IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2019] NZEmpC 132
EMPC 67/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	CHIEF EXECUTIVE OF MANUKAU INSTITUTE OF TECHNOLOGY Plaintiff
AND	ALEKSANDER ZIVALJEVIC Defendant

Hearing: 3 September 2019

Appearances: Merepaia King and M Cassaidy, counsel for plaintiff
A Zivaljevic, defendant

Judgment: 25 September 2019

JUDGMENT OF JUDGE J C HOLDEN

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[1] This judgment deals with two issues:

(a) Whether the communications sent by the defendant, Mr Zivaljevic, to the plaintiff, the Chief Executive of the Manukau Institute of Technology (MIT), raised an unjustifiable dismissal personal grievance within the 90 days prescribed by s 114(1) of the Employment Relations Act 2000 (the Act).

(b) Whether Mr Zivaljevic's employment agreement contained the plain language explanation required by s 65(2)(a)(vi) of the Act.

[2] In a preliminary determination, the Employment Relations Authority (the Authority) found that Mr Zivaljevic raised an unjustifiable dismissal grievance claim with MIT within 90 days of the termination of his employment.[1]

[3] MIT challenges that finding.

The issues arise out of a restructuring at MIT

[4] In the last quarter of 2017, MIT undertook a review of its academic faculties. In November 2017, proposed changes were announced, affecting Mr Zivaljevic and a number of other employees, and a formal consultation process was begun. Mr Zivaljevic was informed by letter dated 29 November 2017 that his position was to be disestablished.

[5] The Authority found that Mr Zivaljevic's employment ended on 22 December 2017.[2] Mr Zivaljevic had argued in the Authority that his employment ended on 29 January 2018, following a period of notice and based on communications from MIT. Nevertheless, he accepts the Authority's finding on this issue and it is not challenged.

[6] Mr Zivaljevic has several grievances with respect to MIT's review process and outcome. The Authority identified that Mr Zivaljevic claims:[3]

> … that he was unjustifiably dismissed. He raises issues including the genuineness of his redundancy, redeployment discussions and decisions, as well as good faith. He also claims that his final pay including a severance payment, was not calculated correctly. Mr Zivaljevic also has issues about his lack of access to his files and emails on MIT controlled storage and email systems.

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1 *Zivaljevic v Chief Executive of Manukau Institute of Technology* [2019] NZERA 77.
2 At [21].
3 At [4].

First issue: did Mr Zivaljevic raise a grievance within 90 days?

Communications were in writing

[7] The first issue turns on the communications between Mr Zivaljevic and MIT in January and early February 2018, following the termination of his employment. There were no relevant oral discussions; it is the written communications that must be examined.

[8] Mr Zivaljevic first wrote to MIT by email on 5 January 2018. In that email, addressed to Mr Bhimy, then MIT's Executive General Manager, People and Culture, Mr Zivaljevic asks for assistance on three points:

(a) obtaining relevant pay slips showing a breakdown of his redundancy payment;

(b) access to his MIT email account and Google Drive; and

(c) redeployment opportunities.

[9] On the latter point, Mr Zivaljevic says:

> My understanding is that MIT was obliged to offer re-deployment to the individuals whose positions were disestablished. Although there are new positions that are very similar to my disestablished position (Research Director, Bus. Dev. Manager), the offer of redeployment has not been made to me. Similarity of the positions aside, there are even more new positions that I can do with no, or with very little training (almost all positions reporting to the GM Manukau, some of which are advertised externally now). Can you please let me know MIT's standpoint with regards to redeployment that guided the decision not to offer redeployment to the affected individuals (I am interested in my case only)?

[10] On 18 January 2018, after his return from annual leave, Mr Bhimy responded to Mr Zivaljevic. He advised that he understood that the payslip had been sent and said that, although MIT would not reactivate Mr Zivaljevic's email account, he would see whether Mr Zivaljevic's Google Drive could be reactivated so that Mr Zivaljevic could back up his personal documents.

[11] In relation to the re-deployment issue, Mr Bhimy said:

> Redeployment opportunities were offered to all impacted employees as they were given the opportunity to apply for the new roles created. All the new positions created were significantly different to the disestablished positions and as such were open to a contestable process. No immediate offer of redeployment was made to anyone whose role was disestablished. You applied for the Research Director role only and were unsuccessful for this role. Feedback as to why this was the case was provided to you verbally during the process. With regards to the advertised Heads of Positions being advertised for our Manukau Campus, these were advertised internally through the restructure process to which you had an opportunity to apply for and you provided no indication of applying for them. Due to the number of people applying for the roles and our obligation under the State Sector Act, it was important that everyone was given a fair opportunity and as you will be aware an independent interview process was followed. Should you wish to apply for one of the Heads of roles in Manukau, you are welcome to do so and contact [name] (Talent Acquisition Consultant) directly. Please be aware should you be successful with this application, you would be required to repay the redundancy payment made to you on 29th December 2017.
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> I trust this provides some clarity.

[12] Mr Zivaljevic responded on 19 January 2018. He made comment regarding the payslip and then noted that he had been advised that:

> … [his] employment would be terminated by way of redundancy on 28th January 2018 (later corrected to 29th January 2018 by HR department).

[13] He raised that issue because, he said, it was on that basis that he expected to be able to access his emails and files until at least 29 January 2018. He goes on:

> Early termination of access to my email account and files as well as repossession of the laptop I was given (that had plenty of relevant information stored on it) is a huge disadvantage to me in the process of preparing my response to the termination of employment that I consider unjust.

[14] He then addresses redeployment:

> It appears that our understanding of the term "redeployment" differs. Mine is more in line with what is shown on the pages 30 and 31 of the Academic Review outcome Document dated 29th November 2017. Please note that I still disagree with the sequence in the process (in my view, redeployment should be conducted before recruitment, otherwise, the process is unfair to the existing employees).

[15] Later in his email, Mr Zivaljevic says:

> As above, I believe that I was not given a fair treatment in the process of restructure and I am preparing a letter to you to highlight the points I find relevant. ... However, early termination of my email account and no access to my files is making it very hard for me to prepare the case. Can you please help by enabling my access to emails and files to start with, so I can complete the letter that was mentioned in the clause 15.3 of my Individual Employment Agreement?

[16] Mr Bhimy's response was on 24 January 2018. He addresses the points made by Mr Zivaljevic, including saying, in relation to redeployment:

> As these roles were significantly different to the previous roles under the faculty structures they were considered contestable. The State Services Act requires us to undertake an open and contestable process for all new roles, meaning that redeployment focuses on working with impacted staff to apply for new roles that are available.

[17] On 26 January 2018, Mr Zivaljevic provided a detailed reply in which he advised Mr Bhimy that the outcome of the process was rather a shock to him and that MIT had "at the end served me with what I see as an unjustified dismissal". He goes on to say that he was planning to question the decisions through the personal grievance that he intended to send to MIT as soon as he was given access to all information he required to do so. He again mentioned the need for documents to support his claim.

[18] In relation to redeployment, Mr Zivaljevic said that:

> Redeployment – redeployment is clearly stated as a separate step to re-applying in the change documents, including Power Point restructure files (page 30) and the letter from CEO dated 29th Nov 2017... In my view, MIT ignored good-faith obligations and has never offered redeployment to the affected staff members.

[19] He goes on to reference the case *Wang v Hamilton Multicultural Services*,[4] which he considered applied to his situation, and said that:

> ... the test for redeployment is affected person's suitability to the role, rather than the difference in job descriptions.

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[4] Mr Zivaljevic will be referring to *Wang v Hamilton Multicultural Services Trust* [2010] NZEmpC 142, [2010] ERNZ 468.

[20] He says his understanding was that the obligation MIT had to put the best candidates into roles applied only after the redeployment avenues were exhausted.

[21] He couches his comments as a request for MIT's view and asks Mr Bhimy to consult MIT's legal team. He says:

> I expect your comment on this as this is one of the important points that contributed to my personal grievance.

[22] Mr Zivaljevic also asked for information on the hiring process in relation to one of his unsuccessful applications.

[23] The last email in this set of correspondence is from Mr Bhimy dated 5 February 2018 in which he confirms MIT's position. He says he was sorry to hear that Mr Zivaljevic felt that MIT ignored good faith obligations, but that MIT disagreed with Mr Zivaljevic and felt that, by having a very open and transparent redeployment and recruitment process, MIT had very much acted in good faith. Mr Bhimy concludes:

> Alex, given that I have responded extensively to these matters and cannot add any further information, MIT now considers the matter of your redundancy closed. I will however, continue to pursue your payslip to ensure that this is resolved.

[24] In evidence, Mr Bhimy said his interpretation of the exchange of correspondence was that Mr Zivaljevic was clearly unhappy with events that had occurred and that he was seeking information about, or presenting points of view on, those events.

The Authority found that Mr Zivaljevic raised a personal grievance

[25] The Authority found that, in the January emails, Mr Zivaljevic:[5]

(a) referred to the dismissal as unjust and unjustified;

(b) said that he had not been given fair treatment;

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5 *Zivaljevic v Chief Executive of Manukau Institute of Technology*, above n 1, at [38].

(c) noted the parties appeared to have different understandings regarding redeployment;

(d) claimed that he was not offered other similar positions; and

(e) said that MIT had ignored its good faith obligations.

[26] The Authority Member concluded that she was satisfied that an objective observer would consider that Mr Zivaljevic raised an unjustified dismissal personal grievance with MIT in January 2018.[6]

MIT says the communications were not sufficient

[27] MIT says that, although Mr Zivaljevic wrote to MIT on a number of occasions in a manner that he now, belatedly, claims was sufficient to raise a personal grievance, his communications failed to provide sufficient particularity of any grievance. It notes that no remedies were specified and there was no request to attend mediation. It says that the emails were no more than notice that a personal grievance, in the sense of a particularised set of grounds on which the grievance was based, would be raised in the future. It says the communications were intended merely to request information to assist Mr Zivaljevic in preparing to raise a personal grievance at some future point in time.

[28] MIT points to the references in the emails to requests for information, and to references to preparing a letter advising of the personal grievance that Mr Zivaljevic intended to send.

[29] MIT says that there was not sufficient communication to make MIT aware of the basis for Mr Zivaljevic's grievance, so that MIT could address and remedy the grievance, and that MIT could not have been expected to assume which legal aspects of redeployment it allegedly failed in respect of.

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6 *Zivaljevic v Chief Executive of Manukau Institute of Technology*, above n 1, at [40].

[30] It says that the wider context also demonstrated that Mr Zivaljevic was merely seeking information so that he could consider it and then, at some later date, potentially submit a personal grievance.

[31] In summary, MIT submits that an objective observer would not have concluded that Mr Zivaljevic was raising a personal grievance in his January 2018 communications with MIT. There was no clear explanation as to what grounds his personal grievance was based on, and, in any event, any such grounds remained conditional on receiving and assessing the information that he requested from MIT.

[32] MIT also points to later conduct of both parties as indicating that neither considered that Mr Zivaljevic had raised a personal grievance in his January 2018 communications.

The Court has developed key principles

[33] Section 114(1) of the Act requires an employee to raise his or her grievance with the employer within 90 days of the action alleged to amount to a personal grievance occurring or coming to the notice of the employee.

[34] Section 114(2) of the Act provides that:

> … 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.

[35] The issue of what amounts to raising a personal grievance has been dealt with by the Court on many occasions, and both parties referred to a number of authorities. Some key principles emerge.

[36] The grievance process is designed to be informal and accessible.[7] A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used.[8] Where there had been a series of communications, not only would

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7 *Idea Services Ltd (In Statutory Management) v Barker* [2012] NZEmpC 112, [2012] ERNZ 454 at [40].

8 *Creedy v Commissioner of Police* [2006] ERNZ 517 (EmpC) at [36].

each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.[9]

[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.[10]

[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.[11]

Mr Zivaljevic's concerns were clear

[39] It was apparent even from Mr Zivaljevic's first email of 5 January 2018 that he considered there were roles arising out of the restructuring very similar to his, or which he could do with minimal training, and he was unhappy that he had not been offered redeployment.

[40] The combined effect of his emails in January 2018 went beyond merely requesting information. He made clear that he was unhappy with the process involving redeployment, saying that he disagreed with the sequence in the process, as, in his view, redeployment should be conducted before recruitment. He advised that he did not believe that he had been given fair treatment and said that, in his view, MIT had ignored good faith obligations, again pointing to the failure to offer redeployment to

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9 *Liumaihetau v Altherm East Auckland Ltd* [1994] 1 ERNZ 958 (EmpC) at 963; *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] ERNZ 139 (EmpC) at [45]; *Idea Services Ltd (In Statutory Management) v Barker*, above n 7, at [41].

10 *Clark v Nelson Marlborough Institute of Technology* (2008) 5 NZELR 628 (EmpC) at [37].

11 *Creedy v Commissioner of Police*, above n 8, at [36]-[37].

affected staff members. As noted, in his email of 26 January 2018, when he asked for MIT's comment on redeployment, he did so because it was "one of the important points that contributed to my personal grievance". Mr Bhimy understood that Mr Zivaljevic was unhappy with the process. His emails addressed the concerns that Mr Zivaljevic raised about redeployment.

[41] Mr Zivaljevic agrees that he had not intended his emails of January 2018 to be his submission of a personal grievance; he intended to provide that as a formal document once he had more detail. However, as noted in *Clark v Nelson Marlborough Institute of Technology*, a person may be submitting a personal grievance even if they had not understood that they were doing so.[12] The issue is whether the employer has been provided with sufficient detail of the complaint for it to respond to it.

[42] Although all cases turn on their own facts, it is instructive to compare the communications that Mr Zivaljevic sent to MIT with those in issue in the cases to which I refer above.[13] Where the communications were found not to amount to the raising of a personal grievance, they tended to be very brief, more in the nature of a holding letter than a letter setting out the particulars of the employee's complaint. *Coy v Commissioner of Police* is a case with some similarity to the situation here.[14] Ms Coy wrote a letter to the Commissioner of Police advising him of her general grounds of complaint and saying that her personal grievance submission was being prepared and would be forwarded to the Commissioner later. The Court found that this letter, by a narrow margin, met the test for raising a grievance under s 114(2) of the Act.[15] Mr Zivaljevic's emails provide significantly more detail about the grounds for his grievance than did Ms Coy's letter to the Commissioner of Police.

[43] Here, MIT knew Mr Zivaljevic disagreed with the process it had followed and, in particular, its failure to offer him redeployment. MIT was provided with sufficient information about Mr Zivaljevic's complaint for it to respond to it.

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12 *Clark v Nelson Marlborough Institute of Technology*, above n 10, at [33]-[35].

13 *Idea Services Ltd (In Statutory Management) v Barker*, above n 7; *Creedy v Commissioner of Police*, above n 8; *Liumaihetau v Altherm East Auckland Ltd*, above n 9; *Board of Trustees of Te Kura Kaupapa Motuhake O Taiwhiuau v Edmonds*, above n 9; *Clark v Nelson Marlborough Institute of Technology*, above n 10.

14 *Coy v Commissioner of Police* EmpC Christchurch CC 23/07, 19 November 2007.

15 At [15].

[44] Accordingly, in answer to the first question, Mr Zivaljevic's communications to MIT raised an unjustifiable dismissal personal grievance within the 90 days prescribed by s 114(1) of the Act.

[45] This means the challenge fails. The Authority should now proceed with its substantive investigation.

Second issue: did the employment agreement comply with s 65(2)(a)(vi) of the Act?

Failure to comply with s 65(2)(a)(vi) is an exceptional circumstance

[46] The outcome in respect of the first issue means it is not strictly necessary to deal with the second issue. Nevertheless, it does raise interesting points.

[47] Mr Zivaljevic says that, although there is a clause in his employment agreement that deals with disputes and personal grievances, it does not comply with s 65(2)(a)(vi) of the Act because it is not:

> ... a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in s 114 within which a personal grievance must be raised; ...

[48] The issue arises because, had Mr Zivaljevic been found not to have raised his personal grievance within the required 90 days, he wished to argue that the failure to include a clause that complied with s 65(2)(a)(vi) was an exceptional circumstance pursuant to s 115(c) of the Act.

[49] That would not be the end of the matter though; leave to raise a personal grievance outside the 90-day period may be granted if the Authority is satisfied that the delay in raising the personal grievance was occasioned by exceptional

circumstances and the Authority considers it just to do so.[16] This means, for Mr Zivaljevic to be granted an extension of time, three matters would need to be satisfied:

(a) First, there would need to be exceptional circumstances, which may include where s 65(2)(a)(vi) of the Act is not satisfied.

(b) Second, the delay in raising the personal grievance would need to have been occasioned by those exceptional circumstances.

(c) Third, the Authority would need to consider it just to grant leave.

[50] The Court was only asked to consider the first issue.

The clause in the employment agreement is problematic

[51] The clause in Mr Zivaljevic's employment agreement in question provides:

> **15.0 DISPUTES AND PERSONAL GRIEVANCES**
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> 15.1 This procedure applies to the settlement of all employment relationship problems and personal grievance matters within the Institute. A personal grievance occurs when the Employee feels aggrieved because of an action or actions, taken by the Employer that affects the Employee. Such actions may include unjustifiable dismissal, unjustified disadvantage, discrimination, racial or sexual harassment, or duress because of membership or non-membership of the union. The Employee may use this procedure and may, at any point during the procedure, seek advice and/or representation from a third party.
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> 15.2 Initially the Employee should raise the matter with her/his line manager. If this is inappropriate or does not resolve the matter s/he should raise it with the next reporting line of management. If the situation remains unresolved and s/he and s/he has not already done so, s/he may raise it with the appropriate Director.
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> 15.3 If clause 14.2 does not resolve the matter the Employee may write a letter to the Director, People & Culture explaining the details of the problem or grievance, why s/he feels aggrieved, and what solution s/he is seeking. People & Culture will arrange a meeting which will include People & Culture, the Employees manager and the Employee to discussed matters raised and if possible agree resolutions.

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[16] Employment Relations Act 2000, s 114(4).

> 15.4 If after the meeting the Employee still wishes to pursue a personal grievance, or if the process to clause 14.3 has not been completed within a reasonable time, the Employee must notify the Employer in writing within 90 days of the original event. Failure to provide formal notice within the 90 day period will prevent the employee from pursuing the personal grievance, except where the delay in raising the grievance was occasioned by any one or more of the exceptional circumstances stated in section 115 of the Employment Relations Act 2000.
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> 15.5 The Employee may seek advice from the Mediation Service of the Department of Labour, or with any alternative mediation provider that has been agreed with the Employer.
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> 15.6 In the case of alleged unjustifiable dismissal, an Employee is entitled to request that the Employer provide them with a written statement giving the reasons for dismissal. The Employee is required to make this request to the Employer within 60 days of being dismissed or becoming aware that they have been dismissed. The Employer must provide that written statement within 14 days of receiving the Employee's request.
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> 15.7 In the event the matter is not resolved by mediation, the matter may be referred to the Employment Relations Authority for decision. Either party may appeal the decision of the Employment Relations Authority to the Employment Court[.]

[52] Mr Zivaljevic's evidence was that, when his employment was terminated, he was initially focussed on the substantive issues, in particular around redeployment.

[53] He says that he started being aware of the 90-day limitation only in late February, when he had lost all hope that communicating his "resentments" was having any effect, and then he started thinking of getting external help from the Ministry of Business, Innovation and Employment. He turned to his employment agreement, but he says that clause 15.0 made him unsure about the real meaning of the 90-day limitation in s 114(1) of the Act.

[54] Mr Zivaljevic accepts that clause 15.0 contained reference to the 90-day period, but he says the meaning of that reference, and of the clause generally, was not clear and was "rather deceiving".

[55] The points he makes are:

(a) Sub-clause 15.1 says the employee "may" use this procedure, which made Mr Zivaljevic think that the procedure was optional.

(b) Sub-clauses 15.3 and 15.4 referred incorrectly to clauses 14.2 and 14.3, which made clause 15.0 difficult to understand.

(c) Sub-clause 15.3 referred to a meeting arranged by the Director, People and Culture, and yet none was ever arranged by Mr Bhimy.

(d) Sub-clause 15.4 specifies that the grievance must be notified "in writing" and that it must be communicated in the form of a "formal notice". This led Mr Zivaljevic to believe that, in his submission of his personal grievance, he needed to mount what he saw as a "court-case level of evidence", which was why he continued to seek information from MIT.

[56] Mr Zivaljevic makes valid points. Clause 15.0 of his employment agreement is not well drafted. It conflates the statutory processes and requirements with procedures that MIT has in place for dealing with disputes and personal grievances.

[57] I agree with Mr Zivaljevic that sub-clauses 15.2 and 15.3 of the employment agreement appear to set out steps that are to be followed prior to an employee raising his or her personal grievance, when that is not required by the Act. Then, sub-clause 15.4 refers to notification in writing and formal notice, neither of which are required by s 114 of the Act.

[58] The purpose of the requirements in s 65(2)(a)(vi) is for employees to understand the services available for the resolution of employment relationship problems, and to know the need to raise personal grievances within 90 days of the claimed personal grievance occurring or coming to their notice.

[59] The requirement for the explanation of the services available to be "a plain language explanation" is significant. That obligation for plain language includes with

respect to the reference to the period of 90 days within which a personal grievance must be raised. Where an explanation is not in plain language, so it is not clear to an employee what his or her rights and obligations are, there has not been compliance with s 65(2)(a)(vi) of the Act.

[60] That is what happened here. Mr Zivaljevic clearly is an intelligent man. He has experience as an academic researcher. Although he acknowledges he is not an expert in employment law, he went about researching his rights, including by considering case law and, when it came to process, by reviewing the terms of his employment agreement. Even he was led astray by clause 15.0. That clause does not comply with s 65(2)(a)(vi) of the Act.

[61] A further point that can be made is that s 115 of the Act provides only examples of exceptional circumstances. If the employee has been misled by the employer, through the employment agreement or otherwise, as to what is required to raise a personal grievance, that itself may well amount to an exceptional circumstance.

Two further requirements to gaining an extension

[62] If Mr Zivaljevic had sought to rely on ss 114(4) and 115(c), the Authority would then have needed to resolve whether the delay in raising the personal grievance was occasioned by the exceptional circumstance.[17] The word "occasioned" points to a liberal interpretation of the test; it is wider than "caused".[18]

[63] Mr Zivaljevic's evidence was that, by the end of February 2018, he started being aware of the 90-day limitation. The evidence before me did not clearly demonstrate that it was the difficulty with the clause that prevented Mr Zivaljevic from providing a formal letter raising a grievance in March 2018, before the 90 days expired, but it seems likely it was a significant contributing factor.

[64] If he satisfied that requirement, Mr Zivaljevic then would have needed to persuade the Authority that it was just to grant him leave to raise the personal grievance

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17 Employment Relations Act 2000, s 114(4)(a).

18 *McClutchie v Landcorp Farming Ltd* [1993] 1 ERNZ 388 (EmpC) at 395, cited with approval in *Bryson v Three Foot Six Ltd* [2006] ERNZ 781 (EmpC) at [43].

out of time. This would be unlikely to have been an insurmountable hurdle, given the delay would have been occasioned by MIT's failure to comply with s 65(2)(a)(vi) of the Act. Relevant too would be that Mr Zivaljevic had understood his employment was ending on 29 January 2018, in large part because of unclear communications from MIT.[19] This, of course, meant that, even after becoming aware of the 90-day issue, Mr Zivaljevic would have thought he had until late April to raise his personal grievance.[20]

Conclusion

[65] In conclusion:

(a) Mr Zivaljevic's communications to MIT raised an unjustifiable dismissal personal grievance within the 90 days prescribed by s 114(1) of the Act. The Authority should now proceed with its substantive investigation.

(b) Mr Zivaljevic's employment agreement with MIT did not contain the required plain language explanation of the services available for the resolution of employment relationship problems, including reference to the period of 90 days in s 114 of the Act within which a personal grievance must be raised. This is an exceptional circumstance pursuant to s 115(c) of the Act. However, for leave to raise a personal grievance outside the 90-day period to be granted, Mr Zivaljevic would have needed to satisfy the Authority that the delay in raising the personal grievance was occasioned by the exceptional circumstance and that it was just to grant the leave sought.

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19 *Zivaljevic v Chief Executive of Manukau Institute of Technology*, above n 1, at [10]-[14].

20 Mr Zivaljevic requested mediation assistance on 28 March 2018, and MIT was advised of that request a few days later.

[66] Mr Zivaljevic represented himself and therefore there is no order for costs.

J C Holden
Judge

Judgment signed at 3.15 pm on 25 September 2019