IN THE EMPLOYMENT COURT
CHRISTCHURCH

[2014] NZEmpC 137
CRC 6/14

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	POLLARD CONTRACTING LIMITED Plaintiff
AND	SHAUNE DONALD Defendant

Hearing: (by way of documents filed on 16 May, 9 June and 23 June 2014)

Judgment: 5 August 2014

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] The defendant, Mr Shaune Donald, was employed by the plaintiff, Pollard Contracting Limited (PCL), from May 2011 until his summary dismissal on 18 June 2013. He lodged a statement of problem with the Employment Relations Authority (the Authority) alleging he had been unjustifiably dismissed. He relied on the service of that statement to raise his personal grievance but it was not actually received by the plaintiff until after the expiry of the statutory 90-day period. The Authority granted leave for the defendant to proceed out of time.[1] The plaintiff challenges that determination and seeks a hearing de novo. The parties agreed that the Court should consider the challenge on the papers.

[2] In summary the Authority determined:

[1] *Donald v Pollard Contracting Ltd* [2014] NZERA Christchurch 1 [Authority determination].

a) The Authority was bound to accept the conclusion reached in *Premier Events Group Ltd v Beattie (No. 3).*[2] In that case Chief Judge Colgan held that an employee could raise a personal grievance by lodging a statement of problem in the Authority which outlined the grievance. So long as the statement of problem complied with the requirements for lodging a personal grievance this could be an appropriate means of doing so.

b) Having regard to the dicta in *Creedy v Commissioner of Police,*[3] the Authority was satisfied that Mr Donald had made statements in the statement of problem which clearly expressed the view that the dismissal was unjustified and that there were failings in the process adopted by the plaintiff. Although the claim was raised in scant terms, there was sufficient specificity for PCL to understand what Mr Donald was complaining about.[4] Claims were also raised under the Wages Protection Act 1983 and the Holidays Act 2003; these were not subject to the 90-day time limit so the Authority could accept those claims.[5] However, it was not accepted that Mr Donald had raised a grievance of unjustified disadvantage arising from an alleged suspension, as there were insufficient particulars to raise such an allegation.[6]

c) The grievance was clearly not raised with the employer within the statutory 90-day period. However, the Authority was satisfied that there were exceptional circumstances, namely an error committed by a third party (Courier Post) which meant that it would be just to grant Mr Donald leave to raise his personal grievance outside of the 90-day time period.[7]

[3] The parties have agreed a summary of facts which states:[8]

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[2] *Premier Events Group Ltd v Beattie (No 3)* [2012] NZEmpC 79, (2012) 10 NZELC 79-011.
[3] *Creedy v Commissioner of Police* [2006] ERNZ 517 (EmpC).
[4] Authority determination, above n 1, at [19]-[21].
[5] At [22].
[6] At [23].
[7] At [37]-[40].
[8] The summary was supported by relevant documents.

Counsel for the Plaintiff and for the Defendant have agreed to the following statement of facts:

1. The Plaintiff company employed the Defendant on 23 May 2011.

2. The Plaintiff provided the Defendant with an individual employment agreement which was taken from the (then) Department of Labour website 'employment agreement builder.'

3. The individual employment agreement contained a plain language explanation of how employment relationship problems may be resolved, consistent with section 65 (2) (vi) of the Employment Relations Act 2000. This clause was taken from the Department of Labour website, and is the clause referred to on that website as 'Short Form'.

4. The Plaintiff sent the Defendant a new individual employment agreement in November 2011. This agreement also contained a plain language explanation of how employment relationship problems may be resolved.

5 The Plaintiff called the Defendant to a disciplinary meeting in a letter dated 25 May 2113.

6. The Defendant instructed a solicitor, Simon Graham, of Young Hunter Barristers and Solicitors, who emailed the Plaintiff on 28 May 2013.

7. Mr Graham continued to act for the Defendant throughout the disciplinary process.

8. The Plaintiff suspended the Defendant. The Defendant consented to the suspension on pay in an email from Mr Graham to Counsel for the Plaintiff on 7 June 2013.

9. The Plaintiff held two disciplinary meetings with the Defendant on 4 June 2013 and on 12 June 2013.

10. Mr Graham sent an email to Counsel for the Plaintiff on Monday 17 June 2013 enquiring as to when the Defendant could expect to receive notification of the outcome of the two disciplinary meetings. The Defendant had expected to hear the outcome by Friday 14 June 2013.

11. Counsel for the Plaintiff sent an email to Mr Graham on 18 June 2013 at 3:21pm. This email attached a letter which notified the Defendant of his summary dismissal "the dismissal letter").

12. At 3:53pm on 18 June 2013, counsel for the Plaintiff sent Mr Graham a further email ("the second email") which sought to make arrangements for the return of the Plaintiff's property that was believed to be held by the Defendant. This email made reference to the earlier email which contained the dismissal letter.

13. The dismissal letter was also placed in the post. The letter was received by Young Hunter on 19 June 2013.

14. On 24 June 2013 the Defendant attended counsel for the Plaintiff's offices and returned property belonging to the Plaintiff. Shortly thereafter an email was sent to Mr Graham regarding this.

15. On 2 July 2013, Mr Graham emailed and called counsel for the Plaintiff on the telephone to discuss which items of property were still to be returned by both parties, and to discuss the payment of commission to the Defendant on sales generated in the early days of the Defendant's employment.

16. On 4 July 2013 Mr Graham emailed counsel for the Plaintiff with a query regarding the Defendant's final pay, and also asking for an update on the issues raised by him on 2 July 2013**.**

17. Counsel for the Plaintiff emailed Mr Graham on 9 July 2013 with a response to each of the issues raised by Mr Graham on 2 July 2013 and 4 July 2013. This was counsel for the Plaintiff's last contact with Mr Graham.

18. Soon after Mr Graham's last contact with counsel for the Plaintiff, the Plaintiff received a letter from Johan Kirkzwager, Labour Inspector with the Ministry of Business Innovation and Employment. This letter was dated 9 July 2013 and was sent via post directly to the Plaintiff.

19. On Wednesday 11 September 2013, the Employment Relations Authority ("the Authority") accepted for filing an application filed by the Defendant.

20. At 4:27pm on 11 September 2013, Carol Lin, Support Officer with the Authority, emailed counsel for the Plaintiff regarding whether counsel was still authorised to accept service of an "*application*" on behalf of the Plaintiff.

21. Counsel for the Plaintiff responded to Ms Lin in an email sent at 10:52am on Thursday 12 September 2013. This email confirmed that counsel was still authorised to accept service on behalf of the Plaintiff.

22. Ms Lin sent the Defendant's application in a courier bag. This was addressed to the PO Box of SB Law. The courier bag was not sent on a 'signature required' ticket. This is the Authority's standard practice.

23. Courier Post records indicate that the application was picked up from the Authority at 3:14pm on Thursday 12 September 2013. Their records also indicate that the application was delivered at 12:00 noon on Friday 13 September 2013.

24. The Legal Receptionist at SB Law, Margaret Paterson, retrieved the application from the SB Law PO Box on the morning of Thursday 19 September 2013.

25. Mrs Paterson collects SB Law's mail from the firm's PO Box before the start of every working day. The relevant PO Box is located at the Christchurch Box Lobby, 67 Cashel Street, Christchurch Central.

26. At 12:01pm on 19 September 2013, counsel for the Plaintiff sent a copy of the Defendant's application to the Plaintiff in an email.

27. On 3 October 2013 the Plaintiff filed a statement in reply in the Authority. This set out the Plaintiff's view that the Defendant had raised a personal grievance out of time, and that the Plaintiff did not consent to the personal grievance being raised out of time. It also raised the Plaintiff's view that even if it was raised in time, the statement of problem failed to sufficiently specify the particulars of the alleged personal grievance so that the Plaintiff could address it.

28. On 6 November 2013, the Plaintiff filed an affidavit of Ms Paterson in the Authority. This affidavit pertained to the matters set out in paragraphs 24 -26 of this agreed statement of facts.

29. On 14 November 2013 Ms Sue Freeman from Courier Post emailed Ms Lin at the Authority regarding the delivery of the Defendant's application. Ms Freeman stated that the delay in receiving the courier package *"Could*" have been due to it being put in the incorrect mail box, but that this was only an assumption.

Submissions

[4] For the plaintiff it is submitted in summary:

a) In the period between the defendant's dismissal and service of the statement of problem, PCL had not received any information regarding a personal grievance being advanced or for any request for a meeting or mediation. It was submitted that Mr Donald appeared to base his entire case upon a mistaken belief that he could submit the grievance within time by bringing it to the attention of the Authority within 90 days, rather than PCL. There was ample opportunity for a personal grievance to be raised within the statutory timeframe.

b) Even if the statement of problem was a valid means of raising a personal grievance within the statutory period, there were insufficient particulars to enable the plaintiff to address the grievance.

c) The grievance ran from the date on which the dismissal was communicated to the defendant's solicitor, being 18 June 2013. The employer became aware of the grievance on 19 September 2013.

d) PCL accepted that it was settled law that, depending on the facts of the case, a personal grievance could be raised via the service of a statement

of problem upon an employer. Service by this means would only be permissible, however, where it occurred within 90 days; it was submitted that a more strict approach is apt where an employee had ample time to engage counsel on this task or to act on advice. If a personal grievance is to be raised in this way, the employee runs a risk that service may occur outside the 90-day window. The proposition that delivery by Courier Post was "… a completely fail-safe method of delivery" was hardly a credible proposition. Mr Donald had ample knowledge of PCL's lawyer's contact details and physical location, and could have contemporaneously provided a copy of the application at the time it was sent to the Authority.

e) The High Court Rules are an instructive guide as to timeframes; reference was made to r 6.6(1). This rule provides that service may be effected by post to a post box; if so, service is deemed to have occurred on the third working day after the day on which it was posted or on the day on which it was received if that day is earlier. Applying that rule, there would not be compliance with the 90-day timeframe.

f) It was submitted that the defendant's statement of problem only specified the statutory category of the personal grievance, without providing any particulars in support. There was no indication in the statement of problem as to what the merits of the grievance were, or what the procedural issues were. PCL did not at the time know what issues were in dispute; hence it was not possible to respond in a meaningful manner. A common sense and objective approach to the reading of the document meant that the employer had insufficient details to which a response could be given.

[5] The submissions for the defendant were in summary:

a) In June 2013, two disciplinary meetings were held and Mr Donald was dismissed. Mr Donald advised at the second meeting that he was not happy with the progress of these discussions and that he would be taking further steps.

b) The employer's letter was dated 18 June 2013, but was stamped by the employee's previous lawyer as being received on 19 June 2013.

c) Thereafter, Mr Donald represented himself.

d) The initial email exchange between the Authority and PCL's lawyer took place within the 90-day timeframe; a hardcopy of the application was sent to PCL's lawyer within the 90-day timeframe. It appears the application was then placed in an incorrect postal box, so that PCL's lawyer did not receive the application until 93 days later. The date from which the grievance should run is 19 June 2013. Even were it to be held that the notification was on 18 June 2013, the application was sent to the Authority on 11 September 2013, which was within the 90-day timeframe. If Courier Post had placed the document in the correct postal box, the statutory timeframe would have been complied with. Courier Post had accepted that there may have been an error by them, and that the envelope had been placed in the wrong postal box.

e) Section 115 of the Employment Relations Act 2000 (the Act) gives examples of exceptional circumstances, but the concept is not limited to those examples. Here Mr Donald should not be penalised and prejudiced for a third-party error, when he took reasonable steps to ensure that the application was provided in time to the Authority office.

f) An analysis of the statement of problem indicated that there was sufficient specificity.

Discussion

[6] The relevant provisions of the Act are ss 114 and 115. They provide:

> **114 Raising personal grievance**
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> (1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the 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 the later, unless

the employer consents to the personal grievance being raised after the expiration of that period.

(2) For the purposes of subsection (1), 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.

(3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.

(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.

(5) In any case where the Authority grants leave under subsection (4), the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance.

(6) No action may be commenced in the Authority or the Court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

115 Further provision regarding exceptional circumstances under section 114

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 period specified in section 114(1); 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

(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.

[7] The first issue relates to the question of when the calculation of the statutory period of 90 days should commence. The evidence is that two emails relating to a

decision to dismiss were sent on behalf of PCL to Mr Donald's lawyer on 18 June 2013. However, there is no evidence to show that they were opened and read on that day. A hard copy of the dismissal letter was delivered by post, and there is evidence that this was received by Mr Donald's representative on 19 June 2013.

[8] Section 114(1) of the Act makes it clear that the 90-day timeframe begins with the date on which the action alleged to amount to the personal grievance occurred or came to the notice of the employee. I find that the period of 90 days commenced on 19 June 2013 when the dismissal letter came to the notice of the employee's representative. The period expired on 17 September 2013.

[9] The second issue relates to whether a personal grievance can be raised with an employer via the lodging of a statement of problem in the Authority.

[10] This issue was considered in *Premier Events*.[9] The Chief Judge considered two cases decided under similar provisions of the Employment Contracts Act 1991; he then stated:

> [10] This case does not concern employer misidentification but I consider that the case law supports a finding that an employee may raise a personal grievance if a third party brings that grievance to the attention of the employer within the 90 day period. An employee who submitted an application to the Authority could be confident (because that is the normal procedure) that the Authority would serve that application to the named employer soon after its submissions. While this period of raising a personal grievance runs the risk that service may occur outside the 90 day window, in this case a count back from the date of service includes some part of Mr Regan's employment.
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> [11] Further, I consider that this approach is mandated by the terms of s 114(2) itself which define the raising of a grievance with an employer as occurring "as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware". What is required is that the employee has made the employer aware of the grievance and that awareness occurred in this case when the employer was served with the statement of problem. In addition, the inclusion of the words "has taken reasonable steps to make", a phrase which was absent from the Employment Contracts Act, also clearly allows a grievance to be raised where reasonable steps have been taken even if the employee has not succeeded in directly raising the grievance with the employer. I consider that Parliament's use of this phrase confirms this Court's interpretation that a "circuitous route" for raising a personal grievance may be permissible depending on the facts of

[9] *Premier Events*, above, n 2.

> the case. In this case, the reasonable steps taken were the filing of the claim with the Authority.
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> [12] Interpreting s 114 in this way might seem to permit a party to short circuit the normal process of dispute resolution which the Act envisages will occur in most cases. That is, a grievance is raised first with the employer and then there is an opportunity for negotiation and discussion so that a resolution may occur before the matter is lodged with the Authority. Such an approach is to be encouraged. But there will remain ample opportunity for the employer to address the grievance and, perhaps, resolve that grievance through discussion and/or mediation between the parties even after the matter is officially before the Authority. If unmeritorious claims are lodged in the Authority, but which could have been resolved by earlier discussion for instance, then the party lodging the claim may well have to bear the costs' consequences of such a claim.
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> [13] Because both the statute and the principles of long established case law allow a personal grievance to be raised by lodging a statement of problem in the Authority if such claim is served on the employer within the 90 day limitation period, I declined the first ground to strike out Mr Regan's claim.

[11] In *Brookers Employment Law*, the authors submit that the Court's reliance in *Premier Events* on cases decided under the Employment Contracts Act 1991 is arguably misplaced in the context of the different legislative policy which applies under the Act, where there is a much stronger emphasis on direct discussion between the parties, including mediation as the normal first port of call.[10] This submission is developed by reference to the explanatory note of the Employment Relations Bill 2000, which states:[11]

> In terms of problem resolution in employment relationships, a strong emphasis is placed on the prior resolution of problems by the parties themselves, who will have access to a wide range of resources, through information provision, structured or unstructured mediation and other services to voluntarily resolve matters at an earlier stage.
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> …
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> The Bill embodies a general presumption that mediation will be the first port of call for dispute resolution before any decision-making forum is sought.

[12] It is further suggested that the subsequent amendments in 2004 which introduced s 101(ab), along with the contemporaneous introduction of "fast track"

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[10] *Employment Law* (online looseleaf ed, Brookers) at [ER114.03(6)]. It is necessary to refer to this issue because the Authority referred to it in its determination although counsel for the plaintiff in his submissions did not.

[11] Employment Relations Bill 2000 (8-1) (explanatory note) at 8.

and "early stage" mediation services in s 147(2)(ab) and (ac) were also intended to recognise that:[12]

> Employment relationship problems are more likely to be resolved quickly and successfully if the parties have first raised and discussed their problem directly between themselves.

[13] The authors therefore suggest that the raising of a personal grievance by way of lodging a statement of problem can only occur in "very rare cases".

[14] I respectfully disagree with this view for the following reasons:

a) The Chief Judge prefaced his remarks in *Premier Events* by stating that it was clear the Court's approach had been to treat s 114 and its predecessor broadly in that there is a relatively low threshold for notification of a personal grievance. He noted that in *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds,*[13] after a discussion of the statutory language and the Parliamentary history, the Court stated that because getting to the dispute resolution process is a key aim of the Act, "less rigidity, less formalism are guidelines in interpreting provisions in part 9 including the requirement to raise a personal grievance".[14]

b) Section 101(ab) of the Act expresses a preference for employment relationship problems being reconciled quickly and successfully if the problems are first raised and discussed directly between the parties to the relationship; but as already observed, s 159 contemplates that prior mediation may not have occurred and should be directed in certain circumstances. Section 147(2) describes the procedures to be adopted in relation to mediation services; the subsection does not state that these must be undertaken prior to the lodging of a statement of problem.[15]

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[12] Employment Relations Act 2000, s 101(ab).
[13] *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] ERNZ 139 (EmpC) at [42].
[14] At [40].
[15] A point which was confirmed by the Court of Appeal in *Morgan v Whanganui College Board of Trustees* [2014] NZCA 340, at [30].

c) Since the position is clear from the statute itself, it is unnecessary to resort to extrinsic materials to discern legislative intent. Consequently, the explanatory note cannot override the effect of the statutory provisions. In any event the explanatory note, makes it clear that it was intended that the Authority can order the parties to try to resolve their differences through mediation before it proceeds to deal with any matter, where this is appropriate in the circumstances; the note does not state that mediation is restricted to the period prior to lodging the statement of problem.[16]

[15] Having considered these factors, I find that as a matter of law the Authority (or Court) may find that an employee has taken "reasonable steps" for the purposes of s 114(2) by lodging a statement of problem with the Authority, providing the other statutory requirements for raising a personal grievance are met, whether or not direct discussion and/or mediation with the employer has occurred. But whether the particular steps taken are reasonable will require an assessment of all the circumstances, and whether the employee has acted reasonably. As the Chief Judge observed in *Premier Events*, this will depend on the facts.[17] It will be a matter of fact and degree.

[16] Counsel for the plaintiff submitted that the raising of a grievance through the lodging of a statement of problem in the Authority should be permissible only where it has occurred within 90 days; and that a more strict approach is apt where an employee has had ample time to engage counsel on this task or to act on advice. There is no indication in the statute to this effect. These factors may be relevant to the question of whether the employee has taken reasonable steps, but whether that is so will depend on an assessment of all the facts.

[17] Turning to the present case, it is submitted that at the second of two disciplinary meetings, Mr Donald advised that he was not happy with progress of discussions to that point and that he would be taking further steps. Mr Donald continued to have the assistance of a lawyer up until approximately 9 July 2013, but

[16] Referred to in the Brookers extract at [11] above.
[17] *Premier Events*, above n 2, at [11].

by that date he was acting for himself. There is evidence that he had raised a complaint as to pay entitlements with the Ministry of Business, Innovation and Employment, who wrote to PCL on 9 July 2013. In his statement of problem Mr Donald recorded that he had asked the Labour Inspector to talk to his former employer with a view to resolving the problem. The totality of this evidence establishes that PCL was on notice that Mr Donald had significant concerns as to what occurred. The steps to that point did not go as far as raising a personal grievance, but meant that PCL would not have been surprised – or prejudiced – by the fact that Mr Donald subsequently filed a statement of problem with the intention of raising a personal grievance. In assessing Mr Donald's conduct I also take into account the fact that he was, by that stage, no longer represented by a lawyer.

[18] In this case it is common ground that the personal grievance was not raised until the employer became aware of the grievance on 19 September 2013. The defendant lodged the statement of problem with the Authority on 11 September 2013, six days prior to the expiry of the statutory limit. Having established on the same day that the plaintiff's counsel was still authorised to accept service, the document was dispatched to him on the following day via Courier Post. It was delivered to a post office box on Friday, 13 September 2013. The best evidence is that there was an error committed by Courier Post in that the document was placed in an incorrect post office box. Had this not occurred it is reasonable to conclude that a representative from the counsel's law firm would have uplifted the document by Monday, 16 September 2013 which would have been in time.

[19] Regulation 5(2) of the Employment Relations Authority Regulations 2000 (the Regulations) states that proceedings in the Authority are commenced by lodging with an officer of the Authority two copies of the application that complies with the regulations, in form one.[18] Regulation 16 provides that a document required to be served under the Act or the regulations must be served by an officer of the Authority, and that if a party lodges a document under (inter alia) reg 5, a copy of the document must as soon as practicable after the lodging of that document be served on the other party to the proceedings.

[18] Except where the proceeding is one governed by reg 10 (Application to Authority to reopen investigation) or 12 (Removal of matters to Court), neither of which apply in this case.

[20] Here the proceeding was commenced in time by the lodging of the statement of problem with the Authority. The Authority officer proceeded in accordance with the regulations, but the courier made an error. That is not the fault of the employee, and it should not result in a denial of access to the Authority's processes. Also relevant is the very short period of the delay which arose, and the absence of any evidence suggesting prejudice to the employer as to its ability to respond. I find in all the circumstances which I have reviewed that exceptional circumstances exist.

[21] Some evidence has been placed before the Court as to which of two individual employment agreements was operative. Extracts from two documents which were apparently sent by the employer to the employee were produced to the Court, but no signed employment contract has been produced. Both the documents that were provided contain a reference to the statutory period for raising a personal grievance of 90 days. The submission made by counsel for the employee suggests Mr Donald may have been employed under the first of the two employment agreements. That may be so but the evidence regarding the status of Mr Donald's employment agreement is somewhat vague. However, it does appear there was an agreement that complied with s 65(2)(a)(vi) of the Act. Consequently I do not conclude that there are exceptional circumstances by reason of the ground described in s 115(c); that is that the employment agreement does not contain an explanation concerning the resolution of employment relationship problems, as is required by s 65(2)(a)(vi) of the Act.

[22] The final issue relates to the question of whether the statement of problem as filed by Mr Donald contains sufficient particulars. The requirements in this regard were addressed by the Chief Judge in *Creedy v Commissioner of Police* where he stated:[19]

> [35] Although the plaintiff, upon advice from his barrister, believed that the 4 April 2001 letter raised his personal grievance of unjustified disadvantage in employment, I have concluded that its contents did not do so. Case law under the previous Employment Contracts Act 1991 on what constituted the submission of a grievance (as it was called under that enactment) was codified and built on by Parliament in 2000 by s 114(2). That 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

[19] *Creedy,* above n 3.

> employer aware that the employee alleges a personal grievance that the employee wants the employer to address".
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> [36] It is the notion of the employee wanting the employer to address the grievance that means that it should be specified sufficiently to enable the employer to address it. So it is insufficient, and therefore not a raising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of the personal grievance as, for example, unjustified disadvantage in employment as in cases under the previous legislation, for an employer must know what to address. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular formula of words needs to be used. What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.

[23] Analysis of the statement of problem indicates that:

a) The problem that the defendant wished the Authority to resolve included an "unlawful, unjustified, wrongful procedural dismissal" and "failing to act in good faith".

b) As to the factors Mr Donald alleged, he was "… unlawfully, wrongfully procedurally dismissed" and "forced to go through two disciplinary hearings which cost me $2,300 in legal fees".

c) The problem which he wished to have resolved included "ruling on the grounds of dismissals …" and "I want compliance, compensation, reimbursement and costs for my lawyers for two disciplinary hearings".

d) The detail in the statement of problem was, as the Authority found, scant. However, attached to the statement of problem were various documents, which included a suspension notice and correspondence from the employer's lawyer. Many of these documents were not produced to the Court. One which was, is a letter sent on behalf of the employer's lawyers to the employee's lawyers dated 18 June 2013. The letter conveyed PCL's decision to terminate Mr Donald's employment summarily. Reasons were set out in considerable detail. I find that this letter, when considered alongside the statements contained in the statement of problem made it quite clear that Mr Donald was contesting the given reasons for dismissal. Furthermore PCL knew, according to

the submission made by Mr Donald's counsel, that Mr Donald was unhappy with the process of the disciplinary meetings; this was the context in which the documentation needed to be considered.

e) It was clear what the employer was expected to do to resolve the personal grievance. It was asserted that there had been an unjustified dismissal; Mr Donald sought a ruling to that effect, along with compensation and costs. The employer was accordingly able to respond on those issues.

[24] The Authority found that no valid personal grievance had been raised for unjustified disadvantage arising from the defendant's suspension, and Mr Donald has not cross-challenged that conclusion. I consider it no further.

[25] The Authority also found that there appeared to be claims under the Wages Protection Act 1983 and the Holidays Act 2003. These were not grievance claims, and therefore not subject to the criteria described in s 114 of the Act.

Conclusion

[26] PCL has not made out its challenge in any respect. It is accordingly dismissed. The Authority's orders stand. Nothing in this judgment should be understood as indicating a view as to the validity of the personal grievance, one way or the other.

[27] Mr Donald is entitled to costs. If the parties are unable to resolve that issue directly, Mr Donald is to file submissions and any supporting evidence within 14 days, and PCL's response, submissions and evidence, if any, 14 days thereafter.

B A Corkill
Judge

Judgment signed at 3.50 pm on 5 August 2014