

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 459
3334000

BETWEEN NOELINE HEALEY
Applicant

AND HEALTH NEW ZEALAND
Respondent

Member of Authority: Claire English

Representatives: Elizabeth Lambert, advocate for the Applicant
Jordan Boyle, counsel for the Respondent

Investigation Meeting: On the Papers

Submissions received: 17 April and 30 June 2025 from Applicant
20 May and 28 July 2025 from Respondent

Determination: 30 July 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Noeline Healey, was an employee of the respondent Health New Zealand (HNZ). She declined to be vaccinated and was given 4 weeks' notice of the ending of her employment on 17 November 2021, with her last day of employment being 15 December 2021.

[2] Ms Healey filed a statement of problem with the Authority on 4 November 2024 claiming she was unjustifiably dismissed. She also raised claims of unjustified disadvantage, set out in an amended statement of problem filed 11 March 2025.

[3] HNZ denies that Ms Healey was unjustifiably dismissed or subject to unjustified disadvantage. It also says that she never raised a personal grievance claim with it, and the first it was aware of her claims was via the statement of problem, which is well outside the 90-day statutory timeframe for raising a personal grievance.

[4] Accordingly, this determination resolves the issue of whether Ms Healey is out of time for raising her personal grievance claim, and whether any of the claims she raises can be properly considered by the Authority.

The Authority's investigation

[5] For the Authority's investigation an affidavit was lodged by Ms Healey, and written submissions were received from both parties.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[7] The issues requiring investigation and determination were:

- (a) Did Ms Healey raise a personal grievance claim for unjustified dismissal and/or unjustified disadvantage within the 90-day statutory timeframe?
- (b) Should either party contribute to the costs of representation of the other party?

Background

[8] Submissions on behalf of Ms Healey are that she raised personal grievance claims for both unjustified dismissal and unjustified disadvantage, in or by various pieces of correspondence with HNZ, starting on 29 October 2021, and ending with her last piece of correspondence on 12 November 2021. It is submitted that, taken in their totality, it is logically consistent that when read together, Ms Healey's communications were sufficient to raise personal grievances of unjustified dismissal and unjustified disadvantage.

[9] It is submitted for the respondent that Ms Healey's communications did not as a matter of fact, raise personal grievances for either unjustified dismissal or unjustified

disadvantage. HNZ says that no communications were received from Ms Healey that raised issues around either her stand-down from employment or her dismissal, up until the filing of her statement of problem on 4 November 2024.

[10] I will therefore begin by considering the various pieces of correspondence sent by Ms Healey to HNZ. As per the submissions filed on behalf of Ms Healey, these were sent on the following dates:

- a. 29 October 2021;
- b. 4 November 2021;
- c. 6 November 2021;
- d. 8 November 2021;
- e. 12 November 2021;

[11] On 28 October 2021, HNZ began consulting with staff about the need for vaccinations as required by the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order).

[12] On 29 October 2021, Ms Healey wrote to the Manager of Radiology. The letter was brief, and said there was no express provision in her employment agreement that she must be vaccinated, and she was intending to “speak with my medical practitioner.”

[13] On 4 November 2021, Ms Healey again wrote to the Manager of Radiology. She said:

- a. Her employment agreement did not require her to be vaccinated;
- b. She was not able to take the vaccine, because it was “novel”, she had concerns over its safety, and it would not prevent infection or transmission of SARS-COV-2;
- c. She had the right to refuse medical treatment;
- d. I may exercise my right to file a personal grievance (the type of grievance was not stated).

[14] The text of this letter appeared to be a template complaint describing the vaccine as an experimental treatment, and posing a series of rhetorical questions, rather than a

piece of correspondence authored by Ms Healey herself. It did not contain any personalisation to Ms Healey's specific circumstances.

[15] On 6 November 2021, Ms Healey obtained a document headed "PRIVATE and CONFIDENTIAL VACCINATION EXEMPTION" from Ms Deidre Carter, described as a Registered Psychiatric Nurse. I understand this was provided to HNZ shortly after this date.

[16] On 8 November 2021, Ms Healey filed a safety incident report. The one-page document as provided to the Authority states: "Summary – situational trauma stress / anxiety / insomnia / nausea / massive headaches". It does not contain further detail.

[17] On 12 November 2021, Ms Healey wrote to the Acting CEO, the Manager of Radiology, and a People & Culture representative. She said:

I am deeply opposed to this one vaccine....

I am very concerned about my livelihood and it is wrong to be forced/coerced into taking an experimental drug....

I would like it known that I enjoy my job and am willing and able to take regular Covid tests....

I am not resigning or abandoning my employment....

I am advising that I will not be applying for a further medical exemption....

I would also like to receive a signed receipt of your receiving this notification and confirmation stating I am forbidden to come on-site from the 16th of November 2021.

Thank you and I look forward to your response.

[18] Ms Healey was stood down from duties due to her non-vaccinated status on 15 November 2021 by letter, and received written notice of termination on 17 November 2021. Her last day of employment was 15 December 2021. It is not disputed that her last piece of correspondence sent to HNZ prior to the filing of her statement of problem was on 12 November 2021.

[19] It is submitted for Ms Healey that she first raised the concern that her employment agreement did not require her to be vaccinated on 29 October 2021, and this and all subsequent correspondence sought to retain her employment by pointing out the legal obligations of the employer. I understand this to be a submission that when

read properly, the 29 October letter together with all other correspondence is sufficient to raise Ms Healey's personal grievance claims.

[20] As the court has confirmed, no particular form of words need be used to raise a personal grievance claim.¹ In addition, "where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance."

[21] This means I must consider whether Ms Healey conveyed the substance of her complaint to HNZ. In doing so, I must also consider the further guidance of the court that:

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.²

[22] I will consider the correspondence from Ms Healey in turn. On 28 October 2021, HNZ wrote to Ms Healey about her vaccination status sought her feedback on how the Order might affect her. Ms Healey replied on 29 October 2021 stating "there is no express provision within [my] employment agreement that I must be vaccinated to carry out my role....I acknowledge your Vaccination Order and confirm that I am going to speak with my medical practitioner."

[23] This letter was brief, containing only three sentences. It refers to and acknowledges HNZ's correspondence, advises that Ms Healey will be seeking her own medical advice, and refers to the employment agreement between the parties. There is nothing in the 29 October letter that would raise a personal grievance, or that suggests that Ms Healey has an employment relationship problem that HNZ as her employer needed to address. Rather, it indicates to HNZ that Ms Healey has received its correspondence, and was taking her own steps to explore what options might be open to her.

¹ In *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132, at [36].

² Ibid, at [38].

[24] On 4 November 2021, Ms Healey sent a far longer letter to HNZ. She said that her employment agreement did not require her to be vaccinated, and she was refusing to take the vaccine. The letter concluded that she “may exercise” her right to file a personal grievance. The type of grievance was not stated, nor was any action requested of HNZ.

[25] The court has held that mere advice to the employer that the employee considers they have a personal grievance is not sufficient, as the employer must know what to address³. In her 4 November letter, Ms Healey did not go as far as to claim she had a grievance, or set out a problem she wanted HNZ to address. She advised that she did not intend to be vaccinated, and that she might raise a grievance at some future point in time. This is not sufficient to amount to the raising of a personal grievance.

[26] On or shortly after 6 November 2021, Ms Healey provided a document purporting to be a vaccine exemption, provided by a person describing themselves as a registered psychiatric nurse. It is common ground that HNZ advised Ms Healey that this document did not meet the criteria for a vaccine exemption, and Ms Healey made a comment in a meeting on 10 November to the effect that she would not attempt to get another (compliant) exemption as she believed she would not meet the updated criteria. These exchanges demonstrate that Ms Healey was continuing to communicate to HNZ about her vaccination status and was consistently advising that she did not intend to be vaccinated. There is no indication that she went further than simply advising this view.

[27] On 8 November 2021, Ms Healey filed an incident report. It was brief as quoted above. She describes this as recording how she felt at the time, stating that it recorded her “situational trauma, anxiety and insomnia”. On this same date, HNZ wrote to her acknowledging her right to choose whether to be vaccinated, referring to the Order as setting out a legal obligation that her role could only be performed by a vaccinated worker, and offering free and confidential counselling through the Employee Assistance Programme if she wished to use this.

[28] I note that the incident reporting process was a process for noting health and safety matters specifically rather than a channel for raising individualised concerns, or human resources matters more generally. The use of this process suggests that this was not the raising of a personal grievance claim. Ms Healey’s own description of her report

³ [Creedy v Commissioner of Police \[2006\] ERNZ 517 \(EmpC\)](#), at [36].

does not indicate that she believes a personal grievance claim was raised through this process. I find that it was not sufficient to do so.

[29] On 9 November 2021, HNZ communicated to Ms Healey and other staff further information about the Order and the process it was following.

[30] On 10 November 2021, Ms Healey attended a staff meeting. She does not suggest that she raised a personal grievance at that meeting, and her own description of her comments at this meeting as set out above do not suggest otherwise.

[31] On 11 November 2021, HNZ emailed her to follow up on topics she had raised at that meeting, and providing information from Worksafe NZ and about details of the medical exemption process. The email concluded reminding Ms Healey that if she chose not to be vaccinated and did not have a medical exemption after the 15th [of November], then her employment would be terminated on notice. It invited further questions or a further meeting if Ms Healey desired.

[32] On 12 November 2021, HNZ sent Ms Healey a process map clarifying who was covered by the Order and clarification regarding risk assessments. Also on 12 November, Ms Healey sent HNZ her final letter stating that she was “deeply opposed to this one vaccine”, was “willing to investigate further options to be able to carry out my role” and that she would not be applying for a further medical exemption. Ms Healey was clear in this correspondence that she was advising HNZ of her stance. There was no request for engagement from HNZ.

[33] This was the last piece of correspondence sent by Ms Healey. I find that no grievance claim was raised in this correspondence either.

[34] Having considered the pieces of correspondence themselves, I will now consider the broader argument made on Ms Healey’s behalf that on 29 October 2021, she told HNZ that there was “no express provision” in her employment agreement requiring her to be vaccinated to carry out her role, and that “the applicant throughout this time sought to retain her employment by pointing out the legal obligations for the employer, of which the employment agreement was the basis.”

[35] There are three reasons why this submission is of no assistance in showing that Ms Healey raised a personal grievance for either unjustified dismissal or unjustified disadvantage within the statutory 90-day timeframe.

[36] First, Ms Healey's statement in the 29 October letter referring to her employment agreement does not meet the tests for a personal grievance claim. It lacks any particulars that would allow HNZ to know what it was responding to, or that Ms Healey required a response at all. The purpose of this letter was to advise HNZ that Ms Healey was taking her own steps. It suggested that she might then be in further contact although it did not go so far as to commit to this. It did not suggest an employment relationship problem requiring resolution.

[37] Second, this argument mis-states the reasons why Ms Healey's employment came to an end. HNZ stated many times in its correspondence that the basis for its consultation and the reason why Ms Healey's employment was at risk was due to the requirements of the Order, not the requirements of her employment agreement. Ms Healey understood this, and engaged with this by suggesting that her role was not covered by the Order, and that she was willing to explore alternatives that might meet the Order including testing and masking. Ms Healey never suggested at the time that her employment was at risk due to a disagreement about the requirements of her employment agreement, or that the need to be vaccinated stemmed from her employment agreement. This submission on Ms Healey's behalf inaccurately characterises the correspondence between the parties at the time.

[38] Third, this argument does not explain how or why the 29 October letter could logically raise a personal grievance claim for unjustified dismissal (which had not occurred yet and Ms Healey was not advised of until 17 November) or unjustified disadvantage (which again had not yet occurred). It is significant that when Ms Healey was advised that she was stood down from her employment, she made no comment of any sort, and when she was dismissed, she made no comment of any sort. The only correspondence on which she now seeks to rely pre-dates these two decisions by HNZ that affected her employment.

[39] Looking at the communications from Ms Healey to HNZ as a whole, there is a clear pattern showing Ms Healey engaging with HNZ as to the details of the process, the Order, and the potential requirements of her. HNZ responded, providing details and

offering further support, meetings, and to be available for other correspondence. Throughout, Ms Healey was clear that she was unvaccinated, and did not intend to become vaccinated. This drove the conversation and HNZ made it clear vaccination was her choice.

[40] On 15 November 2021, HNZ sent Ms Healey a formal letter advising that she was being stood down because HNZ understood she was unvaccinated. She was advised to contact her manager if her situation was likely to change. Ms Healey did not respond to this letter in any way.

[41] On 17 November 2021, HNZ wrote and emailed Ms Healey, advising her that her employment was being terminated on notice on the basis that she had not been vaccinated, and therefore her continued employment would be in breach of the Order. Ms Healey did not respond to this letter in any way.

[42] Even now, Ms Healey relies on her previous correspondence, particularly her letter dated 29 October 2021, to support her contention that she raised a personal grievance claim of unjustified dismissal and unjustified disadvantage. Her affidavit in support of this can be quoted in full:

I raised complaints against the actions of my employer within 90 days of them coming to my attention.

I am familiar with the submissions made on my behalf that outline the actions that were taken by my former employer and the dates that I raised complaints about those actions.

[43] Ms Healey's two-sentence affidavit falls short of demonstrating that she raised a personal grievance claim against HNZ. It does not set out when, where, or how Ms Healey believes she raised a personal grievance claim with HNZ for either unjustifiable dismissal or unjustifiable disadvantage.

[44] It does not even refer to the phrase "personal grievance", set out what she believes her alleged grievance/s were for, or name her employer.

[45] Ms Healey's affidavit does not support her contention that she raised personal grievance claim/s against HNZ. In addition, neither she, nor her representative, have made any attempt to explain why Ms Healey did not raise any complaint, concern, or issues, with HNZ after she received the letter of 15 November standing her down, or the letter of 17 November advising her of the termination of her employment. Ms

Healey's lack of engagement on receipt of these two letters stands in stark contrast to her previous level of engagement, where she repeatedly referred to seeking a medical exemption and exploring the possibility that she might be allowed to continue her role by engaging in some other measures such as testing and mask-wearing.

[46] Standing back and looking at the correspondence overall, I am of the view that Ms Healey was aware that she could raise concerns and ask questions of HNZ as it moved through its process. She consistently advised HNZ that she was not vaccinated and would not become vaccinated. When it became clear that she would not qualify for a medical exemption at the relevant time, she then ceased to engage with HNZ prior to the end of its process, to the extent that she did not raise any personal grievance claim about her eventual termination, even though she had previously said this was something she was considering.

[47] In addition, Ms Healey has not explained why she delayed filing her statement of problem for over three years after she says she first raised her personal grievance claim on 29 October 2021. Section 114(6) of the Act states that "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."

[48] Both the lack of explanation for the significant delay and the fact that Ms Healey now seeks to rely on a piece of correspondence which occurred more than 3 years prior to the date on which her action in the Authority commenced, reinforces my view that Ms Healey did not raise a personal grievance claim within 90 days, and is out of time in any case to commence that claim in the Authority.

[49] The matter is accordingly dismissed.

Costs

[50] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[51] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Health New Zealand may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, Ms Healey will then have 14 days to lodge any reply memorandum.

On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[52] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁴

Claire English
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1