

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 15
3351900

BETWEEN MICHAEL KNOWLER
Applicant

AND CABLEPRICE (NZ) LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Elizabeth Lambert, advocate for the Applicant
Megan Richards and Ruvin Pattiaratchi, counsel for the
Respondent

Investigation Meeting: On the papers

Submissions and Further 4 September and 9 October 2025 from the Respondent
Information Received: 26 September from the Applicant

Date of Determination: 9 January 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Michael Knowler was employed by CablePrice (NZ) Limited as a Trainee Parts Specialist from March 2019.

[2] In December 2021 CablePrice undertook a risk assessment regarding the potential impact of Covid-19 in the workplace. It concluded, amongst other things, that all its employees would need to be vaccinated against Covid-19 to attend any CablePrice site.

[3] CablePrice then consulted its employees over the introduction of a Covid-19 Vaccination Policy based on this assessment.

[4] On 9 December 2021 all CablePrice employees were advised of the implementation of a Covid-19 Vaccination Policy (the Vaccination Policy). The Vaccination Policy required all CablePrice employees to be vaccinated against Covid-19 to attend any CablePrice sites.

[5] Mr Knowler was not vaccinated against Covid-19. Because of his non-vaccination pursuant to the Vaccination Policy he was unable to attend any CablePrice site, meaning he was unable to carry out any work. As a result, CablePrice undertook a process with Mr Knowler regarding his ability to work and it concluded that dismissal was the appropriate outcome. Mr Knowler was dismissed by CablePrice effective 28 February 2022.

[6] Ms Knowler lodged a statement of problem in the Authority on 20 January 2025. The employment relationship problem included personal grievances for unjustified action causing disadvantage and unjustified dismissal, breach of contract claims, a claim for damages for a breach of the duty of good faith, and a claim for damages for breaches of the Health and Safety at Work Act 2015 (the HSW Act).

[7] CablePrice lodged a statement in reply. In the statement in reply, CablePrice said, amongst other things, that Ms Knowler's personal grievances were not raised in time.¹ And it raised concerns about the Authority's jurisdiction to award damages as claimed.

The Authority's investigation

[8] In case management conferences on 12 June 2025, 24 July 2025 and 26 August 2025 I discussed the refinement of the employment relationship problem because of the jurisdictional issues raised and the personal circumstances of Mr Knowler. In the end the representatives for Mr Knowler advised that Mr Knowler wished to proceed with the employment relationship problem based solely on breach of contract allegations.

[9] The alleged breaches of contract by CablePrice are:

- (a) A breach of clause 10 of Mr Knowler's employment obliging CablePrice to comply with the HSW Act.
- (b) A breach of the implied duty to provide a safe working environment.

¹ Employment Relations Act 2000, s 114(1).

[10] Mr Knowler says that CablePrice breached both clauses by introducing the Vaccination Policy. He says this breached both clauses because the Vaccination Policy was a serious hazard, and it adversely affected Mr Knowler.

[11] In response to this refinement of the employment relationship problem, CablePrice applied to dismiss the problem on the basis it is frivolous and/or vexatious.

[12] I investigated the application to dismiss the employment relationship problem on the papers, that is I received written submissions from the parties' representatives and considered these.

[13] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the submissions that I received, in this determination. I have set out agreed facts as required and relevant legal principles. Based on this I have expressed conclusions on issues as necessary to determine the application to dismiss, and then I have specified the orders made as a result.

Application to dismiss

[14] CablePrice has applied to have Mr Knowler's claim dismissed pursuant to clause 12A of Schedule 2 of the Act. Clause 12A of Schedule 2 of the Act provides:

12A Power to dismiss frivolous or vexatious proceedings

- (1) The Authority may, at any time, in any proceedings before it, dismiss a matter or defence that the Authority considers to be frivolous or vexatious.

[15] The power to dismiss a matter pursuant to clause 12A of Schedule 2 of the Act has been considered by the Employment Court in *Lumsden v Sky City Management Ltd* and *Gapuzan v Pratt & Whitney Air New Zealand Services*.² This case law indicates that when considering an application to dismiss the following is relevant:

- (a) All parts of the matter, that is all the component parts of the employment relationship problem, must be either frivolous or vexatious for me to dismiss a matter.

² *Lumsden v Sky City Management Ltd* [2015] NZEmpC 225; and *Gapuzan v Pratt & Whitney Air New Zealand Services* [2014] NZEmpC 206.

- (a) For the claims to be frivolous they must trifle with the Authority's processes - as an example a matter may be said to trifle with the Authority's processes if it is impossible to take seriously.
- (b) For the claims to be vexatious they must be extreme claims made without reasonable or probable cause or excuse, they are harassing or annoying, vexing a respondent beyond what is normal in a claim, or they might contain scandalous or unjustified allegations, and they have an improper purpose.
- (c) There is a high threshold, and I should not take the step of dismissing a matter lightly as it is a draconian action.

The parties' positions on dismissing the problem

CablePrice

[16] CablePrice describes the employment relationship problem articulated by Mr Knowler as an allegation that CablePrice breached its contractual health and safety obligations by introducing the Vaccination Policy requiring its employees to vaccinated. It did this without adequately assessing the risks associated with the Pfizer vaccine (the Covid-19 vaccine available at the time) and the Pfizer vaccine was a serious hazard.

[17] CablePrice says the issue with the employment relationship problem is that the Pfizer vaccine was safe, evidenced by the regulatory approval of the vaccine and government guidance and policy on Covid-19 vaccination, which CablePrice was entitled to rely on when formulating and introducing the Vaccination Policy. Also, even if the Pfizer vaccine was a risk, which it denies, Mr Knowler chose not to be vaccinated and was therefore never exposed to the risk.

[18] Based on this CablePrice submits that the employment relationship problem is frivolous as it:

- (a) Is misconceived, relying on the characterisation of the Pfizer vaccine as a workplace hazard – this is an assertion that is unsupported by medical, scientific and legal standards and ignores the regulatory framework under which the vaccine was introduced.

(b) Cannot be taken seriously given the scientific consensus on the safety of the Pfizer vaccine and the absence of any credible evidence to indicate it posed a risk that constituted a workplace hazard.

(c) Fails to disclose any arguable allegations as the Vaccination Policy was formulated and introduced by CablePrice in line with public health directives and legal obligations – there can be no breach of any health and safety duties where the Vaccination Policy was based on government approved medical guidance (so it did not constitute a risk to Mr Knowler and was not a hazard on its introduction) and did not result in exposure to any risk of harm as Mr Knowler chose not to be vaccinated.

[19] And CablePrice submits that the employment relationship problem is vexatious as it:

(a) Relies on extreme and unfounded allegations, primarily that the Pfizer vaccine was a workplace hazard.

(b) Contains unjustified accusations, including that CablePrice endangered its employees by introducing the Vaccination Policy when the Vaccination Policy was consistent with public health guidance and legal obligations.

(c) Appears to harass and burden CablePrice with litigation that lacks any factual or legal foundation.

[20] CablePrice says the employment relationship problem is frivolous and vexatious and it should be dismissed.

Mr Knowler

[21] Mr Knowler submits that the Covid-19 pandemic generally, and specifically the government advice and regulation around Covid-19 vaccination, did not suspend or alter employees' rights and employer obligations with regard to protecting employees in the workplace or in their work.

[22] So, under the HSW Act and the implied term to provide a safe workplace, CablePrice was required to take steps that were reasonably practicable to protect its employees, and this

remained in place despite the circumstances under which the Vaccination Policy was formulated and introduced.

[23] Then CablePrice failed to meet this ongoing obligation when it formulated and introduced the Vaccination Policy because:

- (a) The Pfizer vaccine not safe and CablePrice failed to check its safety, erroneously relying on provisional approval – as a result it introduced a hazard into the workplace.
- (b) It required Mr Knowler to get vaccinated against Covid-19 when it could not do so - lawful administration of any vaccine is premised on informed consent and individuals have the right to refuse medical treatment (s 11 of the New Zealand Bill of Rights Act 1990). And, in any event, there was no provision in Mr Knowler's employment agreement requiring vaccination of any kind.

[24] On this basis Mr Knowler says the employment relationship problem is neither frivolous nor vexatious.

My analysis

[25] I have reviewed the amended statement of problem and the submissions made by Mr Knowler's representatives (both orally in the case management conferences and in writing for this application) and I accept Mr Knowler's articulation of the employment relationship problem.

[26] The issues to resolve this employment relationship problem are both factual and legal and comprise two broad questions:

- (a) Did CablePrice breach the obligation to provide a safe workplace by introducing a hazard into the workplace through the Vaccination Policy?
- (b) Did CablePrice breach the obligation to provide a safe workplace by requiring Mr Knowler to get vaccinated against Covid-19?

[27] So, for there to be a breach of the health and safety obligation owed by CablePrice, the Vaccination Policy needed to be a workplace hazard and/or CablePrice must have compelled Mr Knowler to get vaccinated against Covid-19.

[28] Turning first to the question of introducing a hazard through the Vaccination Policy, the hazard referenced cannot be the Vaccination Policy itself but rather the Pfizer vaccine that Mr Knowler would need to take if he wished to access CablePrice's sites.

[29] I have considered the extensive submissions from both parties' representatives on the presumed safety of the Pfizer vaccine at the time of the introduction of the Vaccination Policy. I accept CablePrice's submission that for its purposes the Pfizer vaccine was safe based on the provisional approval from Medsafe at the time (noting that full approval subsequently followed on 15 November 2023). In addition, the Pfizer vaccine was subject of safety monitoring and the Ministry of Health confirmed no widespread safety concerns. CablePrice was entitled to rely on Ministry of Health guidance and the Medsafe approval of the Pfizer vaccine.

[30] And it follows that I accept that at the time the Pfizer vaccine had no widespread safety concerns and therefore its use as the Covid-19 vaccine for the Vaccination Policy did not introduce a hazard into the CablePrice workplace.

[31] Turning to the second question of compulsion to get vaccinated against Covid-19, the effect of the Vaccination Policy was not that CablePrice was compelling or requiring Mr Knowler to be vaccinated. Mr Knowler always had the choice not to take the Pfizer vaccine (or any other available Covid-19 vaccine). Mr Knowler's choice had the consequence that he was unable to attend any CablePrice site and because of this he was subsequently dismissed. The implications of Mr Knowler's choice were serious and significant for him but they did not mean he was compelled to get vaccinated against Covid-19.

[32] So, overall, I conclude this employment relationship problem does not contain any plausible allegations; it is not sustainable as a matter of fact and law. The Pfizer vaccine was not unsafe, the Vaccination Policy did not compel Mr Knowler to have the Pfizer vaccine and Mr Knowler chose not to have the Pfizer vaccine – therefore he was not exposed to any health and safety risk in the workplace by CablePrice.

[33] Based on these conclusions then I turn to consider if the employment relationship problem is frivolous or vexatious.

[34] *Is the employment relationship problem frivolous?* – The employment relationship problem is misconceived in relation to the allegation of introducing a hazard. It does not contain any arguable allegations either in terms of the safety of the Pfizer vaccine and Mr Knowler being compelled to take the vaccine. I accept that for these reasons it cannot be taken seriously. The employment relationship problem is incapable of succeeding and allowing it to proceed in circumstances would be a waste of resource. Therefore, I find that the employment relationship problem trifles with Authority processes and should be dismissed.

[35] *Is the employment relationship problem vexatious?* – The allegations made in the employment relationship problem are unfounded but are not extreme; despite the Medsafe approval and government guidance it is not uncommon for people believe the Pfizer vaccine (and other Covid-19 vaccines) are unsafe. I accept the allegations are made by Mr Knowler are made without an objectively reasonable, or probable, cause or excuse, but I do not find the employment relationship problem to be harassing or annoying and does not have an improper purpose. Therefore, I do not find that the employment relationship problem is vexatious.

Conclusion and orders

[36] Mr Knowler's employment relationship problem against CablePrice is frivolous. I dismiss the employment relationship problem pursuant to Clause 12A of Schedule 2 of the Act.

Costs

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

[38] If the parties are unable to resolve costs, and an Authority determination on costs is needed, CablePrice 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 Mr Knowler 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.

[39] 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.³

Peter van Keulen

Member of the Employment Relations Authority

³ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1