

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 604
3321021

BETWEEN

DR KENG HSIN LO
Applicant

AND

HEALTH NEW ZEALAND
Respondent

Member of Authority: Rachel Larmer

Representatives: Peter Cranney, for the Applicant
Chloe Luscombe, counsel for the Respondent

Submissions and Other Information Received: 16 and 17 June 2025 and 10 July 2025 from the Applicant
4 July 2025 from the Respondent

Date: 29 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Dr Keng Hsin Lo, also known as Dr Stephen Lo, is a medical specialist employed by the respondent, Health New Zealand (Health NZ). He holds two Senior Doctor positions with NZ Health.

[2] This matter involved a dispute about Dr Lo's annual holiday balance which has arisen because of the two separate roles he has with Health NZ. Dr Lo has been treated as if each role was a separate employment relationship that had its own separate leave entitlements associated with it. Within its payroll system Health NZ maintains two separate sets of leave entitlements, including holiday leave balances, for Dr Lo.

[3] Dr Lo said that way of dealing with his annual holiday entitlements was incorrect, because he only has one employment relationship with his employer Health NZ, so he has one

entitlement to annual holidays, not two separate entitlements for each role. Health NZ did not accept that was the correct legal position for multi-jobbers such as Dr Lo.

Dr Keng Hsin Lo

[4] Dr Lo is a member of the Association of Salaried Medical Specialists (ASMS), and he works in two separate specialities, with separate colleges:

- (a) Australian and New Zealand College of Anaesthetists; and
- (b) College of Intensive Care Medicine of Australia and New Zealand.

[5] Dr Lo has been employed by Health NZ since 3 July 2017 to work in the Department of Critical Care Medicine (DCCM).¹ Until 5 November 2023 Dr Lo was employed solely in the DCCM at Auckland Hospital. The hours for this role have varied since 2017, but as at 5 November 2023 Dr Lo held this role as a 1.047 Full Time Equivalent (FTE) position.

[6] From 6 November 2023 Dr Lo reduced the hours he was working in the DCCM position from 1.047 FTE to 0.625 FTE and he commenced working in a new role in the Anaesthesia – Surgical Department at Auckland Hospital.² This new role was initially 0.472 FTE, but it increased to 0.489 FTE within a month of him commencing it. This resulted in a total change at Auckland Hospital for Dr Lo from 1.047 FTE to 1.11 FTE.

[7] Dr Lo is covered by the same collective agreement for both his roles, but each role is remunerated with different pay rates. He received two separate letters of offer each containing different terms and conditions for each of his roles. In this regard, Dr Lo has one set of terms and conditions for his role in the DCCM and another set of terms and conditions for his role in the Anaesthesia - Surgical Department.

[8] The terms applicable to each role differ in material ways, including hours of work, on call expectations, and the positions are in different departments with different managers. The two roles are fundamentally different positions, with different duties and require work that is undertaken within different specialties.

¹ Known by the parties as “Appointment 6”.

² Known by the parties as “Appointment 7”.

Health NZ

[9] Health NZ is a public entity. It was established on 1 July 2022, as a result of the amalgamation of the 20 district health boards, approximately 1,800 roles from the Ministry of Health, and seven other shared service entities including the Northern Region Alliance, NZ Health Partnerships, Health Alliance, Health Source, Health Promotion Agency, Technical Advisory Services Ltd and Health Share.

[10] This meant there were 27 different payrolls being managed by Health NZ on 1 July 2022. Through consolidation Health NZ now uses 21 payrolls, for 20 former District Health Boards (DHBs) and one Health NZ corporate payroll.

[11] There are approximately 101,000 employees being paid through these payrolls, including clinicians and non-clinical staff. There are 45 collective agreements that are administered through these payroll systems in addition to multiple individual employment agreements.

The Collective Agreement

[12] Prior to the establishment of Health NZ on 1 July 2022, Dr Lo was working under a multi-employer collective agreement (MECA) covering each separate DHB employer.

[13] As a member of ASMS, Dr Lo was employed on the Te Whatu Ora Senior Medical and Dental Officers Collective Agreement dated 1 September 2023 to 31 August 2024 (the CA).

[14] The CA provides in clause 23.1 that:

All employees shall be granted six weeks annual leave (pro rata for part time employees) on full pay. Subject to the provisions below, all annual leave shall be taken in accordance with the provisions of the Holidays Act 2003.

Dr Lo's roles

[15] According to payroll records, Dr Lo has been employed in Auckland pursuant to seven different appointments over his career. His most recent period of continuous employment by Health NZ commenced on 3 July 2017. These proceedings concern what will be referred to in this determination as Dr Lo's "Appointment 6" and "Appointment 7".

[16] The salary and allowances for Appointment 6 and Appointment 7 are remunerated differently in the CA.

(i) Appointment 6

[17] On 3 July 2017 Dr Lo was employed by Auckland District Health Board (ADHB) as an Intensivist in the DCCM, initially on a part time basis. This is referred to as “Appointment 6”, or as ‘Position 6’, in Health NZ’s records. This designation recognises the five other previous appointments Dr Lo has had within the same payroll system.

[18] Dr Lo’s hours of work have changed a number of times since he has held the Appointment 6 role, from a low of 25 hours which was 0.625 Full Time Equivalent (FTE) to a high of 48.81 hours which was 1.220 FTE.

[19] In his Appointment 6 role Dr Lo works as an Intensivist, providing clinical care to critical patients with illness and injuries in ICU (Intensive Care Unit). Dr Lo reports to Dr Robert Bevan, the Acting Service Clinical Director, who in turn reports through to Samantha Titchener, Acting Director – Adult Medical Services Directorate. The role is located on level 8, of Building 32 at Auckland Hospital.

[20] Dr Lo’s total remuneration for Appointment 6 is made up of pro-rata salary for the role to reflect his part-time (0.625 FTE) hours plus ‘after hours on-call’ and ‘availability’ allowances.

(ii) Appointment 7

[21] On 25 October 2023, Health NZ offered Dr Lo a Specialist Anaesthetist position within the Anaesthesia – Surgical Department “in addition” to his 0.625 FTE DCCM role. This is referred to as “Appointment 7”, or ‘Position 7’, in NZ Health’s record keeping. This role had a start date of 6 November 2023, and it was also located at Auckland Hospital, the same location as the Appointment 6 role, but was situated in a different building.

[22] Appointment 7 was offered to Dr Lo as an “Offer of Permanent Employment – Specialist Anaesthetist”, it was not stated to be a variation to his DCCM role.

[23] The letter of offer for Appointment 7 detailed all the terms, including its status as a part time position, and the hours of work that applied to it. The offer also stated, “This position is in addition to your current role as SMO Critical Care Ward 82 (0.625FTE).”

[24] In his Appointment 7 role Dr Lo is a Specialist Anaesthetist, within a surgery environment. He reports to Dr Ivan Bergman, the Service Clinical Director, who in reports to Dr Sara Jane Allen, the Director – Perioperative Directorate. This role is based on level 8 of the Support Building (8) at Auckland Hospital.

[25] Dr Lo’s remuneration for his Appointment 7 role consists of pro-rated salary based on his part time (0.551 FTE) hours plus ‘after hours on-call’ and ‘availability’ allowances.

Multi-jobbers

[26] Health NZ estimated it employs approximately 3,352 employees who it described as “multi-jobbers” because they held more than one role with it. Multi-jobber employees worked in two (or more) jobs, with different terms and conditions (such as pay and leave) applying to each of their roles. Some non-exhaustive examples included employees who worked as both a nurse and a midwife, or as a physio and a nurse, or a nurse and a nurse educator.

[27] Because of the number of collective agreements Health NZ has, it is not uncommon for it to have multi-jobbed employees who are covered by more than one employment agreement, that may contain different terms and conditions, including leave entitlements. In Dr Lo’s case, both of his roles were covered by the same CA.

Dr Lo’s claims

[28] Dr Lo said he had approximately 22.8 weeks annual leave balance when he started the new role in Auckland Hospital’s Anaesthesia – Surgical Department.

[29] Health NZ declined to apply that annual leave balance to Dr Lo in his new role (Appointment 7), instead continuing a separate leave balance for his Specialist Anaesthetist role, which meant he started his Appointment 7 role with an initial annual leave balance of zero. Dr Lo said Health NZ’s approach to these issues was incorrect and had breached the HA03 and CA.

[30] Dr Lo claimed he was unable to access all of his annual leave balance when taking annual leave from his employment duties with Health NZ. Dr Lo also said the approach adopted by Health NZ to his annual leave from 6 November 2023 onwards meant he had not received his correct annual holiday pay for the annual leave he has taken since then.

[31] In his statement of problem, Dr Lo sought:

- (a) A determination of the correct annual holidays balance that applied to him, and the correct methodology to be applied for calculating his annual holiday pay; and
- (b) A compliance order requiring Health NZ to maintain a single leave balance in respect of his employment at Auckland Hospital.

Health NZ's position

[32] Health NZ acknowledged Dr Lo was a Senior Doctor in both positions, but said the two roles are not the same as they involve different positions, different duties, different reporting relationships, work locations and pay rates, and therefore have different HA03 entitlements.

[33] Health NZ said because Appointment 6 and Appointment 7 involved two separate appointments, these two roles had two separate sets of leave entitlements for Dr Lo, with his annual holiday entitlements being administered via separate payrolls for each role.

[34] Health NZ said the differences in Dr Lo's two roles meant it could effectively treat them as involving two separate employment relationships, which each had separate leave entitlements. Health NZ therefore denied breaching the HA03 and/or CA.

How Dr Lo's annual holidays are currently dealt with

[35] Health NZ said no changes were made to Dr Lo's annual leave balance for his Appointment 6 role when he commenced his Appointment 7 role.

[36] Health NZ's position is that Dr Lo is provided with six weeks of annual holidays per annum for each of his two roles, in a manner consistent with the CA, and which it submitted complied with the HA03.

[37] Health NZ's payroll system only provides for one manager to sign-off on Dr Lo's annual holidays, which occurs by way of an electronic leave application and notification to his

manager (rather than a paper form). NZ Health said there would be no way for Dr Lo to apply to both of his current managers for leave if he only had one annual leave entitlement for both roles.

[38] Dr Lo can currently make separate leave applications for each role, because he has two separate payroll profiles (one for each of his roles). Dr Lo's manager for his Appointment 6 role approves leave taken from his Appointment 6 position, and his manager for his Appointment 7 role approves leave taken from Dr Lo's Appointment 7 position.

[39] Health NZ said Dr Lo's leave balance for Appointment 6 has continued to accrue, and when he takes annual leave from his Appointment 6 role, those leave days are deducted from his annual leave balance for his Appointment 6 role only.

[40] Separately to that Appointment 6 annual leave balance, Health NZ said that since 6 November 2023 Dr Lo has also had a second annual leave balance applied to him for his Appointment 7 role. That annual leave balance commenced from zero on 6 November 2023, and Dr Lo has been treated as having another entitlement to six weeks of annual leave per annum for this position arising from his leave anniversary date for that role of 6 November 2024.

[41] Health NZ said its current payroll system in Auckland cannot manage two different pay rates for one set of annual leave entitlements. Because of those limitations, Health NZ said that if the Authority determined that Dr Lo was employed with one set of annual leave entitlements, then each time he took annual leave his annual holiday pay calculations would need to be performed manually by someone in the payroll department.

Calculation of Dr Lo's annual holiday pay

[42] Health NZ said it undertakes three, rather than two, calculations for annual holiday payments. It calculates Average Weekly Earnings (AWE) and Ordinary Weekly Pay (OWP) in accordance with the HA03, then it does a third calculation which it calls 'OWP2'.

[43] For OWP2, Health NZ said it calculates the payments made to the employee for the past four weeks, including leave and allowances, but excluding lump sum payments and non-taxable reimbursements, and divides that by four. Employees receive the greater of those three calculations as payment when they take annual holidays.

[44] The approach taken by Health NZ when calculating Dr Lo's pay for annual holidays is as follows:

- (a) When the annual leave is being taken from his Appointment 6 role, he is paid the greatest of:
 - (i) His AWE for Appointment 6, using only his Appointment 6 role gross earnings;
 - (ii) OWP for Appointment 6, using his contracted salary and enduring allowances (e.g. After Hours On-call, Availability) for a week's work in his Appointment 6 role; and
 - (iii) OWP2 for Appointment 6, using only his earnings from his Appointment 6 role over the previous four-week period.
- (b) When the annual leave is being taken from his Appointment 7 role, Dr Lo is paid the greatest of:
 - (i) His AWE for Appointment 7, using only his Appointment 7 role gross earnings;
 - (ii) OWP for Appointment 7, using only his contracted rate of pay for a week's work in his Appointment 7 role (i.e. salary plus enduring allowances such as After Hours On-call, Availability and Flexibility); and
 - (iii) OWP2 for Appointment 7, using only his earnings from his Appointment 7 role in the previous four-week period.

Dr Lo's annual leave balances

[45] When Dr Lo's hours of work reduced from 1.047FTE to 0.625FTE in Appointment 6, his annual holiday balance did not reduce.

[46] Health NZ said that Dr Lo's annual holidays balance as at 16 June 2025 for his:

- (a) Appointment 6 role was 29.6777 weeks.
- (b) Appointment 7 role was 4.6448 weeks.

[47] Health NZ's records indicated there have been occasions on which Dr Lo has taken leave of some description from one of his positions, while also being paid to attend work at Auckland Hospital in his other role.

The Authority's investigation

[48] By agreement with the parties, the issue of whether Health NZ's current approach to Dr Lo's annual holiday entitlements breached the CA and HA03 was to be determined 'on the papers'.

[49] The parties also agreed that Dr Lo's compliance order application would be put on hold, so that is not currently a claim that is to be determined by the Authority in this determination.

[50] Dr Lo and Mr Stephen Hurring lodged affidavits supporting Dr Lo's position. Mr Hurring is the Director, Industrial, of ASMS and he was its advocate during the bargaining for the 2023-2024 CA that replaced the MECA between the ASMS and the DHBs dated 1 April 2022 to 31 March 2023.

[51] Ms Elizabeth Jeffs, who is employed by Health NZ as the Head of National People Services, People and Communications, also provided an affidavit in support of Health NZ.

[52] Both parties lodged written submissions.

The Holidays Act 2003

[53] Section 3 of the HA03 states that its purpose is to promote balance between work and other aspects of employees' lives and to (among other things) provide minimum annual holidays to give employees an opportunity for rest and recreation.

[54] The HA03 is an example of minimum code legislation that is intended to protect employees, so s 6(3) of the HA03 prohibits parties from contracting out of it. Any attempt to exclude or restrict or reduce an employees' entitlements under the HA03 is of no effect.

[55] Section 5(1) of the HA03 defines the meaning of AWE. Section 8 of the HA03 defines the meaning of OWP.

[56] Section 8(3) of the HA03 allows parties to specify in their employment agreement a special rate of OWP, provided it is not less than the calculation of OWP under s 8(1) of the HA03.

[57] Section 9(2) of the HA03 allows parties to specify in their employment agreement a special rate of Relevant Daily Pay (RDP), provided that is not less than the calculation of RDP under s 9(1) of the HA03.

[58] Section 16(1) of the HA03 provides that annual holidays are an entitlement which comes into effect “after the end of each 12 months of continuous employment”. When the annual holiday entitlement arises, it may be taken by the employee as “paid annual holidays” in accordance with ss 18 and 19 of the HA03.

[59] Payment for annual holidays is to be made on the basis of the higher of:

- (a) OWP, being Ordinary Weekly Pay as at the beginning of the annual holiday, as per s 22(2)(b)(i) of the HA03; or
- (b) AWE, being Average Weekly Earnings for the 12 months immediately before the last pay period before the annual holiday, as per s 22(2)(b)(ii) of the HA03.

[60] Section 17 of the HA03 permits an employer and employee to agree on how an employee’s entitlement to four weeks’ annual holidays is to be met, based on what genuinely constitutes a working week for the employee. Section 17(2) of the HA03 allows a Labour Inspector to determine that, if the employer and employee cannot agree.

[61] Section 17(3) of the HA03 provided that when a Labour Inspector is determining how an employee’s entitlement to four weeks’ annual holidays is to be met, they may take into account any matters they see fit, including the matters specified in s 12(3) of the HA03. These s 12(3) factors are also used to determine what would “otherwise be a working day” for the employee, which is used to determine the employee’s public holiday entitlements.

[62] Section 81 of the HA03 specifies an employer’s record keeping obligations, which requires an accessible holiday and leave record to be kept for each employee. That obligation relates to the employee’s entire employment, meaning there is to be one holiday and leave record. The HA03 does not provide that separate holiday and leave records are to be kept for each position if the employee is a multi-jobber.

[63] Section 81(2) of the HA03 sets out what information the employer must record in its holiday and leave records for each employee. Section 81(3) of the HA03 requires this information to be written and in a form that allows the information in it to be easily accessed. Holiday and leave information must be kept for six years.

[64] Section 75(2)(e) of the HA03 provides that a penalty may be imposed on an employer that fails to keep a holiday and leave record.

Issues

[65] The parties agreed the following issues were to be determined:

- (a) Is Dr Lo entitled to one annual leave entitlement that covers both of his roles or to separate annual leave entitlements for each role he holds?
- (b) If one annual leave entitlement covers both roles, then how is Dr Lo's annual holiday to be calculated?
- (c) Has Dr Lo received his correct annual holiday entitlements since he commenced his Specialist Anaesthetist role?
- (d) What was Dr Lo's annual holiday entitlement when he lodged his affidavit for this matter?
- (e) Has Health NZ breached Dr Lo's terms and conditions of employment?
- (f) What costs and disbursements should be awarded?

Is Dr Lo entitled to one annual leave entitlement that covers both of his roles or to separate annual leave entitlements for each role he holds?

Health NZ's submissions

[66] Health NZ submitted that because there are two sets of different key terms and conditions that apply to Dr Lo's two roles, that had effectively created two separate employment relationships.

[67] Based on Health NZ's belief each role had its own standalone employment relationship, Health NZ said it had complied with its HA03 obligations by providing annual leave

entitlements to Dr Lo separately for each of his two roles. Health NZ had therefore calculated each set of leave entitlements for Dr Lo in accordance with the terms and conditions that applied to the role the annual leave was being taken from.

[68] Health NZ's submission that this approach complied with its annual leave obligations under the CA and HA03, whereby Dr Lo received annual leave in respect of his Appointment 6 role and Appointment 7 role as two entirely separate sets of annual leave entitlements, did not succeed.

The position under the HA03

[69] Health NZ and Dr Lo have been in one continuous employment relationship since he commenced his Appointment 6 role on 3 July 2017.

[70] The manner in which Health NZ elected to manage that one employment relationship (such as via different managers, different remuneration being applied to the work Dr Lo undertakes in his two roles, and the requirement that he work in different departments in Auckland Hospital) does not change the fact there is only one employment relationship between the parties.

[71] It would be artificial to conclude an entirely new (and second) employment relationship with Health NZ had been created when Dr Lo accepted the Appointment 7 role, solely because it had been the subject of a separate offer letter, his remuneration for it differed from his remuneration for his Appointment 6 role, and Health NZ had elected to use a different payroll than what it used to pay him for his Appointment 6 role.

[72] The entitlement to annual leave that is created by s 16(1) of the HA03 arises "after the end of each completed 12 months of continuous employment [...]". There is no reference in the HA03 to annual leave entitlements being linked to a specific position/role or to an entirely new set of annual leave entitlements arising if/when an employee began working in a second additional role or began undertaking additional work/duties.

[73] The qualifier for annual leave entitlements is "12 months of continuous employment". Prior to 3 July 2017, Dr Lo had five discrete periods of employment with Health NZ, as follows:

- (a) Registrar - 29 August 2005 to 11 June 2006;
- (b) Registrar - 11 December 2006 to 10 June 2007;

- (c) House Officer - 26 November 2007 to 23 November 2008;
- (d) Registrar - 8 June 2009 to 11 December 2011;
- (e) Fellow - 3 February 2014 to 22 March 2015.

[74] Accordingly, Dr Lo's "12 months of continuous employment" with Health NZ was calculated from 3 July 2017, being the date on which he had commenced his Appointment 6 role. Dr Lo's annual holidays entitlement therefore crystallised on 3 July 2018, and then each year on his leave anniversary date of 3 July.

[75] On 3 July 2018, after having completed 12 months' continuous employment with Health NZ, Dr Lo became entitled to four weeks' annual holidays under the HA03, plus two weeks of additional annual leave pursuant to clause 23.1 of the CA. Dr Lo's annual leave entitlement was therefore six weeks per annum for each year following his first annual leave entitlement anniversary date of 3 July 2018.

How has Health NZ dealt with Dr Lo's annual leave entitlements?

[76] Dr Lo commenced employment in his Appointment 6 role on 3 July 2017 and he has remained employed by NZ Health since then, on varying hours of work. Notwithstanding that, Health NZ said that Dr Lo's annual holiday balance has remained consistent. He has been provided with six weeks of annual holidays per annum, with untaken annual holidays being carried over from one year to the next.

[77] Health NZ said that Dr Lo's Appointment 6 annual leave balance was not affected by his appointment to his Appointment 7 role. He did not lose any leave, nor was his leave balance reduced or removed by reason of the changes in his hours of work that had occurred since 2017, which included the reduction in the hours he worked in his Appointment 6 role that occurred after he had commenced his Appointment 7 role.

[78] Dr Lo has continued to take annual holidays from his Appointment 6 role separately to attending to his work commitments for his Appointment 7 role. Health NZ said it had calculated Dr Lo's annual holiday pay for the leave he took from his Appointment 6 role based on the greater of three calculations:

- (a) OWP, being his contracted rate of pay for a week of work in his Appointment 6 role;

- (b) AWE, being his gross earnings in his Appointment 6 role over the past 12 months, divided by 52; and
- (c) 'OWP2', being Dr Lo's earnings in his Appointment 6 role over the prior four weeks, divided by four.

[79] However, all of these calculations failed to account for any of the remuneration Dr Lo received for his Appointment 7 role, meaning Health NZ has calculated his annual holidays pay incorrectly.

[80] When Dr Lo started work in his Appointment 7 role on 6 November 2023, this was treated by Health NZ as a separate employment relationship for the purposes of his annual leave entitlements.

[81] Health NZ therefore used 6 November as Dr Lo's annual leave anniversary date for his Appointment 7 role. Health NZ started Dr Lo's annual leave for his Appointment 7 role from a zero-leave balance, leaving Dr Lo's annual leave balance for his Appointment 6 role unaffected. Health NZ then applied another six weeks' annual leave per annum to Dr Lo's Appointment 7 role.

[82] When Dr Lo took annual holidays from his Appointment 7 role, these were paid completely separately from his annual holidays pay for his Appointment 6 role. Annual holiday pay for his Appointment 7 role was based solely on his earnings and contracted rate of pay for his Appointment 7 role. Health NZ calculated his annual holiday pay for his Appointment 6 role in the same way, by excluding any earnings Dr Lo had in his Appointment 7 role.

Finding

[83] The CA and HA03 do not require or permit Health NZ to run two separate annual leave entitlement schemes for Dr Lo. Health NZ's adoption of two different payrolls, and application of different annual leave entitlements to Dr Lo for his two roles, is contrary to the requirements of the HA03, and therefore breached the CA.

[84] The HA03 does not allocate leave entitlements according to each position an employee holds. The CA and HA03 both refer to entitlements paid by the "employer" to the "employee" arising from the "employment", not from each role/position the employee may hold with a single employer. The relevance of an employee holding more than one role with the same

employer is that it will impact the annual holiday pay calculations, but it does not impact the annual holiday entitlement.

[85] The fact Dr Lo's remuneration differed between the two roles did not create separate HA03 entitlements. Likewise, Dr Lo's reduced hours of work and varied duties from 6 November 2023 onwards also had no effect on his annual leave entitlement, as that was related to his annual leave anniversary date of 3 July.

[86] Payment of Dr Lo's annual leave under the HA03 is not disturbed by the contractual arrangements Health NZ had in place to manage Dr Lo's two roles within Auckland Hospital. Payment for his annual leave was still required to occur in accordance with ss 21 and 22 of the HA03.

[87] From 6 November 2023 onwards, Health NZ had incorrectly calculated Dr Lo's annual holiday pay when he took annual leave from his Appointment 6 role, because it had excluded his earnings from his Appointment 7 role.

[88] Health NZ had also incorrectly dealt with Dr Lo's annual leave entitlement because it treated him as if he had only taken annual leave from one role instead of treating him as having taken annual leave from all of his employment duties for both roles.

[89] Dr Lo cannot be said to have been on annual leave under the HA03 if he was still turning up to work and performing his normal work duties in another role. In such circumstances Dr Lo was not receiving the benefit of the rest and recreation that the HA03 is intended to provide employees with.

[90] Health NZ should have applied one annual leave entitlement to Dr Lo, as the parties had one employment relationship, not two separate employment relationships for each of his roles.

If one annual leave entitlement covers both roles, then how is Dr Lo's annual holiday to be calculated?

[91] Health NZ's submission that Dr Lo's annual holiday entitlements are able to be calculated as two separate entitlements, one for Appointment 6, and another for Appointment 7 did not succeed. Dr Lo's annual holidays must be calculated as one entitlement in accordance with the requirements of the HA03.

[92] Dr Lo's additional part-time hours of work in his Specialist Anaesthetist position do not affect his annual holiday entitlements, which remain at six weeks per annum (four weeks under the HA03 plus two weeks under the CA). However, it did affect what Dr Lo is to be paid as annual holiday pay.

[93] Dr Lo's total hours of work across both positions will affect the payment calculations that Health NZ has to do pursuant to ss 20 and 21 of the HA03. Dr Lo was to be paid the greater of either his ordinary weekly pay or average weekly earnings pay over the previous 12 months, whichever is the greater, taking into account the remuneration he received for both his Appointment 6 and Appointment 7 roles.

[94] Ms Jeff's evidence was that Health NZ's payroll system is unable to manage two pay rates for one set of leave entitlements, so if Dr Lo was held to be in one employment relationship with one set of leave entitlements, then his annual holiday pay calculations would have to be manually processed.

[95] Because Dr Lo should have one annual holiday balance, a blended rate would need to be used:

- (a) To arrive at his AWE, gross earnings from both positions would be added together, and divided by 52.
- (b) For his OWP, a blended weekly pay rate would need to be arrived at, made up of the weekly pay rate for Appointment 6, and the weekly pay rate for Appointment 7.

[96] In either case, this weekly amount would then be used to determine the amount of annual holiday pay to be paid to Dr Lo, depending on how much of a week was being taken as annual leave.

Has Dr Lo received his correct annual holiday entitlements since he commenced his Specialist Anaesthetist role?

[97] Health NZ has incorrectly accrued Dr Lo's annual holiday entitlement balance by treating Appointment 6 and Appointment 7 separately for annual leave purposes. Accordingly, Health NZ's submission that Dr Lo has received his correct annual holiday entitlements was not accepted.

[98] Dr Lo's annual leave entitlements have incorrectly been treated as if he had two entirely separate employment relationships with Health NZ. That was wrong because the parties are in only one employment relationship, which entitles Dr Lo to a single set of annual leave entitlements under the CA, and as per the HA03 requirements.

What was Dr Lo's annual holiday entitlement when he lodged his affidavit in this matter?

[99] Dr Lo said that as at 17 June 2025 his total annual holiday entitlement for the duration of his employment was 48 weeks, calculated as six weeks per annum for eight years, less the annual holidays he had used up to that date. That figure was not currently available to the Authority, but Health NZ will have it in its payroll records.

[100] Health NZ said that as at 16 June 2025, Dr Lo's annual holiday balances were for his:

- (a) Appointment 6 role - 29.6777 weeks
- (b) Appointment 7 role - 4.6448 weeks

[101] However, that was not accepted by the Authority because it failed to reflect that Dr Lo should have had one single annual holiday balance. It also incorrectly reduced Dr Lo's annual leave balance on days where he was on leave from one role but still attending work for his other role. Health NZ must not treat Dr Lo as being on paid annual holiday on days when he is at work and working as per the normal requirements of one of his two roles.

[102] The parties will need to do the necessary calculations and annual leave adjustments to work out what annual holiday pay arrears, and/or annual holiday entitlement arrears, Dr Lo is owed. The discrepancies between the parties' differing views on Dr Lo's leave balance will also need to be resolved.

[103] The parties should attempt to agree on these issues first, with leave being reserved to revert back to the Authority to determine any unresolved issues they have been unable to agree on.

Has Health NZ breached Dr Lo's terms and conditions of employment?

[104] Health NZ breached the CA, which required Dr Lo to be provided with annual holiday entitlements in accordance with the HA03, because since 6 November 2023 that has not occurred.

[105] At times Dr Lo has been recorded as having been on paid annual leave from one position while at the same time working (on those same annual leave days) in his other position with Health NZ.

[106] However, the HA03 does not permit annual leave to be taken from only one role, if an employee holds more than one role with their employer. When granted, annual leave must be taken from the employees' employment duties as a whole, so the employee has sufficient time for rest and recreation.

[107] Accordingly, an employee cannot simultaneously be both on paid annual leave and also being paid to attend work, and work as normal, at the same time, on the same day, which is what has occurred with Dr Lo.

[108] Requiring a multi-jobber employee to continue working for the employer in one role/position while they are on annual leave from another position with the same employer is contrary to the HA03's objects and stated purpose.

Practical problems raised by Health NZ

[109] Health NZ said its current approach is that multi-jobbers such as Dr Lo use its automated system to apply for annual holidays in respect of the position they want to take leave from. If an employee who is a multi-jobber reports to separate managers for their different positions, then the different managers would have to each approve the employee's leave application if multi-jobbers were found to have only one annual holiday entitlement.

[110] However, Health NZ said if multi-jobbers had only one leave entitlement, then the payroll system would not allow for two managers to approve a leave application if the employee had two or more roles/positions they wanted to take leave from at the same time.

[111] Health NZ also said that its current payroll systems would not be able to calculate the correct leave payments for leave automatically if multiple roles a multi-jobber held were considered to be part of one employment relationship with Health NZ, meaning the multi-jobber employee had to have a single leave entitlement and leave balance.

[112] Such a situation would therefore require manual calculations to be undertaken on each occasion that a multi-jobber employee (such as Dr Lo) took leave, which Health NZ said would

increase the likelihood of human errors being made with holiday pay payments to its multi-jobber employees.

[113] Health NZ also told the Authority that requiring manual calculations to ensure accuracy for every period of leave for all of the 3352 multi-jobbed employees it employed was not practicable.

[114] It has been widely recognised that the HA03 creates issues that have been of longstanding concern to employees, employer and payroll providers. However, because the HA03 is the applicable law, the Authority is therefore required to apply it, even if that generates the practical problems Health NZ has identified.

Outcome

[115] Health NZ is not permitted to apply two different annual holiday entitlements to Dr Lo's two roles, so he is not to be provided with separate HA03 leave balances for each role he holds.

[116] Dr Lo's claim that his annual holiday entitlements have not been dealt with correctly, in breach of the CA and HA03 succeeded.

[117] Accordingly, Health NZ is ordered to recalculate and, if necessary, rectify Dr Lo's annual holiday entitlements. That will require Dr Lo to be treated as having one annual holiday entitlement with Health NZ, that encompassed all of the hours he has worked in both of his roles since 6 November 2023.

[118] Health NZ is ordered to pay Dr Lo any annual holiday pay arrears he is owed for annual leave he has already taken, but which was not paid correctly, and it must also correct his current annual leave balance.

[119] Going forward, Health NZ must calculate Dr Lo's annual holiday entitlements in accordance with ss 21 and 22 of the HA03, or if the OWP2 calculation it currently uses would result in a higher payment to Dr Lo, then that must be used instead of OWP or AWE to ensure Dr Lo is not disadvantaged by the findings made in this determination.

What costs and disbursements should be awarded?

[120] Costs and disbursements are reserved.

Rachel Larmer
Member of the Employment Relations Authority