

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 238  
3388165

BETWEEN                      BOYANG (also known as  
MIKE) YIN  
Applicant

AND                              ACUPUNCTURE  
ASSOCIATES LIMITED  
Respondent

Member of Authority:      Peter Fuiava

Representatives:            Applicant in person  
Anita Kumar, company director for the Respondent

Investigation Meeting:     On the papers

Submissions and other     12 January and 23 March 2026 from the Applicant  
information received:     13 February and 9 March 2026 from the Respondent

Determination:              21 April 2026

---

**PRELIMINARY DETERMINATION OF THE AUTHORITY**

---

**What is the employment relationship problem?**

[1]     The issue this preliminary determination resolves is whether Boyang Mike Yin, a former academic staff member of Acupuncture Associates Limited (AAL, the company or the employer) raised his personal grievance of unjustified dismissal with his employer within the relevant employee notification period of 90 days.

**How was the preliminary issue investigated?**

[2]     Following a telephonic case management conference with the representatives on 16 December 2025, timetabling directions by consent were made for the filing of written submissions which have been received and considered. With the agreement of the representatives, I have determined this preliminary issue on the papers.

### **What happened?**

[3] Mr Yin commenced working for AAL on 25 January 2021. On 12 November 2024, he and three others with whom he worked, received notices that their employment would end on the grounds of redundancy as it appeared that the school might not receive government funding for 2025.

[4] On 13 December 2024, Mr Yin and his affected colleagues were formally dismissed. However, in mid-January 2025, he and another member of the academic staff received new contracts but they were both dissatisfied with the way in which the school had undertaken the redundancy process which included a failure to respond to their concerns raised in various phone calls, letters and requests.

[5] When Mr Yin received his new contract, he said that he was concerned about its legality and fairness and, together with other staff who were offered new employment agreements, applied to Employment Mediation Services (EMS) for mediation. However, matters did not resolve there.

[6] On 28 June 2025, Mr Yin commenced proceedings in the Authority by lodging a statement of problem (SOP) which stated that he and three other teachers, had been unjustifiably dismissed on 13 December 2024.

[7] On 16 July 2025, AAL lodged its statement in reply in which it alleged that Mr Yin had failed to raise his personal grievance within the 90-day period as required by s 114 of the Employment Relations Act 2000 (the Act). It was further submitted that the 90-day timeframe ended on 12 March 2025 and that Mr Yin's SOP cannot of itself be considered as having raised the personal grievance as it was received by the company on 2 July 2025, which is 112 days out of time.

### **What is the relevant law?**

[8] For Mr Yin to have raised his personal grievance of unjustified dismissal in time, s 114 of the Act requires him to have done so within the applicable employee notification period of 90 days. That period of time starts from the date on which the action alleged to amount to the personal grievance occurred or when it comes to the employee's notice, whichever is later.

[9] The leading authority on the question of what is required to raise a personal grievance claim is *Creedy v Commissioner of Police* in which it was held that what is important, is that the employer is made sufficiently aware of the grievance to be able to respond.<sup>1</sup> The applicable principles were summarised relatively recently in *Chief Executive of Manukau Institute of Technology v Zivaljevic*,<sup>2</sup> in which her Honour Judge Holden held:

[36] 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.

[37] 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.

[38] 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.

### **Mr Yin's personal grievance was raised with his employer in time**

[10] In his written submissions to the Authority, Mr Yin provided new and additional evidence that showed that he had raised his personal grievance with AAL within the relevant employee notification period of 90 days. This was a letter dated 18 December 2024, five days after he had been formally dismissed on 13 December 2024 (the letter). The letter expressly states that Mr Yin felt that the redundancy process was handled unfairly with respect to the following:

1. The redundancy process did not follow proper procedures;
2. The reasons provided for the redundancies were not sufficiently justified;
3. There was a lack of fair communication and treatment throughout the process.

---

<sup>1</sup> *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].

<sup>2</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132.

[11] Mr Yin provided the Authority with metadata information confirming the date the letter was created, which was 18 December 2024. He also signed the letter jointly with three other affected teachers. Even so, Mr Yin explained in his written submissions that he is not in a position to provide the Authority with his work email account showing that the letter was emailed to his employer. This was because on the day he and his colleagues made their request to EMS in January 2025 for mediation, his access to his work email account was disabled as was the work emails of other employees who were made redundant.

[12] AAL's replies in two separate emails to the Authority (13 February and 9 March 2026) from one of its company directors, Ms Anita Kumar, are brief. Ms Kumar denies ever receiving the letter but, in any case, says that the school is no longer operating as it is not funded by the government.

[13] I prefer Mr Yin's evidence as it would be a simple matter for AAL to have provided the Authority with his relevant work emails from 18 to 22 January 2025, which was when Mr Yin and his colleagues approached EMS for mediation assistance. Mr Yin's 'Sent Items' folder will have recorded what emails had been sent during this short period of time but this information has not been provided. In the absence of this information which will reasonably still be in AAL's possession, I give Mr Yin the benefit of the doubt that the letter was sent to his employer on 18 December 2024, which is well within time.

### **Conclusion**

[14] If I am wrong with this, AAL will have the opportunity to adduce further evidence at the substantive investigation. However, based on the information and evidence before me at this time, I am satisfied that Mr Yin has raised his personal grievance of unjustified dismissal within the 90-day period as required by s 114 of the Act.

[15] The investigation of this employment relationship problem in the Authority continues.

## **Costs**

[16] Costs are reserved.

Peter Fuiava  
Member of the Employment Relations Authority