

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 117  
3372203

BETWEEN	KIM ROSEWARNE Applicant
AND	FONTERRA CO-OPERATIVE GROUP LIMITED Respondent

Member of Authority: Peter Fuiava

Representatives: Elizabeth Lambert, advocate for the Applicant  
Rebecca Rendle and Pema Gyeltshen, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 24 September and 28 November 2025 from the Applicant  
22 October and 17 November 2025 from the Respondent

Determination: 2 March 2026

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**What is the employment relationship problem?**

[1] The issue this preliminary determination resolves is one of jurisdiction: was Kim Rosewarne's present action in the Authority commenced within three years of her having raised a personal grievance with her former employer, Fonterra Co-operative Group Limited (Fonterra, the company or the employer)?

**How was the preliminary issue investigated?**

[2] Following a telephonic case management conference on 27 August 2025, timetabling directions by consent were made for the filing of written submissions and affidavit evidence. For Ms Rosewarne, I received from her employment advocate Ms Lambert, written submissions dated 24 September and 28 November 2025. For

Fonterra, the Authority received from its counsel, Ms Rendle, written submissions dated 22 October and 17 November 2025 and an affidavit from the company's (then) employment relations manager, Anmol Shankar.

[3] A submissions' hearing had been scheduled to hear further oral submissions from the parties. However, as I was unavailable at the time, it was subsequently agreed with the representatives that I could determine the preliminary issue 'on the papers' having regard to all the information and evidence before me.

**What is the relevant background?**

[4] On 20 January 2021, Ms Rosewarne signed an individual employment agreement with Fonterra to work as a credit officer which she did from 15 February 2021 until 14 April 2022 when her employment ended due to redundancy.

[5] In late 2021, the COVID-19 Response (Vaccinations) Legislation Act 2021 came into effect which permitted an employer to introduce a requirement that an employee must be vaccinated in order to carry out their work. The legislation also permitted an employer to terminate an employee's employment if they failed to comply with that requirement.

[6] Following a period of consultation, Fonterra introduced its own COVID-19 policy the implementation of which was extended from 1 March to 1 April 2022, to give those undecided about becoming vaccinated more time to make their decision. Part of the company's COVID-19 policy included a means by which it could be reviewed and amended which recognised the evolving situation with the pandemic.

[7] Ms Rosewarne did not wish to be vaccinated and, on 9 February 2022, wrote to Fonterra's chief executive officer challenging the safety, efficacy and ethical propriety of the vaccine. Fonterra's head of invoice to cash, Kirstin Hunter, responded to Ms Rosewarne in writing stating that the company was not mandating vaccination without exemption and that it remained willing to discuss her concerns with her and the impact of its COVID-19 policy on her role.

[8] On 15 February 2022, the company announced its proposal to restructure Fonterra's invoice to cash team so that its operations were standardised and more compatible with those of external third-party partners and customers.

[9] On 21 February 2022, the parties met online via Teams. Ms Rosewarne and her representative Ms Lambert were both present as was Ms Hunter and several other operations and HR representatives for Fonterra. During the meeting, the company's COVID-19 policy and the proposed restructure were discussed. As for the restructure, Ms Hunter advised that following consultation, Ms Rosewarne's role would be disestablished but that new credit controller positions would become available and could be applied for by affected staff by lodging an expression of interest (EOI). Ms Rosewarne was further advised that she would be given preference by the company but that the work would need to be performed by vaccinated individuals in line with its COVID-19 policy.

[10] As part of Fonterra's COVID-19 policy which included a mechanism by which it could be amended, staff were advised that from 1 April 2022, those who remained unvaccinated could continue to work provided they undertook a daily rapid antigen test (RAT).

[11] Ms Rosewarne did not lodge an EOI for any of the new credit controller roles before the due date to submit an EOI ended. Consequently she was sent a letter by Fonterra advising her that her role was disestablished. Following 21 February 2022, the company began its redeployment process but by the time the amendment to its COVID-19 policy came into effect, the newly-created credit controller roles were already filled.

[12] On 14 March 2022, Ms Rosewarne was issued with a notice of redundancy and because no other redeployment opportunities were identified, she was advised that her employment would end due to redundancy on 14 April 2022.

[13] On 23 March 2022, Ms Rosewarne wrote to Fonterra to raise a personal grievance of unjustified disadvantage with Fonterra. The parties are in dispute whether or not she raised a personal grievance on that date or whether she did so on a later occasion on 14 April 2022, which would then have brought her claim within the three-

year time limit to commence proceedings in the Authority. Ms Rosewarne's statement of problem was not lodged in the Authority until 14 April 2025.

### **Whether the action is time-barred?**

[14] Section 114(6) of the Employment Relations Act 2000 states:

No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

[15] The three-year time limit to file proceedings in the Authority is absolute and cannot be extended. This is to enable the speedy resolution of personal grievances and where possible, to limit stale grievances from being litigated.<sup>1</sup>

[16] In a letter dated 23 March 2022, Ms Rosewarne wrote to her employer stating that "I would like to raise a personal grievance in regards to Fonterra's COVID-19 H&S policy and how this has affected my work". The letter further stated that the policy and its most recent amendment, which allowed for daily RAT testing of unvaccinated staff, was to her disadvantage and detriment because it was discriminatory as between the unvaccinated versus the vaccinated and breached the Human Rights Act 1993.

[17] On 7 April 2022, Fonterra's then employment relations manager, Mr Shankar, replied to Ms Rosewarne by email which had the subject heading of "Confidential – Response to Personal Grievance". In his email, Mr Shankar stated that prior to meeting with Ms Rosewarne to discuss matters, he had concerns about the "personal grievance" she had raised namely with respect to the lack of detail. Mr Shankar noted that Ms Rosewarne had not provided specific detail regarding the disadvantage and detriment she claimed to have suffered and it was unclear how the company's COVID-19 leave and pay provisions had impacted her. There was also a lack of specificity as to how Ms Rosewarne wanted Fonterra to address her concerns making mediation difficult without first being able to fully understand and assess the concerns she had raised.

[18] On 14 April 2022, Ms Rosewarne responded to Mr Shankar's questions stating that her personal grievance had been a "forewarning". She further stated that it was scientifically proven that the vaccinated could still contract and spread the COVID-19

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<sup>1</sup> *Blue Water Hotel Ltd v VBS* [2018] NZEmpC 128 at [34].

virus which made the company's requirement that only the unvaccinated submit to a daily RAT test unfounded and discriminatory.

[19] Ms Rosewarne further explained in her letter of 14 April 2022 that the situation had affected her personally and that she had suffered significant hurt and humiliation as a result of Fonterra's failure to treat unvaccinated employees on the same terms and benefits as vaccinated employees. She sought compensation for hurt and humiliation, reimbursement of legal costs, and changes to the company's approach towards unvaccinated employees so that they were treated equally.

[20] On 28 June 2022, the parties attended mediation but matters did not resolve there. Fonterra received no further communications from Ms Rosewarne until she commenced proceedings in the Authority approximately three years and three weeks after receiving her first letter dated 23 March 2022.

[21] Ms Lambert's submissions to the Authority focus on Ms Rosewarne's second letter to Fonterra dated 14 April 2022 and it was submitted that in this communication, further in depth and detailed information was provided regarding Ms Rosewarne's "forewarning" of a personal grievance.

[22] However, at the time of Ms Rosewarne's first letter to Fonterra on 23 March 2022, her role was already affected by Fonterra's COVID-19 policy which would become effective as of 1 April 2022. This is acknowledged by Ms Rosewarne in the opening paragraph to her first letter to her employer which begins with, "I would like to raise a personal grievance in regards to Fonterra's COVID-19 H&S policy and how this has affected my work." This was not a forewarning or advance notice of an incoming personal grievance from Ms Rosewarne but her advising her employer of a personal grievance that she wanted the company to address.

[23] Ms Lambert submitted that Fonterra had not accepted Ms Rosewarne's first letter of 23 March 2022 because it subsequently sought further information from her. It is acknowledged that the grievance process is designed to be informal and accessible and that a personal grievance may be raised orally or in writing with no particular

formula of words required to be used.<sup>2</sup> The fact that Fonterra sought further details from Ms Rosewarne does not negate the fact that she had raised a personal grievance.

[24] This is evident from Mr Shankar's emailed reply dated 7 April 2022 which had in the subject field: "Confidential – Response to Personal Grievance." Moreover, nowhere in Mr Shankar's email does he expressly state that he did not regard Ms Rosewarne letter of 23 March 2022 as her not having sufficiently raised a personal grievance because plainly, Mr Shankar considered that she did.

[25] To treat Ms Rosewarne's second letter of 14 April 2022 as the moment she had raised her personal grievance is to ignore its direct connection to her first letter of 23 March 2022. The second letter expands on the personal grievance of unjustified disadvantage and discrimination which Ms Rosewarne had made Fonterra sufficiently aware of on 23 March 2022.

[26] It was further submitted by Ms Lambert that in Ms Rosewarne's second letter to Fonterra, she raised for the first time a new personal grievance of unjustified constructive dismissal. The relevant passage to which Ms Lambert refers is as follows:

Fonterra has set up the reapplication process in such a way to exclude me because of my vaccination status. I was told I would not be considered because of my vaccination status; this is discriminatory as outlined above. It is also an illegal term of a contract as per section 65(2)(b) of the ERA.

[27] However, a plain reading of the above passage does not make it reasonably clear that Ms Rosewarne intended to raise an unjustified constructive dismissal grievance. Rather, the passage is an expansion of her initial claim of unjustified disadvantage in the form of discrimination in employment mentioned in her first letter to Fonterra on 23 March 2022.

[28] I find that Ms Rosewarne never raised a grievance of unjustified constructive dismissal in either of her two letters to Fonterra and while the three-year time limit of s 114(6) would not apply to this claim, it is outside the 90-day notification period and Fonterra does not consent for it to be considered now.

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<sup>2</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36].

## **Conclusion**

[29] When Ms Rosewarne's letters of 23 March and 14 April 2022 are individually and cumulatively considered, for the reasons given, a personal grievance of unjustified disadvantage was raised on 23 March 2022. The three-year time limit of s 114(6) of the Act is absolute and required Ms Rosewarne to have commenced proceedings in the Authority for this grievance no later than 23 March 2025, which she did not.

[30] Put differently, I do not have the jurisdiction to investigate Ms Rosewarne's disadvantage grievance because she was three weeks late in commencing her proceedings for it in the Authority.

[31] The only other matter that remains and which is not caught by s 114(6) is an alleged breach by Fonterra of Ms Rosewarne's employment agreement. However, before this claim can be investigated further, further particulars regarding the breach will need to be provided first.

## **Costs**

[32] Costs are reserved.

Peter Fuiava  
Member of the Employment Relations Authority