

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 470  
3332200

BETWEEN	CHERELYN DEVLIN Applicant
AND	LADY WIGRAM VILLAGE LIMITED Respondent

Member of Authority: Philip Cheyne

Representatives: Erika Whittome, advocate for the Applicant  
Jo Appleyard, counsel for the Respondent

Investigation Meeting: On the papers

Information received: 4 July 2025 from the Applicant  
16 April 2025 from the Respondent

Date of Determination: 1 August 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Cherelyn Devlin worked for Lady Wigram Village Limited (Lady Wigram), but when her employment ended in November 2021, Ms Devlin raised a personal grievance.

[2] Ms Devlin promptly applied to the Authority to investigate and determine her personal grievance. The parties were directed to mediation. Later, Ms Devlin's then representative advised the Authority in April 2023 that the application was withdrawn.

[3] In October 2024, Ms Devlin again applied to the Authority to investigate and determine her personal grievance about the end of her employment. Lady Wigram says

that the matter was fully and finally settled at mediation, Ms Devlin subsequently withdrew her claims and that it would be an abuse of process to allow Ms Devlin to proceed with this new claim.

[4] In this preliminary determination, I will consider whether Ms Devlin did settle her personal grievance claim or whether she is otherwise prevented from proceeding with this claim now.

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

[5] At a case management conference it was agreed that the preliminary issue was appropriate to be investigated on the papers. Ms Devlin's present representative had not been involved previously.

[6] A timetable was set for the respondent and the applicant to lodge affidavits, followed by submissions.

[7] The respondent lodged its affidavit, but the applicant did not. The parties were advised that the Authority would determine matters on the material before the Authority, but the applicant had until 7 July 2025 to provide any further information for the Authority to consider.

[8] Ms Devlin lodged an affidavit on 4 July 2025. It was not necessary to hear further from the parties.

[9] I should set out more context for the preliminary point.

### **Context**

[10] Throughout the following events, Ms Devlin was represented by Mr Bennett, an employment advocate.

#### *First application – file number 3156141*

[11] Ms Devlin lodged an application in the Authority in November 2021.

[12] Ms Devlin's employment relationship problems were her personal grievances concerning Lady Wigram's actions in response to the Covid-19 Public Health Response (Vaccinations) Order 2021, Ms Devlin's decision not to get vaccinated and the resulting

termination of her employment. Ms Devlin sought reimbursement and compensation under s 123 of the Employment Relations Act 2000.

[13] In December 2021, the Authority directed the parties to mediation. The Authority's investigation was suspended in the meantime, with the applicant to advise the Authority if matters were not resolved and an investigation was required.

*Mediation and what followed*

[14] A mediation was convened on 4 February 2022 using Zoom by a mediator with authority under the Employment Relations Act 2000 to sign agreed terms of settlement in accordance with s 149 of the Act.

[15] Matters were not resolved during the mediation. However, Ms Devlin's representative sent a proposed record of settlement to Lady Wigram's lawyer by email on 9 February 2022 in the evening. Lady Wigram says that this was in response to some minor change in words provided earlier by their lawyer.

[16] The proposed settlement was in a standard form but included several terms specific to Ms Devlin's situation. It required the employer to record the reason for the termination as redundancy, to provide a letter stating that Ms Devlin was made redundant due to COVID-19, to pay the employee notice period if not already paid and to pay an amount towards Ms Devlin's costs on receipt of an invoice from the representative.

[17] The representative's email to the lawyer and the mediator included the line "I have added "due to COVID-19". If this is satisfactory then we are all good to go?"

[18] On receipt of the representative's proposal, Lady Wigram's general manager signed the settlement, recorded the reason for the termination of employment as redundancy and paid the notice period to Ms Devlin.

[19] Lady Wigram's lawyer sent an email to the representative on 10 February 2022 with a copy of the payslip. The representative copied the information to Ms Devlin a little later the same day. Ms Devlin replied promptly to the representative to say that she had not been paid for 15 November 2021 and to ask why she did not get "the 4 weeks as per the PM?" notice.

[20] On 14 February 2022 the mediator messaged the representative to ask for an update on the signed record of settlement and the lawyer for contact details of the general manager who has signed it. The representative replied to the mediator and the lawyer on 17 February 2022 and said “I am still working on Cherelyn to sign the ROS, and will advise tomorrow of the outcome.”

[21] Later on 17 February 2022, the representative answered Ms Devlin’s question about the “4weeks”, confirmed that “2 weeks notice” was as per the contract and said he was following up on the pay for 15 November 2021. The representative also advised Ms Devlin that the settlement agreement permitted her “to invoke your redundancy insurance”, so she should sign it. Ms Devlin’s response to her representative was that she had decided not to sign the settlement. The representative asked if there was “any reason for that”?

[22] On 21 February 2022 the mediator followed up on her earlier contact and again asked about the signed record of settlement. The representative the same afternoon advised the mediator and the lawyer that Ms Devlin had stated that she would not sign it. Also that day, the mediator spoke directly to Ms Devlin and was told that she would not sign it.

[23] The next day on 22 February 2022, the lawyer for Lady Wigram advised the representative that the employer regarded the matter as settled given it had already taken steps in reliance on the agreement.

[24] Ms Devlin messaged her representative in March 2022 to ask about progress with her case. Eventually, the representative advised the Authority that he had instructions to proceed with the matter. The Authority then scheduled a case management conference.

*First application is withdrawn*

[25] At the conference in December 2022, Lady Wigram raised as a preliminary matter its view that the parties’ representatives had finalised an agreement in settlement of Ms Devlin’s claims and Lady Wigram had met its obligations under the settlement, with one exception. The representative for Ms Devlin (Mr Bennett) was directed to take instructions from Ms Devlin and advise the Authority whether she considered that matters were or were not settled.

[26] The exception was that Lady Wigram had not paid the representative's costs because it had not been invoiced for the agreed amount. Lady Wigram advised it would pay the agreed amount if it was properly invoiced.

[27] By early April 2023, having not received a response to the December directions and several follow-up messages, the Authority initiated arrangements for a further case management conference. It was scheduled for 14 April 2023.

[28] On 12 April 2023 the representative advised the Authority and the lawyer that Ms Devlin had agreed to withdraw the application. The following day, the Authority and the lawyer received this message from the representative's office:

Hi,  
This is to confirm our client formally withdraws and request the file be closed  
regards

[29] On 13 April 2023, the Authority sent the parties a standard letter confirming that the application was closed and the Authority would take no further action.

*New Application – file number 3332200*

[30] Ms Devlin lodged a new application on 21 October 2024.

[31] The employment relationship problem set out in the new application arose from the application of the Covid-19 Public Health Response (Vaccinations) Order 2021 to a retirement village and rest home, Ms Devlin's decision not to get vaccinated and Lady Wigram's decision that compliance with the Order required it to terminate her employment. The application referred to Ms Devlin's personal grievance claims about these matters.

[32] To remedy the problem, Ms Devlin seeks reimbursement and compensation under s 123 of the Employment Relations Act, damages for breach of contract under s 142 of the Employment Relations Act 2000 and common law damages for breaches of several statutory duties.

**Ms Devlin's claim was settled**

[33] The legal basis given for Ms Devlin's claim under file number 3332200 is more extensive than was set out in her claim under file number 3156141 and different

remedies are sought, but both are based on the same events. It is not a new or different employment relationship problem.

[34] There is no reason to doubt that Ms Devlin's representative acted with her authority when he messaged Lady Wigram's lawyer at 9.51 pm on 9 February 2022. He conveyed an offer to settle Ms Devlin's claims in the Authority on the terms set out in the attached record of settlement.

[35] Lady Wigram accepted the offer, acted on the settlement and communicated that to Ms Devlin's representative on 10 February 2022. He in turn passed on that information to Ms Devlin. Responding to her representative, Ms Devlin questioned the payment. It is notable that Ms Devlin did not dispute that she had settled her claim, but just questioned whether the payment she had received was correct.

[36] Ms Devlin later refused to sign the record of settlement. However, it is well understood in this field that not completing a record of settlement in accordance with s 149 of the Employment Relations Act 2000 is a different question to whether a settlement was reached.

[37] Having settled her employment relationship problem in February 2022 and having affirmed that in April 2023, Ms Devlin cannot bring that problem to the Authority now for investigation and determination.

### **Conclusion and orders**

[38] Ms Devlin's application is dismissed.

[39] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If an Authority determination is required, the respondent may lodge and serve a memorandum on costs within 28 days of the date of this determination. The applicant must then lodge and serve any reply memorandum within a further 14 days.

Philip Cheyne  
Member of the Employment Relations Authority