

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 24  
3326843

	BETWEEN	SARAH BREWER Applicant
	AND	CANOPY CANCER CARE LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Liz Lambert and Erika Whittome, advocate for the Applicant Marie Whisker and Elin Harris, counsel for the Respondent	
Investigation Meeting:	On the papers	
Submissions and/or further evidence	3 November and 5 December 2025 from the Applicant 17 November and 12 December 2025 from the Respondent	
Determination:	16 January 2026	

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Sarah Brewer, claims that she was unjustifiably dismissed on 7 January 2022 by the Respondent, Canopy Cancer Care Limited (CCC), due to the fact that she did not meet the mandatory requirements of the Vaccination Order which applied to her role as an oncology nurse.

[2] Ms Brewer also claims that she was unjustifiably disadvantaged by the actions of CCC.

[3] CCC denies that it unjustifiably dismissed or unjustifiably disadvantaged Ms Brewer.

[4] CCC claims that at no stage during her employment or at any time post-employment did Ms Brewer raise a personal grievance. The first occasion of CCC being aware that she is making such claims (of unjustifiable dismissal and unjustifiable disadvantage) was on receipt of the Statement of Problem dated 1 October 2024. CCC does not consent to the raising of the personal grievances outside of the statutory 90 day time limit.

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

[5] The parties agreed to the Authority determining this preliminary issue based on the Statement of Problem and the Statement in Reply, documents submitted by the parties, and on submissions from Ms Lambert on behalf of Ms Brewer, and from Ms Whisker and Ms Harris on behalf of CCC.

[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.

### **Issues**

[7] This preliminary determination addresses the issue of whether or not Ms Brewer raised her personal grievances for unjustifiable disadvantage and/or unjustifiable dismissal within the 90 day statutory time limit.

### **Brief Background**

[8] Ms Brewer was employed as an oncology nurse in CCC's cancer care clinic. Her main duties involved delivering systemic anti-cancer treatments to patients with cancer, many of whom were immune-compromised.

[9] As set out in the Statement in Reply, during the COVID-19 pandemic CCC complied with the various requirements which were in force prior to vaccinations becoming available. It also acted on Ministry of Health (MOH) recommendations and took other measures to address the risk of COVID-19 in the workplace for its staff, patients and other persons affected by its work. These measures included the

availability of appropriate personal protective equipment, development of guidelines and clear and regular communication.

[10] CCC asked staff members who were at higher risk of severe effects from COVID-19 due to underlying conditions to identify themselves, Ms Brewer was not included among those staff members who did so.

[11] Following approval of the Pfizer COVID-19 vaccine in February 2021, CCC took steps to ascertain which of its staff had been vaccinated and to develop its own vaccination policy.

[12] From about June 2021 onwards CCC consulted with its staff on the terms of its proposed immunisation policy. The CCC policy identified certain infection safety-sensitive roles and proposed that the workers in those roles were required to be fully vaccinated. Ms Brewer's role as an oncology nurse was one of the identified roles.

[13] CCC states that Ms Brewer was provided with a copy of the draft policy and also the draft risk assessment for feedback. It states that the consultation process resulted in feedback from a number of staff members and as a result, a variety of changes were made to the proposed policy. The CCC policy and risk assessment were finalised on 1 October 2021.

[14] At the time the policy was finalised Ms Brewer had been working from home on limited duties and was being paid her usual remuneration. However CCC stated that it could not continue to provide Ms Brewer with limited duties, and on 6 October 2021 it wrote inviting her to a meeting to discuss the implications of its policy and what that meant for her role given she was not vaccinated.

[15] Before the meeting with Ms Brewer took place, or CCC took any action under its policy, the Government announced that vaccinations would be mandatory in the health sector, and that those workers would have to be fully vaccinated by 1 December 2021.

[16] CCC wrote to Ms Brewer on 12 October 2021 advising her that it would need to defer the requested meeting under its own immunisation policy whilst it assessed the Government's announcement and how that would affect its workforce.

[17] At 11.59 on 25 October 2021 amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order) came into force. From that date, the Vaccination Order required health practitioners providing health services to patients in person to have had their first dose of a COVID 19 vaccination by no later than 15 November 2021 and to be fully vaccinated by 1 January 2022. Unless a health practitioner had received their first dose by 15 November 2021, the Vaccination Order prohibited that person from carrying out their work.

[18] I note that CCC was legally obliged to comply with the Vaccination Order, the validity of which has been tested by judicial review. Accordingly CCC did not act unjustifiably in complying with its requirements.<sup>1</sup>

[19] On 31 October 2021 Ms Brewer wrote to CCC providing a list of questions about the vaccination and asking for that information in advance of any meeting to discuss her role.

[20] On 2 November 2021 CCC responded to Ms Brewer acknowledging that she had genuine concerns about the vaccination but suggested that her questions were more appropriately directed to the MOH or her health practitioner. CCC explained that its own internal policy had identified her role as requiring vaccination, but that even if Ms Brewer disagreed with that, that policy had been overtaken by the Vaccination Order.

[21] Ms Brewer's role as an oncology nurse was subject to the Vaccination Order which prohibited her from carrying out her duties unless she was vaccinated.

[22] CCC set out its view that it was unable to continue offering Ms Brewer limited alternative duties and notified her of its preliminary view that it would be unable to keep her role open for her unless she met the terms of the Vaccination Order.

[23] Ms Brewer responded to CCC on 4 November 2021. In its response on 8 November 2021 CCC reminded Ms Brewer of the Vaccination Order with which they both had to comply.

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<sup>1</sup> NZDSOS Inc v Minister for Covid-19 Response [2022] NZHC 716; NZTSOS Inc v Minister for Covid-19 Response [2022] NZCA 74

[24] Ms Brewer was on sick leave until 3 December 2021 and so no further steps were taken to address her status as an unvaccinated health practitioner over that period of time.

[25] On 6 December 2021 CCC contacted Ms Brewer asking to meet the following day, 7 December 2021. The meeting took place on 8 December 2021 during which Ms Brewer provided feedback on how her role could be modified so as to fall outside of the Vaccination Order. CCC disagreed that the suggested modifications were either reasonable or practicable.

[26] On 10 December 2021, CCC wrote to Ms Brewer providing her with four weeks' notice of termination due to her inability to perform her role due to her failure to meet the requirements of the Vaccination Order. CCC also offered to place Ms Brewer in any vacant position should she become vaccinated during the course of her notice period.

[27] CCC heard nothing further from Ms Brewer following the notice of termination and her employment with CCC came to an end on 7 January 2022.

[28] On 30 September 2024 Ms Brewer lodged a Statement of Problem with the Authority claiming that she had been unjustifiably dismissed by CCC.

[29] As set out in the submissions on her behalf, Ms Brewer is claiming that she raised personal grievances about two matters in the communications with CCC on 31 October and 4 November 2021. These matters were about (i) the health and safety of the vaccine and her personal fears about it, and (ii) health and safety in the workplace in terms of a lack of consultation in the workplace arising from events between 17 August and 1 October 2021.

**Did Ms Brewer raise her personal grievance within the 90 day statutory time limit?**

[30] Section 114(1) of the Employment Relations Act 2000 the Act) states:

- (1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 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 the later, unless the employer consents to the personal grievance being raised after the expiration of that period;

[31] In *Creedy v Commissioner of Police* Chief Judge Colgan stated:

[36] ...for an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular formula of words needs to be used. What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.<sup>2</sup>

[32] In *Panapa v Spotless Facility Services Limited* the Employment Court stated:

[23] A grievance is raised as soon as the employee has made, or has taken reasonable steps to make, the employer aware that the employee alleges a personal grievance that the employee wants the employer to address. The raising of a grievance is the first recognised step in the problem solving process.

[24] In order for a communication to constitute the raising of a personal grievance, it must make the employer sufficiently aware of the grievance to be able to respond to it.<sup>3</sup>

[33] I find that the language of s 114(2) of the Act as applied by the Employment Court in *Panapa v Spotless Facility Services Limited* makes it clear that it is necessary that:

- (i) there is an action by the employer which gives rise to a personal grievance before the personal grievance is raised;
- (ii) the employee has taken reasonable steps to advise the employer that he/she is alleging a personal grievance it wants the employer to address; and
- (iii) the communication about the personal grievance made the employer sufficiently aware of what it had to address.

[34] Whether the grievance has been specified sufficiently to enable the employer to address it, is to be assessed objectively i.e. from the standpoint of an objective observer.

[35] Ms Brewer relies on two sets of communications in support of her claim that she raised a personal grievance within the statutory 90 day time limit: an email and a

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<sup>2</sup> *Creedy v Commissioner of Police* [2006] ERNZ 517

<sup>3</sup> *Panapa v Spotless Facility Services Limited* [2021] NZEmpC 88

letter sent to CCC on 31 October 2021 and an email sent on 4 November 2021. I shall address these communications separately.

*The 31 October 2021 email and letter*

[36] On 31 October 2021 Ms Brewer emailed CCC stating:

Please find attached a letter with some questions that I indicated in a previous conversation earlier last month.

When I have received this information, I will consider meeting with you and [...] to discuss next steps.

[37] In the attached letter (the 31 October 2021 letter) Ms Brewer stated:

As I indicated on the phone in a previous conversation, I have some questions regarding the medical procedure that is being requested for my role, that I'd appreciate being answered before meeting again as this may affect my final answer towards receiving this procedure.

[38] The questions contained in the 31 October 2021 letter were concerned with the nature of the vaccine. Having examined them, I find that the letter is primarily concerned with asking CCC to provide information to a number of questions about the testing regime of the proposed vaccine, its contents and the likelihood of fatality if COVID-19 was contracted.

[39] The 31 October 2021 letter concluded:

Once I have received the above information in full and I am satisfied that there is no threat to my health I will be happy to accept your offer to receive the treatment ...

[40] It is submitted for Ms Brewer that the letter attached to the 31 October 2021 raises concerns about taking the required vaccine in order to maintain her employment and the informed consent processes.

[41] It submits that Ms Brewer's situation is analogous to that of the applicant in *Taniwha v Te Runanga O Toa Rangatira Inc*, who wrote a letter expressing the same sentiments as Ms Brewer<sup>4</sup>.

[42] It is submitted for CCC that there is no reference in the 31 October letter or the email of the same date to a disadvantage arising from the events that took place between 17 August and 1 October 2021.

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<sup>4</sup> *Taniwha v Te Runanga o Toa Rangatira Inc* [2023] NZEmpC 140

[43] It is submitted that it is apparent that the 31 October email and the 31 October 2021 letter do not raise a disadvantage grievance with CCC. At that point in time CCC was no longer introducing its own policy, it was seeking Ms Brewer's response to the Government mandate, the Vaccination Order, that had been introduced.

[44] It is submitted for CCC that there is no analogy in Ms Brewer's 31 October 2021 Letter and *Taniwha*.<sup>5</sup> In that case, the nurse said to his employer that his contract contained nothing about the COVID-19 Public Health Response Act 2020; that people still had rights, and referred to being bullied twice.<sup>6</sup> In contrast, in the 31 October 2021 letter Ms Brewer asks a series of concerns about the vaccine itself, she does not raise any concerns, or complaint of criticism about CCC's own conduct.

[45] It is submitted for CCC that the 31 October 2021 letter does not identify any specific disadvantage to Ms Brewer; or set out how the alleged failure by it to address a 'health and safety' issue caused her detriment or disadvantage.

[46] In particular it is submitted that Ms Brewer did not place any onus on CCC to stop requiring people to be vaccinated; suggest that CCC was introducing a serious hazard into the workplace; nor did she suggest that CCC was coercing its employees to have the vaccine.

[47] In examining both the 31 October 2021 email and letter, I find no evidence in either that Ms Brewer was raising a personal grievance of disadvantage arising from a lack of consultation in the period 17 August to 1 October 2021.

[48] I find that the 31 October 2021 letter makes it clear that Ms Brewer wanted to examine in detail information about the vaccine before she committed to taking it, and that provided once the information was received and she was convinced there was no threat to her health, she would be agreeable to receive it: "... I will be happy to accept your offer to receive the treatment...".

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<sup>5</sup> *Taniwha* Above n3 at [10] – [13]

<sup>6</sup> *Taniwha* Above n3 at [10] – [13]

[49] Examining the 31 October 2021 letter against the criteria identified in *Panapa* I note that Ms Brewer does not refer to ‘an action’ by CCC giving rise to a personal grievance but instead refers to ‘an offer’ made by it.<sup>7</sup>

[50] Secondly I find no evidence in the wording of the 31 October letter to support Ms Brewer having taken reasonable steps to advise CCC that she was alleging a personal grievance she wanted CCC to address, as opposed to her wanting CCC to answer some specific queries about the vaccine.

[51] Thirdly the 31 October 2021 letter does not make it sufficiently clear what Ms Brewer wants CCC to address, other than to provide the information she requires.

[52] I find there is no disadvantage grievance raised in either the 31 October 2021 email or letter.

#### *4 November 2021 email*

[53] Ms Brewer emailed CCC on 4 November 2021 stating:

The number of people who have valid concerns about the safety and efficiency of this vaccine is significant, and due to there being no real answers provided by the MOH to our questions ....

To date I have been unsuccessful in finding someone who is able to answer my questions or providing guarantees, ... This does very little to reassure me that going ahead with vaccination is a sound decision to be making on my part.

The fact that a workplace can place demands on an employee to be vaccinated, with a vaccine that carries the concerns that this one does, and yet does not provide any guarantee for the safety and wellbeing of these employees, is astonishing. Any employer making such a demand has a moral obligation to purview such reassurance, the lack of which finds me very ill at ease. ...

I understand the enormous pressure being placed on certain sectors, to have their employees who are dealing with the public vaccinated, and especially those who are in a face to face role with vulnerable individuals whose health is compromised. ...

It is regrettable that termination of my employment contract seems to be a way forward, when we both know that Canopy Cancer Care will be losing a very capable and diligent Nurse. I am disappointed that a short-sighted and overreaching Government mandate leaves both of us in the position we now find ourselves in.

[54] It is submitted for Ms Brewer that the 4 November email raises issues of safety and informed consent.

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<sup>7</sup> *Panapa* above n 2

[55] It is submitted for CCC that the 4 November email does not raise a disadvantage grievance for a lack of consultation about the risk assessment, there is no specific reference to events between 17 August and 1 October 2021. Nor does Ms Brewer raise a lack of consultation as a disadvantage grievance in the Amended Statement in Reply dated 18 October 2024 in which she states: “On 4 November 2021 I sent another letter with the same safety concerns to follow up”.

[56] CCC further submits that Ms Brewer did not raise a disadvantage arising from a ‘health and safety of the vaccine’.

[57] In the 4 November 2021 email I find that:

- i. Ms Brewer refers to a lack of answers about the safety of the vaccine being provided by the Ministry of Health;
- ii. To the enormous pressure being placed (by the Government mandate) on certain sectors to have employees who were dealing with vulnerable, health compromised individuals vaccinated; and
- iii. That she is disappointed in the Government issuing a mandate that affected both her and CCC.

[58] Ms Brewer does comment that she finds it astonishing that an employer can demand vaccination but not provide reassurance as to its safety, however I find no statement in the 4 November 2021 email that Ms Brewer saw CCC as acting unreasonably in expecting its employees who were in “a face to face role” with the vulnerable employees to accept the vaccine. Rather she acknowledges the pressure placed on it as a result of its position as a health practitioner in light of the Government’s mandate, the Vaccination Order.

[59] I find the 4 November 2021 email focuses on Ms Brewer’s disappointment with “a short-sighted and overreaching Government that leaves both of us in the position we now find ourselves in” rather than raising a personal grievance with CCC itself.

## **Summary**

[60] It is submitted for Ms Brewer that she did raise personal grievances in the 31 October and 4 November 2021 correspondence. It is submitted for CCC that the correspondence relied on by Ms Brewer as forming the basis for her grievance claims

lacked the necessary substance, detail and specificity to have elicited any response from it. Rather it makes plain that Ms Brewer's focus was on the Government's actions.

[61] Having examined the 31 October 2021 email and letter against the criteria identified in *Panapa* I note firstly that Ms Brewer does not identify an action on the part of CCC, Ms Brewer does not refer to a lack of consultation, or an action by CCC giving rise to a personal grievance but she does refer to dissatisfaction with the Government mandate.

[62] Secondly, I find no evidence in the wording of the 4 November 2021 email to support Ms Brewer having taken reasonable steps to advise CCC that she was alleging a personal grievance she wanted CCC to address, as opposed to expressing her frustration with a Government mandate and the position in which it placed them both.

[63] I find the statement by Ms Brewer in the 4 November 2021 email is to the effect that the Government mandate has been responsible for the termination of her employment, there is no statement that CCC itself has acted unjustifiably.

[64] Thirdly the 4 November 2021 email does not make it sufficiently clear what Ms Brewer wants CCC to address.

[65] I find that the 31 October Letter and the 4 November 2021 together clearly express that Ms Brewer:

- a. Had concerns about the safety and efficacy of the vaccine;
- b. Was not satisfied with the information about the vaccine available from the Ministry of Health or via other medical professionals; and
- c. Regretted the position that the Government mandate placed both her and CCC in, being the termination of her employment with CCC if she failed to be vaccinated.

[66] I determine that Ms Brewer did not raise her personal grievance for unjustifiable disadvantage within the 90 day statutory time limit.

*Did Ms Brewer raise an unjustifiable dismissal claim apart from in the 31 October Letter and 4 November 2021 email and within the statutory 90 day time limit?*

[67] I have found that Ms Brewer did not raise any claim that she was unjustifiably disadvantaged in the 31 October email and letter, nor in the 4 November 2021 email.

[68] CCC submits that it received no correspondence following Ms Brewer's termination of employment raising a claim of unjustifiable dismissal until the Statement of Problem was lodged was 27 September 2024. This was well outside of the statutory 90 day time limit.

[69] There is no evidence before the Authority supporting the fact that Ms Brewer raised a claim for unjustifiable dismissal prior to the Statement of Problem.

[70] I determine that Ms Brewer did not raise a personal grievance for unjustifiable dismissal within the statutory 90 day time limit.

[71] As Ms Brewer has been found not to have raised a personal grievance within the requisite time frame, her claims in the Authority cannot proceed and the dates set down for the substantive investigation will be vacated.

### **Costs**

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

[73] If they are not able to do so and an Authority determination on costs is needed CCC may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Brewer would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[74] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[75] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>8</sup>

Eleanor Robinson  
Member of the Employment Relations Authority

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<sup>8</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].