

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 829
3220981

BETWEEN KAY ROBSON-THOMAS
Applicant

AND CHRIST'S COLLEGE
CANTERBURY
Respondent

Member of Authority: Sarah Blick

Representatives: Karen Glass and Erika Whittome, advocates for the applicant
Dean Kilpatrick and Jane Freeman, counsel for the
respondent

Investigation: 15-16 July 2025 in Christchurch

Submissions and
information received: 19 August and 17 September 2025 from the applicant
3 September 2025 from the respondent

Determination: 18 December 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kay Robson-Thomas was employed as a Graphic Designer and Marketing Assistant pursuant to a fixed term employment agreement (the IEA) with Christ's College Canterbury (the College). The College ended her employment before the expiry of the fixed term in January 2022, after the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) was amended to include education services. As a registered school, the College was an affected education service. As it considered Ms Robson-Thomas role had contact with children or would be present at the College at a time when children or students were also present, its assessment was that she was an affected worker and was therefore required to be vaccinated.

[2] Ms Robson-Thomas pursues unjustified disadvantage grievances and remedies. She also says the College breached health and safety obligations in relation to which she alternatively claims damages.

[3] The College's position is that it complied with the Order in terminating Ms Robson-Thomas' employment, and acted in good faith and as a fair and reasonable employer at the relevant times. The College denies Ms Robson-Thomas raised any personal grievances within the 90-day limitation period and has not consented to any claim being raised outside of that period. Without prejudice to its position, the College denies Ms Robson-Thomas was unjustifiably disadvantaged and that it breached the IEA.

The Authority's process

[4] Witness statements were received for Ms Robson-Thomas. For the College, the Authority received statements for former Executive Principal Garth Wynne, Director of Advancement Claire Sparks and Risk Manager Darren Dean. All witnesses gave evidence under oath or affirmation at the investigation meeting, with Mr Wynne attending by audio visual link.

[5] 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 any orders made. It has not recorded all of the evidence and submissions received but which has been considered.

The issues

[6] The issues for investigation and determination are:¹

- (a) Did Ms Robson-Thomas raise any personal grievance(s) with the College for unjustified disadvantage within time?
- (b) If the answer to (a) is yes, did the College unjustifiably disadvantage Ms Robson-Thomas, and if so, how?

¹ Prior to my involvement, Ms Robson-Thomas' representatives confirmed a claim for an unjustified dismissal had been withdrawn, which was confirmed by written directions issued on 7 August 2024 (corrected on 8 August 2024).

- (c) If the answer to (a) is no, are any of the issues identified in (d) and (e) below unable to be investigated as a consequence?
- (d) Did the College breach its obligations towards Ms Robson-Thomas by:
- (i) Requiring her to be vaccinated for covid-19 and was this in breach of her employment agreement?
 - (ii) Giving her notice of termination before the Order applied?
 - (iii) How it implemented the Order by not pursuing alternatives that would preserve her employment?
 - (iv) Ms Robson-Thomas' experiencing stress, bullying and loss of dignity in the workplace because of other staff being made aware of her vaccination status?
- (e) What (if any) remedies should be awarded, such as the damages for breach of the IEA, lost remuneration or compensation claimed, and are there any issues of contribution?

Background

[7] Ms Robson-Thomas signed the IEA on 14 June 2021 and commenced employment on 21 June 2021. The reason provided for the fixed term employment was to cover parental leave of another employee. The fixed term was to end on 30 June 2022.

[8] Clause 33.3 of the agreement provided that:

The Employee agrees to take the necessary steps, including but not limited to vaccinations and/or immunisations that will limit and/or eliminate any risk to the company's operations, workers and clients/customers.

[9] Clause 25.2 provided that the employment may be terminated prior to the end of the fixed term where the College has cause to do so. Two months' notice was required.

Vaccination prospect

[10] Ms Robson-Thomas claims that from October 2021 weekly meetings were held for work updates. She says at those meetings team members were asked specifically about their vaccination status. Ms Robson-Thomas says she made it known that she was reluctant to take the vaccination due to heart conditions within her family. She claims despite this there was

subjected to “discrimination, coercion and bullying” from senior staff to pressure her into getting a vaccine. Ms Robson-Thomas says she began to suffer from a stress-related rash.

The Amendment Order

[11] The Order was amended in accordance with the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (the Amendment Order). At 11:59pm on 25 October 2021 the Amendment Order came into effect.

[12] The amendments to clause 4 of the Order included extending its application to cover affected education services, the definition of which included “a registered school”. As a registered school, the Order applied to the College.

[13] Schedule 2 of the Order recorded the “Groups of affected persons” that were required to be vaccinated in accordance with clause 7 of the Order. Clause 9.1 of Part 9 in Schedule 2 provided that the Order applied to any workers in an affected education services:

...over the age of 12 years who carry out work at or for an affected education service (including as a volunteer or an unpaid worker) and who—
may have contact with children or students in the course of carrying out that work; or
will be present at the affected education service at a time when children or students are also present...

[14] The College considered Ms Robson-Thomas was within the scope of clause 9.1 of Schedule 2 and therefore was required to be vaccinated in accordance with clause 7 (unless an exemption was provided in accordance with the Order).

[15] Part 3 of Schedule 1 in the Order provided the time frames for affected workers to be vaccinated. In clause 4 of the Order, “vaccinated” was defined as a person who “has received all of the doses of a COVID-19 vaccine or combination of COVID-19 vaccines specified in the first column of the table in Schedule 3”. In general terms, workers in affected education services were required to have received the first dose of the COVID-19 vaccine by 15 November 2021 and be vaccinated by 1 January 2022.

[16] As the Order applied to the College, workers were made aware of the requirements on vaccination. The College engaged with workers, including Ms Robson-Thomas, in that it:

- (a) Confirmed what was required under the Order;
- (b) Requested workers confirm their vaccination status; and

(c) Requested any worker who was not vaccinated to confirm their intention to get vaccinated or not as the case may be.

[17] On 29 October 2021 and 1 November 2021 the College wrote to Ms Robson-Thomas requesting she confirm her vaccination status.

Staff Injury report

[18] Ms Robson-Thomas filled out a Staff Injury Report dated 1 November 2021 which said she was experiencing:

...psychological harm and duress due to vaccine mandate and the requirement to give my vaccination status which is my personal medical information. I have not been sleeping and have a rash on my face and an ulcer in my eye. This has been ongoing in the workplace since the vaccine mandates came into effect.

[19] Mr Dean gave evidence that he recalled Ms Robson-Thomas phoning him inquiring about the status of a report she had made. He indicated he had not seen the report. Mr Dean surmised at the investigation meeting that the report had not been fully submitted but the original report was later identified. Ms Robson-Thomas agreed to submit the report again, which resulted in a further Staff Injury Report dated 2 November 2021 repeating the concerns as above.

[20] Mr Dean gave evidence that Ms Robson-Thomas came to see him again after he confirmed the report(s) had come through. He recalls (as noted in the report) her saying she was having trouble sleeping due to her concerns about the safety of the vaccine and as a consequence a rash had formed. Mr Dean gave evidence that he could not specifically recall informing Mr Wynne of the reports but as a courtesy he would have done so. Mr Wynne had no direct recollection of Mr Dean advising him of the report but said he may have done so.

[21] Ms Robson-Thomas has provided an email dated 2 November 2021, which she says was sent to the College. The email claimed she believed the vaccination mandate was illegal and she would be visiting a doctor to seek an exemption from vaccination. The College says it has attempted to locate the email in its system but it has no record of it. The copy of the email shows only that it was sent to Ms Robson-Thomas' personal email address from her work email address.

Ms Robson-Thomas writes to Mr Wynne

[22] On 5 November 2021 Ms Robson-Thomas emailed two letters to the College. The email stated:

I understand the predicament that this has placed Christ's College in, by the Government issuing this mandate. ... I would be very happy to offer up my services ongoing to Christ's College...

[23] The email further stated she “attached two letters as I am not sure when we meet next week which one would be applicable...”. The letters were dated 5 November 2021 and 8 November 2021 and raised concerns about how the Order was applied, the requirement to be vaccinated, the risk of COVID-19, and the efficacy and safety of the COVID-19 vaccination.

[24] The letter dated 8 November 2021 was based on a template letter (which Ms Robson-Thomas acknowledges). The letter stated she was not able to give her “full consent to undergo a medical procedure” and it was “not unreasonable for me to exercise my rights to not receive the Injection at this stage”. It then stated:

Should my choice not be respected, and you elect to disadvantage my employment by linking my employment with participating in a trial for an experimental treatment that does not guarantee the prevention of transmission of COVID-19, then I may exercise my right to file a personal grievance.

[25] To conclude, the letter stated Ms Robson-Thomas trusted the College would take the information in the letter into consideration and confirmed she was ready, willing and able to carry out her role.

[26] Ms Robson-Thomas says by the time she was able to get an appointment to see her doctor it was 8 November 2021. She says the consultation resulted in her doctor treating her for stress related rash/eczema related to the pressure and worry she was being subjected to in her employment. She was not able to obtain an exemption.

The College's response to letters

[27] On 9 November 2021, Mr Wynne wrote to Ms Robson-Thomas acknowledging her email of 5 November 2021 and letters. The letter confirmed the requirements under the Order and that her employment was covered by the Order, and as such it must comply with it. It said the Order required Ms Robson-Thomas, as an affected person, to have her first dose of the

vaccine by 5 November 2021 and a second dose by 2 January 2022. The letter noted Ms Robson-Thomas' advice that she would be seeking an exemption and that it would consider any such exemption granted. The letter confirmed the vaccination decision Ms Robson-Thomas' decision was for her to make, and highlighted that her continued employment was potentially in jeopardy should she not receive an exemption and choose not to be vaccinated. The letter refers to a meeting organised for 10 November 2021.

Mr Wynne and Ms Robson-Thomas meet

[28] On 10 November 2021, Mr Wynne then met with Ms Robson-Thomas and they discussed her circumstances. There are no notes of the conversation but Mr Wynne has given evidence that it was wide-ranging, and that by the end Ms Robson-Thomas, while disappointed, accepted her employment was ending.

The College confirms end of employment by letter

[29] By letter dated 11 November 2021, sent by email to Ms Robson-Thomas, Mr Wynne confirmed what he says was agreed at the meeting of 10 November 2021. It records that they had agreed that Ms Robson-Thomas' two month period would commence from 16 November 2021 and from that day forward she would work remotely. The letter acknowledged that should circumstances change, the College would welcome Ms Robson-Thomas back to complete her fixed term contract. The letter asked her to confirm her agreement to the change in her terms of employment in writing for the College's records.

Ms Robson-Thomas' claims to have worked on site after 15 November 2021

[30] Ms Robson-Thomas provided evidence both in her witness statement and at the Authority investigation meeting that she had worked on site after 15 November 2021, in breach of the Order, and that this supported that the College could not rely on the Order to justify the termination of her employment. In particular, Ms Robson-Thomas' witness statement read:

... if the School was compliant with the Order, it would not have permitted me to work at the School after 15 November 2021. It cannot now be claimed that my employment was terminated in reliance on the Order. This is because I worked in the office in the tower block at school, after 15 November 2021.

[31] At the investigation meeting, Ms Robson-Thomas initially claimed that if the College was complying with the Order, "why was [she] never walked offsite and sent home" when the

Order came into force on 15 November 2021. She claimed to have continued working on site from 16 November 2021 to 3 December 2021. She acknowledged the letter from the College dated 11 November 2021 stated that she would work from home from 16 November 2021 until the end of the notice period, but she said she “never did”.

[32] Ms Robson-Thomas claimed to be onsite printing certificates after 15 November 2021, and that she was at a Junior Prize Giving on 2 December 2021, which she claimed was supported by a photograph of her at the prize giving.

[33] Following evidence being submitted that verified her computer was delivered to her home on 16 November 2021, Ms Robson-Thomas retracted her statements and acknowledged she was not on site after 14 November 2021. Ms Robson-Thomas claimed that the discrepancy was because she no longer had access to her email.

Ms Robson-Thomas confirms she had not resigned, acknowledges end of employment

[34] By letter dated 22 November 2021, Ms Robson-Thomas stated she had not resigned, she would work remotely for the notice period to 16 January 2022, her employment would end on 16 January 2022 and offered her services as a freelance graphic designer. The letter further stated:

I would like to add that I have very much enjoyed working both with the Advancement Team and for Christ's College and would like to continue to do so, I understand that the government has at this time made it very difficult for both employers and employees.

[35] Ms Robson-Thomas worked remotely until her employment came to an end on 16 January 2022.

[36] Ms Robson-Thomas claims she spoke to a lawyer in around November 2021 but they advised against raising an unjustified dismissal claim.

[37] The College says it received no further correspondence from Ms Robson-Thomas escalating her concerns until her Authority statement of problem was received on 30 March 2023.

Relevant law

Raising a personal grievance

[38] For the Authority to have jurisdiction to consider any personal grievance it must have been raised by the employee with the employer during the notification period as specified in s 114 of the Act. The relevant notification period is in s 114(7)(b) - being 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 later.

[39] To paraphrase the Act, a grievance is raised with the employer as soon as the employee has made the employer aware that they allege a personal grievance that they want the employer to address.² No particular form of words is required. A grievance may be raised orally or in writing by one communication or through several communications taken together. It does not matter whether the employer recognised the complaint as a personal grievance. The issue is whether the nature of the complaint was a personal grievance as defined in the Act and whether the communication(s) conveyed the substance of the complaint to the employer. The employer must be given sufficient information to address the grievance, by responding to it on its merits with a view to resolving it soon and informally, at least in the first instance.³ The issue is whether, taking an objective assessment of the facts, the nature of the complaint was a personal grievance within the meaning of the Act.

[40] Not every criticism of an employer, or the culture within a workplace, will obviously constitute a personal grievance.⁴

Assessment

[41] Ms Robson-Thomas did not state at the investigation meeting that she considered she had raised a personal grievance by submitting health and safety incident reports on 1 and 2 November 2021. Her representatives say however this was the first time she raised a grievance related to being subject to psychological harm and duress due to the vaccine mandate and the requirement to give her vaccination status. Although the College's response to the report could have been more robust. However, Ms Robson-Thomas gave no indication that she was not satisfied with the College's response to the report(s). In any event, for reasons that follow, I

² Employment Relations Act 2000 s 114(2).

³ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132.

⁴ *Shaw v Bay of Plenty District Health Board* [2022] NZCA 241 at [19].

find subsequent interactions between the parties show the reports were not sufficient to raise a personal grievance.

[42] The Authority has also considered evidence given by Ms Robson-Thomas regarding an email she says she would have sent to Ms Sparks on 2 November 2021. Her representatives submitted the email was sufficient to raise a personal grievance for unjustified disadvantage. The evidence before the Authority did not establish on the balance of probabilities that an email was indeed sent to Ms Sparks. As such, no weight can be given to the contents of the email as raising any grievance.

[43] When asked at the investigation meeting to clarify what she relied upon to show that a personal grievance had been raised, Ms Robson-Thomas pointed to the contents of her letter dated 8 November 2021. However, the letter of 8 November 2021 (and of 5 November 2021) was limited to raising concerns about the validity of the Order, and the requirement to be vaccinated. It clearly stated should her choice not to receive the vaccine not be respected, she “may exercise my right to file a personal grievance”. Objectively, this showed both Ms Robson-Thomas did not consider she had raised a grievance via her health and safety report, nor was she doing so in the 8 November 2021 letter.

[44] When the College met with Ms Robson-Thomas on 10 November 2021, Ms Robson-Thomas repeated her concern about validity of the Order and gave her views on vaccination. While there are no notes or minutes of this meeting available from either party, there is no evidence that Ms Robson-Thomas raised complaints in this meeting regarding whether the College should apply for an exemption to the Order and the result that her employment would be terminated. There is no evidence that the meeting went any further so that the College was on notice that grievances existed and needed to be addressed.

[45] Following the meeting the College confirmed Ms Robson-Thomas’s employment would be terminated by letter of 11 November 2021.

[46] Ms Robson-Thomas gave evidence at the investigation meeting that she also objected to being terminated in her letter of 22 November 2021. As the College has pointed out, this is not consistent with the contents of her letter, which states that she confirms she cannot work within the school grounds and understands that her notice period would commence from 16 November 2021 and end on 16 January 2022. She further states that she “understands the

predicament this has placed Christ's College in, by the Government issuing this mandate". The College understandably did not take this correspondence to raise any complaint and I find that it did not put the College on notice of any new problems that she wanted addressed. No complaints were made in this letter regarding the College the requirement to be vaccinated being a breach of the IEA, giving her notice before the Order applied, consideration of alternative options to preserve her employment and bullying by staff related to her vaccination status. There was also no suggestion that the College should apply for an exemption.

[47] From the College's perspective, while Ms Robson-Thomas disagreed with the Order, and the requirement to be vaccinated, Ms Robson-Thomas did not challenge the termination of her employment. After being notified her employment was at an end, she worked out her two-month notice period with home, in a professional manner. There is no evidence in any conduct or communications with the College during her notice period that she either had or intended to pursue any grievances. Standing back, objectively her conduct during that period was consistent with not having raised any personal grievances previously.

[48] The 90-day period for raising a claim of unjustified dismissal commenced on 16 January 2022 and ended on 16 April 2022. Having considered all of the above matters, including single interactions and Ms Robson-Thomas' conduct cumulatively, I find she did not raise any personal grievance claim(s) in respect of events leading to and/or after the termination of her employment prior to the statement of problem being served on the College on or about 5 April 2023.

Breach of IEA claim(s)

[49] Ms Robson-Thomas has additionally claimed the College breached the IEA by requiring her to be vaccinated for COVID-19. In submissions she further claimed her IEA was breached by:

- (a) the College failing to provide a safe workplace, pursuant to clause 22 of the IEA;
- (b) her being subject to alleged bullying and harassment in the workplace;
- (c) the College terminating her employment in reliance on the Order; and
- (d) varying the IEA in terms by requiring her to work remotely.

[50] The onus lay with Ms Robson-Thomas to show that there was a breach of the IEA. Having carefully considered the evidence presented, such breaches have not been established

or to the extent that the breach of contract claims are a duplication of what would have been a personal grievance claim for dismissal, they cannot proceed.

Outcome

[51] Ms Robson-Thomas did not raise her grievances within time under s 114 of the Act. The College has not consented to any of the grievances being raised out of time. Additionally, Ms Robson-Thomas has not applied for leave to raise those grievances on the basis exceptional circumstances exist, and there has been no evidence presented to suggest such grounds did or do exist. Accordingly, the Authority does not have jurisdiction to determine Ms Robson-Thomas' personal grievance claims. Finally, no breaches of contract have been established.

Costs

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

[53] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the College 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 Robson-Thomas 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.

[54] 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.⁵

Sarah Blick
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1