

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 114
3326520

BETWEEN ANTHONY LUGO-SHARPE
Applicant
AND KAH NEW ZEALAND
LIMITED
Respondent

Member of Authority: Robin Arthur
Representatives: Allan Halse, advocate for the Applicant
Beverley Edwards, counsel for the Respondent
Investigation Meeting: 29 January 2026 in Tauranga
Determination: 27 February 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Anthony Lugo-Sharpe worked for KAH New Zealand Limited (KAH) as its Food and Beverage Operations Manager at the Chateau Tongariro hotel from 21 November 2021 until he resigned on 24 May 2022.

[2] KAH is a subsidiary of a Malaysian conglomerate, Oriental Holdings Berhad, which operates hotels and businesses in other industries around the world. It owns the Chateau Tongariro but closed the hotel in February 2023 due to safety issues and repair costs for seismic strengthening needed at the premises.

[3] In September 2024 Mr Lugo-Sharpe applied to the Authority for findings and orders about personal grievances for unjustified disadvantage and unjustified dismissal. He said he had raised disadvantage grievances during his employment and had raised a grievance of constructive dismissal in a letter of resignation he said he gave to the hotel general manager on 24 May 2022. He also relied on an email which he sent to a

company representative on 5 September 2022 which he asked “to be acknowledged as my personal grievance”. Mr Lugo-Sharpe’s 5 September letter described poor conditions and treatment of staff generally and some specific instances where his direct manager, the Food and Beverage Manager, had criticised and abused him. He said those and other problems were known about but ignored by the hotel’s assistant general manager and general manager. His letter ended: “I wish to inform you that legal action will be taken”.

[4] In its statement in reply to the Authority KAH said the first it knew of Mr Lugo-Sharpe’s alleged grievances was the 5 September email sent to a senior human resources executive at its Singapore head office. The email was sent after the end of the 90-day time limit for raising a grievance of unjustified dismissal, which in this case was by 22 August 2022. The company denied Mr Lugo-Sharpe had raised any disadvantage grievances during his employment and said the letter of resignation he said was sent on 24 May had not raised a constructive dismissal grievance, that is one alleging his resignation was really caused by unjustified actions of his employer.

[5] An Authority investigation meeting was convened to consider this preliminary issue of whether Mr Lugo-Sharpe had raised his disadvantage and dismissal grievances within the required timeframe. If he had not, the Authority would not have jurisdiction to investigate them further.

[6] In preparation for that investigation Mr Lugo-Sharpe amended his claim to request that, if his dismissal grievance was found not to have been raised in time, he be granted leave to raise it now because there were exceptional circumstances for the delay.

[7] On the day of his resignation Mr Lugo-Sharpe made a complaint to the Labour Inspectorate about the staff at the hotel being subject to migrant exploitation, working unpaid hours and being forced to work during periods of leave. Mr Lugo-Sharpe said he understood from subsequent discussions with a Labour Inspector investigating that complaint that she was dealing with his personal grievances and he had trusted her to do what needed to be done within the required time. He said he wrote to KAH on 5 September, outside the 90-day timeframe for raising a grievance, once he had learned from the Labour Inspector that she could not raise one on his behalf.

[8] Mr Lugo-Sharpe said his reliance on the Labour Inspector, who he believed was pursuing his personal grievances for him, was an exceptional circumstance warranting the leave he now sought.

The Authority's investigation

[9] Mr Lugo-Sharpe and a representative of KAH, Gary Reid, each provided a written witness statement and attended the investigation meeting on the preliminary issue. Mr Reid is the human resources manager at Wairakei Resort, another hotel facility operated by KAH.

[10] In the meeting Mr Lugo-Sharpe and Mr Reid answered questions, under affirmation, about their written evidence and the parties' representatives gave oral closing submissions.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[12] The issues for determination were:

- (a) Did Mr Lugo-Sharpe raise grievances of unjustified disadvantage during his employment?
- (b) Did Mr Lugo-Sharpe raise a grievance of unjustified dismissal, as a constructive dismissal, within 90 days of resigning and ending his employment?
- (c) If Mr Lugo-Sharpe had not raised his dismissal grievance, were there exceptional circumstances for not having done so and was it just to give him leave to raise his grievance now?

Legal principles

Raising a grievance

[13] Section 114 of the Act sets the following requirements for raising a personal grievance:

- (1) Every employee who wishes to raise a personal grievance must ... raise the grievance with his or her employer **within the period of 90 days** ... 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.

[14] The following principles, as summarised by the Employment Court, guide the assessment of whether a grievance has been raised in a way that meets those requirements:¹

The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

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.

Exceptional circumstances

[15] Section 114 of the Act allows for a personal grievance to be pursued outside the 90-day limit in exceptional circumstances:

- (3) Where the employer does not consent to the personal grievance being raised after the expiration of the employee notification period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.
- (4) On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority—

¹ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132, at [36]-[38] (footnotes omitted).

- (a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and
- (b) considers it just to do so.

[16] Section 115 sets a non-exclusive definition of exceptional circumstances:

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 applicable employee notification period under section 114; 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.

Concerns arose during the employment relationship

[17] Mr Lugo-Sharpe has more than 40 years' experience working in the hospitality and service industries, in New Zealand and, for extended periods, around the world.

[18] In his written and oral evidence about his experience of working as operations manager in the Chateau's food and beverage department Mr Lugo-Sharp said he repeatedly raised concerns about staff levels, rosters and pay with his direct manager, the Food and Beverage Manager. He said his manager yelled at him when Mr Lugo-Sharpe queried changes being made to time sheets so they did not record all hours worked by staff. Mr Lugo-Sharpe said he had also raised this and other concerns, on behalf of the staff reporting to him, directly with the hotel's assistant general manager and the hotel general manager but he was "brushed off, told the staff member was a liar or a troublemaker or treated as if I was the problem for speaking up".

[19] For the Authority investigation Mr Lugo-Sharp did not provide any documents generated during his employment, up to the time of his resignation, which corroborated his account of having raised and pursued the concerns he referred to – such as emails,

texts or notes of meetings with staff or other managers – or which recorded any dismissive or derogatory responses directed at him by those managers.

[20] Documents available for that period, before his resignation, did include a letter from the hotel manager, dated 11 April 2022. The letter called Mr Lugo-Sharpe to an investigation meeting to discuss complaints about him from two duty managers, a supervisor and two staff members who worked under him in the food and beverage department. The complaint from one duty manager said Mr Lugo-Sharpe had made derogatory remarks and criticised his work. The complaints from other employees alleged Mr Lugo-Sharpe had been harsh or abrupt in giving work instructions.

[21] Mr Lugo-Sharpe said the duty manager who made one of the complaints was a protégé of his own direct manager. In Mr Lugo-Sharpe’s view, paraphrasing his evidence to the Authority investigation, the complaints and the investigation meeting about them were orchestrated as retaliation for the concerns he had raised about management practices.

[22] The hotel’s investigation meeting was held on 19 April. KAH’s Singapore-based senior vice president for human resources, Charmaine Lee, joined the discussion with the hotel general manager and Mr Lugo-Sharpe by telephone conference.

[23] A transcript of the meeting, provided by the company, showed Mr Lugo-Sharpe gave his explanation about the complaints. He had also provided a written response about some incidents referred to in the complaints. The transcript records Ms Lee noted the complaints came from four of the 20-or-so staff reporting to Mr Lugo-Sharpe and said he needed “to be mindful” of his communication style with employees who looked up to him in his role as their manager. The meeting ended with the hotel’s general manager, according to the transcript, saying he would analyse Mr Lugo-Sharpe’s explanations and “go from there”.

[24] In his evidence to the Authority investigation meeting Mr Lugo-Sharpe said he received no further information after the 19 April meeting and no disciplinary meeting or consequences had followed by the time he resigned five weeks later.

No unjustified disadvantage grievances raised during the employment

[25] The available evidence did not establish Mr Lugo-Sharpe had raised personal grievances for unjustified disadvantage during his employment.

[26] His own evidence referred to various instances where he sought to protect or promote the interests of staff reporting to him. This included raising the concerns about whether those employees were paid promptly and got their proper leave entitlements.

[27] There was nothing however to corroborate the proposition that he had raised those issues, or others about his working relationship with other managers, as specific personal complaints that he had been disadvantaged in his own employment or conditions and he wanted the company to address his personal concerns.

[28] The 19 April investigation meeting was an instance where Mr Lugo-Sharpe could have raised such concerns, as part of his explanation about the complaints made about him, but the transcript of the meeting did not show he had made any such comments. Asked about that point during the Authority's investigation meeting Mr Lugo-Sharpe said the hotel general manager had stopped him from mentioning problems with the other managers. There was, however, nothing to corroborate Mr Lugo-Sharpe's assertion that more was said in that meeting which was not recorded in the transcript.

[29] Another possible indicator of disadvantage grievances having been raised was what Mr Lugo-Sharpe wrote in his 24 May resignation letter. The version of his 24 May letter available for the Authority investigation was not in a format which corroborated the date or means of sending it, such as an email with addresses and a time of sending. KAH, however, accepted Mr Lugo-Sharpe had given the letter to the hotel's general manager that day.

[30] That letter, closely read, does not indicate Mr Lugo-Sharpe had already raised complaints or concerns about personal disadvantage which he had asked KAH to address or had intended to do so by what he wrote in that letter. He wrote that he had "thoroughly enjoyed working at the Chateau" with support received from the general manager and assistant general manager. He made no reference to any previous instances of having raised personal concerns and still awaiting or being disappointed by a response.

[31] Mr Lugo-Sharpe's letter does specifically criticise his direct manager for a lack of support, respect and empathy for the hotel staff but his comments focus on the effects of those shortcomings on those staff and the hotel's guests. He mentions two personal

instances, where the manager asked him to fill in additional forms for a rostered day off and misreported to staff the reason Mr Lugo-Sharpe was late to work at one time, but his letter does not ask the company to do anything about that or indicate he expected any response in relation to those instances.

[32] On 24 May Mr Lugo-Sharpe also made a complaint about KAH's work practices by telephone to the Labour Inspectorate. The note of his call kept in the Inspectorate records indicates he referred to conditions for staff generally. There was no complaint or specific request in relation to his own circumstances.

[33] According to the Labour Inspectorate's records one of its assessors had a 55-minute long telephone discussion with Mr Lugo-Sharpe on 1 June. The assessor's note of questions and answers in that call show Mr Lugo-Sharpe was asked whether he was taking a personal grievance. His response was noted as: "I should. What they did is inhumane". If Mr Lugo-Sharpe's view or understanding was that he had already raised a personal grievance during his employment, or did so in his 24 May resignation letter, his answer in that 1 June discussion would have been different.

No unjustified dismissal grievance raised in time

[34] The 24 May letter cannot be read, objectively, as raising a personal grievance for unjustified dismissal, by way of constructive dismissal. In that letter Mr Lugo-Sharpe wrote that resigning was a better choice for his well-being and he no longer felt comfortable in his position, but he did not ask the company to address the personal effects on his employment and conditions of anything his direct manager did or give any indication he expected a response to the concerns touched on in his letter.

[35] Mr Lugo-Sharpe's letter of 5 September, sent to KAH's senior human resources representative Charmaine Lee and to the Labour Inspector, did expressly ask for the letter "to be acknowledged as my personal grievance". It repeated Mr Lugo-Sharpe's general criticism of employment practices at the hotel, which he called abusive and exploitive. It also made allegations about the treatment of three named staff on three instances and described abusive or undermining behaviour of his manager towards him personally. It also referred to his GP diagnosing Mr Lugo-Sharpe as "burnt out" from the stress and hours worked.

[36] This letter ended with the statements: “I wish to inform you that legal action will be taken” and “I look forward to your reply”. Taken together with his request for the letter to “be acknowledged as my personal grievance”, and the details given about some unsatisfactory interactions with his direct manager, the 5 September letter clearly had sufficient information for the company to understand Mr Lugo-Sharpe intended to raise a grievance and for the company to know what concerns it was being asked to respond.

[37] The 5 September letter was, however, sent outside the statutory framework of 90 days to raise a grievance. For his dismissal grievance, the time limit had ended on 22 August. Mr Lugo-Sharpe could only pursue this grievance if he could first establish exceptional circumstances caused the delay.

No exceptional circumstances for raising grievance out-of-time

[38] Mr Lugo-Sharpe placed his claim of exceptional circumstances causing the delay squarely in the second illustrative example given in s 115 of the Act. He said he had made reasonable arrangements with his agent, the Labour Inspector, to raise the grievance on his behalf and the agent unreasonably failed to ensure this was done on time.

[39] This two-part statutory test of the employee’s reasonable arrangements and the agent’s unreasonable failure is answered through considering the available information about communication between Mr Lugo-Sharpe and Labour Inspectorate personnel, the statutory role of Inspectors and an assessment, on the balance of probabilities, of what more than likely not had happened in the communication between him and the Inspector.

[40] The Labour Inspectorate did act on Mr Lugo-Sharpe’s complaint about staff conditions at the hotel. An Inspector’s investigation report, finalised on 10 March 2023, concluded KAH had breached employment standards for provision of meal breaks and calculating pay for annual holidays, alternative holidays, unworked public holidays and sick leave. In July 2023 KAH acknowledged the breaches and accepted an enforceable undertaking to review records for all current and past employees going back six years and to pay arrears for any amounts found owing. In October 2024 the Inspector accepted evidence from KAH that it had satisfied the requirements of the undertaking.

[41] A further consequence of Mr Lugo-Sharpe's complaint was that the Labour Inspector notified WorkSafe in July 2022 of some concerns identified. A WorkSafe investigation resulted in KAH being issued with improvement notices about training and worker engagement on 31 August 2022. WorkSafe lifted those notices in December 2022 after the company provided evidence that those non-compliance issues were remedied.

[42] Those inquiries are important context for the assessment of Mr Lugo-Sharpe's claim that he had made reasonable arrangements with the Inspector to pursue a grievance for him. His evidence gave two differing accounts on that point.

[43] In his written witness statement Mr Lugo-Sharpe referred to first speaking directly to the Inspector who investigated his complaint about KAH on 6 June 2022. He said "he described in detail the working conditions and exploitation at the Chateau" and he "was clearly talking about a personal grievance". He said the Inspector did not tell him he had to go back to his employer within 90 days and "I reasonably believed that my grievance was being dealt with through the proper official channels".

[44] The Inspectorate's records show the Inspector was not assigned to this complaint until early July. Her notes of an interview with Mr Lugo-Sharpe on 5 July show they discussed matters such as pay and leave for staff across the board, with no reference to personal grievance or individual complaint.

[45] This is consistent with Mr Lugo-Sharpe's written evidence which made no reference to the Inspector mentioning a 'personal grievance' in any conversation or correspondence with him before 31 August.

[46] He said it was not until he sent the Inspector his 31 August email, some 99 days after his resignation and asking to have his complaint "acknowledged as a personal grievance", that the Inspector referred to a 90-day limit for raising a grievance.

[47] Mr Lugo-Sharpe's oral evidence on this point was, however, different. He said that when he first talked to the Inspector about his complaint about KAH the Inspector "had asked me to hold back on any PG so they can have a fair investigation and to hold off until the investigation is over".

[48] There was no direct evidence from the Inspector about her communication with Mr Lugo-Sharpe from the outset of her investigation and after its completion. Rather, this determination has relied on what is captured of their interactions in the Inspectorate records. Those records are accepted as likely to be relatively objective, being recorded at or around the time of that contact, and before the point about whether a personal grievance had or had not been raised became contentious.

[49] For the following reasons, and relying on what can be seen or inferred from those records, it was unlikely Mr Lugo-Sharpe had made any arrangement with the Inspector to raise a personal grievance on his behalf.

[50] Firstly, in his telephone discussion with an Inspectorate assessor on 1 June, the call notes show Mr Lugo-Sharpe was asked: “Was there something you were looking for from the complaint?” His reply is recorded as: “Not looking for anything. People should know what is going on”.

[51] The evidence, assessed overall, shows Mr Lugo-Sharpe intended his call to the Inspectorate on 24 May, and what he said in the 1 June discussion with an assessor, to get his concerns about how staff were treated generally addressed, not any personal effects on him of his experience working at the hotel. If this were not the case, his answer to the question of what he was “looking for from the complaint” would have been different.

[52] And, as noted earlier in this determination, he was expressly asked in this 1 June call about a personal grievance and his response was recorded as: “I should. What they did is inhumane”. This indicates Mr Lugo-Sharpe understood there was a difference between his general complaint on behalf of the hotel staff and doing something about any personal grievance of his own.

[53] Secondly, there is no reference in any record of phone calls and email messages between the Inspector and Mr Lugo-Sharpe to the phrase ‘personal grievance’ until his email of 31 August. His request in that message for “my letter of complaint to be acknowledged as a personal grievance” indicates he understood there was a difference between a complaint being investigated by the Inspector and a personal grievance. It would not be a necessary distinction if he had already talked with the Inspector about a personal grievance, which in his oral evidence to the Authority he said he had.

[54] Thirdly, it was not likely the Inspector suggested to Mr Lugo-Sharpe that she could do anything about whatever personal grievance he might have with his former employer. Labour Inspectors are authorised under the Act to carry out specific functions, using carefully defined powers and mechanisms, to enforce employment standards and to ensure compliance with related legislation.² Those statutory parameters of their role do not extend to representing employees in raising a personal grievance. The Act sets the scope of matters on which Labour Inspectors may commence proceedings.³ This does not include the matters about which an employee may raise a personal grievance, even though there may be some factual overlaps (such as failure to pay wages or to provide leave) which could be the basis of an employee's claim of unjustified disadvantage and an Inspector's claim of employment standards being breached.

[55] In that context it was unlikely that the Inspector gave any indication to Mr Lugo-Sharpe that she could act on his behalf, in any capacity, in raising a personal grievance with his former employer. Mr Lugo-Sharpe may have misunderstood the difference between his complaint to the Inspectorate and pursuing a grievance of his own, although his 31 August email indicated he knew the distinction.

[56] Fourthly, again in the context of the scope of the Inspector's role, it was not likely the Inspector asked Mr Lugo-Sharpe to delay raising any personal grievance he had until her investigation was complete. The Inspector would be aware, as is clear from the evidence about such matters across many determinations of the Authority, that her investigation through to issuing a final report would likely take more than three months.

[57] In interviewing workers during their investigations Labour Inspectors are no doubt often asked about matters such as personal grievances. While they cannot act as a representative, Inspectors could reasonably be expected to point workers asking such questions to publicly-available information for answers. This is consistent with the general objects of the Act they operate under and the Inspectors' statutory function of taking reasonable steps to ensure relevant Acts are complied with.

² Employment Relations Act 2000, s 223 – 235.

³ See, for example, s 229(4).

[58] And this appears to be what happened here. Once the Inspector was made aware by Mr Lugo-Sharpe's email of 31 August that he wished to pursue a personal grievance, rather than solely have his complaint investigated by the Inspectorate, she promptly provided him with some useful information.

[59] The Inspector's records show she rang Mr Lugo-Sharpe later the same day to "discuss PG request". As well as updating him on progress with her investigation the Inspector recorded she:

Suggested that if he intends to lodge a PG he do it as soon as possible and that I will provide him the contact addresses of the NZ Director and the VP of HR so that he can advise them of his PG. Advised he use the Employment NZ website to see how to lodge a PG and what the written documentation should include. He said he will have help with that.

[60] By email later that on 31 August the Inspector sent Mr Lugo-Sharpe the contact email addresses for KAH representatives that she said she would provide.

[61] Returning to the statutory test for exceptional circumstances the evidence was not sufficient to conclude, on the balance of probabilities, that Mr Lugo-Sharpe had made "reasonable arrangements" with the Labour Inspector to raise a personal grievance on his behalf with KAH. Having not cleared the first hurdle of the test, there was no basis to find the Inspector had failed to raise a grievance for him within the required time.

[62] Accordingly, Mr Lugo-Sharpe's application for leave to raise a grievance now is declined.

Outcome

[63] For the reasons given in this determination, Mr Lugo-Sharpe has not established he had raised grievances of unjustified disadvantage and unjustified dismissal with KAH or that raising his grievances was delayed by exceptional circumstances. As a result the Authority does not have jurisdiction to investigate and determine concerns he had about his employment and how it came to end.

Costs

[64] Costs are reserved. If there is an issue as to costs, the parties are encouraged to resolve this between themselves.

[65] If unable to do so, and an Authority determination on costs is needed, KAH may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, Mr Lugo-Sharpe would then have 14 days to lodge any reply memorandum. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

[66] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁴ In this case, where the investigation meeting started later than scheduled and ended by mid-afternoon, the tariff would likely be treated as applying to a half-day only.

Robin Arthur
Member of the Employment Relations Authority

⁴ See www.era.govt.nz/determinations/awarding-costs-remedies.