

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 683  
3348240

BETWEEN                      NATASHIA CORBY  
   Applicant  
  
AND                                VIRTUAL PLUMBING  
   LIMITED  
   Respondent

Member of Authority:        Sarah Kennedy-Martin

Representatives:             Ian Hard, counsel for the Applicant  
   Kajal Sharma and Frank Peters, advocates for the  
   Respondent

Investigation Meeting:        On the papers

Submissions Received:        18 July and 24 July 2025 from the Applicant  
   18 July 2025 from the Respondent

Determination:                24 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Natasha Corby applies for leave to raise a personal grievance claim outside the 90 day employee notification period.<sup>1</sup> Virtual Plumbing Limited (VPL), who was Ms Corby's employer say her grievances were either raised outside of the 90-day notification period or what was communicated was not sufficient to have raised a grievance with an employer.

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<sup>1</sup> Employment Relations Act 2000, s 114(1), (3) and (4).

[2] Ms Corby was employed by VPL from 2 May 2022 in the role of Labourer until her employment was terminated on 13 November 2023. Ms Corby's personal grievance claims relate to the termination of her employment at VPL.

[3] VPL do not consent to Ms Corby raising her grievance outside of the 90-day notification period and say because it was raised out of time it ought to be struck out and cannot be pursued. VPL also say the email purporting to raise a grievance on Ms Corby's behalf contained insufficient information for the purposes of raising a grievance with an employer.

[4] Ms Corby says she was relying on a lawyer to raise her grievance on her behalf. She also says if her employment is considered to have ended on the date she received her final pay, then her grievance was raised in time but if the Authority reaches the conclusion her grievance was raised out of time, it was only by one day and it ought to be allowed to proceed.

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

[5] The parties agreed this application could be heard on the papers. Affidavits were lodged by Ms Corby and Vincent Cookson, managing director of VPL. Written submissions were lodged from both parties.

### **The issues**

[6] The issues for investigation and determination are:

- (a) was a grievance properly raised in the email of 12 February 2024?
- (b) when did the grievance come to Ms Corby's attention?
- (c) are there exceptional circumstances that caused the delay in Ms Corby's grievance being raised?
- (d) should leave be granted?

### **Ms Corby's employment ended**

[7] On 13 November 2023, Ms Corby's employment ended after an employment investigation concluded there had been serious misconduct. The letter recording VPL's final decision and outcome set out the following:

In the circumstances, and for the reasons as outlined above, we maintain the view that it is appropriate that your employment should be terminated with immediate effect and without notice. For the sake of clarity the last day of employment is 13 November 2023.

Your outstanding and accrued (if any) entitlements will be paid to you on 22 November 2023. A separate letter will confirm the amount in components of that payment. Please return all company property in your possession by 20 November 2023, inclusive of your electronic key, the physical key to the workshop, your uniform and dining room table.

### **Ms Corby wished to raise a personal grievance claim**

[8] Ms Corby wished to challenge her dismissal and contacted a lawyer Ian Hard. Mr Hard was unavailable to take on any additional work at that time but he spoke to another lawyer who Ms Corby says told Mr Hard he would be able to take this matter on for her and raise a personal grievance on her behalf with VPL. Ms Corby communicated a number of times with the other lawyer by phone and email but has only been able to retrieve one email from her records. She says for whatever reason over the passage of time several of these emails have been deleted but not deliberately by her.

[9] The email she has been able to retrieve is dated 17 December 2023 and records the following:

Hi Mike, I've tried getting in contact with you via telephone and text, but have been unsuccessful. I am a little worried I may have your number wrong, and needing to get this personal grievance letter underway through the courts as I only have 90 days, and 30 of those have already gone, so only have 60 days left.

Could you please get back in touch to let me know if you still want to take the case on.

[10] This email indicates she has been unsuccessfully trying to contact the second lawyer by phone and text. She asks if he could get back in touch with her to let her know if he still wants to take her case on. It transpired that the email address Ms Corby used on that occasion was not correct in that she did not put a full stop in the correct place.

[11] However, on 12 February 2024, that lawyer emailed Ms Corby's employer:

I now act for your former employee Ms Natasha Corby. I understand her employment with Virtual Plumbing Limited was terminated on 13 November 2023. This email is to formally notify you that Ms Corby is taking out a personal grievance alleging an unjustified dismissal. Further details will be sent to you in the upcoming weeks but I would invite you to respond earlier if you wish. I look forward to hearing from you.

[12] Mr Cookson on behalf of VPL says this email was sent 91 days after Ms Corby's termination date of 13 November 2023 and it did not raise any substantive grounds or have details about the grievance. Although it was stated further details would be sent in the coming weeks no further information was received until 30 November 2024.

[13] On 30 November 2024, Ian Hard wrote to Mr Cookson advising that he now acted for Ms Corby in relation to her personal grievance claim against VPL and set out further details related to the claim and what she was seeking. The matter was not resolved between the parties and Ms Corby lodged a statement of problem in the Authority on 19 December 2024. VPL responded saying the grievance could not proceed because it had been raised with the employer outside of the 90 day employee notification period.

#### **Was a grievance raised in the 12 February 2024 email?**

[14] It is submitted on VPL's behalf that what was raised in the 12 February email was not sufficient to be considered to have raised a grievance because the words used did not include any detail about what Ms Corby was unhappy about or what she wanted.

[15] There is no particular formula of words that must be used when raising a grievance. What is required is that the employer must know what it is responding to and to facilitate this there must be sufficient information to allow the employer to respond to the grievance on its merits with a view to resolving it soon and informally in the first instance.<sup>2</sup>

[16] While the 12 February email was brief the key components of what was being raised were straight forward because it was the dismissal that was being raised as the grievance. Ms Corby also says her email to Mr Cookson during the employment investigation is relevant because it set out her concerns that she considered VPL's actions to be unjustified particularly if she was to be summarily dismissed in relation to the concerns that had been raised with her. Even without resort to that letter the words "This email is to formally notify you that Ms Corby is taking a personal grievance alleging unjustified dismissal" is fairly clear and likely sufficient for VPL to know it was the dismissal Ms Corby was raising as the grievance.

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<sup>2</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC, 132 at [36].

[17] The employee does not have to state how they would like the matter resolved and it does not matter whether the employer recognised the complaint as a personal grievance. In the context of a dismissal for cause the words used were sufficient to convey that Ms Corby's complaint was a personal grievance about her dismissal within the meaning of s 103 of the Act and the substance of her complaint which was that she was unhappy with the decision to dismiss her in relation to the conduct that it had concerns about. I also note the employer was invited to respond. It is desirable for parties to resolve grievances informally between them and in a timely manner and the offer to engage was consistent with that in light of the communication that Ms Corby was raising a personal grievance.

[18] I am satisfied the words used in the email dated 12 February 2024 email were sufficient for Ms Corby to have raised her grievance with VPL.

**When did the grievance come to Ms Corby's attention?**

[19] Section 114(1) of the Act requires grievances to be raised with employers within the applicable employee notification period and sets that out in this way:

- (1) An employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with their employer within the applicable employee notification period unless the employer consents to the personal grievance being raised after the expiration of that period.

[20] Section 114(7) defines an employee notification period to be:

- (b) in respect of any other personal grievance, the period of 90 days beginning 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 later.

[21] VPL says if the 13 November 2023 was the date on which the action alleged to amount to a personal grievance occurred or came to Ms Corby's attention, the 12 February 2024 email raising the grievance, is not "within the applicable notification period". This is because it considered the 90 day period starts running from the 13 November which was the date Ms Corby was summarily dismissed and there are 91 days from 13 November 2023 (date of termination) and 12 February 2024 (email raising the grievance). VPL says Ms Corby was required to raise her grievance "within" the 90 days if she was to fall within the employee notification period set out in the Act and she was a day late.

[22] On Ms Corby's behalf it is submitted that the date employment ended can be taken to be a later date because the termination letter recorded several dates. The first was termination on 13 November and the second was 20 November when all company property was to be returned and 22 November which was the date she would receive her final pay. What actually happened was two further payments were made by VPL to Ms Corby, one on 15 November and the final payment on 22 November. It is unclear when property was returned but the distinction the submissions on Ms Corby's behalf rely on is between the date when employment has effectively ended but when it is uncertain whether the relationship has legally terminated. It generally turns on whether an employee is being paid for a notice period but is not being required to work out their notice or whether there is a termination of the employment agreement with payment in lieu of notice.

[23] In this case given the way the termination was recorded in the final letter to Ms Corby it is difficult to form the view that employment could have ended on any date other than 13 November 2023. The individual employment agreement provided for termination of employment without notice or without payment in lieu of notice for serious misconduct. The disciplinary letters from VPL to Ms Corby dated 5 and 8 November 2023 advised her that if proven the allegations were considered to be serious misconduct and an outcome could be termination of employment without notice.

[24] The letter expressly stated the last day of employment was 13 November 2023 and the dismissal was with immediate effect. The date in the future for payments was not at the end of a notice period but a final pay to ensure Ms Corby received all her wage and leave entitlements for employment that had already ended. The letter recorded that no notice was to be paid.

[25] For the purposes of calculating time, the date of dismissal was the date the "action alleged to amount to a personal grievance came to the notice of the employee". Prior to dismissal Ms Corby and VPL went through a process that involved VPL raising its concerns with her and seeking her feedback. Ms Corby provided written feedback and was invited to a further meeting on 6 November to discuss the matter further in light of new information. Another opportunity for feedback was provided and after review of all feedback Mr Cookson made a decision and on 13 November 2023 issued

the termination letter. Ms Corby does not suggest that she received the letter on any other day than the date it was issued.

[26] That means that prior to 13 November 2023, VPL and Ms Corby were going through a process in relation to VPL's concerns and it was not until 13 November that the dismissal grievance crystallised. That was both the date the action alleged to amount to a personal grievance occurred and the date it came to Ms Corby's attention because it was not until a final decision was made that there was a dismissal and that was the action Ms Corby wished to complain about. Prior to that they had been in the process of raising and responding to concerns.

### **Exceptional circumstances**

[27] With the amendment to s 114 of the Act in June 2023 there is an argument that because the Legislation Act 2019 requires time that is to be measured between two points to be calculated starting on the day after the event described in the legislation, 90 days in Ms Corby's case could be counted from the day after she was dismissed. The use of the word "within" means the employee notification period in ss114(1) and (7) is a period that is between two dates being the day the grievance occurred (or came to the employee's attention) and the expiration of 90 days. It is complicated by the phrase in s 114(7) that defines the employee notification period as beginning on the date of the grievance but this appears to be at odds with s 54 of the Legislation Act 2019 that sets out how periods of time are to be calculated according to how they are described in legislation. If the employee notification period does not include the day the grievance occurred then Ms Corby's grievance could have been raised in time.

[28] However, she has also applied for leave to raise her grievance outside the employee notification period based on exceptional circumstances because she made arrangements to have her grievance raised on her behalf with the lawyer that sent the email dated 12 February 2024. For the reasons set out below leave is granted based on the exceptional circumstances ground in s 115(b).

[29] Section 115(b) provides:

- (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.

[30] The email Ms Corby does have with the second lawyer shows she was aware of the 90 day time frame for raising grievances. By that stage she was concerned time was running and she recorded she was worried she may have incorrect details but had been attempting to contact him via phone, text and email. She stated she needed to get the personal grievance letter underway.

[31] Ms Corby had taken steps earlier and been referred to the second lawyer from Mr Hard whom she had initially contacted with a view to having him represent her but due to his unavailability at that time he appears to have made arrangements for her with the second lawyer. What is clear is that the second lawyer was instructed to raise the grievance on Ms Corby's behalf because he sent the 12 February email. That would indicate there was sufficient communication to establish there had been engagement of the second lawyer to act on her behalf and raise her grievance. Added to that was the fact Ms Corby followed up as evidenced by her email to the second lawyer.

[32] In those circumstances I am satisfied Ms Corby would have submitted her grievance in time and had made reasonable arrangements to have her grievance raised on her behalf by Mr Hard and then the second lawyer. It was the agent that unreasonably failed to ensure the grievance was raised in time.

[33] The final issue is whether it is just to grant leave to Ms Corby to raise the personal grievance outside the 90 day period. Given that the grievance was only one day late it is unlikely VPL would be prejudiced by such a delay. Mr Cookson was the decision maker and the matter would have been fresh in his mind. There is evidence Ms Corby took immediate steps to have the grievance raised by Mr Hard and followed up after approximately 30 days. While other emails are not available and an error had been made with the email address, instructions were conveyed to the other lawyer otherwise the 12 February 2024 email could not have been sent.

[34] I consider it just to allow Ms Corby to proceed with her personal grievance and leave is granted.

### **Conclusion**

[35] The delay in raising the grievance was occasioned by exceptional circumstances and leave is granted for Ms Corby to raise her personal grievance claim outside the expiration of the employee notification period.

**Mediation**

[36] Before any further steps are taken in relation to the Authority's investigation, the parties are directed to attend mediation to seek to mutually resolve the grievance in accordance with s 114(5) of the Act.

**Costs**

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

[38] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Natasha Corby 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 Virtual Plumbing Limited 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.

[39] 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.<sup>3</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>3</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)