

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2021] NZERA 306  
3118354

BETWEEN            ROBERT SINGLE  
                                 Applicant  
  
AND                    IDEA SERVICES LIMITED  
                                 Respondent

Member of Authority:      Geoff O’Sullivan  
  
Representatives:            Kerry Single, advocate for the Applicant  
                                 Paul McBride, counsel the Respondent  
  
Investigation Meeting:      13 April 2021 at Napier  
  
Submissions [and further    19 April 2021 from the Applicant  
Information] Received:      19 April 2021 from the Respondent  
  
Date of Determination:      19 July 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      Robert Single is employed by Idea Services Limited (ISL) with his terms and conditions of employment set out in an individual employment agreement he signed on 6 September 2018. Mr Single claims he has been disadvantaged in his employment because ISL made unilateral changes to his employment agreement without formal notification or consultation. He says that ISL suspended him then placed him on paid special leave without any formal or informal discussions with him regarding this. Mr Single says this was after he had applied for and been given three months leave (not all of which was on pay) for a pending surgery.

[2]      Mr Single asks the Authority to:

- (a) Compensate him for any loss of wages which may have come about whilst he was on suspension.
- (b) Reinstatement any annual holiday leave used to make up subsidy payments.
- (c) Order full costs for his representation including mediation.

[3] ISL denies suspending Mr Single or making any unilateral changes to his employment agreement and says it went out of its way to ensure Mr Single was covered financially not only during his illness, but also during the national lockdown as a result of Covid-19.

### **The Authority's investigation**

[4] Pursuant to section 174E of the Employment Relations Act 2000 (the Act) I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence. I have likewise carefully considered the helpful submissions received from both parties.

[5] The Authority heard from Mr Single, Bastian Kuesel, ISL's Service Manager and Nick Cockroft, ISL's Human Resource Business Partner. The issues the Authority needed to determine were:

- (a) Did ISL suspend Mr Single and make unilateral changes to his employment agreement which disadvantaged him in his employment?
- (b) Was Mr Single placed on special leave with no formal discussions and without his agreement?
- (c) Should ISL have applied for the Covid wage subsidy in respect of its employees sooner than it did?

[6] Initially, Mr Single had joined IHC New Zealand Incorporated as a party, but prior to the investigation meeting accepted it should not be a party to these proceedings as at no time was there an employment relationship between him and that party.

### **Background**

[7] Mr Single has been employed by ISL as a support worker since September 2018. In late 2019, he was diagnosed with prostate cancer and was subsequently advised that he would need to have radiation treatment in Palmerston North. Treatment was to be over a period of approximately three months. Mr Single advised his manager that he would therefore be away from work from 2 April 2020 for the three month period. As Mr Single had been employed

for only a short period of time, he had limited leave entitlements and accordingly most of the three months off, would have been largely leave without pay.

[8] By the middle of March 2020, Mr Single was identified as a vulnerable person in terms of the Government guidelines issued during the initial Covid-19 outbreak in New Zealand. Both parties agree that Mr Single was in a high risk situation due to his pre-existing medical conditions. On Saturday 21 March 2020, the Government had recommended that all vulnerable persons and those over the age of 70 go home and isolate themselves to limit the possibility of getting Covid-19. As a result of this, staff including Mr Single were advised by ISL of changes being made as a result of Covid-19. Those who felt they had a compromising health condition, were encouraged to obtain an appropriate medical certificate to be off work. Mr Single immediately did this and provided ISL with a medical certificate dated 24 March 2020 which provided:

Due to pre-existing medical conditions Mr Robert Single is at increased risk of Covid-19 infection. To protect himself and people he works with he is advised to stay at home for the duration of this pandemic.

[9] It was against this background Mr Kuesel the Service Manager, entered into discussions with Mr Single. Upon receipt of the medical certificate, Mr Kuesel advised Mr Single that because of his health he would be removed from any scheduled shifts until further notice. This was in keeping with the medical certificate. It was at this point, that it became clear that Mr Single had not read his medical certificate. He did not understand that in the context of the discussions he was having with ISL he should not be at work, but should stay at home for the duration of the pandemic.

[10] ISL was aware that this would have a financial impact on Mr Single. Mr Single was unhappy with what he saw as a suspension. At some point, Mr Kuesel sought advice from Mr Cockroft regarding Mr Single's position and it was in those conversations, that the idea of special leave was discussed. The intention was to try to stop the escalating Covid-19 crisis from adversely impacting financially on Mr Single. Mr Cockroft then confirmed the special leave had been approved subject to review on 28 March. On 28 March, the special leave was extended.

[11] By 5 April 2020, Mr Single's representative, Kerry Single seemed to be of the view that ISL was required to apply for a wage subsidy. This was confirmed in subsequent emails on 7 April and was in the context of a contended personal grievance. At that stage, ISL considered

it was not entitled to apply for a wage subsidy as it did not meet the criteria. Naturally however it kept its position in that regard under review.

[12] The pandemic and lockdown unfortunately continued, and on 22 April 2020 ISL advised all staff that it could no longer meet the full pay for staff who were absent by reason of Covid-19. It sought to register for the Government's essential workers leave support scheme. Payment under that scheme to Mr Single, was confirmed on or about 28 April 2020.

[13] Mr Single then underwent treatment in Palmerston North and returned to Hawkes Bay.

### **Discussion**

[14] This is not a case where there were any major material differences between the parties' evidence. What it is about, are perceptions. For instance, when one stands back and looks at all the evidence, it is clear that Mr Single believed he was being railroaded into doing something he did not want to do, namely, leave the workplace. No doubt that is why he considered himself under some form of suspension.

[15] It is extremely likely that Mr Single's misapprehension and misunderstanding of what was occurring, came about as a result of him giving ISL a medical certificate of 24 March 2020 without reading it. Mr Single's evidence was that he was surprised when it was put to him that he should not be at work for the duration of the pandemic. However this was exactly what the medical certificate provided for. It is unlikely he would have considered himself suspended if he had read the medical certificate he handed to Mr Kuesel.

[16] There was nothing untoward in how ISL treated the medical certificate. Indeed it did precisely what one could expect. Mr Single was a vulnerable person with surgery booked. He was exactly the sort of person the advice to go home and isolate was aimed at. ISL's action cannot be construed as a suspension.

[17] However, this was not the end of the matter. ISL would have been entitled to have relied on the medical certificate to ensure it was playing its part in keeping Mr Single safe, that is away from the workplace. This would have had financial repercussions for Mr Single who, as an employee of some 18 months service, did not have much in the way of accrued leave and/or sick leave. He was facing a significant break from work, some three months, as a result of the need to have his radiation treatment completed.

[18] ISL was aware of this and having at least discussed the idea of extra leave with Mr Single, approved special leave which was later extended. Putting aside the obvious difficulty in arguing such an action could amount to a disadvantage, the special leave in fact advantaged Mr Single and was something that ISL was not required in law to provide.

[19] Although his argument is based on a false premise, for the sake of completeness I do mention Mr Single's claim that ISL was required to apply for a wage subsidy, and in his case earlier than it did. There was no legal requirement on any employer in New Zealand to apply for the wage subsidy. There were criteria that were to be met, but even in a case where an employer was entitled to apply for a wage subsidy, there was no legal requirement that they do so. It was a decision for ISL to consider whether or not it felt it met the criteria and as to when and if it wished to apply for a wage subsidy.

[20] Indeed, ultimately ISL did apply for the wage subsidy for its employees and payment to Mr Single in terms of that scheme was confirmed on 28 April 2020.

[21] During the period, a mistake had been made with Mr Single's wages however as soon as that was brought to ISL's attention, the error was fixed.

### **Conclusion**

[22] The evidence does not support Mr Single's belief that he was disadvantaged in his employment. Mr Single was not suspended. I accept that he took the view he was on suspension, however that was not a reasonable view in light of the medical certificate he provided his employer on 24 March. Mr Single was properly paid. There was consultation to the extent there needed to be regarding special leave which it must be said advantaged Mr Single. As he has not established any personal grievances, Mr Single's claims fail in their entirety.

### **Costs**

[23] Costs are reserved.

**Geoff O'Sullivan**  
**Member of the Employment Relations Authority**