

Ninety days and you are out

The Employment Relations Authority recently took a tough approach when a teacher delayed too long before raising a personal grievance.

Paul Robertson explains.



A RECENT APPLICATION to the Employment Relations Authority did not go well for an employee whose claims were all knocked out. The tough approach taken by the Authority will make it easier to resolve similar personal grievances in the future.

The case concerned a former secondary teacher who had been appointed to a one-year fixed term contract to cover a period of maternity leave. At the time, she was provisionally registered and needed professional development to become fully registered.

Over the term of her employment she alleges that she was bullied/harassed by the principal and other staff and so she took extensive sick leave. She was not reappointed for the following year. After a delay of 18 months, she raised a personal grievance with a range of complaints. The college responded saying that, irrespective of the merits, the grievance had not been raised within the required 90 days.

THE AUTHORITY INVESTIGATES

The Authority looked closely at

what complaints were made and when, and whether they were disadvantage grievances that the college could be liable for:

Novapay deductions and incorrect payments. The teacher referred to debt collectors chasing her to recover overpayments. The Authority found there were no grounds for a personal grievance against the board as Novapay was at fault, not the college.

Lapse of her provisional teacher registration. Once again, this was not an action of the employer, this was a decision of the Teaching Council.

Her fixed term contract was not renewed. There were discussions about the legitimacy of her contract during the year she was employed. The teacher referred to the possibility that she would take a claim for "unfair dismissal" if her contract were not renewed.

The Authority held that it was not possible to raise a grievance on a conditional basis in this way, and that after her contract ended, she delayed too long before raising a valid grievance.

Failing to offer her support and

training to achieve registration, being bullied and harassed.

The evidence on the part of the college was that it tried to support the teacher, but this proved impossible because of her absences from the school caused by ill health. During her employment, an advocate sent a letter to the college complaining about a lack of support, but the Authority held that there was no complaint about her failure to gain registration.

As regards the allegations of bullying, the evidence focused on a comment made by the principal about her wearing a dress that was 'see through' and her allegations of being assaulted. The Authority found that insufficient evidence of the alleged bullying/assaults had been provided to the college for it to investigate, and hence no grievance has been raised within the 90-day period.

EXCEPTIONAL CIRCUMSTANCES?

The Authority refused to allow the grievances to be raised out of time on account of exceptional circumstances because the

teacher was unable to explain the 18-month delay.

There was evidence of her ongoing health issues, but the Authority concluded that the evidence was insufficient to "... meet the high threshold for [the teacher] being either so 'affected or traumatised' ... that she was unable to consider raising a grievance ..." This was in spite of ACC having accepted a claim on the grounds that she suffered mental or physical injury following an incident of sexual violence.

The Authority held that "... acceptance of a [claim by ACC] and any ill health [the teacher] suffered ... does not assist her to prove that she was so traumatised by the matter giving rise to the personal grievance that she was unable to properly consider raising a grievance within 90 days."

XHZ v BOT of BSR College [2019] NZERA 171

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