

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 763
3357184

BETWEEN VOLHA DANILIUK
 Applicant

AND FOR THE BOYS LIMITED
 Respondent

Member of Authority: Helen van Druten

Representatives: Aliaksandra Andreyuk, Advocate for the Applicant
 Kirsty McDonald and Erin Drew, Counsel for the First
 Respondent

Investigation Meeting: On the papers

Submissions received: Up to 3 October 2025 from the Applicant
 Up to 25 August 2025 from the Respondent

Determination: 26 November 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In 2022, Ms Volha Daniliuk was working as a permanent employee for Big Black Sacks Limited (BBS). She was offered, and accepted, a lump sum payment to move from this role into an “on-hire” fixed term contract employed by For The Boys Limited (FTB) working for BBS. The fixed term contract was for a two-year period from 22 November 2022 to 21 November 2024.

[2] As the contract neared expiry, Ms Daniliuk sought to confirm her ongoing employment arrangements. On 19 November 2024, after discussions with FTB did not meet the timeframes and terms she expected, Ms Daniliuk ceased work until a new contract was signed. A one-week extension to the existing contract was offered by FTB on 21 November 2024 and then a new three-month contract was offered to commence

on 29 November 2024 and end on 15 March 2025. Ms Daniliuk did not accept either offer.

[3] Ms Daniliuk has raised personal grievances for unjustified dismissal and unjustified disadvantage. She claims that the uncertainty and changing assurances given by FTB negotiating her new agreement gave her no reasonable choice but to discontinue working, resulting in an unjustified (constructive) dismissal. She further claims that the fixed term contract she signed in 2022 was invalid and began a course of conduct that resulted in reduced terms and removal of benefits, causing her unjustified disadvantage.

[4] FTB disputes that the grievances were raised in time as required by s 114 of the Employment Relations Act 2000 (the Act) and agreed that this preliminary matter should be determined on the papers. This determination resolves queries relating to compliance with s 114 of the Act.

The Authority's investigation

[5] For the Authority's preliminary investigation written submissions were lodged from Ms Daniliuk and an amended statement in reply from FTB. BBS did not wish to provide any information on the preliminary matter.

[6] 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 preliminary matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[7] The preliminary issue requiring investigation and determination is whether Ms Daniliuk's grievances were raised in time as required by the Act.

[8] Should the Authority determine that the personal grievance(s) were not raised in accordance with s 114 of the Act, then those personal grievance claims will not be issues for investigation and determination. The issues for investigation and determination will remain as follows:

- a. Whether there was a breach of good faith by FTB under the Act;

- b. Whether Ms Daniliuk's final pay was unreasonably withheld in breach of s 131 of the Act;
- c. Whether any penalties should be awarded for a breach of s 4 of the Act and/or for failure to pay Ms Daniliuk's final pay; and
- d. Should the party/ies contribute to the costs of representation of the other party/ies?

[9] Should the Authority determine that the unjustified dismissal and/or unjustified grievance claims were raised in time as required by the Act, then BBS will be joined as a Second Respondent and the issues for determination will also include the relevant personal grievances, consideration of any remedies and consideration of any contribution by Ms Daniliuk as required by s 124 of the Act. The issues were outlined to the parties in directions issued 29 September 2025.

Timeline of events

[10] For determination of the preliminary matter, the relevant timeline of events is outlined below.

[11] On 21 November 2022, Ms Daniliuk entered into an "on-hire assignment IEA" with FTB. She was placed to work at a third-party employer (where she was previously employed on a permanent basis) on a two-year fixed term basis, concluding on 21 November 2024.

[12] On 21 November 2024, FTB emailed Ms Daniliuk with an offer to extend the existing IEA by one week to 28 November 2024. Later that day, FTB sent a further email:

- a. reaffirming the one-week extension of the existing IEA on the same terms to give Ms Daniliuk time to consider the offer; and
- b. offering a new fixed term IEA in a new position from 29 November 2024 to 15 March 2025.

[13] Between 22 and 25 November 2024, various minor changes were made to the offer by FTB in Ms Daniliuk's favour.

[14] On 27 November 2024, a letter was received from counsel acting for Ms Daniliuk. This letter is relied upon by Ms Daniliuk as the raising of her personal grievances. The purpose of the letter was to “raise our concerns with [Ms Daniliuk’s] employment and outline her potential claims against FTB and BBS”.

[15] Alternatively, Ms Daniliuk relies upon attendance of the parties at mediation on 12 February 2025 and the lodging of her application to the Authority on 16 February 2025.

Relevant Law

[16] The case law supports that there is no singular formula to raise a personal grievance. The established Authority on what constitutes the raising of a personal grievance is *Creedy v Commissioner of Police*.¹ In that decision, the Court determined that merely advising the employer that the employee has a grievance, or specifying only the type of grievance is not enough. The more recent Authority decision in *Devine v Heart Kids New Zealand Inc*, emphasised that it is not necessary for the employee to specify how they want the matter resolved provided there is enough information for the employer to identify and address the issue.²

[17] The employer must know what it is responding to, be given sufficient information to address the grievance, and be able to respond to the complaint on its merits with a view to resolving the complaint informally and as soon as practicable. It is not necessary for the employee to state how they would like the matter resolved. Raising an employment relationship problem might constitute raising a personal grievance.³

Analysis

[18] FTB does not consent to any personal grievance being raised after the expiration of the applicable employee notification period and the Authority is not aware of any exceptional circumstances that resulted in a delay raising Ms Daniliuk’s grievance claims.⁴

¹ *Creedy v Commissioner of Police* [2006] 1 ERNZ 517 (Emp C).

² *Devine v Heart Kids New Zealand Inc* [2024] NZERA 122.

³ *Clark v Nelson Marlborough Institute of Technology* [2008] 8 NZELC 99, 483 (Emp C).

⁴ Employment Relations Act 2000 s 114(1) and (4).

[19] Therefore, in order for either of Ms Daniliuk's grievance claims to progress, it must be determined that her unjustified dismissal claims and/or disadvantage claims were raised within the 90-day employee notification period.

Is there a valid unjustified dismissal grievance claim raised within time?

[20] Before determining whether the grievance claim was raised within time, there must be a grievance capable of being raised. There cannot be a successful personal grievance claim for unjustified dismissal if no dismissal occurred.

[21] The unjustified dismissal claims relate to the nature of contract negotiations occurring from 5 to 12 November 2024, when FTB first emailed Ms Daniliuk to discuss an extension to her contract expiring on 21 November 2024. Based on email correspondence, between 5 and 18 November 2024, the parties met and discussed what Ms Daniliuk wanted and what FTB wanted to present to her.

[22] Ms Daniliuk's unjustified dismissal grievance claim relates to the November 2024 decision by FTB not to offer ongoing permanent employment and/or the failure to provide a genuine reason for the fixed term nature of the three-month fixed term employment offer. There cannot be an unjustified dismissal claim for a failure to negotiate future terms and conditions of employment satisfactory to both parties. Accordingly, Ms Daniliuk must rely on the fixed term contract she signed in 2022 being non-compliant with the statutory requirements under s 66 of the Act. If a fixed term contract is valid and properly executed, expiry alone does not constitute a dismissal and therefore any claim for unjustified dismissal would be unsuccessful.⁵ If a fixed term contract is not compliant with these statutory requirements or is otherwise invalid, the employee may raise a personal grievance for unjustified dismissal upon the contract's expiry.

[23] Ms Daniliuk says that she was constructively dismissed on 19 November 2024. Based on evidence provided to the Authority, this claim cannot succeed as Ms Daniliuk did not resign, she stopped working on 19 November 2024 until FTB provided certainty

⁵ *Timmis v Benefitz DMA Ltd* [2010] ERNZ 395, *Joe v Juken New Zealand Ltd* [2020] NZERA 167 and *Saleem v Musselburgh Pharmacy (2021) Ltd* [2024] NZERA 99 are all examples supporting this approach.

about ongoing employment. On 19 November 2024 Ms Daniliuk emailed FTB that “until a new agreement is formalised and communicated, I will not be able to proceed with new tasks or client visits”.

[24] Two days later, she was given a one-week extension to her existing contract and a new three-month fixed term employment agreement. The concern at that point was not that there was uncertainty, but that neither contract contained the terms and conditions she wanted. Ms Daniliuk chose not to accept either offer, as she was entitled to do. However, this meant that the employment relationship ended on 21 November 2024. There was no further employment relationship between Ms Daniliuk and FTB or between Ms Daniliuk and BBS after 21 November 2024.

[25] The first one-week extension offer was presented to Ms Daniliuk on 21 November 2024. Accordingly, this date is taken as the date on which the action alleged to amount to the personal grievance occurred. Ms Daniliuk lodged her claim in the Authority on 16 February 2025 so this falls within the 90-day employee notification period.

[26] I conclude that while an unjustified dismissal grievance was raised in compliance with s 114 of the Act as Ms Daniliuk filed with the Authority on 16 February 2025, Ms Daniliuk was working under a fixed term employment agreement at the time she stated she could not continue working. The reason for Ms Daniliuk ceasing work on 19 November 2024 was satisfied when an offer was provided on 21 November 2024. As Ms Daniliuk chose not to accept this offer, the ending of the employment relationship on 21 November 2024 meant that there was no constructive dismissal or resignation. Any claim can only be on the basis that the fixed term agreement signed in 2022 was invalid in terms of s 66 of the Act.

Is there a valid unjustified disadvantage grievance claim raised within time?

[27] Ms Daniliuk raised two claims relating to disadvantage in 2023, specifically that BBS proposed changing her to a contractor arrangement and that on 8 September 2023 Ms Daniliuk was asked to sign a casual employment agreement. On both occasions, Ms Daniliuk did not sign the agreement and continued in her existing fixed term agreement. In any event, raising them on 27 November 2024 is substantially outside the 90-day period required by s 114 of the Act.

[28] The actions taken by the employer in 2023 are only considered to the extent they may indicate a prior course of conduct relevant to an unjustified disadvantage grievance.

[29] Lastly, Ms Daniliuk claims that she was disadvantaged in her employment as the 21 November 2024 three-month agreement offered significantly less secure terms than she had previously and there was no genuine reason for the fixed term nature of the employment provided by FTB, therefore any offer should have been permanent employment.

[30] Ms Daniliuk filed with the Authority within 90 days of 21 November 2024 therefore this grievance was raised within the 90-day employee notification period.

Involvement of BBS as a controlling third party

[31] As outlined very recently in *Love & Ors v Whare Manaaki & Ors*, s 103B of the Act is concerned with joining a controlling third party to a personal grievance.⁶ An application to join a controlling third party can be made to the Authority if an employee has raised a personal grievance under s 114, applied to the Authority to resolve the grievance with the employee's employer and the personal grievance relates to an action that is alleged to have occurred while the employee was working under the control or direction of a controlling third party.

[32] Applying this to BBS, Ms Daniliuk has notified BBS of this matter before the Authority in accordance with s 115A of the Act and I am satisfied that any offers made to Ms Daniliuk were contingent on BBS's approval as FTB's client. Ms Daniliuk was working on site at BBS and they exercised control or direction over Ms Daniliuk in a manner that is similar or substantially similar to the control or direction that an employer exercises, or is entitled to exercise, in relation to the person.⁷

[33] The assessment made under s 103B(3)(b) of the Act involves considering whether "there is a serious question to be tried or, put another way, that the claim is not vexatious or frivolous".⁸ Accordingly, BBS is joined as a party to this matter in relation

⁶ *Love & Ors v Whare Manaaki & Ors* [2025] NZERA 638 at [9].

⁷ Employment Relations Act 2000, s 5.

⁸ *NZ Tax Refunds Limited v Brooks Homes Limited* [2013] NZCA 90 at [12].

to the unjustified disadvantage grievance claim only. All other issues, other than costs, are between Ms Daniliuk and FTB.

Conclusion

[34] Ms Daniliuk was not employed after 21 November 2024 therefore any disadvantage claim is restricted to determination of unjustifiable actions by the employer up to 21 November 2024. Ms Daniliuk has outlined these as:

- a. Unreasonable and unachievable KPI's within shortened contract periods;
- b. Unilateral changes to terms and conditions of employment;
- c. Failure to provide a genuine fixed term reason for employment; and
- d. Uncertainty created by contract negotiations.

[35] There is no obligation to negotiate new terms and conditions of employment following expiry of a valid fixed term employment agreement. Therefore, any claims related to proposed terms and conditions of employment cannot constitute an unjustified disadvantage grievance unless these were previously agreed by the parties.

[36] The Authority determines that:

- a. the unjustified dismissal claim can only proceed on the basis that the initial 2022 fixed term employment agreement was invalid and/or did not meet the requirements of s 66 of the Act.
- b. Any unjustified disadvantage claim is restricted to actions by the employer prior to 21 November 2024. The actions taken by the employer in 2022 and 2023 are only considered to the extent they may indicate a prior course of conduct relevant to an unjustified disadvantage grievance.
- c. BBS is joined as a controlling third party to this matter under s 103B of the Act in relation to the unjustified disadvantage grievance only.

[37] The issues for the substantive determination are therefore:

- a. as outlined in [8] above;
- b. as outlined in [36] above;

- c. if FTB or BBS's actions were not justified (by disadvantaging Ms Daniliuk), what remedies, if any, should be awarded, considering:
 - i. Lost wages (subject to evidence of reasonable endeavours to mitigate her loss); and
 - ii. Compensation under s123(1)(c)(i) of the Act; and
- d. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Daniliuk that contributed to the situation giving rise to her grievance?

Costs

[38] Costs are reserved until determination of the substantive matter or until the matter is no longer before the Authority.

[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.⁹

Helen van Druten
Member of the Employment Relations Authority

⁹ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.