

NOTE: This determination contains an interim non-publication order prohibiting publication of certain information

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 48
3331640

BETWEEN QHE
Applicant

AND ROBERT WALTERS NEW
ZEALAND LIMITED
Respondent

Member of Authority: Sarah Blick

Representatives: Applicant in person
Anne Wilson, counsel for the respondent
Emma Peterson, counsel for the proposed respondent

Investigation Meeting: 24 July 2025 in Auckland

Submissions and information received: 4 August 2025, 21 October 2025 from the applicant
7 and 28 October 2025 from the respondent and proposed respondent

Determination: 28 January 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] QHE wishes to pursue a personal grievance claim for unjustified dismissal against his former employer, the respondent Robert Walters New Zealand Limited (RW). He also seeks to join a proposed second respondent, Samsung Electronics New Zealand Limited (Samsung), as a controlling third party.

[2] QHE claims to have raised or notified that he had a grievance in November 2022 during a phone call with a representative of RW, and also in a face-to-face conversation with a Samsung manager in December 2022. The companies say QHE did not raise grievances at the times claimed, and evidence QHE has supplied in relation to the conversations is unverified and unreliable. RW says if the Authority finds the evidence in relation to the phone call can be relied on, QHE's comments during it were in any event not sufficient to raise a grievance.

[3] QHE did not lodge a statement of problem in the Authority until October 2024, nearly two years after the conversations and after the employment with RW ended. Despite saying he raised a grievance in relation to his dismissal in late 2022, he also says he did so in his statement of problem on 16 October 2024, the same day he alleges an ex-employee of Samsung advised him Samsung had employed another person in a permanent role doing the same work shortly after QHE left employment.

[4] RW submits QHE did not raise an unjustified dismissal grievance with it within 90 days, and he is therefore out of time to pursue a grievance. Samsung says QHE did not notify it that he considered its actions caused or contributed to any unjustified dismissal grievance claim within 90 days either. Neither company consents to the raising or notifying of the grievance outside the relevant notification period.

Non-publication orders

[5] QHE seeks non-publication orders in respect of his name. The companies have not objected to orders at this stage of the proceedings.

[6] There is a fundamental principle that justice should be administered openly and may be departed from only to the extent necessary to serve the ends of justice.¹ The Employment Court has observed that damage to future career prospects was a factor to balance but that a party seeking to depart from the principle of open justice needs to provide evidence identifying adverse consequences. The Court has also considered that the open justice principle may have greater importance at the stage when evidence is properly tested, and the Authority is in a position to make findings.²

¹ *MW v Spiga Limited* [2024] NZEmpC 147.

² *JGD v MBC* [2020] NZEmpC 193.

[7] QHE seeks an order on the basis his medical information and health effects will form part of the evidence in relation to his grievance claims. He also refers to being early in his career and publication of such information would disproportionately affect his career prospects. At this interim stage I am satisfied on the information that an interim order prohibiting publication of QHE's name is appropriate in the circumstances and that other factors including the public interest do not currently outweigh them.³ This is an interim non-publication order only. It applies until further order of the Authority or the Employment Court. The parties should be prepared to make further submissions in the substantive proceedings as to whether permanent non-publication should be made.

The Authority's process

[8] Witness statements were received for QHE. For RW, the Authority received a statement for former business Support and HR division manager Kiri Johnston. For Samsung, a witness statement was received for Gary Lee, who managed the team QHE was in at the relevant time. Each of the witnesses gave evidence under oath or affirmation at the investigation meeting.

[9] 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 any orders made. It has not recorded all of the evidence and submissions received but which has been considered.

The preliminary issue

[10] The preliminary issue before the Authority is therefore whether QHE raised a personal grievance claim for unjustified dismissal with either one or both companies within the 90-day employee notification period under section 114 and 115A of the Act.

Background

Fixed term employment agreements

[11] RW provides recruitment services and temporary staffing solutions. QHE entered into a fixed term individual employment agreement (IEA) with RW from June 2021 to June 2022

³ QHE has been referred to in this determination by a randomised abbreviation that bears no resemblance to his actual name.

to provide services to RWs' client, Samsung. QHE was employed to provide services as a Graduate RF/Drive Test Engineer in Samsung's Graduate Programme.

[12] On or around 17 December 2021, QHE raised a personal grievance for unjustified disadvantage in a 9-page document alleging his working conditions at Samsung were unsatisfactory. The unjustified disadvantage grievance forms part of the claims before the Authority, which both companies are refuting.

[13] In June 2022, QHE signed another fixed term IEA with RW commencing on 21 June 2022 with an end date of 23 December 2022.

[14] Both IEAs included a clause advising of the 90-day period for raising personal grievance claims.

RW advises QHE employment was ending

[15] On 25 November 2022 Ms Johnston called QHE and advised him that his employment would be coming to an end at the end of the fixed term. QHE claims he verbally raised a personal grievance for unjustified dismissal on the call.

[16] Prior to the Authority investigation meeting, QHE provided a document which he says is a transcription of the phone call, transcribed by the Microsoft Office Mobile application. It records Ms Johnston advising the fixed term agreement was ending in one month, saying Samsung had advised there was no "full-time headcount". It records that QHE queried who made the decision. In the transcript QHE is recorded as saying there is a tradition of "perpetually extending the fixed term agreements" and he was "thinking maybe there was something that caused them to not want me to stay in that team". Ms Johnston is recorded as saying it was a business decision of a fixed-term nature, and she could not give much more information. She encouraged QHE to look online to see if Samsung had any permanent roles advertised.

[17] The transcript goes on to record QHE as saying:⁴

Regarding the personal grievances during the previous contract...
Yeah, them offering me an extended contract, keeping me employed was a major deterrent to me from taking this personal grievance further, so I didn't take it further because they were giving me another contract, keeping me employed, but if I was no

⁴ Emphasis added.

longer employed by them, that deterrent would no longer exist and I would consider taking this personal grievance further, and **I want to raise a personal grievance for the dismissal.**

[18] The transcript records Ms Johnston as saying she did not know if the original personal grievance could be pursued and he would have to consult somebody about that. She encouraged QHE to put his CV out to find work and earn more money, to which QHE said he wanted to build experience at Samsung and salary was not critical - that is why he wanted to ask if the companies “could consider that my contract is permanent provided the work is ongoing in nature...so yeah that is what I am seeking”. Ms Johnston is recorded as saying QHE was welcome to have a chat with Mr Lee to see if there were other opportunities available, to which QHE said he would. Ms Johnston then says to let her know if he had any further thoughts, to which he responded “ok”.

[19] Ms Johnston’s oral evidence was that she was confident the transcript was not an accurate record of her conversation with QHE and she believed QHE had created or edited the transcript. She said QHE did not mention a personal grievance during their call, and that this is supported by the fact she did not advise anyone else in the business (as she would have done had QHE mentioned a grievance) and she did not record a grievance in her notes taken shortly after the call. Ms Johnston’s brief notes, recorded electronically, state QHE was not overtly happy, but they do not include any reference to a complaint or personal grievance claim.

[20] During the investigation meeting QHE advised the Authority that his home surveillance system may have captured the audio of his phone call with Ms Johnston. The Authority allowed QHE time to locate and provide any original recording or otherwise advise if he was unable to locate it. QHE provided the Authority with three audio recordings which he says captured the original audio of the phone call he had with Ms Johnston. The recordings reflected the contents of the transcript.

[21] Upon receipt of the recordings, counsel for RW requested that QHE provide the entirety of the recording allegedly captured by his home surveillance system, including the video. QHE initially declined to provide the video footage, saying:

- (a) his home surveillance system was set up in a room adjacent to the room where the phone call took place;
- (b) the video surveillance did not capture the room where the call took place;

- (c) it was “distanced from where the phone call took place, and it was merely incidental that it captured the audio of the phone call from the adjacent room”;
- (d) the phone call occurred in a bedroom where surveillance systems were not operating;
- (e) he wished to keep the interior arrangement of his home private and did not want to share videos of his home; and
- (f) only the audio files were relevant to the matter and the original audio files had been provided.

[22] In response, the Authority advised QHE that if he would like it to give evidential weight to the audio recording, he would need to provide the video/original recording captured from which the audio was said to be taken. QHE later provided a link to a folder containing three video files displaying what appears to be a still image of a frosted exterior lockable ranch slider door covered in raindrops, through which no image could be made out.

QHE says he had a conversation with Mr Lee about a grievance

[23] QHE says he spoke to Mr Lee on 5 December 2022 at Samsung’s premises. QHE has provided a transcript of the alleged conversation. It records QHE as saying the words “... and so if they don't extend this, then I want to raise a personal grievance with the company”. QHE has stated the software used to transcribe the meeting notes was also the Microsoft Office Mobile app, which ran on a Samsung mobile phone, which was Samsung’s property. The meeting notes (in text form) were transferred from that mobile phone to a computer. He claimed to have been instructed by a team member to factory reset it which permanently removed all software and data, so the only data available was what was copied off the phone.

[24] Mr Lee says the “transcription” did not appear to be an accurate record of any one conversation he had with QHE. While parts of the transcription rang true to him, other parts did not. He said the notes seemed to include points from different discussions that took place at various times, not just from a single catch up or conversation. Some topics appeared to have been repeated or revisited. He says since the notes were generated by a machine tool, they may not fully capture what he intended to say and could have been influenced by his pronunciation – referring to himself as having a strong accent. Mr Lee said he did not recall QHE telling him at any time that he intended to raise a personal grievance about the way his employment with RW ended, or about the end of his secondment to Samsung. He says there was no reference to

a personal grievance in any of their discussions. If he had said that to him, Mr Lee was clear he would have notified Samsung's HR team and appropriately escalated the matter.

[25] QHE then apparently worked out his notice and his employment then came to an end on 23 December 2022.

Relevant law

[26] For the Authority to have jurisdiction to consider any personal grievance it must have been raised by the employee with the employer during the notification period as specified in s 114 of the Act. The relevant notification period is in s 114(7)(b) - being 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.

[27] To paraphrase the Act, a grievance is raised with the employer as soon as the employee has made the employer aware that they allege a personal grievance that they want the employer to address.⁵ No particular form of words is required. A grievance may be raised orally or in writing by one communication or through several communications taken together. It does not matter whether the employer recognised the complaint as a personal grievance. The issue is whether the nature of the complaint was a personal grievance as defined in the Act and whether the communication(s) conveyed the substance of the complaint to the employer. Further:⁶

[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 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.

[28] In *Creedy v Commissioner of Police*, the Employment Court noted:⁷

[39] The personal grievance procedures in the legislation are aimed not at preserving rights to litigate past or current injustices at some indefinite future time at which an employee may elect to revive them. Rather, the procedures exist to have alleged injustices identified and addressed quickly, and initially at least, informally, and directly between employer and employee.

⁵ Employment Relations Act 2000 s 114(2).

⁶ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132.

⁷ *Creedy v Commissioner of Police* [2006] ERNZ 517.

Assessment

Transcript of call with Ms Johnston

[29] QHE also claims the meeting notes of the phone call with Ms Johnston were transferred, in text form, from a mobile phone to his computer prior to him returning the phone to Samsung in December 2023. However, the summary tab of the document properties shows that it was created on 22 May 2025 and QHE has not provided the original data he says was captured by the transcription and transferred to his computer before December 2022, despite requests for this information. It is not the original transcript or data and appears to have been edited and contains punctuation, grammar and lacks mistakes which would be expected from an original transcription.

[30] The parties note that the Microsoft Office Mobile app is no longer available as it was replaced or rebranded by Microsoft 365 Copilot. RW says the Microsoft Office Mobile App did not allow (and it was not possible) to transcribe a phone call from the App for privacy reasons. The evidence presented by QHE does not show it was possible to transcribe directly from a phone call using the App.

Alleged audio and video footage of call with Ms Johnston

[31] RW submits that QHE could have edited the audio files and video files just as seamlessly as the transcript and that the Authority should not give evidential weight to either. RW points out that both the audio files and the video files appear to have been edited using a Microsoft application called 'Clipchamp' which publicly available information confirms is a video editor which allows the user to combine videos, images and audio files together. RWs' position is that QHE could have edited the audio files and/or the video files to make it appear that the transcript was accurate. It further says if these files were an accurate reflection of one single conversation, it seems unlikely that the files would be split into three different recordings.

[32] While giving evidence during the investigation meeting, QHE acknowledged there were other conversations during his time with RW and Samsung that he recorded. QHE went on to give evidence that he used the same application on his Samsung mobile phone to transcribe the conversations and that he did not "record" these conversations. QHE was unable to recall or provide any evidence about the nature of the conversations he recorded and indicated that he recorded a few conversations with Ms Johnston.

[33] As mentioned above, the video files show only a still image of an exterior door that does not divulge any information about the interior arrangement of QHE's home. Furthermore, as the video files depict a still image of a door and do not show any movement, there is no way of verifying the legitimacy of the footage. Despite the footage being said to be captured by a home surveillance system, the video files are not time or date stamped. RW says a still video frame can be edited seamlessly, in the same manner as audio recordings and RW submits that the video files do not enhance the credibility of the audio files or transcription evidence submitted by QHE and cannot be relied on by the Authority.

Finding on evidence of phone call with Ms Johnston

[34] RW and Samsung have given evidence that QHE appears to have created or edited the transcriptions to include pieces of multiple different conversations and/or added information to suit his claims. Despite the Authority's request for the original data of any of these documents, these have not been provided, nor have they been independently verified. The Authority has concerns about the reliability of the transcript, audio and video recordings of the phone call, given the valid concerns raised by RW. I must decline to give weight to them.

Transcript of alleged conversation with Mr Lee

[35] As with the transcript relating to the conversation with Ms Johnston, there are material questions over the authenticity of the transcription of the alleged conversation with Mr Lee. There is no recording of the conversation with Mr Lee, upon which its accuracy could be tested. There is no other credible evidence to establish that the claimed transcription is accurate. The Authority is not satisfied it transcript is a reliable or accurate transcript. I can give no weight to the transcript either.

Evidence not sufficient to raise a personal grievance for unjustified dismissal in any event

[36] RW submits that even if the Authority accepts the transcript, the audio files and the video files as being an accurate record of the conversation between QHE and Ms Johnston, the conversation was not sufficient to raise a personal grievance. I agree. Asking questions or making inquiries is also not sufficient to raise a grievance - QHE asked questions about whether there were permanent opportunities available and expressed disappointment about Samsung declining to offer him a permanent role, which was also not sufficient to raise a personal grievance for unjustified dismissal. QHE did not specify verbally in enough detail what the alleged dismissal grievance was about. He did not explain why he considered the dismissal to

be unjustified or provide sufficient particulars to allow RW to respond to the grievance. Merely stating he wanted to raise a personal grievance for the dismissal was not sufficient in the circumstances.

QHE's subsequent conduct displays no intention to pursue grievance

[37] Further, by QHE's own admission, he did not have a strong desire to raise a personal grievance in the phone call with Ms Johnston and that is why he did not raise a grievance in writing. QHE claimed:

I raised it verbally, and not in writing, because I had a moderate desire to raise a PG, not a strong desire to raise a PG. When there is a strong desire, I raise the PG in writing.

[38] As mentioned, QHE had previously raised a very detailed written personal grievance claim in writing in relation to his unjustified disadvantage grievance, by submitting a 9-page document with attachments. It is highly unlikely that he would rely on a comment made during a verbal conversation to raise his personal grievance claim. It is not credible that, if QHE intended to challenge his dismissal, he would not produce a similar written grievance.

[39] QHE did not take any steps to ensure that RW understood it had been his intention to raise a grievance during his phone call with Ms Johnson and did not follow up with RW despite the fact that it took no steps to address his alleged grievance following the phone call.

[40] That QHE did not raise a grievance in his phone call with Ms Johnston or during a conversation with Mr Lee is further supported by QHE's lack of action in pursuing his alleged dismissal claim after his employment ended on 23 December 2022.

[41] QHE had further opportunity to pursue a personal grievance for unjustified dismissal within 90 days of his employment ending. RW's electronic record of its interactions with QHE show he made inquiries with it seeking to obtain a reference from Samsung in March 2023. Records show Mr Lee agreed to be a personal reference for him at the time. Despite these further interactions, QHE gave no indication he intended to pursue a personal grievance for unjustified dismissal.

Alternate claim that statement of problem raised grievance

[42] QHE took no steps to address a dismissal claim or seek any kind of resolution until he lodged the statement of problem on 16 October 2024.

[43] QHE claimed that he spoke to an ex-employee of Samsung on 16 October 2024 and lodged his application with the Authority the next day (on 17 October 2024) whereas the document (comprising a 33-page statement of problem with 172 pages of attachments) was lodged on the same day QHE allegedly received the advice. QHE has not named the ex-employee or provided evidence from the ex-employee to support his claim. In the absence of that supporting information, the Authority cannot accept that unlikely timeline as credible.

[44] Finally, even if the Authority accepted QHE's evidence that he obtained information on 16 October 2024 that Samsung had hired another employee, the statement of problem was still outside the 90-day period of the action giving rise to the grievance, which was the dismissal itself, either occurring or coming to QHE's attention. The dismissal or action took effect on 23 December 2022. QHE's unjustified dismissal claim is that the fixed term was not genuine - he therefore had all the information he needed to be able to raise his personal grievance claim within 90 days of 23 December 2022. QHE knew that his fixed term employment with RW was concluding at the end of the fixed term. That was the event that triggered the obligation to notify Robert Walters and Samsung about a potential grievance if he had one. By his own admission he considered that termination "moderately" unjustified. He did not take action within the required timeframe. Therefore, the statement of problem also did not raise a personal grievance in time.

Outcome

[45] QHE did not raise a personal grievance for unjustified dismissal with RW within time under s 114 of the Act.

[46] QHE did not notify Samsung that he considered it caused or contributed to a personal grievance of unjustified dismissal. The threshold requirement for adding Samsung to the unjustified dismissal grievance has not therefore been met under s 115A of the Act.

[47] Neither company has consented to the grievance being raised or notified outside the relevant 90-day notification period.

[48] The Authority may grant leave to raise a personal grievance out of time if it is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances, and if it considers it just to grant leave. There are no exceptional circumstances shown on the evidence which would support an argument QHE should be able to raise his grievance out of

time. To find as such would in any event be inconsistent with QHE's assertion that he did raise a personal grievance verbally within time.

[49] Accordingly, the Authority does not have jurisdiction to determine QHE's personal grievance claim for unjustified dismissal against either company.

[50] The Authority will be in contact with the parties and Samsung about next steps in the investigation, which will need to determine whether Samsung should be joined as a controlling third party to resolve QHE's personal grievance claims relating to unjustified disadvantage.

Costs

[51] Costs are reserved.

Sarah Blick
Member of the Employment Relations Authority