IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE

[2025] NZERA 411
3302540

	BETWEEN	MADISON NODA Applicant
	AND	ONEFORTYONE NEW ZEALAND LIMITED Respondent

Member of Authority:	Rowan Anderson
Representatives:	Emma-Jayne M Tucker and Sharan Mavi, counsel for the Applicant Gillian Service and Rob McStay, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and other information received:	Up to and including 8 July 2025
Determination:	11 July 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Madison Noda was employed by OneFortyOne New Zealand Limited (OFO), having been first offered employment on 19 May 2021.

[2] Mr Noda has lodged a statement of problem claiming he was unjustifiably dismissed from, and unjustifiably disadvantaged in, his employment.

[3] A preliminary issue arises as to whether Mr Noda raised his unjustified dismissal grievance with OFO within the 90-day period prescribed by s 114 of the Employment Relations Act 2000 (Act). Mr Noda also seeks leave, in the alternative in

the case of the dismissal, to raise his grievances out of time based on exceptional circumstances.

[4] OFO says that Mr Noda did not raise any personal grievance within the statutory timeframe provided for at s 114 of the Act, disputes the existence of any exceptional circumstances, and otherwise maintains that any exceptional circumstances were not causative of Mr Noda's delay in seeking to raise the personal grievances.

The Authority's investigation

[5] A case management conference was held on 25 February 2025 to discuss the Authority's investigation. It was agreed that the Authority should first deal with the preliminary issues listed below. The preliminary issues for investigation and determination are:

(a) Whether Mr Noda is out of time for his disadvantage grievances and, if so, whether leave should be granted under s 114(4) of the Act; and

(b) Whether the Mr Noda is out of time for raising his unjustified dismissal personal grievance, and if so:

(i) whether OFO has consented to the grievance being raised out of time; or otherwise:

(ii) whether leave should be granted under ss 114(4) of the Act.

[6] The preliminary issues subject to consideration in this determination have been, with the agreement of the parties, dealt with 'on the papers' based on written documentation, an agreed statement of facts (dated 12 March 2025), and submissions. Additionally, an affidavit from Rose McMillan, HR and Payroll Coordinator, was lodged in support of the OFO's position. An affidavit in reply was lodged from Mr Noda.

[7] Following receipt of the written material provided, I requested the parties provide clarification regarding the relevant documents and communications relied upon as establishing that a personal grievance for unjustified dismissal was raised within the statutory timeframe. Responses were received on 4 and 8 July 2025.

[8] 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.

Further background

[9] Mr Noda commenced employment in 2021, and the parties agree that the terms of his employment were unclear up until 27 April 2023 when an individual employment agreement (IEA) was put in place.

[10] There is a dispute as to whether Mr Noda, when provided with the IEA, was given a copy of a schedule "Schedule B" to the IEA. Schedule B contained what is said by OFO to be the required plain language relating to the resolution of employment relationship problems required by s 65(2)(a)(vi) of the Act. Mr Noda contends that Schedule B was never given to him, OFO maintain that it was.

[11] Schedule B, whether given to Mr Noda or not, contained an error by referencing a period of 12 months as the time in which any personal grievance must be raised, as opposed to the 90 days provided for at s 114 of the Act.

[12] Mr Noda was issued a "final written warning" on 10 November 2023. The warning was issued for failing to provide advance notice of a work absence. Mr Noda claims he was unjustifiably disadvantaged by the issuing of the warning, at least in part, because the warning was premised on his having breached "Schedule E, Section A" of his IEA, when in fact it is a schedule to a collective agreement he says did not apply to him. A personal grievance was not raised as to the final warning within the statutory 90 day period.

[13] Mr Noda was suspended from this employment on 13 December 2023 following an incident between him and another employee. Mr Noda claims he was not consulted prior to the suspension.

[14] A disciplinary meeting was held on 15 December 2023. Mr Noda had a union representative present at the meeting.

[15] A letter outlining OFO's preliminary decision as to the 13 December 2023 incident was initially sent to Mr Noda's work email address on 15 December 2023. It was then sent to his personal email address on 18 December 2023. Following an email exchange, Mr Noda was sent a corrected letter which confirmed that termination of employment was being proposed.

[16] Mr Noda attended a further meeting on 22 December 2023. Following the meeting, at 3.28pm, he was sent a letter confirming the decision to terminate his employment without notice.

[17] Mr Noda provided an email response at 4.41pm on 22 December 2023. That response noted he previously resigned from his employment and had attended the final meeting after being encouraged to reconsider. The email sought to have OFO recognise his resignation and, in effect, sought to have OFO discontinue its decision to terminate his employment. Mr Noda submits that the letter also raised a personal grievance of unjustified dismissal.

[18] A representative of OFO responded to Mr Noda on 9 January 2024 advising she would discuss the matter with her manager and get back to him.

[19] On 10 January 2024, the representative wrote to Mr Noda acknowledging he had resigned on 18 December 2023, noting he was still an employee at the time of the dismissal, and advising that the dismissal stood.

[20] On 22 March 2024, by letter dated 13 March 2024, Mr Noda wrote to OFO raising a personal grievance of unjustified dismissal.

[21] On 9 April 2024, OFO wrote to Mr Noda acknowledging receipt of the unjustified dismissal personal grievance and outlining its position as to the dismissal. The letter included a denial of Mr Noda's unjustified dismissal claim and the remedies sought.

[22] On 22 April 2024, a letter was sent to OFO on Mr Noda's behalf seeking to raise two unjustified disadvantage personal grievances as to the final warning (the "Warning Grievance") and suspension (the "Suspension Grievance") respectively.

[23] On 7 May 2024, OFO objected to the Warning Grievance and Suspension Grievance being raised outside of the statutory period.

[24] Mr Noda seeks to progress a personal grievance for unjustified dismissal. Mr Noda claims that personal grievance was raised within the applicable statutory period. In the alternative, he claims that OFO consented to his raising the grievance out of time. In the further alternative, he seeks leave to raise the personal grievance out of time based on exceptional circumstances.

[25] Mr Noda also seeks to progress the Warning Grievance and the Suspension Grievance. It is not in dispute that he first sought to raise those matters outside of the statutory 90 day period. The issue in relation to those matters is whether leave should be granted for him to raise those two personal grievances out of time based on exceptional circumstances.

[26] The broad basis for the Warning Grievance is said to be that the disciplinary outcome was inconsistent with the terms of the IEA having regard to the circumstances. The broad basis for the Suspension Grievance is said to be that OFO failed to consult with Mr Noda in accordance with the IEA prior to the suspension being imposed.

Relevant principles

[27] Section 114(1) of the Act requires an employee wishing to raise a personal grievance to do so within 90 days of the action alleged to amount to a personal grievance occurred or came to the notice of the employee.

[28] What is required in terms of the raising of a personal grievance is dealt with at s 114(2) of the Act, which provides as follows:

> (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.

[29] There are several principles relevant to whether a personal grievance has been raised in accordance with s 114 of the Act. I summarise them as follows:[1]

(a) The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing, and there is no particular formulation of words that must be used.

(b) Whether a grievance has been raised for the purposes of s 114(2) is to be objectively determined having regard to the facts of each case. The test is "whether to an objective observer the communication was sufficient to elicit a response from the employer".

(c) There is no requirement that the grievance be raised in writing, and it may be established by a "totality of communications".

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[1] *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2009] NZEmpC 35, at [36] to [38]; *Idea Services Ltd (in statutory management) v Barker* (2013) 10 NZELR 262, at [39] and [41]; *Goodall v Marigny (NZ) Ltd* [2000] 2 ERNZ 30; *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] 1 ERNZ 139; *Creedy v Commissioner of Police* [2006] 1 ERNZ 517;

(d) The level of detail required is not such as would be required in, for example, a statement of problem.

(e) The substance of the grievance must be made clear, but an employee is not required to specify the type of relief sought.

(f) Merely advising an employer that the employee has a personal grievance, or specifying the statutory type of grievance without more, will be insufficient.

[30] In *Chief Executive of Manukau Institute of Technology v Zivaljevic*, Judge Holden said:[2]

> [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 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.

[31] The Authority may grant leave for a personal grievance to be raised after the expiration of the 90-day period if satisfied that the delay was occasioned by exceptional circumstances and if it considers it is just to do so.[3] Section 115 of the Act provides a non-exclusive list of exceptional circumstances. For present purposes, Mr Noda relies on the ground at s 115(c) of the Act which provides:

> (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…
>
> ….

[32] Exceptional circumstances are not limited to those listed at s 115 of the Act. As to what amount to 'exceptional circumstances', the Supreme Court's decision in *Creedy v Commissioner of Police* confirms that the term is to be taken as meaning "being unusual" or "the exception to the rule", as opposed to "something more than special and less than extraordinary".[4]

[33] It is not enough simply that exceptional circumstances are present, the delay in raising the personal grievance must be occasioned by[5] the exceptional circumstances, that requiring a causative connection between the exceptional circumstances and the delay.[6]

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[2] *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132, at [38].
[3] Employment Relations Act 2000, s 114(3) and (4).
[4] [2008] 3 NZLR 7, at [31].
[5] Employment Relations Act 2000, s 114(4)(a).
[6] *Wilkins & Field Ltd v Fortune* [1998] 2 ERNZ 70 at 77; *GFW Agri-Products Ltd v Gibson* [1995] 2 ERNZ 323 at 330.

Analysis and discussion

The unjustified dismissal personal grievance

[34] It is submitted for Mr Noda that he notified OFO of a personal grievance relating to his dismissal by email at 4.41pm on 22 December 2023, soon after having been sent a letter advising him of the dismissal which had been emailed at 3.28pm that same day. The text of the relevant email sent by Mr Noda was as follows:

> Hi Celia
>
> Thank you for your response.
>
> I believed that your email advice to me that I attend this meeting was in good faith (noting that I had already officially tendered my resignation on 18 December 2023) and was instead, I believe, in bad faith.
>
> Upon receiving your letter today, it is very clear that it was not your intention, as per your updated letter to make a "preliminary decision", but rather the decision was already pre-determined.
>
> Please note that it was not my "intention to resign" as you have stated, rather I had officially resigned on 18 December 2023 and was awaiting your confirmation of that as stated in my email. I agreed as per my email to attend the meeting, acknowledging that I had officially resigned and was seeking alternative employment, on your instruction that you wanted to hear my further feedback. You acknowledge in your email to me on 20 December "it is not our intention that you resign, and we do not wish you to resign. For this reason, that I wrote to you and asked for you to reconsider your intention to resign fully and invite you to participate in a further meeting to discuss it more fully". This in itself, is a clear acknowledgment of my resignation and I also state in my email to you, upon agreeing to attend the meeting, that "I would like my resignation to stand at this time, however if you would like me to come in and provide some further feedback, whereby you may consider the option of a final warning, rather than immediate termination, then I am willing to accept that offer". I also stated that if that was an option, then as already emailed earlier today, I would like your letter updated to reflect this before I agree to attend. I also stated in my email "if the above is not an option, then as already emailed earlier today, I confirm my official resignation of today's date." You failed to confirm any of the above and I attended the meeting in good faith.
>
> Your decision to now terminate me post my official resignation is extremely distressing. Should you choose to continue with your decision to summarily terminate me, rather than acknowledging my official resignation, you leave me no choice but to pursue a personal grievance with the company in respect of this. I obviously do not want to take this action and would prefer to undertake in further communication in this regard to save time and money for both parties. If you are not prepared to acknowledge my resignation by 5.00pm today or engage in further communication regarding my resignation or discuss an exit strategy, please put on notice that my counsel will be lodging a personal grievance with the ERA in relation to his matter to pursue remedies for both your disciplinary process and hurt and humiliation.
>
> I look forward to your response.
> ….

[35] I am satisfied that the above communication from Mr Noda was sufficient to raise a personal grievance relating to the dismissal. While on one view the email

reflected a future intention to lodge a personal grievance with the Authority, that is not the same as simply advising that a personal grievance may be raised in the future. The reasons for that include that the reference was in effect to the lodgement of a personal grievance to being in the Authority, that being a step that, at least ordinarily, follows notification of a personal grievance to the employer.

[36] Further to the above, I consider the email clearly takes issue with the dismissal and makes plain that Mr Noda was asking OFO to address his concerns. Mr Noda's email clearly identified that he was contesting the dismissal, that he wanted OFO to address the matter, and it also made reference to how the matter might be addressed. I consider OFO could have been under no illusion as to the substance of the issue, that being that Mr Noda was disputing the dismissal decision, and that Mr Noda was asking OFO address the matter. That is consistent with OFO's response on 10 January advising that OFO's decision to dismissal would stand.

[37] Mr Noda's email of 22 December 2023 also communicated other relevant matters. While not fully articulating the grounds for the unjustified dismissal claim as later stated, the substance of the email addressed alleged predetermination, communicated issues as to the process in terms of the arrangement of the final meeting, and generally raised the disciplinary process in the context of remedies.

[38] Ultimately, I consider Mr Noda clearly took issue with OFO decision to dismiss and sufficiently raised some matters as to the substance of why he considered that to be the case. The grounds relating to his claim as to the dismissal have now been further refined, but I do not consider Mr Noda is now limited in raising additional or more specific issues, nor does that mean he did not raise a personal grievance earlier.

[39] I conclude that Mr Noda raised a personal grievance relating to unjustified dismissal, within the statutory 90 day period required by s 114 of the Act, by sending the email at 4.41pm on 22 December 2023.

[40] Given the above, I need not consider the alternative arguments made in relation to the dismissal personal grievance claim. However, I record that I would have found that OFO consented to the late raising of the unjustified dismissal personal grievance when it responded to the substance of the matter on 9 April 2024, through its ongoing

engagement on the matter, and by its attendance at mediation. I would have reached that conclusion notwithstanding the apparent absence of informed consent.[7]

The unjustified disadvantage personal grievances

Summary of submissions

[41] Mr Noda first sought to raise the Warning Grievance and Suspension Grievance on 22 April 2024, being 164 and 131 respectively following the relevant events. OFO has not consented to those grievances being raised out of time.

[42] Mr Noda seeks leave to raise his unjustified disadvantage personal grievances out of time based on exceptional circumstances. The grounds relied upon in claiming exceptional circumstances are largely the same for both claims, that being that Mr Noda's IEA did not contain the plain language explanation concerning the resolution of employment relationship problems that is required by s 65(2)(a)(vi) of the Act. Mr Noda submits it would be just to grant leave in the circumstances.

[43] In summary, OFO submits that:

(a) Schedule B of the IEA containing a plain language explanation of the resolution of employment relationship problems in terms of s 65(2)(a)(vi) of the Act was provided to Mr Noda;

(b) at least as to the Suspension Grievance, the First Union Collective Agreement 2023 – 2025 (the "Collective Agreement"), containing a plain language explanation of the resolution of employment relationship problems in terms of s 54(3)(iii) of the Act, applied to Mr Noda;

(c) (a) and (b) above means that the grounds relied upon by Mr Noda to establish exceptional circumstances in terms of s 115(c) of the Act have not been met;

(d) even if exceptional circumstances are found to have been established, those circumstances did not occasion the delay in Mr Noda raising the grievances; and

(e) it would not be just to grant leave for the grievances to be raised out of time.

Have exceptional circumstances been established?

[44] OFO submits that Mr Noda's claim of exceptional circumstances relating the Warning Grievance does not meet the test at s 115(c) of the Act because the IEA

[7] *Jacobsen Creative Surfaces Ltd v Findlater* [1994] 1 ERNZ 35 (EmpC) at 54-55.

included Schedule B which included the required plain language explanation concerning the resolution of employment relationship problems. As acknowledged by OFO, Schedule B contains a mistaken reference to 12 months being the time within which a personal grievance must be raised. It was submitted for OFO that the ground for exceptional circumstances at s 115(c) of the Act, as to whether an employment agreement contains "the explanation", is not met in this case because the IEA did contain "the explanation" despite the error.

[45] Mr Noda's evidence is that he was employed on the IEA and that he was not provided Schedule B containing the plain language explanation required. He says he did not know of the requirements at the relevant times and remained unaware of the requirement at the time he raised the dismissal grievance.

[46] Ms McMillan's evidence is that Schedule B was provided to Mr Noda with the IEA and that if they had been absent when Mr Noda returned the signed agreement that that would have been noticed by HR.

[47] In terms of the factual dispute, I am not satisfied that Mr Noda was provided Schedule B. To the extent the evidence of Ms McMillan goes to the unlikelihood of Schedule B not being provided, the evidence is largely speculative and does not in my view outweigh Mr Noda's direct evidence, that it was not provided. There is also no complete signed record of the IEA containing Schedule B and it is OFO's responsibility to ensure one is kept. However, for the reasons below, I do not consider that issue determinative given the error it contained anyway.

[48] Section 115(c) of the Act, concerns "…the explanation…that is required by… section 65". The plain language explanation at s 65(2)(a)(vi) of the Act is required to include a reference to "…the 90 days in section 114 within which a personal grievance must be raised". The requirement is not merely that the plain language explanation reference s 114 of the Act, it must reference the 90 days. On that basis the IEA, even if it were accepted that Schedule B was provided to Mr Noda, did not contain the plain language explanation required by s 65(2)(a)(vi) of the Act.

[49] I record that even if I were incorrect as to the need for a specific reference to the 90 day period, I would have considered the incorrect information given by OFO, referencing a 12 month period for the raising of a personal grievance, was an error such

as would otherwise amount to exceptional circumstances outside of the inclusive grounds at s 115 of the Act.

[50] There is a question as to whether the Collective Agreement ever applied to Mr Noda. Section 54 of the Act deals with the form and content of collective agreements. Section 54(3)(iii) of the Act requires that a collective agreement must contain a plain language explanation in the same terms as s 65(2)(a)(vi) of the Act.

[51] OFO submits that Mr Noda was, from 13 December 2023, employed under the Collective Agreement. Mr Noda disputes that and says he was never a member of First Union. Therefore, whether the Collective Agreement applied to Mr Noda is contested. It does not appear to be in dispute that the Collective Agreement contained a plain language explanation in terms of s 54(3)(iii) of the Act.

[52] The relevant contested factual issue is whether Mr Noda was a member of First Union. Having regard to all of the available evidence I conclude that he was not. It is correct to say that he had signed a membership form and that a carbon copy of that was provided to OFO for payroll purposes. However, I find that the form was such that it comprised an application to join the union as opposed to entitling Mr Noda to automatic membership once signed.

[53] Mr Noda's evidence is that he did not return the relevant form to First Union and was told membership would not be effective until that occurred. An email from a representative of First Union annexed to Mr Noda's affidavit in reply asserts that Mr Noda has never been a member. I accept that evidence and find that Mr Noda was not a member of First Union, and therefore that the Collective Agreement never had application to him.

[54] I find that the ground for exceptional circumstances at s 115(c) of the Act has been made out in relation to both the Warning Grievance and Suspension Grievance.

Were the delays occasioned by the exceptional circumstances?

[55] OFO submits that exceptional circumstances did not occasion the delays and that Mr Noda's evidence does not establish the necessary causative effect, including there being no reference to his reviewing the IEA or being confused as to the relevant time limitations given the error in Schedule B. It submits that the only relevant evidence from Mr Noda was that he "did not know the process for raising a personal grievance,

or how to resolve those kinds of issues". OFO also relies on Mr Noda having been covered by the Collective Agreement as of 13 December 2024.

[56] Mr Noda submits that the absence of the plain language explanation was causative of the delays. His evidence is that he did not have access to union representation and did not have an employment advocate despite having referred to having one in his email correspondence of OFO. Further, he says that if the plain language explanation had been given then he would not have needed external advice in order to become aware of the relevant timeframes and process.

[57] Mr Noda also gave evidence that he was not provided Schedule B. He says he had heard of the term personal grievance but did not know when one could be raised or the process for doing so. After the dismissal, he says the still didn't know what was needed so he told OFO he would raise a grievance and that they would hear from his advocate. He says he didn't have an advocate at time of the dismissal and would not have had the ability to find one until the following year given the timing. He says a friend of his later told him he had three months to raise a grievance and that, on 13 March 2024, he started writing a grievance for the dismissal but thought he was out of time for raising the suspension given the advice about he received.

[58] I conclude that Mr Noda has not established that the delays in relation to the Warning Grievance were occasioned by the exceptional circumstances. Mr Noda's evidence does not establish that he took issue, in any form, with the final warning until receiving advice some significant time later following his termination. Based on the evidence given, I conclude he only took issue with the final warning after seeking advice significantly later and in the context of the dismissal. On the evidence, it was not the case that Mr Noda took issue with the final warning but did not know when or how to raise it. I conclude that the delay in relation to the Warning Grievance was not occasioned by the exceptional circumstances.

[59] I consider that the cause of the delay in seeking to raise the Suspension Grievance differs. Mr Noda's direct evidence is that he was going to raise it in his letter of 13 March 2024 but that he had been given advice by a friend which he considered meant he was out of time. The letter was subsequently issued on 22 March 2023 addressing only the dismissal. He then sought to raise the Suspension Grievance on 22 April 2024.

[60] I find Mr Noda was going to take issue with the suspension earlier but that he did not do so because he was unclear on the process and timeframe for doing so. While Mr Noda's evidence does not go to seeking to review the IEA in the context of considering the personal grievances, he does say he would have read the schedules if they had been provided at the outset. I accept that evidence and find he would likely have read and understood any compliant plain language explanation if it had been included in the IEA. I consider it more likely than not that Mr Noda would have raised the Suspension Grievance within time had his IEA contained the plain language explanation.

[61] I conclude that:

(a) the delay in raising the Warning Grievance was not occasioned by exceptional circumstances; and

(b) The delay in raising the Suspension Grievance was occasioned by exceptional circumstances.

Is it just to just leave?

[62] I need only consider whether it is just to grant leave in relation to the Suspension Grievance.

[63] I am not satisfied that the delay in raising the Suspension Grievance weighs significantly against the granting of leave. First, Mr Noda had taken issue with the dismissal which followed shortly after the suspension. I consider that relevant to whether there would be any disadvantage or prejudice caused to OFO and conclude that is very unlikely. Second, the delay in relation to the Suspension Grievance, being approximately 41 days, was not considerable.

[64] Mr Noda gave evidence, which I have accepted, as to the reason for the delay. The reasons are attributable to OFO and, in effect, non-compliance with the requirement to provide the plain language explanation required by 65(2)(a)(vi) of the Act. The statutory requirement to do so is straightforward and OFO did not comply with it. That caused the delay and I consider that a factor weighing in favour of granting leave.

[65] In terms of the conduct of the parties, there are no matters that I consider could form the basis for criticism and I consider it a neutral factor.

[66] I do not consider the delay such as would cause OFO significant prejudice. The relevant events were in close proximity, and on one view intertwined with, the dismissal. OFO has been on notice about the dismissal claim for some significant time. The same factual events are very likely relevant to the procedural justification relating to the dismissal. Additionally, OFO has been on notice that Mr Noda was seeking leave to raise the Suspension Grievance out of time since 22 April 2024.

[67] The issues relating to the Suspension Grievance are not insignificant. A further relevant factor in my view is that Mr Noda is in any event entitled to pursue his claim of unjustified dismissal. This is not a case where in my view the significance of the issues involved in the Suspension Grievance should be considered in isolation.

[68] Having balanced the relevant factors, I conclude it is just to grant leave.

[69] While I would have reached the above conclusion regardless, and the issues were not raised in this form, I consider the error in Schedule B referring to a 12 month period, albeit that it was not provided to or relied upon by Mr Noda, may well have estopped OFO from taking the position it has or alternatively may have reasonably led to a conclusion that OFO impliedly consented to the grievance being raised out of time.

[70] Leave is granted for Mr Noda to raise the Suspension Grievance outside of the statutory timeframe.

Conclusion

[71] Mr Noda validly raised a personal grievance in terms of s 103(1)(a) of the Act within the 90 day period in compliance with s 114 of the Act.

[72] Leave is granted for Mr Noda to raise the Suspension Grievance out of time in accordance with s 114(4) of the Act.

[73] Leave to raise the Warning Grievance out of time is declined.

Costs

[74] Costs are reserved pending consideration of Mr Noda's substantive claims.

Direction to mediation

[28] Section 114(5) of the Act requires, in the case where leave is granted, that the Authority direct the employer and employee to use mediation to seek to mutually

resolve the grievance. The parties are accordingly directed to attend mediation within 20 working days and attempt in good faith to reach an agreed settlement of their differences.

Rowan Anderson
Member of the Employment Relations Authority