IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 317
3371083

	BETWEEN	REBECCA HOPSON Applicant
	AND	ULTI GROUP LIMITED Respondent

Member of Authority:	Alyn Higgins
Representatives:	Sean Maskill, counsel for the Applicant Robert Thompson, advocate for the Respondent
Investigation Meeting:	On the papers
Submissions received:	9 February and 3 March 2026 from the Applicant 24 February 2026 from the Respondent
Determination:	22 May 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Rebecca Hopson, claims that she was unjustifiably dismissed by the Respondent, Ulti Group Limited (Ulti) following the disestablishment of her position. Ms Hopson claims that Ulti's decision to end her employment by reason of redundancy was not substantively justified or procedurally fair and seeks to raise a personal grievance for unjustified dismissal.

[2] Ms Hopson was unhappy with the process and the decision to terminate her employment and says, that as a result, she adequately raised a personal grievance

through email correspondence on 13 and 27 September 2024 during her notice period along with a further email to Ulti on 2 January 2025.

[3] Ulti opposes the raising of the personal grievance on the basis that Ms Hopson's grievance was raised outside of the 90 day employee notification period pursuant to s 114 of the Employment Relations Act 2000 (the Act). For completeness, Ms Hopson has not sought leave to raise her grievance under s 114 (4) of the Act for exceptional circumstances.

[4] It is necessary to determine whether Ms Hopson raised a personal grievance within the employee notification period before the substantive claim of unjustified dismissal can be investigated.

The Authority's investigation

[5] The parties agreed to the Authority determining this as a preliminary issue based on the Statement of Problem and the Statement in Reply, documents submitted by the parties and on submissions from Mr Maskill on behalf of Ms Hopson and from Mr Thompson on behalf of Ulti.

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

Issue

[7] This preliminary determination addresses the issue of whether or not Ms Hopson raised her personal grievance within the 90 day employee notification period pursuant to sections 114 (1) and 114 (7) of the Act. This determination does not consider the merits or otherwise of any actual grievance.

Relevant Background

[8] Ms Hopson commenced employment with Ulti on 14 November 2022 as a Customer Services Representative (CSR) based at Ulti's Hawera site. The role was permanent for 35 hours per week and Ms Hopson had a written individual employment agreement. Clause 18.2 of Ms Hopson's employment agreement stated the following:

> If the Employee wishes to raise a personal grievance, this must be done within 90 days of the date when the alleged grievance occurred or came to the employee's attention, whichever is the latter. The grievance is 'raised' as soon as the Employee has informed the Employer that the Employee considers a personal grievance has occurred.

[9] On 23 August 2024, Ulti sent Ms Hopson a letter proposing to disestablish her position. This letter set out the reasons for this proposal including that Ulti continued to be affected by economic conditions and Ulti wanted to address areas in the business that were falling behind.

[10] The letter further said that the Hawera hub had been an area of the business that had been adversely impacted and was down on revenue and budget and quoted supporting information. The letter questioned whether the Hawera hub of the Ulti business required a dedicated CSR role and that if the business decided to take the approach that a CSR role was not needed at Hawera then Ms Hospon's CSR role would be disestablished. A meeting to hear Ms Hospon's feedback on this proposal was proposed for 30 August 2024.

[11] On 27 August 2024, an Ulti HR adviser emailed Ms Hopson to ask if she had received the letter and after an email exchange to confirm the process Ms Hopson asked if Ulti would be offering her an alternative position to which Ulti replied that redeployment would continue to be explored, but that Ulti was currently only hiring for technical roles and that there wasn't an obvious alternative position at that stage.

[12] 30 August 2024, Ms Hopson provided Ulti with feedback generally outlining the value she added and her ability to grow and adapt.

[13] On 5 September 2024, Ms Hopson received a letter acknowledging Ms Hopson's feedback and responding to some of the points that Ms Hopson had made in her feedback on the proposal. Despite this, the letter confirmed Ulti's decision to disestablish her position. The letter also informed Ms Hopson that there were no suitable redeployment opportunities and that her employment will end on 3 October 2024, being four weeks' notice and that Ms Hopson's final pay would also be processed on this date. The letter said that the decision was no reflection on Ms Hopson's work or performance in her role with Ulti. The letter was sent to Ms Hopson by email with the subject line "Final Decision – Proposed Restructure".

[14] Ms Hopson was on ACC compensation for the full period of her notice. On 13 September 2024, Ulti HR sent Ms Hopson an email to check in and make sure that Ms Hopson had received the final decision latter. Approximately 75 minutes later Ms Hopson responded by email copying in Mr Ernie Cottle, Ulti's General Manager, and saying that the letter had been received. Ms Hopson went on to comment about the business being ahead and that decisions may have been made too quickly and also referring to Ms Hopson's ACC. Mr Cottle replied at 4.59pm the same day saying that the decision was not made lightly and that support had been offered in assisting Ms Hopson find another job.

[15] On 27 September 2024 Ms Hopson sent Mr Cottle a further email in the same email conversation saying that she "still hadn't made peace". Ms Hopson's email also contained the following lines:

> Can Ultigroup please satisfy me that a fair and proper process was followed?
>
> Can I be provided dated documentation from the beginning
>
> I want to understand how this came about, what meetings were held…resulting in my redundancy decision

[16] By email on 4 October 2024, and after the end of Ms Hopson's notice period, Mr Cottle responded to Ms Hopson in some detail referring to a mid-year operations strategy review and the Hawera hub sales being down and there being insufficient work. Mr Cottle also said that he consulted the leadership team and then commenced a formal consultation process with Ms Hopson and had considered the feedback she had provided before reaching a decision.

[17] There was no further correspondence provided until on 2 January 2025, Ms Hopson sent Mr Cottle a further email again with the same subject line "Final Decision – Proposed Restructure." In this email Ms Hopson still expressed concerns about her redundancy termination and requested information about roles that Ulti had hired that Ms Hopson considered herself suitable for. In this email Ms Hopson said that she would raise a personal grievance if not satisfied with Ulti's answers.

[18] On 10 January 2025 Mr Cottle replied to Ms Hopson saying that from Ulti's perspective the matter was closed.

[19] On 27 January 2025, Ms Hopson's representative sent Ulti a substantive personal grievance letter for unjustified dismissal that, in addition to summarising the background steps, outlined the reasons that Ms Hopson considered amounted to a personal grievance being validly raised.

Relevant law

[20] In this case a personal grievance needed to have been raised within the employee notification 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.[1]

[21] 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.[2]

[22] Judge Holden summarised the applicable principles in *Chief Executive of Manukau Institute of Technology v Zivaljevic*[3] [2019] NZEmpC 132:

> [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.
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> [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.

[1] Employment Relations Act 2000 s 114 (7) (b)
[2] Employment Relations Act 2000 s 114 (2)
[3] *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 105

> [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.

Did Ms Hopson raise a personal grievance within the 90 day employee notification period?

[23] Ms Hopson claims that her personal grievance was raised within the employee notification period. Ms Hopson has not sought leave to raise her grievance out of time and submits that the final day for her to submit a grievance was 31 December 2024 being 90 days from the end of her notice period on 3 October 2024. Ms Hopson submits that the email correspondence between Ms Hopson and Ulti between 13 September 2024 and 2 January 2025 validly raised an unjustified dismissal personal grievance within the employee notification period.

[24] Ms Hopson also submits that s114 of the Act is subject to s55 of the Legislation Act 2019, which provides:

> **55 Extension for doing thing if day or last day is not working day**
> A thing that, under legislation, must or may be done on a particular day or within a limited period of time may, if that day or the last day of that period is not a working day, be done on the next working day.

[25] Ms Hopson further submits that the notification period ended on 3 January 2025 because the Legislation Act 2019 also provides that days between 25 December and 2 January are not considered working days. However, for the reasons set out below I do not need to determine the application of the Legislation Act 2019 to this matter.

[26] Ulti's argument is that Ms Hopson failed to raise her personal grievance within the 90 day employee notification period and Ulti does not consent to a grievance being raised out of time or that any exceptional circumstances exist to justify a grievance being raised out of time and therefore the Authority does not have jurisdiction and should dismiss the application.

[27] Ulti's further submission is that Ms Hopson's employment ended on 5 September 2024 the day on which Ms Hopson was informed that Ulti were disestablishing her position because at the time of the dismissal notification Ms Hopson' wages were being covered by ACC and that Ms Hopson's employment with Ulti ended immediately (on 5 September 2024) and therefore that the employee notification period started from this date and ended on 4 December 2024.

[28] I don't accept that Ms Hopson's employment ended on 5 September 2024. Not only is it well established that an employee's employment generally ends at the expiry of the notice period, not simply when they are advised of the ending of their employment, even if they are told to leave immediately or are paid in lieu of notice.[4] I also note Ulti's termination letter to Ms Hopson of 5 September 2024, which expressly stated the following:

> "Your employment agreement provides for four weeks' notice in the event of redundancy and this means that your employment will end on 3 October."

[29] The payment of ACC weekly compensation was in lieu of Ms Hopson working during her notice period. Ms Hopson's employment ended on 3 October 2024.

[30] Alternatively, Ulti says that if the employee notification period started on 3 October 2024 then Ms Hopson had until 31 December 2024 to raise a grievance being 90 days from 3 October 2024.

[31] Finally, Ulti says that Ms Hopson's 2 January 2025 email does not meet the requirements for raising a grievance because Ms Hopson states that she will raise a personal grievance being some future event rather than raising a grievance in fact.

[32] In general, a grievance of unjustified dismissal cannot be raised until the notice period has expired as the dismissal does not occur until the notice period has ended.[5]

[33] However, in the Employment Court case of *Dunn v Waitemata District Health Board*[6] Judge Perkins found that, given the surrounding circumstances, a letter sent during the employee's notice period about a dismissal decision amounted to the raising

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[4] See for example *Ceres New Zealand LLC v DJK* [2020] NZEmpC 153.
[5] See *Poverty Bay Electrical Power Board v Atkinson* [1992] 3 ERNZ 413 (EmpC), at 420 and *Gibson v GFW Agri-Products Ltd* [1994] 2 ERNZ 309 (EmpC), at 314.
[6] *Dunn v Waitemata District Health* Board [2013] NZEmpC 246.

of an unjustified dismissal personal grievance as it had been raised with sufficient clarity to inform the employer of the matter. In *Dunn*, Judge Perkins referred to the Employment Court case of *New Zealand Automobile Association Inc v McKay*[7] and said:

> [19] While it is clear that Mr Dunn's employment was terminated subject to a notice period of one month, the Authority would appear to be incorrect in holding that the grievance raised during a notice period relating to the dismissal is invalid. In *McKay* the Court considered the type of situation which in fact has arisen in this case. It held that it would be contrary to the scheme of the legislation to say that an employee, having been given notice of a dismissal and knowing that his or her replacement had been appointed and announced, had to wait for the inevitable expiry of the notice period before the law entitled him or her to submit a challenge to the dismissal by personal grievance. The Court in that case [*McKay*] contemplated that, in any event, a grievance could be submitted during the notice period as an alleged unjustifiable disadvantage thereby becoming conflated with a dismissal grievance once the notice of termination had expired and the termination effected.

[34] This situation must be contrasted with decisions that affirm that a personal grievance for unjustified dismissal cannot be raised in advance of or in anticipation of a dismissal and must follow the actual termination of employment.[8] The situation must also be contrasted with situations where termination of employment has been notified alongside statements from the employer that termination will be withdrawn if certain conditions are met such as medical assessment information[9] or confirmation of Covid-19 vaccination[10] where no dismissal could be said to have occurred prior to the termination date. What is required is a factual assessment of the relevant communications and of the particular circumstances of the case.

[35] Applying this to the totality of Ms Hopson's communications on 13 and 27 September 2024 I find that she sufficiently raised concerns with Ulti's decision to terminate her employment. While I acknowledge that not every complaint or criticism of an employer will constitute a personal grievance, it is clear from Ms Hopson's communications that Ms Hopson had some concerns with how Ulti had reached its

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[7] *New Zealand Automobile Association Inc v McKay* [1996] 2 ERNZ 622 (EmpC)
[8] See for example *Robinson v Cromwell College Board of Trustees* [2026] NZERA 11, *Bastion v Cashmere Primary Te Pae Kereru School Board* [2025] NZERA 841
[9] *YSI v Health New Zealand* [2026] NZERA 38
[10] *Sampson v Lyttleton Port Company Limited* [2026] NZERA 17

decision to terminate her employment for redundancy and the methodology and decision making process that Ulti had adopted.

[36] It was clear enough that Ms Hopson was not satisfied as to whether Ulti had followed a fair process, which is one of the requirements on employers when considering disestablishing an employee's employment. She also felt that Ulti had not properly considered her input into the process or taken her concerns on board before deciding to end her employment.

[37] Ms Hopson's email to Mr Cottle on 27 September 2024 expressly referred to Ulti's decision and that Ms Hopson wasn't satisfied that a fair process had been followed in respect of the decision and requested further information. Indeed Ulti, through Mr Cottle, was able to infer enough of what Ms Hopson was saying about the decision to end her employment that Mr Cottle was able to respond to both emails explaining in some detail why Ulti considered that Ms Hopson's redundancy was appropriate and did so, particularly in the email of 4 October 2024 at 8.15am where both the reasons for Ms Hopson's redundancy and the consultation process followed were referenced. The lack of alternative or redeployment opportunities within Ulti was also apparent.

[38] In the present case I find that the communications collectively were sufficient to raise a personal grievance for unjustified dismissal. Even if I am wrong on this conclusion the termination may still be relevant to the ultimate outcome. As Judge King recently stated in the Employment Court case of *Healy v Health New Zealand*:

> [21] For the avoidance of doubt the communications that occurred before Ms Healey was stood down and her employment terminated did not purport to raise a grievance in respect of those matters. Nevertheless, if the implementation of the vaccine policy is found to be unjustifiable, the termination may still be relevant to the ultimate outcome of the case [11]

[39] As noted in *Baguley v Coutts Cars Ltd,* also a redundancy case, where the Court stated that the broad argument is that the unjustified action was so closely bound up

[11] *Healy v Health New Zealand* [2026] NZEmpC 98

with the dismissal in terms of both time and causality that the dismissal is tainted by it and cannot be separated from it.[12] This point was not disturbed on appeal.[13]

[40] The combination of Ms Hopson's emails of 13 and 27 September 2024 were within the requisite 90 days of the employer's action, being the notification of the decision by Ulti to terminate her employment, which was issued on 5 September 2024 and were sufficient to amount to the raising of a personal grievance for unjustified dismissal such that Ulti were sufficiently informed to respond in some detail to the concerns Ms Hopson raised.

Outcome and next steps

[41] Ms Hopson did raise a valid personal grievance with sufficient clarity within the employee notification period of 90 days.

[42] Having found that Ms Hopson did raise a personal grievance with Ulti about Ulti's decision to end her employment within the employee notification period, I note from the Statement of Problem and Statement in Reply that both parties appear willing to attend mediation. Having found that the unjustified dismissal grievance was raised in time, and having considered section 159 of the Act, parties are now directed to mediation.

[43] Accordingly, the parties are now directed to mediation and must now attempt in good faith to reach a resolution to the employment relationship problem.[14] A copy of the Statement of Problem and Statement in Reply will be forwarded to the Mediation Service and a dispute resolution coordinator will contact the parties to arrange a mutually acceptable date and time for mediation to take place.

[44] If the matter is not resolved in mediation, Ms Hopson is to advise the Authority whether she then wishes to proceed with the next stage of the Authority's process.

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[12] *Baguley v Coutts Cars Ltd* [2000] 2 ERNZ 409 (EmpC) at [52]
[13] *Coutts Cars Ltd v Baguley* [2001] ERNZ 660 (CA) at [46]–[47].
[14] Employment Relations Act 2000 s159 (2)

Costs

[45] 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