

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 616
3355023

BETWEEN NICKA PAPER
Applicant

AND THE RECRUITMENT
NETWORK LIMITED
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Nicka Papera in person
Kirsten MacLean, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and
Information Received: 1,5,6,23 June and 1 July 2025 from the Applicant
24 June and 29 and 30 September 2025 from the
Respondent

Determination: 1 October 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Nicka Papera was employed by The Recruitment Network Limited (TRNL) as a Seasonal Fruit Harvester. He worked in at least two locations for TRNL in 2021. He was dismissed from working at a Christchurch location after an employment investigation into serious misconduct but carried on working for TRNL in the Hawke's Bay.

[2] Mr Papera lodged a statement of problem in the Authority on 30 January 2025 claiming unlawful dismissal, fraud, failure to pay holiday pay and Covid pay and defamation.

[3] TRNL responded saying Mr Papera had lodged his claims outside of the 90-day time frame in s 114 of the Employment Relations Act 2000 (the Act) and denied any

wage or holiday arrears were owed to Mr Papera. It had a written casual employment agreement with Mr Papera and although he was dismissed for cause from the Christchurch location, employment continued in another location but came to an end when Mr Papera did not seek any further work after 30 July 2021 in accordance with the casual contract. TRNL said Mr Papera did not raise any personal grievance claims with it so the lodging of the statement of problem was the first time it was aware of Mr Papera's claims.

[4] It was agreed the issue of whether Mr Papera's claims were lodged within the statutory 90-day time frame would be investigated and resolved on the papers. Evidence and submissions were timetabled.

The Authority's investigation

[5] Mr Papera's evidence and submissions were in the form of a series of emails. An affidavit from Michael Pugh, Director and Shareholder of TRNL, and written submissions on behalf of TRNL were lodged.

Time elapsed since the grievance

[6] TRNL agree Mr Papera was dismissed from the Christchurch location on 12 May 2021. This confirmed Mr Papera's information. However, after that Mr Papera returned to Wellington and TRNL continued to offer casual placements to Mr Papera which he took up until his final shift on 30 July 2021. TRNL say because these dates are three and a half years before Mr Papera lodged his statement of problem in the Authority, and this was the first time Mr Papera's grievance claims had been raised with it, Mr Papera's claims are out of time and cannot proceed in the Authority.

[7] Mr Papera says he handed a letter to a person named Rachel at the Christchurch location. The letter was about concerns after the meeting at the Christchurch location that led to his dismissal and he says this was when he raised the grievance with TRNL. His email to the Authority described what he says happened as follows:

I returned to work the next day to clean my locker out, I handed my letter to Rachel the Samoan lady, then I left immediately, time passed I received a recall from Karen Feint who took over the case, Karen asked me her name I said Rachel Smith she rang [name of TRNL's client] to talk to Rachel Smith apparently the surname was wrong, the case was closed because no one by the name of Rachel Smith worked there, then I waited to see what will happen, Ollie rang me when I got back to Wellington giving me a job at the hotel and other jobs.

[8] Mr Pugh's affidavit evidence covered off the process that is followed when personal grievances are lodged and that included immediately providing both Mr Pugh and any relevant manager with personal grievance claims and they are escalated to TRNL's lawyer straight away. TRNL through Mr Pugh says no personal grievance was lodged by Mr Papera because if it had he or their lawyer would have received a copy of it. Mr Pugh has also talked to Olly Edwards who was Mr Papera's manager at the time and he has confirmed he can recall Mr Papera and that he was involved when Mr Papera left TRNL but he has no recollection of a personal grievance ever being raised.

The Authority has no jurisdiction to hear Mr Papera's personal grievance claim

[9] Section 114 of the Act requires that a personal grievance claim must be raised within the period of 90 days beginning with the date on which the action alleged to amount to the personal grievance occurred or came to the attention of the employee, which ever is later.

[10] Mr Papera finished employment with TRNL on 30 July 2021 meaning his statement of problem has been lodged over three years since the last date of employment. The email he provided does not provide enough certainty about what he says happened and I prefer the evidence of TRNL. TRNL has made enquiries and has not been able to locate any employees matching the description Mr Papera gave. Mr Papera also referred to seeking assistance from a lawyer to help him to write his personal grievance letter. It seems likely if any such letter was presented to TRNL with the assistance of a lawyer it would have been addressed to Mr Papera's manager or Mr Gower or Mr Howard, who met with Mr Papera, and who were the decision makers. Mr Gower signed the dismissal letter.

[11] Mr Papera's manager at the time has no recollection of Mr Papera raising a personal grievance and by Mr Papera's own admission he continued to deal with that manager when he returned to Wellington and carried on his employment. It seems more likely than not that if a personal grievance had been raised, Mr Papera would have raised this with his manager when he continued to work for TRNL for another two months.

[12] Without evidence to support Mr Papera's claim that he raised a personal grievance with his employer at an earlier date within the 90 day time frame, Mr Papera's personal grievance claims cannot proceed.

Mr Papera was paid holiday and Covid payments

[13] I also note it appears Mr Papera is mistaken in relation to his other claims that he was not paid holiday pay or Covid payments. Mr Pugh on behalf of TRNL provided copies of the casual employment agreement TRNL entered into with Mr Papera and Mr Papera's payslips. The employment agreement records at cl 10.5 that due to the uncertainty regarding Mr Papera's hours and days of work, it was agreed that due to the irregular and intermittent nature wages would be paid to Mr Papera inclusive of eight per-cent holiday pay.

[14] The pay slips Mr Pugh provided show six Covid payments were paid to Mr Papera in 2021 and that holiday pay was paid on a 'pay as you go' basis in Mr Papera's wages which is consistent with cl 10.5 of the employment agreement. The evidence does not support Mr Papera's claims for unpaid holiday or Covid pay.

Grievance claims must also be commenced within three years of being raised

[15] Even if Mr Papera had lodged a grievance within 90 days of the date the alleged grievance occurred by the time he lodged his statement of problem it was outside of another statutory time frame. Section 114(6) of the Act provides:

No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

[16] That means even if Mr Papera had told his employer he had a grievance in 2021, if he took no further action after raising it with an employer, he would still have needed to have lodged it in the Authority before three years passed. At the point when three years had elapsed s 114(6) would prevent Mr Papera from commencing his personal grievance claims in the Authority. Given the time frames involved it is likely that more than three years have elapsed since Mr Papera alleges he raised a grievance with his employer.

Mr Papera's wage claims cannot proceed

[17] There is a different time frame for wage claims. These must be raised within six years.¹ But even though Mr Papera's statement of problem was lodged in time for

¹ Employment Relations Act 2000, s 142.

any wage claims to proceed, the evidence provided from TRNL makes it clear no holiday arrears are due to Mr Papera and that he was paid Covid payments.

Outcome

[18] Mr Papera has not been successful. His grievance claims were not lodged in the Authority within the statutory time frames and the Authority has no jurisdiction to proceed with those claims. The wage claims (holiday pay and Covid payments) cannot succeed because TRNL has provided evidence Mr Papera was paid all holiday pay due to him and he received six Covid payments in 2021.

Costs

[19] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[20] If the parties are unable to resolve costs, and an Authority determination on costs is needed, The Recruitment Network Limited may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Nicka Papera will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[21] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²

Sarah Kennedy-Martin
Member of the Employment Relations Authority

² www.era.govt.nz/determinations#awarding-remedies-and-costs-2