

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 73
3379464

BETWEEN	YEONG CHAN KIM Applicant
AND	WITH DOT NZ LIMITED (in liquidation) First Respondent
AND	SANG HUN HAN Second Respondent
AND	HYUN JAE LEE Third Respondent

Member of Authority:	Helen van Druten
Representatives:	Michael Kim, counsel for the Applicant Fiona McMillan and Joseph Harrop, counsel for the Respondents
Investigation Meeting:	On the papers
Submissions received:	Up to 21 January 2026 from the Applicant 16 January 2026 from the Respondents
Determination:	13 February 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Yeong Chan Kim accepts that he did not raise his personal grievance claims of unjustified dismissal and unjustified disadvantage within the employee notification period of 90 days required by s 114 of the Employment Relations Act 2000 (the Act).

[2] Following an application under s 114(3) of the Act for leave to raise those grievances out of time, this preliminary determination considers whether there were exceptional circumstances existing that make it just to allow him to pursue those grievances outside that statutory time limit.

The Authority's investigation

[3] The statutory notification timeframes were raised during discussions with the parties during the case management conference on 31 October 2025. Following receipt of an application to raise the grievances out of time and notice of opposition, both parties were provided an opportunity to make submissions including relevant facts and legal principles on that application.

[4] By consent this preliminary issue was then investigated 'on the papers'. The remaining matters were timetabled with inclusion of the grievance claims contingent on the outcome of this preliminary determination.

[5] As permitted by s 174E of 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.

[6] On 5 February 2026, the Authority received notification that the company was placed into liquidation. This preliminary determination was held pending communication from the liquidator. On 10 February 2026 the liquidators consented to the proceedings continuing at this time.

The issues

Preliminary issue

[7] Mr Kim agrees that his personal grievance claims were raised outside the employee notification period required by s 114(1) of the Act. The respondent parties do not consent to those grievances being raised out of time.

[8] The preliminary issue for determination is therefore whether Mr Kim should be granted leave under s 114(3) of the Act to raise a personal grievance claim for unjustified dismissal and/or unjustified disadvantage on the basis that exceptional circumstances exist and it is just to do so.

[9] If leave under s 114(3) of the Act is granted, then the substantive issues for investigation and determination will also include:

- a. Whether Mr Kim was unjustifiably dismissed and/or disadvantaged by the actions of his employer;

- b. If the respondents' actions were not justified (by disadvantaging and/or dismissing Mr Kim), what remedies, if any, should be awarded, considering compensation under s123(1)(c)(i) of the Act; and
- c. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Kim that contributed to the situation giving rise to his grievance?

Remaining matters

[10] Mr Kim's other claims as outlined in directions to the parties of 3 November 2025 remain as issues for investigation and determination independent from the outcome of this preliminary determination.

Statutory requirements and legal principles

[11] Where the employer does not consent to the personal grievance being raised after the expiration of the employee notification period, the Act sets out the grounds on which an employee may apply to raise the personal grievance outside the usual notification period:¹

(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—

(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.

[12] Section 115 then sets out a non-exclusive list 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

¹ Employment Relations Act 2000, ss 114 (3) and (4).

(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.

[13] Exceptional circumstances may exist which do not fit with the four, non-exhaustive examples given in s 115 of the Act.² The Supreme Court addressed the definition of ‘exceptional circumstances’ in *Commissioner of Police v Creedy*.³ This establishes that circumstances are exceptional where they are “unusual” or “outside the common run” and may exist where the ability of an employee to submit the personal grievance within 90 days is affected by “an unexpected delay or difficulty or other factor”. Applicants need to meet a high standard of proof and most cases are unlikely to meet the test.⁴

Analysis

[14] Mr Kim makes his application for leave based on the grounds of health-related incapacity, employer conduct, pursuit of settlement and minimal prejudice to the respondents.

Section 115(a) grounds

[15] Based on Mr Kim’s application, he was hired as a store manager. Initially his work focused on construction-type work getting the store ready for opening. He claims that the long working hours and physical construction work affected his health. Undertaking long work hours outside usual store manager tasks forms a significant part of his disadvantage claim. In his evidence, Mr Kim described the physical and emotional impact of that situation on his health. While no medical evidence was presented to support those claims, I accept that if the hours were worked as he claimed (a matter yet to be investigated), these would likely have a significant impact on his health.

[16] The “so affected or traumatised” wording of s 115(a) of the Act sets a high threshold and this was reinforced in *Telecom New Zealand Ltd v Morgan*.⁵ I take a

² *Goldie v The Chief Executive of the Department of Corrections* [2023] NZEmpC 30 at [50].

³ *Commissioner of Police v Creedy* [2007] 505, 514 (CA).

⁴ *Telecom New Zealand Ltd v Morgan* [2004] 2 ERNZ 9 at [23] to [25] as also referenced in submissions by the respondents’ counsel.

⁵ Above n 3.

similar approach here to other Authority cases in concluding that, while the individual was actually or likely affected, there was insufficient information before the Authority and/or insufficient medical evidence to show that the high threshold was met.⁶

[17] Notably, counsel for the respondents also states that medical certificates were not received during employment and no supporting medical information was provided in relation to this application. Mr Kim also indicated that post-employment he was able to pursue recovery of the monies lent by him to Mr Han and was successful in recovering this money. If he was well enough to seek to recover this money owed to him, then it follows that he would be able to “properly consider” raising the grievance within the applicable employee notification period.

[18] From the information provided by Mr Kim, he did not meet that s 115(a) threshold required by the Act to establish that there were exceptional circumstances that occasioned his delay in raising a personal grievance.

Section 115(c) grounds

[19] With Dot NZ Ltd accepts that Mr Kim worked from May 2024 to approximately 7 October 2024 without a written employment agreement.

[20] Mr Kim says that he was not provided with an employment agreement, despite asking repeatedly. A signed employment agreement is required by the Act.⁷ It was not acceptable that Mr Kim did not have a signed employment agreement from commencement of his employment.

[21] By his own account, at some stage in early October 2024, he was provided with a contract for the period 1 March 2024 to 31 May 2024 as a fixed term contract with a 90-day trial period. This was unsigned by the parties as it contained some terms that were unacceptable to Mr Kim.

[22] Importantly though, it did include an explanation of the employment resolution processes as required by the Act, including the process and timeframes for raising grievances and Mr Kim acknowledges his receipt of that document. His comments about terms and conditions (whether reasonable or not) within that document as his

⁶ Such cases include *Koster v The Chief of New Zealand Defence Force* [2025] NZERA 483 at [97] and *YPC v D&L Decorators (2021) Ltd* [2025] NZERA 480 at [25].

⁷ Employment Relations Act 2000, s 65.

reason for refusing to accept it also shows that he read it. The “resolving employment relationship problems” clause was not disputed by Mr Kim.

[23] On 11 October 2024, after receiving and reading the employment contract, Mr Kim decided not to continue in the role, with his eventual end date being 26 October 2024.

[24] At the time of his resignation he had the required dispute resolution information, including how to lodge a personal grievance and the timeframes for doing so. As he had the explanation concerning the resolution of employment relationship problems prior to his resignation, his application does not succeed on these grounds. Additionally, it would be unjust to consider the failure to have a binding employment agreement as exceptional circumstances, thereby permitting a personal grievance to be raised seven months later.

Other grounds

[25] Mr Kim further said that he did not know New Zealand employment law and hoped that the matter could be resolved “without going to Court”. Based on Mr Kim’s submissions, he was given false assurances of payment by Mr Han, including on 8, 18, 22 November and 1 December 2024, then further in January 2024. These discussions centred on Mr Kim’s attempts to be paid what he felt was owed and assurances from Mr Han that it would be paid. While the frustration was evident, that in itself does not create exceptional circumstances for granting leave under s 114 of the Act. The wage arrears claim remains as an issue for determination.

[26] Ultimately, Mr Kim said that he resigned because of the long hours, lack of staff and failure to pay overtime. He had raised these issues with Mr Han since early in his employment and they had remained unresolved though he remained in discussions with Mr Han. When Mr Han gave Mr Kim an employment agreement in October 2024 that formally offered him no overtime and no compensation for past overtime worked, Mr Kim felt he had no choice but to resign.

[27] For the sake of completeness, I considered whether there is another exceptional circumstance outside the list provided in the Act that applied to Mr Kim. I conclude that there was none that was occasioned by exceptional circumstances.

Conclusion

[28] Because I reached the conclusion that the delay in raising a grievance was not occasioned by an exceptional circumstance it is unnecessary to consider further whether it is just to grant leave, being the second limb of the test under s 114(4) of the Act.

[29] For the reasons given, I decline to grant leave for Mr Kim to raise his personal grievances with With Dot NZ Ltd out of time.

[30] This determination does not prevent Mr Kim's other claims being investigated and determined by the Authority as timetabled, including his overtime claims, statutory leave entitlement claims and other claims including ss 4, 65 and 130 and Part 6D of the Act.

Costs

[31] Costs will be determined once the substantive matter is determined or the substantive matter is no longer before the Authority.

Helen van Druten
Member of the Employment Relations Authority