

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 401  
3151861

BETWEEN

NOORI FIRDAUS  
Applicant

AND

WAIKATO DISTRICT HEALTH  
BOARD  
Respondent

Member of Authority: Rachel Larmer

Representatives: Lachlan Balfour, advocate for the Applicant  
Peter Chemis and Phina Conroy, counsel for the  
Respondent

Investigation Meeting: On the papers

Submissions and Other  
Information Received: 23 May 2022 from Applicant  
3 June 2022 from Respondent  
15 June 2022 from the Applicant  
17 June 2022 from the Respondent  
20 June 2022 from the Applicant

Date of Determination: 19 August 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Mr Firdaus' claims*

[1] The applicant, Dr Noori Firdaus was employed by the respondent, Waikato District Health Board (the DHB) on a fixed term employment agreement that ended on 17 January 2021. Dr Firdaus was employed under the terms of the New Zealand Resident Doctors' Association and 20 District Health Boards Multi-Employer Collective Agreement (the NZRDA MECA).

[2] Dr Firdaus claimed that the NZRDA MECA prevented the DHB from engaging her on a fixed term basis. She also claimed that the fixed term engagement did not meet all of the requirements of s 66 of the Employment Relations Act 2000 (the Act), so the DHB could not rely on the expiry of the fixed term to end her employment.

[3] Dr Firdaus claimed she was unjustifiably dismissed for two different reasons, namely:

- (a) She said the DHB was not able to rely on the expiry of the fixed term to end her employment; and
- (b) She claimed she had entered into an ongoing employment relationship with the DHB by email on 19 October 2020, so the DHB's failure to recognise that amounted to a dismissal.

[4] Dr Firdaus further claimed she had been unjustifiably disadvantaged by the DHB. Dr Firdaus sought remedies that included reinstatement under s 125 of the Act to her former position as a Post Graduate Year One (“PGY1”) House Officer at the DHB. She also sought reimbursement of lost wages and distress compensation.

#### *The DHB's position*

[5] The DHB denied that Dr Firdaus had been dismissed or that it had entered into an employment relationship with her as a result of its email to her on 19 October 2020. The DHB said Dr Firdaus' employment ended because the fixed term expired on 17 January 2021.

[6] The DHB denied that Dr Firdaus was unjustifiably disadvantaged and/or unjustifiably dismissed or was entitled to remedies. The DHB disputed Dr Firdaus' claim that it had not complied with s 66 of the Act. The DHB also opposed reinstatement on the grounds it was not practicable or reasonable.

#### **Authority's Investigation**

[7] This matter was initially set down for an in-person investigation meeting in Hamilton. However, after the parties' filed their evidence it was agreed the matter could be dealt with 'on the papers'.

[8] On that basis, the witnesses converted their witness statements into sworn affidavits. Dr Firdaus filed an affidavit and Andrea Coxhead file an affidavit for the DHB. Both parties also filed written submissions.

## Issues

[9] The following issues are to be determined:

- (a) Did the NZRDA MECA prevent the DHB from engaging Dr Firdaus on a fixed term agreement?
- (b) If not, did Dr Firdaus' fixed term agreement meet the requirements of s 66 of the Act?
- (c) If not, was Dr Firdaus dismissed?
- (d) If so, was her dismissal justified?
- (e) If not, what if any remedies should she be awarded?
- (f) Did the email exchange that occurred between Dr Firdaus and Khaliah Tapu on 19 October 2020 create a legally binding employment relationship?
- (g) If so, did the DHB dismiss Dr Firdaus when it failed to recognise that employment relationship?
- (h) If so, was her dismissal justified?
- (i) If not, what if any remedies should she be awarded?
- (j) Was Dr Firdaus unjustified disadvantaged by the DHB?
- (k) If so, what if any remedies should she be awarded?
- (l) What if any costs and disbursements should the successful party be awarded?

## Background Facts

[10] Ms Coxhead was the DHB's Clinical Unit Service Manager and RMO Unit Manager at the material time. Ms Coxhead was the person responsible for signing off all offers of employment. Ms Coxhead signed Dr Firdaus' fixed term offer of employment that was dated 1 May 2020 for a fixed term engagement that was to run from 24 August until 29 November 2020.

### *Reason for the fixed term*

[11] The reason stated in the 1 May 2020 offer letter for the fixed term role was:

The reason this position is fixed term is to fill the role until a permanent appointment can be made to our current vacancy through the National Recruitment Cycle.

[12] Dr Firdaus had been offered a fixed term engagement to cover a vacancy that had arisen in the Orthopaedic run (as a result of the employee in that role leaving) until a permanent appointment could be made through the National Recruitment Cycle. The National Recruitment Cycle is referred to as the “*Annual Recruitment Cycle*” in the 1 May 2020 offer letter.

[13] The expiry of the fixed term on 29 November 2020 aligned with the original commencement date for PGY1s as per the National Recruitment Cycle.<sup>1</sup> The National Recruitment Cycle governed the process by which all District Health Boards (DHBs) were required to fill Post Graduate Year One (PGY1) positions and above. That requirement formed the backdrop to the DHB’s offer of a fixed term engagement to Dr Firdaus.

#### *National Recruitment Cycle Agreement*

[14] In accordance with the National Recruitment Cycle Agreement (“*the Agreement*”) that covered all DHBs in New Zealand, doctors who are in their first year after graduation (known as First Year House Officers or PGY1) are allocated to DHBs via the Advanced Choice of Employment (ACE) Programme that assisted New Zealand and Australian graduates to gain employment following the completion of their medical degrees.

[15] The ACE Business Rules set out the terms of the Agreement between the 20 DHBs. It recorded, among other things, that all DHBs agreed that the ACE process would be the sole method for First Year House Officer recruitment and appointment.

[16] Under the terms of this agreement, PGY1 doctors were allocated to DHBs via the ACE Programme in accordance with the ACE Business Rules, as set out in the terms of the Agreement with the DHBs. The ACE process is the sole method that DHBs may use for the recruitment and appointment of PGY1s.

[17] Overseas trained doctors were not eligible for appointment through the ACE programme.

#### *Overseas trained doctors*

[18] As a result of the ACE Programme requirements, a doctor who completed their training outside of New Zealand or Australia was required to complete the New Zealand Registration

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<sup>1</sup> As it was at that time.

Examination in order to practice in New Zealand. These doctors are referred to as “*NZREX doctors*”.

[19] NZREX doctors could only be offered employment when vacancies arose outside of the National Recruitment Cycle.

[20] Dr Firdaus is an NZREX Doctor, so she was not eligible to apply for, or be appointed to, PGY1 or PGY2 positions through the ACE Programme. This arrangement meant that the role that Dr Firdaus had was only vacant until the next National Recruitment Cycle intake.

#### *PGY1 positions*

[21] The number of positions a DHB is required to provide to PGY1s is determined by the number of graduates each year. DHBs are advised of the number of graduates for each DHB area and the allocation of those graduates to specific DHBs is done by the Chief Executive Officer of the relevant DHB once the total graduate numbers were known.

[22] DHBs are required to give priority to New Zealand medical school graduates under clause 5.4 of the NZRDA MECA. Each year a new intake of PGY1s are employed to fill the vacancies through the National Recruitment Cycle and ACE programme.

[23] At the House Officer level, the year is divided into quarters. The DHB has a certain number of PGY1 positions available across the hospital each year, with a certain number of positions assigned to different service areas (i.e. allocations/runs) for each quarter.

[24] PGY1s are assigned to carry out certain runs each quarter, which they are appropriately qualified for, and should complete their runs in order to move to the next run. Provided each PGY1 successfully completed their assigned runs, then they would move up together to Post Graduate Year 2 (“PGY2”). Once they have successfully completed all of the PGY2 required runs, then the graduate achieved General Registration as a Doctor.

#### *The DHB’s PGY1 obligations*

[25] For the year starting 2021, the Waikato DHB had an additional three PGY1 graduates it was required to create roles for. That meant the DHB had to find enough PGY1 allocations, including creating new roles where necessary, that were acceptable for the level of training required for these PGY1 graduates. The DHB was therefore required to ensure it held these

PGY1 positions for the number of graduates it was allocated through the National Recruitment Cycle.

[26] The National Recruitment Cycle started in May for allocation (i.e. runs/roles). Successful graduates would be assigned specific runs around October of each year. In late 2020 the commencement date for the new intake of graduates was changed from late November/December to January/February the following year.

*Vacancies outside the National Recruitment Cycle*

[27] If after the New Zealand Medical School graduates have been assigned (or accounted for) there remained vacant roles within a DHB, then the DHBs were able to go to market to fill those additional vacancies.

[28] It was not uncommon for vacancies to arise in hospitals at the post graduate level during the course of a year, usually at the end of a quarter (or run cycle). For example, after completion of PGY2 many doctors elected to move on to GP training. If those graduates had started partway through a year, then that would leave vacancies for the Quarter 3 and Quarter 4 runs onwards, until the current PGY1s progressed to PGY2. That is what occurred with the PGY1 fixed term role Dr Firdaus was offered.

[29] Vacancies may also arise if graduates did not get their preferred hospital placement initially, but it subsequently became available. In such circumstances the graduate who had been appointed to the PGY1 sometimes decided to change DHBs at the end of one of the quarters, thereby creating a vacancy for the remainder of the year with the original DHB.

[30] In such circumstances a DHB would be able to fill the vacancy with other New Zealand Medical School graduates who missed out on the first round of allocations or NZREX graduates, provided the DHB did not limit its obligations to take New Zealand Medical Council graduates as part of the National Recruitment Cycle.

[31] Because of the need to appoint to vacancies that arose outside of the National Recruitment Cycle obligations and requirements, DHBs used fixed term employment agreements to cover vacancies that arose during the course of the year, for positions that had to be held open for New Zealand graduates but which had become vacant between the National Recruitment Cycles.

*Changes to start date of the fixed term engagement*

[32] Dr Firdaus' initial start date was to be 24 August 2020. However the PGY2 who was leaving the role Dr Firdaus was going to cover was required to finish with the DHB sooner than expected due to a sudden change in personal circumstances. As a result of that earlier than anticipated departure, Dr Firdaus agreed to start her fixed term on 6 July 2020.

*Changes to the original expiry date of the fixed term agreement*

[33] In 2020 the commencement date in the National Recruitment Cycle was changed. That change meant Quarter 1 began in January 2021, instead of at the end of November/beginning of December 2020 as it usually had. That decision was made by the CEOs of all DHBs so the change in the graduate intake date had to be implemented by all DHBs.

[34] Accordingly, the DHB extended its Quarter 4 from November to January to cover that change. Dr Firdaus' fixed term was also extended by agreement to align with that change.

[35] The DHB wrote to Dr Firdaus on 4 September 2020 offering her an extension to the expiry date of the fixed term agreement until 17 January 2021. The extension covered the vacancy that was created because the new intake would now not begin their runs until January rather than in November/December, as had previously been the case.

[36] During her employment with the DHB, Dr Firdaus had indicated that if the opportunity arose, she would like to try a medical run as opposed to the surgical vacancy in Orthopaedics that she had been hired to fill on a fixed term basis.

[37] Around the same time the extension to the fixed term expiry date occurred (in early September 2020), a PGY1 position in Rehabilitation, which was a medical run, became vacant so the DHB offered it to Dr Firdaus to carry out during the remainder of her fixed term engagement.

[38] That offer resulted in Dr Firdaus transferring from the 'Orthopaedic run' to the 'Rehabilitation run' for the remainder of her fixed term. That just changed the type of work she did, it did not change the fact that the PGY1 position would be filled by a PGY1 graduate through the National Recruitment Cycle in January as had been explained in the initial engagement letter.

[39] The Rehabilitation run was also a temporary vacancy until a permanent appointment could be made from the upcoming National Recruitment Cycle intake, so the same underlying reason for the use of a fixed term applied. It did not create a new fixed term because the changes had all been agreed as written variations to the original fixed term agreement, and all other terms and conditions remained unchanged.

*Agreed written variations made to the original fixed term agreement*

[40] These changes to the start date and end date of the fixed term engagement were dealt with as signed written variations to the original fixed term agreement.

[41] The start date variation was contained in a letter the DHB sent Dr Firdaus dated 23 June 2020. The change to the expiry date of the fixed term was set out in a letter from the DHB dated 4 September 2020 that Dr Firdaus signed on 5 September 2020.

[42] That letter recording the new expiry date also recorded Dr Firdaus' switch to a 'Rehabilitation run', as per her stated preferences about the type of runs she had wanted to do.

**Did the NZRDA MECA prevent the DHB from engaging Dr Firdaus on a fixed term basis?**

[43] Dr Firdaus claimed that clause 5.3 of the NZRDA MECA prevented her from being employed on a fixed term agreement because her employment did not fall within any of the examples in that clause.

[44] Clause 5.3 of the NZRDA MECA provides:

Temporary employment agreements should only be used to cover specific situations of a temporary nature, e.g:

- (a) to fill a position where the incumbent is on study or parental leave; or
- (b) where there is a task of finite duration to be performed; or
- (c) employment of GPEP trainees on an Alternative Vocational Scope placement.

Temporary employment agreements while justified in some cases to cover situations of a finite nature, must not be used to deny staff security of employment in traditional career fields.

[45] Dr Firdaus also claimed that the use of a fixed term denied her security of employment in breach of clause 5.3 of the NZRDA MECA.

[46] Clause 5.3 of the NZRDA MECA did not create an exclusive list of situations for which a fixed term engagements could be used. Instead, it expressly recognised that fixed term agreements may be used to cover temporary situations. That is the case here.

[47] Dr Firdaus was engaged to fill a temporary vacancy that became available as a result of the incumbent employee leaving the DHB before the next National Recruitment Cycle could fill the vacant role. The reason for Dr Firdaus' fixed term was therefore a "*specific situation of a temporary nature*" as contemplated by the NZRDA MECA.

[48] Further, clause 5.4 of the NZRDA MECA provides:

Subject to the provisions of the Human Rights Act and all else being equal preference for appointment will be given to graduates of a New Zealand Medical School, who are citizens or permanent residents of New Zealand.

[49] Clause 5.4 taken together with the ACE Business Rules required the DHB to hold the PGY1 positions open for New Zealand Medical School graduates to be appointed to during the National Recruitment Cycle.

[50] It was therefore not open to the DHB to have permanently appointed Dr Firdaus into that PGY1 role when she was not eligible in accordance with the National Recruitment Cycle, the ACE Business Rules and the ACE Programme to be permanently appointed to it.

[51] Dr Firdaus' submission that clause 5.4 did not apply to her situation because she had more experience than the PGY1s, so should have been given preference over a new intake of PGY1s graduates did not succeed.<sup>2</sup> Dr Firdaus' argument was that her six months' experience in the temporary PGY1 role meant that "*all else was not equal, with the effect that she should have been preferred.*"

[52] The use of temporary cover for a vacancy that had arisen between the National Recruitment Cycles did not void or supersede the National Recruitment Cycle requirements. The permanent PGY1 role still had to be filled in a way that was consistent with the DHB's obligations under the National Recruitment Cycle.

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<sup>2</sup> Dr Firdaus said she had completed two PGY1 runs (during her fixed term) so was more experienced than other PGY1s. However, she had not successfully completed all of her runs.

[53] Dr Firdaus was employed to fill a vacant role on a temporary basis until a permanent appointment could be made to that role through the National Recruitment Cycle. Her fixed term employment was therefore not inconsistent with the NZRDA MECA.

[54] Dr Firdaus' claim that the NZRDA MECA prevented her fixed term employment did not succeed.

**Did Dr Firdaus' fixed term employment meet all of the requirements of s 66 of the Act?**

[55] Section 66 of the Act sets out the requirements for fixed term employment and provides that: "*An employee and employer may agree that the employment of the employee will end at the close of a specified date or period*", provided that the employer must:

- (a) Have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end that way;<sup>3</sup>
- (b) Advise the employee of when or how his or her employment will end and the reasons for his or her employment ending that way.<sup>4</sup>

[56] The offer letter to Dr Firdaus dated 1 May 2020 formed part of her terms and conditions of employment. The 1 May 2020 letter originally advised Dr Firdaus that her employment would end on 29 November 2020 when the fixed term expired. However, the expiry date was extended to 17 January 2021 as a result of the written variation that was signed by both parties.

[57] Dr Firdaus took issue in her submissions with the genuineness of the reason for the fixed term being "*to fill the role until a permanent employment can be made through the National Recruitment Cycle*". This involves two separate inquiries, namely whether the DHB had genuine reasons for using a fixed term engagement and whether those reasons were based on reasonable grounds.

[58] Dr Firdaus did not claim the DHB had an ulterior motive in using a fixed term engagement, nor did it challenge that there was a genuine vacancy to be filled at the time she entered into the fixed term agreement.

[59] Rather, Dr Firdaus said it was not reasonable for her to be offered fixed term employment because the role that she had been appointed into was not of finite duration, meaning it had continued following the end of her fixed term. Dr Firdaus said because the

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<sup>3</sup> Section 66(2)(a) of the Act.

<sup>4</sup> Section 66(2)(b) of the Act.

position of PGY1 House Officer was an ongoing one she could have continued working in the role.

[60] Alternatively, Dr Firdaus said that even if she could not have continued working in the PGY1 role she had been in, there were always other PGY1 runs available at the DHB because it still had runs that catered to each experience level, not just new graduates.

[61] That submission was not accepted because under the ACE Business Rules the ACE Programme was “*the sole method for the first year House Officer recruitment and appointment.*”

[62] It was not open to the DHB to have made a permanent appointment into that PGY1 vacancy unless/until it did so in accordance with its obligations under the ACE Programme and the DHB was unable to do that until the next National Recruitment Cycle. It was therefore appropriate for the DHB to use a fixed term engagement to cover the temporary vacancy that had arisen between the two National Recruitment Cycle intakes of graduates.

[63] The fact that the need for the role continued after the expiry of the fixed term, did not make the reasons for the use of a fixed term engagement invalid.

[64] There are many situations where a fixed term engagement may be needed to cover a role that continues after the expiry of a fixed term. Examples would include covering for a permanent employee who is on parental leave, someone who is on long service leave, someone who is on absence without leave for an agreed period of time (such as a sabbatical), or someone who may be on long term sick leave, accident leave, or incapacitated for a period of time. A fixed term engagement could also be used to cover a role pending the recruitment and employment of a permanent employee into the role, as was the case here.

[65] At the time that the parties entered into the fixed term engagement, the DHB had genuine reasons based on reasonable grounds for using a fixed term engagement. The reasons did not include any of the prohibited reasons in s 66(3) of the Act because it was not intending to exclude or limit Dr Firdaus’ rights under the Act, to establish her suitability for permanent employment, or to exclude or limit her rights under the Holidays Act 2003.

[66] The Authority finds the DHB met the requirements of s 66 of the Act in terms of Dr Firdaus’ fixed term employment.

### **Was Dr Firdaus dismissed?**

[67] Dr Firdaus was not dismissed because her employment ended when the fixed term engagement expired, on the date that the parties had agreed her employment would end, namely 17 January 2021.

[68] Although the DHB was not required to seek alternative positions for Dr Firdaus after the expiry of her fixed term, as a show of good faith the DHB did look into whether there were any other suitable positions available for her.

[69] The Authority accepted Ms Coxhead's evidence that there were not. There either were no vacant positions available, or Dr Firdaus was not suitably experienced for the positions that were available.

[70] Dr Firdaus' unjustified dismissal grievance related to her fixed term employment did not succeed.

### **Did the email exchanges that occurred between Dr Firdaus and Khaliah Tapu on 19 October 2020 create a legally binding employment relationship?**

#### *The emails*

[71] On 19 October 2020 Khaliah Tapu, RMO Recruitment/RMO Support Services sent Dr Firdaus an email that said;

I have managed to sort out work for you next year.

But please be aware there are no actual choices for runs. I have only just managed to find gaps for you.

It would look like this, also be aware that from the start of next year you will be included on the night roster.

General surgery – PGY1  
Mental health – PGY1  
Obs and gyn – PGY2  
Paediatric surgery – PGY2

Let me know if you are interested and I will send you out an offer.

[72] Dr Firdaus' response by email to Ms Tapu the same day said:

Hope you are very good.

Thank you very much for this great email.  
I am happy to accept it.

Thanks in advance.

[73] Dr Firdaus claimed this email exchange was a binding offer of employment that she had accepted, thereby creating an enforceable employment relationship.

*Ms Tapu's role*

[74] Ms Tapu is an RMO Recruitment Administrator. Her role included planning for the placement of new graduates and other PGY1 and PGY2 vacancies. 2020 was her first year undertaking that process.

[75] Ms Tapu was not authorised to make binding offers of employment. Ms Coxhead as the Clinical Services Manager and Acting RMO Unit Manager had to sign off on any offer of employment before it was sent to an employee.

[76] When Ms Coxhead found out about Ms Tapu's email to Dr Firdaus she (Ms Coxhead) pointed out to Ms Tapu that the runs in the email were not available because of the number of PGY1s the DHB was required to accommodate that year. Ms Coxhead therefore instructed Ms Tapu to let the Dr Firdaus know the DHB did not have PGY1 runs available to her.

[77] After Dr Firdaus claimed the parties were in an employment relationship as a result of the email exchange on 19 October 2022, the DHB pointed out to Dr Firdaus that she would not have been eligible for the runs identified in Ms Tapu's email of 19 October 2020.

[78] Dr Firdaus was not permitted to work night shifts under the NZRDA MECA and she did not have the pre-requisite requirements to be able to carry out the PGY2 runs referred to by Ms Tapu. Although Dr Firdaus disputed that, the Authority preferred the DHB's evidence about those matters.

*Contract formation elements*

[79] Dr Firdaus' claim that the DHB entered into an ongoing employment relationship with her on 19 October 2020 did not succeed.

[80] The usual contract formation elements of offer, acceptance, consideration, certainty and an intention to create legal relationships are well established. The email Ms Tapu sent on 19 October was at best an 'invitation to treat', it was not a binding offer of employment that was capable of creating legal relations. Ms Tapu's email can be contrasted with the original offer of fixed term employment.

[81] The offer of fixed term employment Dr Firdaus had received on 1 May 2020 had been on the DHB's letterhead, it had set out the position that she was to hold and the start date, the details of the role and work location, and it had come from Ms Coxhead, the Service Manager – RMO Support Services.

[82] Dr Firdaus was required to sign the letter to indicate her acceptance of the offer of the fixed term engagement. The offer was stated to be time limited, so if Dr Firdaus had not accepted it within the specified time then the offer could be withdrawn.

[83] The email Dr Firdaus received from Ms Tapu on 19 October 2020 did not meet any of these requirements. Ms Tapu appeared to be asking Dr Firdaus if she was interested in working the identified runs that were available and if so, then the next step would be for Ms Tapu to “*send you out an offer*”.

[84] The reference to the next step being that Dr Firdaus would be sent “*an offer*” indicated the email was not intended to be a binding offer of employment that was capable of being accepted. The email from Ms Tapu was not intended to create legal relations. Nor did it impose mutually agreed legal obligations on the parties.

[85] The Authority finds the DHB did not intend to take on legal liability as an employer in the email that Ms Tapu sent Dr Firdaus on 19 October 2020. It was not legally able to because it could not have offered Dr Firdaus ongoing employment at that time.

[86] The email also did not reflect an intention by the DHB to enter into an immediate and binding agreement with Dr Firdaus on that date. Ms Tapu did not say she would send out an employment agreement for Dr Firdaus to sign, but instead described the next step as involving “*an offer*” from the DHB. That choice of words suggested a binding offer was anticipated but had not already made.

[87] Had the DHB intended to make Dr Firdaus a legally binding offer of ongoing employment, then Ms Coxhead would have followed up Ms Tapu's email to Dr Firdaus with a formal letter of offer of employment, similar to the one that Dr Firdaus was sent on 1 May 2020. That did not occur, fundamentally undermining Dr Firdaus' claim of an employment relationship.

[88] The Authority also accepted the DHB's evidence that the runs Ms Tapu referred to in her email were actually not available to Dr Firdaus because they had to be filled by graduates

in the National Recruitment Cycle and Dr Firdaus was not eligible to do those runs. There was no vacant position available that Dr Firdaus was eligible to be offered.

[89] Dr Firdaus was therefore not dismissed as a result of the DHB's refusal to acknowledge that the parties had entered into an employment relationship on 19 October 2020.

#### **Was Dr Firdaus unjustifiably disadvantaged?**

[90] Dr Firdaus did not provide evidence regarding her unjustified disadvantage claim. Nor did her counsel provide submissions on it. Accordingly, Dr Firdaus' unjustified disadvantage claim did not succeed.

#### **Outcome**

[91] Dr Firdaus' personal grievance claims for unjustified disadvantage and unjustified dismissal did not succeed.

#### **What if any costs should be awarded?**

[92] The DHB as the successful party is entitled to a contribution towards its actual legal costs. This matter will be treated as if it involved a half-day investigation meeting, for the purposes of assessing costs.

[93] The parties are encouraged to resolve costs by agreement. However, if that is not possible then the DHB has 14 days to file its costs submissions and Dr Firdaus has 14 days to file her reply. No cost submissions will be considered outside of this timetable, unless leave has been granted for that to occur.

[94] The Authority is likely to adopt its usual notional daily tariff-based approach to costs, so the parties are invited to identify any factors they say should result in adjustments being made to the notional starting tariff.

**Rachel Larmer**  
**Member of the Employment Relations Authority**