

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 768  
3284619 and 3302020

BETWEEN                      CLAUDIA HEY AND  
   ANTHONY ROSTRON  
   Applicants

AND                              AISLIN FARMS LIMITED  
   Respondent

Member of Authority:        Geoff O’Sullivan

Representatives:             Claudia Serra, advocate for the Applicants  
   Karen Fitzgerald, representative for the Respondent

Investigation Meeting:        On the papers

Determination:                27 November 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Anthony Rostron*

[1] Mr Rostron was employed by Aislin Farms Limited (AFL) as a dairy farm assistant from 11 April 2022. He was never provided with an employment agreement and he worked 25 hours per week at a rate of \$28.00 per hour. He did four milkings per week in lieu of paying for accommodation. He worked 11 days on and three days off in most of the season but twice a season he worked a 12 day on, two day off roster for calving and mating.

[2] On 11 February 2023 Mr Rostron was injured and unable to work. On 4 March 2023 he met with AFL’s Director, Ms Fitzgerald, to discuss his ACC and sick leave. During this meeting, Ms Fitzgerald advised Mr Rostron that he was a casual employee and as such, was not entitled to any sick leave.

[3] On 17 March 2023, Ms Fitzgerald texted Mr Rostron advising that because of his accident they had to employ another relief staff member and accordingly, his casual employment ceased as at 17 March 2023. Mr Rostron says this was a summary dismissal; he was not a casual employee and the dismissal was unjustified.

*Claudia Hey*

[4] Ms Hey was employed by AFL as a dairy farm assistant, with her terms and conditions of employment set out in a signed individual employment agreement.

[5] On 4 March 2023 Ms Hey attended a meeting with her partner, Mr Rostron, to discuss Mr Rostron's injuries. Following the meeting, Ms Hey advised Ms Fitzgerald that she was feeling very stressed and would be taking the remainder of the day off on sick leave.

[6] Ms Fitzgerald, following the meeting, texted Ms Hey advising her that she had no sick leave and advising that she needed to start paying \$300.00 per week in rent.

[7] On 24 March Ms Hey says Ms Fitzgerald turned up, yelling and abusing her, and claiming she owed her money. This caused Ms Hey to take stress leave, for which she provided medical certificates. On the expiry of the certificates when Ms Hey wished to return to work, Ms Fitzgerald would not allow it, stating she needed to understand why Ms Hey had been off sick and she needed other proof that she was medically cleared to return. She would not accept Ms Hey's medical certificate. On 5 April 2023, Ms Hey received a letter advising her that her position as farm assistant was ending due to redundancy on 3 May 2023. She was also required to vacate the farm accommodation she was living in by 4 May 2023.

[8] AFL defends both actions. It says that Mr Rostron was on casual work and had been since early April 2022. He worked up to 25 hours per week and finished working in February 2023. Ms Fitzgerald says that she made him aware that due to his injury and the fact that he was on ACC he could not be on the farm. She says that Mr Rostron never produced a medical certificate and as he was a casual employee only, she terminated his employment.

[9] In respect of his partner, Ms Hey, Ms Fitzgerald says that when she met with the couple on 3 March she made it clear to them that Mr Rostron could not work for Aislin Farms whilst on ACC and because of health and safety concerns, he should not

be on the farm. House rental was paid on the basis of extra milkings and now that was not to happen, Ms Hey was advised she would need to pay the \$300.00 weekly rent. Ms Fitzgerald says Ms Hey told her to “get fucked” and that she wasn’t going back to work. Ms Hey, indeed, did not return to work that day but did return to work on the Monday. She then produced a medical certificate saying she was unfit for work until 13 March 2023.

[10] Ms Fitzgerald says that on 14 March 2023 she received an email from Ms Hey with a further medical certificate stating she would be unfit for work until 20 March 2023.

[11] On 3 April 2023 Ms Fitzgerald received a further medical certificate from Ms Hey advising she was unfit for work until 10 April 2023.

[12] Ms Fitzgerald then says that due to the sale of the farm, Ms Hey was emailed a formal redundancy letter on 5 April stating that due to the farm sale her position would become redundant in four weeks’ time, namely 3 May 2023.

#### **When were personal grievances raised?**

[13] The parties accept that neither Mr Rostron nor Ms Hey raised personal grievances with AFL within the employee notification period prescribed in s 114(7)(b) of the Employment Relations Act 2000 (the Act).

[14] Ms Fitzgerald states that on 27 April 2023 she received an email from a Ronald Jones advising that he was acting for Ms Hey and Mr Rostron and that any future contact with his clients was to be through him. That letter provided that more complete and formal correspondence would follow.

[15] Ms Fitzgerald had further contact with Mr Jones regarding documents she requested, however, at no time did Mr Jones raise personal grievances on behalf of Mr Rostron or Ms Hey. Indeed, it was not until 1 February 2024 when a new representative, Claudia Serra, raised the personal grievances in writing. The letter did not address the fact the grievances were raised out of time, nor did it give any reason for the late raising of the grievances.

[16] At the request of the parties, this determination deals only with the issue as to whether or not both the applicants or either of them should be given leave to bring their personal grievances out of time on the basis that exceptional circumstances exist.

## **The Authority's investigation**

[17] At the request of the parties this matter has been heard on the papers, with evidence filed by Mr Rostron, Ms Fitzgerald and Ms Hey. Both parties made submissions.

## **The issue**

[18] The issue requiring investigation and determination is whether or not Ms Hey and/or Mr Rostron should be granted leave to file their personal grievances outside the prescribed period on the grounds that exceptional circumstances exist and it is just to do so.

[19] 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 the notification period.

[20] In this case there is no dispute that the grievances were raised outside the statutory 90-day timeframe. Aislin Farms has not consented to the grievances being raised outside the statutory 90-day timeframe and accordingly, the issue for the Authority is whether or not leave to raise the personal grievances out of time should be granted.

[21] Leave may be granted to raise a personal grievance outside the prescribed period if the application meets two criteria:<sup>1</sup>

- (a) The delay in raising the personal grievance was occasioned by exceptional circumstances; and
- (b) It is just to allow leave.

[22] A non-exhaustive list of exceptional circumstances are set out in s 115 of the Act as follows:

- (a) Where the employee has been so affected or traumatised by the matter giving rise to the grievance that they were unable to properly consider

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

raising the grievance within the prescribed employee notification period under s 114; or

- (b) Where the employee made reasonable arrangements to have the grievance raised on their behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time; or
- (c) Where the employee's employment agreement does not contain the required explanation concerning the resolution of employment relationship problem; or
- (d) Where the employer has failed to comply with the obligation to provide a statement of reasons for dismissal.

### **Discussion and analysis**

[23] Ms Hey's evidence was that she had contacted Mr Jones on 11 April 2023 asking that he represent herself and her partner and raise personal grievances on their behalf. She says that she provided Mr Jones with all the necessary correspondence and background information. Both Ms Hey and Mr Rostron say they understood Mr Jones to be actively progressing their matters and when they followed up with him, they received assurances that things were being handled.

[24] The evidence indicates that by 11 April 2023 Ms Hey was corresponding with Mr Jones, an employment law advocate. Her email of 11 April indicates she intends sending through signed copies of Mr Jones' letters of engagement. However, at this stage there is no evidence as to what Ms Hey was instructing Mr Jones to do. It is clear, however, that she had forwarded email correspondence from Ms Fitzgerald.

[25] On 27 April 2023, Mr Jones emailed Ms Fitzgerald advising he had been retained by Mr Rostron and Ms Hey:

To assist them with an employment matter with you. This email is simply by way of introduction. More complete and formal correspondence will follow shortly. In the meantime, we would request any future contact with our client is through us.

[26] On 27 April 2023, it seems Mr Jones likely forwarded a copy of his email to Ms Fitzgerald to Ms Hey. She replies "awesome, thanks Ron".

[27] Accordingly, at this stage Ms Hey was aware of the letter that Mr Jones had sent. Although Mr Jones' email contained the words "personal grievance" in the subject line, at this stage no grievance as such was raised.

[28] Ms Fitzgerald responded to Mr Jones' 27 April email advising she would be using a lawyer through Federated Farmers but also asking Mr Jones to ensure Ms Hey and Mr Rostron had vacated the property by 4 May.

[29] Mr Jones responded asking her for a copy of the shared tenancy agreement, along with a copy of his clients' individual employment agreements. There was an implied criticism by Mr Jones regarding the timeframes for vacancy which he indicated appeared to be contrary to the Residential Tenancies Act.

[30] On 28 May 2023 Mr Jones corresponds with Ms Hey. It seems he wished to check as to whether or not the reason Ms Fitzgerald gave for the termination of the tenancy was accurate.

[31] As indicated earlier, Mr Rostron's employment ended on 17 March 2023 and Ms Hey's employment ended on 3 May 2023. Accordingly, Mr Rostron had until the 16th day of June 2023 within which to raise his grievance and Ms Hey had until the 2nd day of August 2023 within which to raise her grievance.

[32] On 16 June 2023, Ms Hey emailed Mr Jones asking "...How are you getting on with those drafts? Did you get Anthony's email?". Mr Jones responded "Hi, sorry for the delay, I've been a bit crook, I'll give you a call later today".

[33] On 27 June 2023, Ms Hey emailed Mr Jones asking if he could send through drafts "for our personal grievances". She stated that the couple wished to see them as soon as possible and noted it had been quite some time since Mr Jones had advised he would send them through.

[34] On 5 July 2023, Ms Hey again emailed Mr Jones stating:

Hi Ron

I'm wondering if you can please send through the drafts, I'm getting a little bit worried.

Do they not have to be sent within 90 days? I've uploaded my employment contract to the Google Drive file that you've added to.

[35] On 9 August 2023, Ms Hey emails Mr Jones again:

Hi Ron

I have attached a draft letter from Community Law in Palmerston North for Anthony's personal grievance.

We received this draft prior to you representing us.

To put it simply, Karen claimed that Anthony was a casual employee and let him go over text.

All the screenshots are in that Google Drive you have access to. All the information and summary is also in the Google Drive. Can you please organise for the letters to be sent to Karen for our personal grievances?

[36] On 15 September 2023 Ms Hey again emailed Mr Jones as follows:

Hi Ron

We would really like to get the letter sent to Karen.

She has caused us significant financial strain and need to get the ball rolling as it has been five months give or take since we started correspondence.

[37] On 27 November 2023 Ms Hey again emailed Mr Jones:

Hi Ron

Hope things are well with you.

Regarding the personal grievance against Karen, I am just wondering if you could have the letters done and the case progressing before the end of the year please? If you are too busy at the moment, would it be easier for us to find another lawyer?

Don't want to step on your toes, but the situation Karen put us in is really hanging over us and we would love to have it sorted.

[38] Ms Hey and through her, Mr Rostron, made numerous efforts to have their personal grievances raised in time. To an extent, they are entitled to rely on Mr Jones carrying out their instructions.

[39] As referred to above, Mr Rostron's employment ended on 17 March 2023. Accordingly, he had until around 16 June 2023 to raise his grievance within the statutory time period. On what could well have been the last day for raising the grievance within time, Ms Hey emailed Mr Jones asking how he was getting on with the drafts and asking whether or not he had Anthony's email. It is probably no coincidence that 16 June was the last day in which Mr Rostron could notify his grievance in time. Accordingly, on 27 June 2023 when Ms Hey again emailed Mr Jones the grievance was well and truly out of time.

[40] In respect of her own grievance, Ms Hey had until 2 August 2023 to file her grievance within time. It is clear that on a number of occasions before that date Ms Hey had emailed Mr Jones attempting to hurry matters up, unfortunately to no avail.

*Ms Hey's position*

[41] There are some differences between Ms Hey's position and that of Mr Rostron. Ms Hey had a written employment agreement and it is clear that following on from her dismissal, she took reasonable steps to raise her grievances. As time passed she increased her efforts to chase Mr Jones up regarding the notification of not only her grievances, but those of Mr Rostron. Initially, the contact with Mr Jones was focussed on the tenancy issue and not on the raising of grievances. In July, Ms Hey emailed Mr Jones expressly mentioning the 90 day period. Accordingly, I find in her case the delay in not advising ASL of her personal grievances until 1 February 2024 was a delay occasioned by exceptional circumstances. She was entitled to rely on Mr Jones to carry out his professional obligation to her which, for reasons unknown, he failed to do. Under all the circumstances, it is just to allow leave. Leave is granted allowing Ms Hey to raise her personal grievances after the expiration of the 90 day period, namely on 1 February 2024.

[42] Mr Rostron's position differs somewhat. The initial focus on the correspondence with Mr Jones was on the tenancy agreement, as indicated above. Ms Hey's follow up, related directly to the raising of grievances, was on 16 June 2023 which would have been likely the last day on which Mr Rostron could raise his grievance in time.

[43] Although the email Ms Hey sent on 5 July 2023 indicates she was aware of the 90 day period within which to notify grievances, the evidence before me is that Mr Rostron had no written employment agreement and therefore, was never given an explanation concerning resolution of employment relationship problems which presumably would have included a statement that any personal grievance would need to be raised within 90 days of the action alleged to amount to the personal grievance occurring or coming to his notice.

[44] For this reason I conclude that taking into account the efforts made to chase Mr Jones up, and Mr Rostron's lack of an employment agreement, the delay in raising his personal grievances were also occasioned by exceptional circumstances. Because he had no employment agreement, it follows he may not have been aware of the need to raise his grievances within 90 days of the action alleged to amount to the personal grievances occurring or coming to his notice. It is just to allow him leave and

accordingly, leave is granted to Mr Rostron to raise his personal grievances after the expiration of the 90 day period, namely, on 1 February 2024.

**Next steps**

[45] An Authority Officer will shortly contact the parties to arrange a further case management conference in order to progress Ms Hey's and Mr Rostron's claims.

**Costs**

[46] Costs are reserved.

Geoff O'Sullivan  
Member of the Employment Relations Authority