

NOTE: This determination contains an order prohibiting publication of certain information at paragraph [9]

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 112
3390044

BETWEEN	DEIDRE WYETH Applicant
AND	HARVEY NORMAN STORES (N.Z.) PTY LTD Respondent

Member of Authority:	Alyn Higgins
Representatives:	Greg Lloyd, counsel for the applicant Lyal Graham for the Respondent
Investigation Meeting:	On the papers
Submissions received:	26 January 2026 from the Applicant 2 February 2026 from the Respondent
Determination:	27 February 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination deals with a preliminary issue as to whether the Authority should grant leave to the applicant, Ms Deidre Wyeth, to pursue her personal grievance claims out of time with her former employer, Harvey Norman Stores (N.Z.) Pty Ltd (Harvey Norman).

[2] Ms Wyeth accepts that her personal grievance claim was not lodged with Harvey Norman within the required employee notification period pursuant to s 114 of the Employment Relations Act 2000 (the Act).

[3] Harvey Norman does not consent to Ms Wyeth's personal grievance claim being raised out of time and Ms Wyeth is seeking leave of the Authority to raise her personal grievance claim after the expiry of the employee notification period because exceptional circumstances exist and it just to grant such leave. Ms Wyeth is further seeking an order from the Authority directing the parties to attend mediation pursuant to s 114 (5) of the Act.

[4] The statutory employee notification period in this case is 90 days beginning with the date on which the action alleged to amount to the personal grievance occurred or came to Ms Wyeth's notice.¹

[5] Where the employer does not consent to a personal grievance being raised after the expiration of the employee notification period, the Act sets out the grounds on which an employee may seek leave of the Authority to raise a personal grievance outside the employee notification period.²

[6] Section 115 of the Act then sets out a non-exclusive list of exceptional circumstances. In the present case, Ms Wyeth says that those exceptional circumstances are that she had made reasonable arrangements to have the grievance raised on her behalf by an agent and the agent unreasonably failed to ensure that the grievance was raised within the required time.³

Non-publication

[7] Mr Lloyd for Ms Wyeth is also seeking non publication of the name of the agent and any identifying details on the basis the agent has not been given an opportunity to comment and that it is in the interests of natural justice to do so.

[8] Harvey Norman submitted that if ordering non-publication of the agent that I should also extend non-publication to it as the respondent. I decline to do so. Harvey

¹ Employment Relations Act 2000, ss 114 (7) (b).

² Employment Relations Act 2000, ss 114 (3) and (4).

³ Employment Relations Act 2000, ss 115 (b).

Norman has not put forward any adverse consequences of publication or whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case.⁴

[9] I am however satisfied that neither Ms Wyeth nor Harvey Norman will be prejudiced by non publication of the agent or any identifying details of the agent. A non-publication order in relation to the name of the agent and any identifying details is accordingly made under clause 10(1) of schedule 2 of the Act, until further order of the Authority.

The Authority's Investigation

[10] The parties agreed that the preliminary issue could be determined on the papers following written submissions. An affidavit from Ms Wyeth with supporting documents was also received.

[11] As permitted by s 174E of the Act this determination states findings of fact and law and expresses conclusions on issues necessary to dispose of the matter. It has not recorded all evidence and submissions received but all information provided in the course of the investigation has been considered.

The issue

[12] The preliminary issue for determination is whether Ms Wyeth should be granted leave under s 114(3) of the Act to have her personal grievance claim for unjustified dismissal and/or unjustified disadvantage raised after the expiration of the employee notification period of 90 days on the basis that exceptional circumstances exist and it is just to do so.

Relevant Background

[13] Ms Wyeth was employed by Harvey Norman as an Operations Assistant from 29 May 2023 to 25 October 2024.

[14] Ms Wyeth's employment ended by way of redundancy and this was advised to Ms Wyeth by letter on 30 September 2024. This termination letter advised Ms Wyeth of four weeks' notice and provided for a date of disestablishment of 27 October 2024.

⁴ *MW v Spiga Ltd* [2024] NZEmpC 147.

However, Ms Wyeth was concerned that the termination of her employment may not have been lawful and potentially gave rise to a personal grievance for unjustified dismissal and/or unjustified disadvantage.

[15] The same day as the termination letter Ms Wyeth sought professional advice from an agent, GZW⁵. The purpose of obtaining advice was to determine whether or not there were grounds to pursue a personal grievance against Harvey Norman, and if so, to raise a personal grievance on her behalf. Ms Wyeth formally engaged the services of GZW on 30 September 2024 who agreed to provide representation to Ms Wyeth.

[16] On 14 October 2024 Ms Wyeth emailed GZW and asked GZW if she had a good case to pursue a personal grievance to which GZW replied, “short answer - yes.”

[17] In reliance on GZW’s reply, Ms Wyeth believed she had grounds for a personal grievance and that GZW had undertaken to raise a personal grievance on her behalf. GZW instructed Ms Wyeth to prepare a statement setting out her account of the relevant facts supporting her personal grievance. On 29 October Ms Wyeth emailed GZW with a copy of her statement and, among other things, asked GZW “...where to from here?”.

[18] Ms Wyeth received no response from GZW to her 29 October email and on 3 November Ms Wyeth emailed GZW again enquiring about the progress of her case. On 4 November GZW replied and arranged to meet Ms Wyeth on 5 November 2024.

[19] Ms Wyeth met with GZW on 5 November to discuss progressing the personal grievance. GZW advised Ms Wyeth that she believed she had a strong case and confirmed that she would raise the personal grievance with Harvey Norman before the end of the year.

[20] On 13 November Ms Wyeth met with GZW again and GZW confirmed that she would raise the personal grievance before the end of the year. On 28 November Ms Wyeth emailed GZW and asked, “Did you find my file and send the letter?” The letter Ms Wyeth was referring to was the personal grievance letter. On 17 December Ms Wyeth emailed GZW again and asked, “Did you send the PG letter off for me?” GZW did not respond to the email.

⁵ Refers to randomly chosen letters that does not refer to name.

[21] Ms Wyeth met with GZW once more before Christmas 2024. GZW said that they were snowed under with work and would raise the personal grievance in January. GZW assured Ms Wyeth that the personal grievance would be raised within the statutory 90-day notification period for raising the personal grievance.

[22] Not having heard from GZW and concerned that the personal grievance may not have been raised within the notification period, Ms Wyeth sent GZW a text message on 5 February 2025 asking what was happening with the personal grievance.

[23] Ms Wyeth spoke to GZW by phone later that day. GZW apologised and acknowledged that the 90-day time limit for raising the personal grievance had been missed and undertook to raise it that day, which was done.

[24] On 7 February 2025 Harvey Norman's Senior Human Resources Advisor, Mr Graham, emailed GZW to advise that Harvey Norman did not consent to the personal grievance being raised out of time. GZW responded and mistakenly asserted that the effective date for the expiration of the notification period was 24 February 2025 and that the personal grievance was therefore raised within time.

[25] GZW did not advise Ms Wyeth of Mr Graham's response and Ms Wyeth made further attempts to contact GZW. On 25 March and 8 April, still unaware of Mr Graham's response, Ms Wyeth sent text messages to GZW enquiring about her personal grievance.

[26] In early May 2025 Ms Wyeth spoke to her local Community Law Centre about her case. On 7 May the Community Law Centre manager emailed GZW requesting a copy of Ms Wyeth's file and Ms Wyeth then engaged the services of new counsel, Mr Lloyd.

[27] On 23 May 2025 Mr Lloyd emailed Mr Graham and invited Harvey Norman to reconsider its position on the basis that Ms Wyeth would likely have grounds to seek leave of the Authority to have her grievance raised out of time as a result of exceptional circumstances being that Ms Wyeth had made reasonable arrangements to have her grievance raised on her behalf by an agent (GZW) and relied on GZW to have her grievance raised on time but this did not occur. Mr Lloyd also invited Harvey Norman to attend mediation in respect of Ms Wyeth's grievance.

[28] On 3 June 2025 Mr Graham responded to Mr Lloyd that Harvey Norman's position had not changed and that Harvey Norman declined to attend mediation. On 4 June Mr Lloyd emailed Mr Graham again inviting Harvey Norman to reconsider its position and that exceptional circumstances appeared to apply to Ms Wyeth. Mr Graham replied on the same day confirming that Harvey Norman would not attend mediation and Mr Lloyd subsequently applied to the Authority.

Ms Wyeth's submissions

[29] Ms Wyeth says that she made reasonable arrangements to have her grievance raised by GZW within time and relied on GZW to do so.

[30] Ms Wyeth engaged GZW's services to raise a personal grievance on her behalf, provided her with all relevant information, met with GZW to assist with the preparation of a personal grievance letter, and GZW did in fact raise a personal grievance, albeit out of time and acknowledged that she was responsible for the failure to raise the grievance within the employee notification period.

[31] Ms Wyeth says that there was no other reason for the delay in not raising the grievance within the employee notification period, other than GZW's acknowledged failure to do so and Ms Wyeth did everything that could be expected of her to advance her grievance claims.

[32] Finally, Ms Wyeth submits that the interests of justice require that leave be granted for her grievance to be heard because the right not to be dismissed unfairly is a fundamental protection, the grievance was raised only 12 days after the expiration of the employee notification period and Harvey Norman has not put forward any compelling grounds of prejudice arising from this relatively short delay.

Harvey Norman's submissions

[33] Harvey Norman submits that Ms Wyeth's actions show repeated inaction while on notice of the 90-day employee notification requirement. Harvey Norman further submits that Ms Wyeth did not secure or confirm any deadline anchored instructions, did not demand a draft personal grievance letter and did not take protective steps despite being aware of the 90-day requirement.

[34] Harvey Norman says that reasonable arrangements require more than an initial engagement and passive assumption and that the record shows two short chasers by Ms Wyeth to GZW (on 28 November and 17 December 2024) and then a lengthy silence until 5 February 2025. Ms Wyeth did not request confirmation that the grievance had been sent or require a copy and these features weigh against a finding that reasonable arrangements were made.

[35] Harvey Norman also says that Ms Wyeth must prove that any failure by GZW was unreasonable and Ms Wyeth's submissions do not establish what the agent knew and when, what she was instructed to do by what deadline, or what steps she actually took and in these circumstances, the Authority cannot safely find an unreasonable failure. Harvey Norman says that causation is not made out and justice does not favour an extension.

Discussion

[36] In this case a personal grievance must be raised 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 later.⁶ A grievance is raised with an employer 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.⁷

[37] What constitutes the raising of a personal grievance in practice is set out in *Chief Executive of Manukau Institute of Technology v Zivaljevic*:⁸

It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

⁶ Employment Relations Act 2000, ss 114 (1) and (7) (b)

⁷ Employment Relations Act 2000, ss 114 (2)

⁸ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 105 at [38]

What were the communications?

[38] To be a grievance there must be sufficient information provided for the employer to understand the issue that the grievance raises. This also includes whether the employee complied with s 114(2) of the Act by conveying the substance of the complaint to the employer and whether the employee has done enough to inform the employer of the nature of the alleged grievance.⁹

[39] GZW acknowledged to Ms Wyeth that the 90-day time limit for raising the personal grievance had been missed and undertook to raise it the same day, which was done to Harvey Norman by email on 5 February 2025. The email to Harvey Norman on 5 February 2025 makes it clear that the basis of Ms Wyeth's alleged grievances were the actions of Harvey Norman during the redundancy process that led to the ending of Ms Wyeth's employment. The email goes on to state the remedies claimed and invites Harvey Norman to mediation.

[40] Accordingly, I am satisfied but for the employee notification period that a personal grievance was validly raised by GZW to Harvey Norman by email on 5 February 2025 on Ms Wyeth's behalf.

Did Ms Wyeth make reasonable arrangements to have a personal grievance raised on her behalf within the required time?

[41] In order to grant the leave requested by Ms Wyeth the Authority must determine whether Ms Wyeth made reasonable arrangements to have her grievance raised on her behalf by GZW and that GZW unreasonably failed to ensure the grievance was raised within the required time.¹⁰ If so, the Authority must still be satisfied that it is just to extend time.¹¹

[42] In *Davies v Dove Hawkes Bay Inc*¹², Chief Judge Colgan held:

If a dismissed employee engages a qualified, knowledgeable, and experienced agent to advise on and protect the grievant's interests following a dismissal with which the former employee is dissatisfied, it is reasonable to expect such an

⁹ See *Idea Services Ltd (in Statutory Management) v Barker* [2012] NZEmpC 12 at [41].

¹⁰ Employment Relations Act 2000, ss 114 (4) (a)

¹¹ Employment Relations Act 2000, ss 114 (4) (b)

¹² *Davies v Dove Hawkes Bay Inc* [2013] NZEmpC 83 at [29]

agent to do so. The grievant's steps to have the agent raise the grievance must be reasonable but that reasonableness must be judged in light of the grievant's inexperience with such matters, the agent's corresponding expertise, and the sufficiency of the information provided to the agent to enable the agent to take those protective steps."

[43] Ms Wyeth formally engaged GZW on the day that she was notified of her dismissal. I was also provided with copies of the underlying correspondence between Ms Wyeth and GZW.

[44] On 4 October 2024 Ms Wyeth asked GZW if she had a good case for a personal grievance and if it was definitely worth going ahead with to which GZW responded, "Short answer – yes, it is." GZW had also asked Ms Wyeth to prepare a background statement of the factual circumstances, which she provided to GZW by email on 29 October 2024.

[45] Harvey Norman says that Ms Wyeth did not secure or confirm any instructions, did not demand a draft and did not take obvious protective steps notwithstanding awareness of the 90-day rule. Harvey Norman acknowledges that Ms Wyeth reached out to GZW on two clear occasions following their meeting on 5 November 2024 through two emails on 28 November and 17 December 2024. Ms Wyeth also met with GZW before Christmas 2024 and GZW assured Ms Wyeth that the grievance would be raised within the statutory 90-day notification period.

[46] I find that Ms Wyeth did secure and confirm instructions with GZW and took a number of active and obvious steps in respect of the raising of a grievance that Ms Wyeth clearly wanted to advance. Ms Wyeth clearly engaged GZW to raise a personal grievance on her behalf, provided her with all relevant information, met with her to prepare a personal grievance letter and followed up when communication was not forthcoming. Ms Wyeth was entitled to and did rely on GZW that her grievance would be raised in time.

[47] Ms Wyeth was then let down by GZW through no fault of her own. GZW unreasonably failed to raise the grievance in time and acknowledged this to Ms Wyeth and on realisation of the failure immediately raised Ms Wyeth's personal grievance with Harvey Norman. This is precisely the situation that s 115 (b) of the Act is intended to address.

[48] However, having found that exceptional circumstances exist for granting leave to have her grievance raised out of time I must still be satisfied that it is just to do so.

[49] Harvey Norman says that the grievance raised in February 2025 was light on particulars, that memories of a 2024 redundancy exercise will have faded and personnel have changed and Harvey Norman conducted its processes on the basis that time had expired and that Ms Wyeth had the opportunity to protect her position, including changing representatives within the 90-day period but did not do so. Finally, Harvey Norman says that extending time would be inconsistent with the legislative intent of certainty and finality.

[50] I am not persuaded by Harvey Norman's submissions. Under the Act Ms Wyeth had up to 25 January 2025 to be within the employee notification period and GZW raised the grievance on 5 February 2025, some 12 days later. I have also found that the grievance raised on 5 February 2025 met the requirements for raising a personal grievance. Sufficient particulars were provided even if Harvey Norman saw fit to request further detail it was still clear that the grievance related to the redundancy in September 2024, just 4 months earlier. It was also clear that the events were recent enough to Ms Wyeth and that she wanted to raise her concerns with Harvey Norman and relied on GZW's expertise to do so. Accordingly, it is just for the Authority to grant Ms Wyeth leave to do so.

Outcome and next steps

[51] Ms Wyeth's agent, GZW did raise a valid personal grievance but this was outside the employee notification period of 90 days.

[52] Despite this I am satisfied that Ms Wyeth made reasonable arrangements to have her grievance raised on her behalf by GZW, and GZW unreasonably failed to raise her grievance within the notification period. Ms Wyeth has established that exceptional circumstances apply.

[53] I also find that it is just to allow Ms Wyeth's personal grievance to be raised out of time.

[54] Having found that exceptional circumstances apply enabling Ms Wyeth's personal grievance with Harvey Norman to be raised after the expiration of the

employee notification period, I must now direct that the parties attempt to resolve the matter through the use of mediation pursuant to s 114 (5) of the Act.

[55] Accordingly, the parties are now directed to mediation and must now attempt in good faith to reach a resolution to the employment relationship problem. A copy of the statement of problem and statement in reply will now be forwarded to the Mediation Service of the Ministry of Business Innovation and Employment and a dispute resolution coordinator will contact the parties to arrange a mutually acceptable date and time for mediation to take place.

[56] If the matter is not resolved in mediation, Ms Wyeth is directed to advise the Authority whether she then wishes to proceed with the next stage of the Authority's investigation.

Costs

[57] Costs are reserved. If the matter is not resolved in mediation and proceeds to a substantive investigation meeting, costs for this preliminary matter can be considered along with costs for that meeting.

Alyn Higgins
Member of the Employment Relations Authority