

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 800
3383823

	BETWEEN	JONATHAN JENKINS Applicant
	AND	ALLIED SECURITY LIMITED t/a ALLIED SECURITY First Respondent
	AND	MINISTRY OF SOCIAL DEVELOPMENT Second Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Allan Halse, advocate/counsel for the Applicant Eve Martin, representing the First Respondent Mike Mercer and Mathew Barnett. Counsel for the Second Respondent	
Investigation Meeting:	On the papers	
Submissions and/or further evidence	26 November 2025 from the Applicant 12 November 2025 from the Second Respondent	
Determination:	10 December 2025	

FIRST PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Jonathan Jenkins, claims that he was unjustifiably disadvantaged by the First Respondent, Allied Security Limited, trading as Allied Security (Allied), failing to follow a fair and reasonable investigation and disciplinary process.

[2] Mr Jenkins claims that it is appropriate that the Second Respondent, the Ministry of Social Development (MSD), be joined to the personal grievance because two of its employees were complainants in the employment dispute that resulted in the events that led to his personal grievance.

[3] MSD submits that it has been incorrectly named as the Second Respondent and seeks to be removed.

The Authority's investigation

[4] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, documents submitted by the parties, an affidavit from David Wright, Manager Health Safety and Security Operations for the MSD, and on submissions from Mr Halse on behalf of Mr Jenkins, and from Mr Mercer and Mr Barnett on behalf of MSD.

Issue

[5] This preliminary determination addresses the issue of whether or not MSD should be removed as a respondent in this matter.

Background

[6] Allied and MSD have a contract with Allied: 'Contract for Commercial Services between The Ministry of Social Development and Allied Investment Limited' (the Commercial Contract) under which Allied provides security services to all MSD Services Centres across New Zealand.

[7] The security guards assigned to the MSD Services Centres are employed by Allied. The security guards are recruited, trained and paid by Allied which also supplies their uniforms.

[8] The security guards' details are provided to MSD and MSD then carries out its own checks to ensure the guards are approved to be suitable to be deployed to MSD sites.

[9] Mr Wright states in his affidavit that the process whereby MSD checks the security guards' details is important due to the nature of MSD sites and the work that is required which involves dealing with high risk and vulnerable clients who may be anxious and suffering from mental health issues.

[10] Mr Jenkins was employed by Allied as a Security Officer on 26 February 2024, to be based in the Waikato region. He was provided with an individual employment agreement (the Employment Agreement) which named Allied as the employer.

[11] Clause 4.1 of the Commercial Contract between MSD and Allied Security states:

Independent Contractor: The relationship between the Ministry and the Provider (Allied) is that of principal and contractor and nothing in this Agreement will be taken as constituting the Provider to be an employee, partner, or agent of the Ministry for any purpose. The Provider has no right or Authority to assume or create any obligations of any kind or to make any representations or warrants for or on behalf of the Ministry.

[12] Security Protocols specify the responsibilities of both Allied and MSD concerning the security services provided by Allied to MSD. Section 2 of the Security Protocols describes

Allied's obligations and outlines the working relationship between Allied and the security guards, including as to oversight and control.

- [13] In accordance with the Security Protocols, Allied must ensure their Guards are:
- properly certified;
 - receive appropriate training;
 - maintain a high standard of professionalism and appearance;
 - are equipped with the necessary communication devices; and
 - remain on sire unless directed otherwise by their supervisor or when escorting staff as authorised by the Site Manager.

[14] Under the Security protocols MSD's responsibilities necessitate providing the security guards with a comprehensive site orientation, consistent with MSD's responsibilities as a PCBU.

[15] Any issues about a security guard's performance or behaviours are brought to the attention of Allied's Managers, primarily through a process where a site manager raises an issue by completing a 'Safety, Threats, Accidents and Risks' (STAR) report. In his untested affidavit Mr Wright stated that a STAR report was a way MSD employees could seek support from Allied for issues relating to employees or contractors' behaviours in the workplace.

[16] A STAR report was raised by MSD staff in regard to incidents involving Mr Jenkins on 7 and 18 March 2025 at the Paeroa MSD site. Apart from the STAR report, MSD provided a witness statement and CCTV footage to Allied.

[17] Following receipt of the STAR report from MSD, Allied initiated an investigation and disciplinary process involving Mr Jenkins in accordance with its internal disciplinary process. It was Allied which conducted the subsequent investigation and disciplinary meetings and Allied which issued the first written warning to Mr Jenkins on 15 May 2025.

[18] MSD was named as the Second Respondent in the Statement of Problem to Mr Jenkins' claim on the basis that:

- i. Two MSD employees raised a STAR report in respect of security incidents involving Mr Jenkins.
- ii. The Security Protocols breached the Health and Safety at Work Act 2015 (HSWA).

[19] MSD filed an application seeking an order that it be struck out of proceedings on the basis that there was no legal or factual basis in the Statement of Problem for its inclusion as a respondent, nor were there any actionable claims against MSD.

Should MSD be removed as a party?

[20] It is not uncommon for applications filed with the Authority to name persons or parties as respondents, who may then file a response denying that he, she, or it, is properly named as a respondent. Such a response does not automatically result in the named person or party being joined or retained as a respondent. It is incumbent upon, and part of the duties of, the Authority Member dealing with the relevant application to ensure that the correct parties are named as respondents.¹

[21] The Authority investigates matters raised and concerning parties who are in an employment relationship. As set out in the Employment Agreement, Mr Jenkins' employer is Allied, and his claim as set out in the Statement of Problem is that of unjustifiable disadvantage arising from Allied's failure to follow a fair and reasonable employment investigation and disciplinary process.

[22] Employees are required to raise a personal grievance with his or her employer pursuant to s 114 (1) of the Act. Mr Jenkins raised a personal grievance for unjustifiable disadvantage with his employer, Allied, on 16 May 2025. Mr Wright states in his affidavit that MSD only became aware that Mr Jenkins was seeking to include it as a party when served with the Statement of Problem in June 2025.

[23] Pursuant to s 103(1)(b) of the Act, in determining whether or not an unjustifiable disadvantage has occurred, the Authority must investigate how the actions of the employer, Allied, and how it acted, to ascertain if they were how a fair and reasonable employer may have acted in the circumstances.

[24] It would appear that Mr Jenkins' basis for joining MSD is that two of its employees raised complaints about Mr Jenkins whilst he was carrying out his duties as a Security Guard at the MSD site in Paeroa.

[25] It is not unusual for third parties to make complaints about an employee. That does not make the complainants parties to the proceedings. What is pertinent is that the employer acts as a fair and reasonable employer in its investigation of the issues concerning its employee.

¹ Employment Relations Act 2000 s221(a)

[26] Mr Halse submits that MSD should be joined as a controlling third party (CTP) to Mr Jenkins personal grievance.

Should MSD be joined to the proceedings as a controlling third party?

Section 103B of the Act

[27] The relevant circumstances in which an application may be made to join a controlling third party to a personal grievance are set out in s 103B of the Act. Section 103B requires that an employee has validly raised the relevant personal grievance with their employer in compliance with s 114 of the Act and has made an application to the Authority seeking that the personal grievance be resolved. The personal grievance must relate to an action alleged to have occurred whilst the employee was working under the control and direction of a controlling third party.

[28] Once these threshold requirements are met and an application to join a CTP has been made, the Authority must grant the application if satisfied of the following matters pursuant to s 103B(3):

- (a) That the requirement to notify a controlling third party in accordance with s 115A has been complied with; and
- (b) That an arguable case has been made out-
 - (i) That the party to be joined to the proceedings is a controlling third party; and
 - (ii) That the party's actions caused or contributed to the personal grievance.

[29] Section 115A addresses notification of the alleged controlling third party of the personal grievance and states:

- 115A Notifying controlling third party of personal grievance
- (1) For the purposes of section 103B, this section is complied with-
 - (a) when the employee
 - (i) considers that the action of a controlling third party caused or contributed to the personal grievance; and
 - (ii) notifies the controlling third party of that fact within the application employee notification period; or
 - (b) When an employer-
 - (i) considers that the actions of a controlling third party caused or contributed to the personal grievance; and
 - (ii) notifies the controlling third party of that fact within the 90 day employer notification period.

[30] MSD states that it was unaware that Mr Jenkins intended to join it as a CTP because he did not notify MSD of his personal grievance. Further that he did not apply to join MSD as a

CTP under s 103B and r 9A of the Regulations to the Act which requires every application under s 103B for joining a CTP to proceedings to be in form 4.

[31] It is submitted by Mr Halse that MSD had actual knowledge of the grievance through the STAR reporting, correspondence and the disciplinary process.

[32] The legislation is quite clear about the process to be followed when joining a third party to a claim. The intended CTP must be notified of the personal grievance within the 90-day statutory time frame pursuant to s 115A(1)(b)(11) of the Act. MSD claims that it was not notified of Mr Jenkins' personal grievance and his intention to join it as a CTP within the statutory time frame, and there is no evidence to support that he did so.

[33] Mr Halse submits that s 115(4) of the Act allows the Authority to grant leave "if the Authority considers it just to do so".

[34] MSD does not consent to being joined as a CTP and claims that there are no exceptional circumstances to support exceptional circumstances.

[35] While Mr Jenkins raised his personal grievance with Allied within the statutory 90-day time limit, there is no evidence that he raised it with MSD within the 90-day time limit. I therefore examine whether or Mr Jenkins should be granted leave to raise the personal grievance out of time pursuant to s 114(4) and s 115 of the Act.

[36] The Authority may grant leave pursuant to s 114(4) of the Act if it:

(a) Is satisfied that the delay, in raising the personal grievance was occasioned by exceptional circumstance (which may include any 1 or more of the circumstances set out in section 115); and

(b) Considers it just to do so.

[37] Examining the criteria which must be fulfilled I note firstly that, Mr Jenkins has made no submission or provided evidence on exceptional circumstances grounds. Other than raising the claim in submissions on this preliminary issue, Mr Jenkins had made no specific application to join MSD as a CTP by raising the personal grievance outside the 90 day statutory time frame.

[38] For leave to be granted, the delay must have arisen due to exceptional circumstances.

[39] Section 115 of the Act sets out the circumstances in which exceptional circumstances may be found:

(5) Further provision regarding exceptional circumstances under section 114
For the purposes of section 114(4)(a), exceptional circumstances include—

(a) where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114(1); or

(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; or

(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; or

(d) where the employer has failed to comply with the obligation under section 120(1) to provide a statement of reasons for dismissal.

[40] It is not submitted for Mr Jenkins, and there is no evidence to establish, that he was so traumatised that he was unable to properly consider notifying MSD of its intention to join it as CTP by including it as a party when raising a personal grievance pursuant to s 115 (a) of the Act.

[41] There is no evidence that Mr Jenkins instructed Mr Halse, or any other agent, to raise the personal grievance with MSD in addition to Allied (s 115(5)(a)).

[42] Mr Jenkins had been provided with a written employment agreement which set out the time limit for raising a personal grievance (s115(5)(b)).

[43] The existence of the exceptional circumstance is not sufficient alone to satisfy the requirements, the exceptional circumstance must have given rise to the delay in raising the personal grievance (s 115(5)(c)).

[44] I find no evidence supporting the conclusion that there was an exceptional circumstance basis for the delay in Mr Jenkins seeking to join MSD to his personal grievance against Allied.

[45] In considering whether or not it is just to allow Mr Jenkins to join MSD to his personal grievance claim out of time I find that given the fact that I have determined there were no exceptional circumstances, it would not be in the interests of justice to allow him to do so now.

[46] I determine that MSD should be removed as a respondent in this matter.

Next Steps

[47] The investigation meeting in respect of Mr Jenkins' substantive claims is scheduled to take place on 21 and 22 April 2026.

Costs

[48] Costs are reserved pending the outcome of the substantive investigation.

Eleanor Robinson
Member of the Employment Relations Authority