personal grievance as, for example, unjustified disadvantage in employment... As the court determined in cases under the previous legislation, for an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular formula of words needs to be used. What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.

[22] In *Shaw v Bay of Plenty District Health Board*, the Court of Appeal observed that "... not every criticism of an employer or the culture within a workplace, will obviously constitute a personal grievance".⁵

[23] Under s 114(4) of the Act, the Authority has a discretion (after giving the employer an opportunity to be heard) to grant an employee leave to raise a personal grievance out of time, if it is satisfied that the delay in raising the grievance was occasioned by an exceptional circumstance, and considers it just to do so.

[24] Mr Chanengeta has not filed an application seeking leave to bring a grievance out of time under s 114(3) of the Act. Rather, Mr Chanengeta's position is that his grievances have been raised within the statutory 90-day timeframe.

Background

[25] The following key events are relevant to the determination of this preliminary issue.

⁴ *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].

⁵ *Shaw v Bay of Plenty District Health Board* [2022] NZCA 241 at [19].

Mr Chanengeta raises a complaint

[26] On 30 September 2023, Mr Chanengeta made a complaint about the Colleague. The complaint was made to the Colleague's manager, Ms Hutchings. Mr Chanengeta's complaint alleged that the Colleague had accessed his adult daughter's clinical files.

[27] On 3 October 2023, health NZ wrote to Mr Chanengeta confirming his complaint was being taken seriously, and would be escalated to the service manager for advice as to investigation.

[28] On 25 October 2023 Mr Chanengeta wrote to Health NZ, advising of his wish to:

...formally request the withdrawal of the complaint I made on 30 September 2023... After careful consideration and discussion, I have decided to retract my complaint and resolve the matter in a different manner.

[29] Health NZ responded on 13 November 2023, advising that:

Your request to withdraw the complaint will need to be authorised by our HR department... I can confirm that a preliminary investigation had already commenced. An audit of IT and medical records was conducted, which did not reveal any unauthorised access to your daughter's medical records.

A complaint is raised about Mr Chanengeta

[30] On 8 November 2023 the Colleague alleged that during work time, Mr Chanengeta began to pressure her into lending him money. The Colleague said that at Mr Chanengeta's insistence, she transferred him funds and that he had assured her that all loans would be repaid.

[31] The Colleague alleged that when she attempted to raise this with Mr Chanengeta, he made excuses as to why he was unable to repay her, and then blocked her mobile telephone number.

[32] Mr Chanengeta says that the money was not a loan but a gift, and that "the money that was exchanged between [them] was for the benefit of them both...".

[33] The Colleague alleged she had received a telephone call during work time from Mr Chanengeta's adult daughter in relation to the funds the Colleague had transferred to Mr Chanengeta.

[34] The Colleague's complaint also alleged that Mr Chanengeta had (during work time) attended the workplace of her husband, where he "...allegedly became intimidating and aggressive", with the Police being called to attend, and subsequently issuing him with a trespass notice.

[35] The Colleague also alleged that Mr Chanengeta's complaint against her of 30 September 2023 had been brought with malicious intent, and had had the effect of preventing her from performing overtime work.

Mr Chanengeta is suspended

[36] On 4 December 2023 Health NZ met with Mr Chanengeta and advised that it was considering suspending him while it investigated the complaints against him. Health NZ says it carefully considered Mr Chanengeta's response before confirming his suspension. The reasons for Mr Chanengeta's suspension were set out in a letter to him of 4 December 2023, which also confirmed that the suspension would be on full pay.

Disciplinary process

[37] On 19 January 2024, Health NZ wrote to Mr Chanengeta inviting him to a disciplinary meeting to discuss allegations arising from its preliminary investigation. The meeting date was rescheduled twice, at the request of Mr Chanengeta. The parties met on 2 February 2024.

[38] At this meeting, Mr Chanengeta alleged (for the first time) to Health NZ that he had been in a personal relationship with his Colleague. Health NZ says that as a result of this new information, it "considered it important to re-interview [the Colleague] and give her an opportunity to respond...".

[39] After meeting with the Colleague again on 1 March 2024, Health NZ amended its allegations against Mr Chanengeta to include a potential breach of its Disciplinary and Dismissal Policy, insofar as he may have failed to declare a conflict of interest with his duties as an employee.

[40] On 12 April 2024 Health NZ provided Mr Chanengeta with its preliminary decision to dismiss, and invited his response.

[41] Health NZ says that it "... carefully and in good faith considered [Mr

Chanengeta's] responses, but ultimately concluded that the allegations had been substantiated and that they amounted to serious misconduct".

[42] Mr Chanengeta was summarily dismissed from his employment by letter dated 4 July 2024.

Personal Grievance letter

[43] There is no dispute that Mr Chanengeta provided Health NZ with a personal grievance letter. The grievance letter raises a number of claims including as to his suspension.

[44] Notably, Mr Chanengeta has provided the Authority with two different versions of his personal grievance letter. One was attached to his statement of problem, the other was provided together with his affirmed affidavit. Both letters use an unconventional date format. One letter is dated "01/05/04/2024", and the other version is dated "03/05/04/2024". The contents of each letter is the same, and both have been signed by Mr Chanengeta's representative. The difference between the two letters is their date.

[45] Health NZ says Mr Chanengeta's sole personal grievance letter was sent by email to it on 2 May 2024. I accept that this is the date of Mr Chanengeta's personal grievance letter.

Has Mr Chanengeta raised a personal grievance for unjustified action causing disadvantage within the statutory 90-day timeframe?

The failure to protect Mr Chanengeta and his family from attacks

[46] Mr Chanengeta says that:

On 30 September 2023, I raised a personal grievance both in writing and verbally with [the Colleague's] line manager. This grievance concerned [the Colleague's] actions towards my family, including an attack on my wife and daughter

[47] On 30 September 2023 Mr Chanengeta wrote to Health NZ. The email is headed "Official Complaint against [the Colleague]", and is addressed to Ms Hutchings. It alleges that Mr Chanengeta and the Colleague "... had an understanding ...on a personal/civil matter... However, [the Colleague] has breached privacy, confidentiality and Counties Manukau policies..."

[48] Mr Chanengeta concludes his complaint by setting out his view that:

I do feel that [the Colleague] is getting out of hand, and she is not showing maturity and is being unprofessional in her capacity as a registered nurse. She has gone as far as making a false police report on a civil matter.

[49] There is no dispute that Health NZ received Mr Chanengeta's complaint, the issue is whether this complaint constituted the raising of a personal grievance within the requirements of s 114 of the Act.

[50] Ms Lee's evidence is that "At no point did I consider Mr Chanengeta's 20 September 2023 complaint about [the Colleague] to be a personal grievance against Health New Zealand...". However, whether Health NZ recognised the complaint as a personal grievance is not the test, but rather whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act.⁶

[51] Mr Chanengeta's complaint is clearly about the Colleague. It specifically refers to concerns arising from his personal matter with the Colleague, it refers to her being unprofessional in her capacity as a nurse, and refers to the Colleague's conduct in relation to a third party (the Police).

[52] Although not determinative of this preliminary matter, Mr Chanengeta's complaint about the Colleague cannot reasonably be said to form the basis of a personal grievance for unjustified action, because the actions complained about are the actions of the Colleague, and not the actions of Health NZ as Mr Chanengeta's employer.

[53] To come within the meaning of s 103 of the Act, the complaint must be in the nature of a personal grievance.⁷

[54] Under s103(1)(b) of the Act, the unjustifiable action causing disadvantage to the employee's employment, must be the action of the employer. Presumably this is because the legislature wished for there to be a differential between personal grievances and mere complaints.

[55] Furthermore, Mr Chanengeta's complaints about his Colleague do not allege a personal grievance that he wants Health NZ to address, as required by s 114(2) of the Act. As in *Shaw*, not every criticism will constitute the raising of a personal grievance.⁸

[56] This claim was included in Mr Chanengeta's statement of problem, lodged in

⁶ Above n 3, at [37].

⁷ Above n 3, at [37].

⁸ Above n 5, at [19]

the Authority on 9 May 2024. Other than in his written complaint of 30 September 2023), Mr Chanengeta does not claim to have raised this issue with Health NZ on any other occasion.

[57] From the documents attached to Mr Chanengeta's statement of problem, the 'attacks' on his wife and daughter by the Colleague occurred on 22 September 2023. A personal grievance must be raised within 90 days of the action giving rise to the grievance, or when the employee becomes aware of the action.⁹ Mr Chanengeta does not say when he first became aware of the 'attack' on his wife and daughter, but this must have occurred between 22 September 2023, and his written complaint on 30 September 2023.

[58] Raising this issue in his May 2024 statement of problem is well outside of the statutory 90-day timeframe for a personal grievance.

[59] In addition, Mr Chanengeta submits that "The primary issue at hand is not the content or context of the complaint but whether the complaint... was raised in a timely manner". Similarly, Mr Chanengeta submits that "the focus should remain on the timeliness of the complaint rather than its content...". I do not accept this submission. In circumstances where Mr Chanengeta is alleging that the words he used in his complaint meet the requirements of s 114 in terms of raising a personal grievance, the content and context of his communications are central to the Authority's assessment.

[60] Mr Chanengeta has not established that he raised a personal grievance for unjustified disadvantage in respect of Health NZ's alleged failure to protect him and his family from his Colleague's 'attacks' within the statutory 90-day timeframe.

Racially discriminatory language used by Mr Chanengeta's Colleague

[61] Mr Chanengeta's evidence is that:

On 4 October 2023, I reported to [the Colleague's] line manager that [she] described me to the police using sensitive racial language, despite our working relationship. This incident caused me significant distress, and I was in tears discussing it with the line manager. I requested the line manager to sort it out.

[62] Health NZ accepts that a telephone discussion between Mr Chanengeta and Ms Hutchings on 3 October 2023 (but not 4 October 2023). However, Ms Hutchings' evidence is that:

⁹ Section 114(1)

During this phone call, Mr Chanengeta's primary concern was his daughter and her privacy. There was no reference to alleged racial slurs, racial profiling... during our discussion and Mr Chanengeta did not say anything that indicated to me that he wished to bring a personal grievance.

[63] Accepting Mr Chanengeta's evidence that he was upset by what he says he heard the Colleague say, merely complaining to Health NZ that a subordinate used racially sensitive language does not meet the test for raising a personal grievance.

[64] Although not determinative of whether Mr Chanengeta's grievance was raised within the statutory 90-day timeframe, the Authority observes that a personal grievance for unjustified disadvantage requires that the action forming the basis for the complaint, is performed by the employer. It must be the employer carrying out the unjustified action.¹⁰ The Colleague is Mr Chanengeta's subordinate. She is not his employer. Even if the Colleague, in laying her Police complaint, had used language which made Mr Chanengeta uncomfortable, this was not an action of Health NZ.

[65] Moreover, even if the Colleague's actions in respect of her Police complaint did meet the threshold for a personal grievance, there is no evidence that Mr Chanengeta raised this with Health NZ within the statutory 90-day timeframe as required by s 114(2) of the Act.

[66] The Colleague's Police complaint was made, and the trespass notice issued to Mr Chanengeta on 30 September 2023. Under s 114(2), Mr Chanengeta was required to have raised his personal grievance in respect of this issue within 90 days of this date, or by 29 December 2023. Notably, Mr Chanengeta's 'racially sensitive' claim does not form part of his personal grievance letter provided to Health NZ on 2 May 2024. Other than the inclusion of this claim in his statement of problem lodged in May 2024, there is no evidence of this matter being raised with Health NZ as a personal grievance.

[67] Mr Chanengeta's May 2024 statement of problem is well past the statutory 90-day timeframe for this grievance to be raised.

[68] As in *Creedy*,¹¹ Mr Chanengeta was required to make Health NZ sufficiently aware of his grievance. As in *Shaw*,¹² merely informing Health NZ of this issue is more akin to a complaint, and does not constitute the raising of a personal grievance.

¹⁰ Section 103(1)(b).

¹¹ Above n 4.

¹² Above n 5.

[69] Mr Chanengeta has not established that he raised a personal grievance in respect of unjustified disadvantage, or racial discrimination, or harassment in respect of the Colleague's Police complaint within the statutory 90-day timeframe.

Mr Chanengeta was bullied by Health NZ, and Health NZ failed to address complaints raised in relation to this

[70] Mr Chanengeta's evidence is that:

[The Colleague] denies any relationship beyond the work environment... Despite this, the employer punished me for non-disclosure, which amounted to bullying... I raised a bullying allegation within the 90-day requirement, as the employer's actions were inconsistent and unfair on 2 May 2024.

[71] The 2 May 2024 letter is the only occasion on which Mr Chanengeta says he raised a grievance in respect of bullying issues.

[72] Mr Chanengeta's personal grievance letter of 2 May 2024 does not raise a personal grievance in respect of bullying. It does not use the word 'bullying', nor does it describe any actions which could reasonably be said to amount to bullying, nor any actions which could be said to amount to a failure to act in respect of a bullying grievance.

[73] In respect of Mr Chanengeta's personal grievance letter of 2 May 2024, Ms Lee says:

...at no point in that letter did Mr Chanengeta raise a personal grievance related to bullying or point to any alleged unreasonable behaviour which could be understood as bullying.

I am authorised by Health New Zealand to confirm that it does not hold any record of any personal grievance being raised by Mr Chanengeta before the letter of 2 May 2024. The first time Health New Zealand became aware of any alleged personal grievance relating to the alleged bullying was when Mr Chanengeta filed an amended statement of problem on 10 July 2024.

[74] I accept that nothing in Mr Chanengeta's 2 May 2024 personal grievance letter raises a personal grievance in respect of bullying and/or Health NZ's actions in relation to the alleged bullying.

[75] Although there is no particular formula of words that must be used,¹³ as in *Creedy*,¹⁴ it is the notion of Mr Chanengeta wanting Health NZ to address his bullying grievance that means it should be specified sufficiently so that Health NZ may address it. Merely saying that he 'raised a bullying allegation within the 90-day requirement'

¹³ Above n 3, at [36].

¹⁴ Above n 4, at [36].

does not discharge Mr Chanengeta's obligation to establish that he raised a valid personal grievance.

[76] Under s 114 of the Act, more is required of Mr Chanengeta. Health NZ was entitled to understand what Mr Chanengeta wanted it to respond to, so that it could resolve the matter 'soon and informally'.¹⁵ As in *Creedy*, it is insufficient for an employee to simply advise that they consider they have a personal grievance, or even specifying the statutory type of grievance. The employer must know what it is to address.¹⁶

[77] Mr Chanengeta's letter of 2 May 2024 does not raise a personal grievance in respect of bullying issues, in accordance with the requirements of s 114(2) of the Act.

Outcome

[78] Mr Chanengeta has not established that he raised within the 90-day statutory timeframe, personal grievances for unjustified actions causing disadvantage in respect of Health NZ failing to protect him and his family from attacks by his Colleague, or in respect of his Colleague's alleged use of racially discriminatory language. Mr Chanengeta's 2 May 2024 letter does not raise a personal grievance for unjustified disadvantage in respect of issues of being bullied by Health NZ, and Health NZ failing to address his complaints in relation to this.

[79] A case management conference is to be scheduled to progress the investigation of the remaining issues of this employment relationship problem, and to discuss further mediation.

Costs

[80] Costs are reserved.

Jeremy Lynch
Member of the Employment Relations Authority

¹⁵ Above n 3, at [38].

¹⁶ Above n 4, at [36].