

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 807
3383823

BETWEEN JONATHAN JENKINS
Applicant

AND ALLIED SECURITY
LIMITED t/a ALLIED
SECURITY
First Respondent

Member of Authority: Eleanor Robinson
Representatives: Allan Halse, advocate for the Applicant
Eve Martin, representing the Respondent
Investigation Meeting: On the papers
Submissions and/or further evidence: 26 November 2025 from the Applicant
12 November 2025 from the Respondent
Determination: 15 December 2025

SECOND 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 seeks to raise a personal grievance for unjustifiable disadvantage in regard to a First Written Warning issued to him on 12 August 2024.

[3] Allied opposes the raising of the personal grievance on the basis that (i) it was raised outside of the 90 day statutory time limit; (ii) Mr Jenkins has not sought leave to raise it under s 114(3) of the Employment Relations Act 2000 (the Act); (iii) there are no exceptional circumstances; and (iv) the FWW has expired and become inactive after 12 months and is not linked to any later warning or disciplinary matter.

The Authority's investigation

[4] The parties agreed to the Authority determining this preliminary issue based on the Statement of Problem and the Statement in Reply, documents submitted by the parties, and on submissions from Mr Halse on behalf of Mr Jenkins, and from Ms Martin on behalf of Allied.

Issue

[5] This preliminary determination addresses the issue of whether or not Mr Jenkins raised his personal grievance in relation to the FWW within the 90-day statutory time limit.

Brief Background

[6] Allied and MSD have a commercial contract under which Allied provides security services to all MSD Services Centres across New Zealand. The security guards assigned to the MSD Services Centres are employed by Allied.

[7] Mr Jenkins was employed as a Security Officer by Allied on 26 February 2024, he was assigned to be based at an MSD site in Paeroa in the Waikato region. Mr Jenkins was provided with an individual employment agreement (the Employment Agreement) by Allied.

[8] Clause 42 of the Employment Agreement was headed 'Employment Relationship Problem Resolution Process' and stated at sub-clause(f):

If you have grounds for raising a personal grievance with the Company (for unjustifiable dismissal, unjustifiable disadvantage, discrimination, duress, sexual or racial harassment, ...) then you must do so within 90 days of the action occurring or the grievance coming to your notice. Otherwise, your claim may be out of time.

[9] On 6 August 2024 Mr Jenkins received a letter inviting him to attend an investigation meeting to discuss his alleged failure to follow correct process to call out of a rostered shift by texting the night before and by not telephoning.

[10] Following the meeting on 9 August 2024, Mr Jenkins was issued with the First Written Warning for not following the process for calling out sick.

[11] On 1 October 2024 Mr Jenkins was involved in a car accident on his way home from work. Mr Jenkins could not obtain a doctor's appointment until 8 October 2024.

[12] On 15 October 2024 Mr Jenkins emailed an Allied senior manager to update him on his accident and the steps he had taken to inform his direct manager of his absences.

[13] In March 2025 there was an incident at the Paeroa offices involving an MSD client. Following a disciplinary investigation, Mr Jenkins was issued with a first formal written

warning on 15 May 2025. He raised a personal grievance for unjustifiable disadvantage on 16 May 2025.

Raising of a Personal Grievance

[14] Section 114(1) and (2) of the Employment Relations Act 2000 (the Act) states:

- (1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within 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 the later, unless the employer consents to the personal grievance being raised after the expiration of that period;
- (2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.”

[15] In *Panapa v Spotless Facility Services Limited* the Employment Court stated:

[23] A grievance is raised as soon as the employee has made, or has taken reasonable steps to make, the employer aware that the employee alleges a personal grievance that the employee wants the employer to address. The raising of a grievance is the first recognised step in the problem solving process.

[24] In order for a communication to constitute the raising of a personal grievance, it must make the employer sufficiently aware of the grievance to be able to respond to it.¹

[16] I find that the language of s 114(2) of the Act as applied by the Employment Court in *Panapa v Spotless Facility Services Limited* makes it clear that it is necessary that:

- (i) there is an action by the employer which gives rise to a personal grievance before the personal grievance is raised;
- (ii) the employee has taken reasonable steps to advise the employer that he/she is alleging a personal grievance it wants the employer to address; and
- (iii) the communication about the personal grievance made the employer sufficiently aware of what it had to address.

¹ *Panapa v Spotless Facility Services Limited* [2021] NZEmpC 88

[17] Whether the grievance has been specified sufficiently to enable the employer to address it, is to be assessed objectively i.e. from the standpoint of an objective observer².

Allied's submissions

[18] Allied submits that Mr Jenkin's attempt to revisit a matter (the First Written Warning) well outside the statutory window is inconsistent with the purpose and intent of the Act and would be prejudicial to it.

[19] Allied submits that Mr Jenkins raised no personal grievance in relation to the First Written Warning within the 90-day period following the issuing of it and only raised it as a disadvantage grievance almost ten months later.

[20] It is submitted that Mr Jenkins has not provided any evidence of trauma, incapacity or representative failure that would provide a basis for claiming exceptional circumstances. On the contrary, he was actively employed and fully engaged in workplace processes following the August 2024 warning, including further meetings and training, thereby demonstrating full capacity to consider any grievance within the 90-day statutory time limit.

[21] Allied submits that the First Written Warning expired in August 2025, and by operation of its disciplinary policy and the ordinary passage of time, it has no continuing effect on Mr Jenkins' employment.

Submissions for Mr Jenkins

[22] It is submitted for Mr Jenkins that he did raise a personal grievance in relation to the First Written Warning within 90 days. It is submitted that the email sent by Mr Jenkins to a senior manager in Allied on 15 October 2024 satisfies the test by making the employer aware of the problem affecting the employment relationship.

[23] It is further submitted for Mr Jenkins that his direct manager spoke to Mr Jenkins and angrily informed him that he was creating problems and told him his email was "bullshit". It is submitted that this reaction by his direct manager indicates that Allied received, understood and acknowledged the complaint.

Did the email dated 15 October 2024 raise a personal grievance in relation to the First Written Warning issued on 9 August 2024?

[24] The email dated in a communication to the senior manager of Allied stated:

² *Winstone Wallboards Ltd v Samate* [1993] 1 ERNZ 503

I am keeping you in the loop regarding a series of incidents following my car accident on 1st October 2024. ...

The accident itself took place in the gorge ...

2nd October

I went to see the doctors ...

3rd October

I received a text from {direct manager} asking if I'd be in the following day ...

The following week

7th I sent a text to follow up regarding sick leave ...

8th October

I get a call from [direct manager] to confirm my shift ...

So the situation is my car was written off, I have been recovering from an accident, I/m in the process of replacing my car ...

As it seems all channels of communication to my manager can not be relied on consistently and has caused stress for all involved.

[25] I find no reference in the email to Mr Jenkins raising a concern about the First Written Warning, instead the email is wholly concerned with a communications issue with his direct manager following the car accident on 1 October 2024.

[26] Having considered the email I determine that it does not raise a personal grievance in relation to the First Written Warning.

Should Mr Jenkins be granted leave to raise the personal grievance in relation to the First Written Warning out of time pursuant to s 114(4) and s 115 of the Act?

[27] Allied does not consent to Mr Jenkins raising his unjustifiable disadvantage grievance in relation to the First Written Warning outside the statutory 90-day timeframe.

[28] As set out in s 114(3) of the Act where an employer does not consent to a personal grievance being raised after the 90-day statutory time frame, an employee may apply to the Authority for leave to raise it outside of that time frame pursuant to s 114(4) of the Act.

[29] Mr Jenkins has made no specific application to raise the First Written Warning personal grievance claim outside the statutory 90-day time period.

[30] I find no evidence supporting the conclusion that there was an exceptional circumstance basis for the delay in Mr Jenkins raising the First Written Warning personal grievance outside of the statutory 90-day time period.

[31] I determine that Mr Jenkins did not raise a personal grievance in relation to the First Written Warning within the statutory 90-day time limit.

Next Steps

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

Costs

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

Eleanor Robinson
Member of the Employment Relations Authority