

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 152  
3360303

BETWEEN

MIKAYLA ZHANG  
Applicant

AND

HEALTH NEW ZEALAND  
TE WHATU ORA -  
WAITEMATĀ  
Respondent

Member of Authority: Marija Urlich

Representatives: Applicant, in person  
Anthony Russell, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and information received: 1 December 2025 2025, from Applicant  
15 August and 11 December 2025, from the Respondent

Determination: 11 March 2026

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**DETERMINATION OF THE AUTHORITY**

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[1] Health New Zealand Te Whatu Ora – Waitematā (Health NZ) applies to have Ms Zhang’s application dismissed as vexatious or frivolous or that the Authority find Ms Zhang cannot rely on events prior to March 2024 as part of any proceedings.<sup>1</sup> It says matters resolved between it and Ms Zhang by settlement dated 24 March 2024 (the 2024 settlement) cannot be brought before the Authority and it is an abuse of process to allow matters not covered by the settlement agreement and which should have been included in previous proceedings between the parties to now be litigated.

[2] Ms Zhang opposes the application for dismissal. She says it is not correct that she is attempting to relitigate matters resolved by the settlement and the new claim

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<sup>1</sup> Clause 12A, schedule 2 Employment Relations Act 2000.

concerns conduct in 2025 after the settlement. Ser says references to pre-settlement matters is for the purpose of context and she seeks clarification regarding the scope of the settlement.

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

[3] By consent this matter is determined on the papers. The parties have filed submissions and Ms Zhang has filed an affidavit in support of her position.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Issues**

[5] The issues identified for investigation and determination are:

- i. Should the application be dismissed under schedule 2, cl 12A of the Employment Relations Act 2000?
- ii. Is either party entitled to an award of costs?

### **Background**

[6] Ms Zhang is employment by Health NZ as a senior financial analyst. The parties entered a settlement agreement (the settlement agreement) on 24 March 2024 which resolved challenges they respectively brought to determinations of the Authority. Clause 7 of the settlement agreement provides:

#### **Full and Final Settlement**

These terms are in full and final settlement of any claims whatsoever either party may have against each other in relation to the Mikayla Challenge and the Te Whatu Ora Challenge.

[7] The settlement agreement was duly executed by the parties and a consent judgment was issued by Beck J on 25 March 2024 reflecting the full and final

settlement. The settlement agreement includes the parties had the opportunity to take independent advice as to the meaning and terms of the settlement agreement.<sup>2</sup>

[8] Subsequent to the parties entering the settlement agreement Ms Zhang lodged an application in the Authority outlining an employment relationship problem for bullying and breach of contract regarding provision of a healthy and safe workplace. Ms Zhang has subsequently lodged an amended statement of problem.

**Should Ms Zhang’s application be dismissed on the grounds it is frivolous and/or vexatious?**

[9] Clause 12A of Schedule 2 of the Act gives the Authority power to dismiss frivolous or vexatious proceedings. The Employment Court in *Lumsden v Sky City Management Limited* recognised that the Authority’s power to dismiss proceedings on the grounds that they are frivolous or vexatious is limited and the threshold for establishing that is high.<sup>3</sup> Dismissing a claim is a serious step, not one to be taken lightly. The Authority’s jurisdiction comes from s 161 of the Act. This provides that the Authority has “exclusive jurisdiction to make determinations about employment relationship problems generally”. Section 4(2) identifies the employment relationships that are covered by the Act. Section 5 of the Act defines an employment relationship problem. Section 6 of the Act sets out the meaning of an employee. The Supreme Court considered the jurisdiction of the Authority arising out of s 161 in the recent judgment of *FMV v TZB*.<sup>4</sup> The Supreme Court stated that s 161 of the Act:

[...] reflects the relational framework of the Act and drives the fact-based, problem-solving approach of the Authority. The Authority has exclusive jurisdiction to make determinations about “problems generally”, not specific causes of action. **The only requirement is that the problem must be an “employment relationship” one; that is, it must relate to or arise from the “employment relationship”** in its entire sense [...] (emphasis added.)<sup>5</sup>

[10] Ms Zhang says the matter she now brings before the Authority concerns conduct of Health NZ arising after the 2024 settlement:

- (i) exclusion from essential month-end and operational communications;

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<sup>2</sup> Settlement agreement, clause 8.1.

<sup>3</sup> *Lumsden v Sky City Management Limited* [2015] NZEmpC 225.

<sup>4</sup> *FMV v TZB* [2021] NZSC 102.

<sup>5</sup> Above at [60].

- (ii) unreasonable criticism and undermining;
- (iii) failure to respond to legitimate concerns; and
- (iv) directions preventing her from communication with a co-worker responsible for her cost centres.

[11] She says these matters were not and could not have been part of the matter originally before the Authority and the Court and that reference to pre-settlement events is included to explain:

- why the impact of the 2025 behaviour is serious;
- why she lacks trust in internal processes; and
- why mediation is not viable.

[12] Ms Zhang says the matter for which she seeks resolution looks forward from the 2024 settlement. The resolution of this employment relationship problem will turn on the application of the law to the facts as they are established at the investigation meeting. Relevant matters about the nature of the employment relationship problem are best canvassed at the investigation meeting. It is apparent the “controversy” between Ms Zhang and Health New Zealand arises from the employment relationship and involves matters within the jurisdiction of the Authority to resolve.<sup>6</sup> The Authority’s investigation is to establish the facts and the resolution of the employment relationship problem follows from an evidential inquiry. The application to dismiss is declined.

### **Scope of the 2024 settlement**

[13] In entering the 2024 settlement the parties resolved the challenges before the Court. Those challenges were to an Authority determination and the subsequently issued costs determination.<sup>7</sup> In the first of those determinations the Authority described the employment relationship problem as follows:<sup>8</sup>

Ms Zhang is employed by Health New Zealand – Te Whatu Ora (HNZTWO) as a senior financial analyst. She has held this position since July 2020.

The terms of her employment are set out in a written individual employment agreement (IEA). Attached to the IEA is a position description. The position description is generic. A document titled ‘service responsibilities’ shows

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<sup>6</sup> N5 at [60].

<sup>7</sup> *Mikayla Zhang v Health New Zealand* [2023] NZERA 363 and *Mikhayla Zhang v Health New Zealand* [2023] NZERA 440.

<sup>8</sup> *Mikayla Zhang v Health New Zealand* [2023] NZERA 363 [1] – [4].

people in roles titled ‘key accountant/analyst’ paired with ‘finance business partner’ in ‘divisions’ or Ms Zhang had previously worked for NZTWO’s predecessor, Waitemata District Health Board as a management accountant from 2016 until she was made redundant in 2018. ‘accountant/analyst’ paired with ‘finance business partners’ in ‘centralised tasks’. Ms Zhang accepts this document describes the structure in which she works.

In her role with HNZTWO Ms Zhang currently works in the analytics and insights division providing accounting and analyst services to an operational team. She has worked with at least one different operational team since 2020. She enjoys this work and wishes to continue to work in this area. She says the work she does for a division is fundamentally different to the work performed in ‘centralised tasks’. HNZTWO wishes Ms Zhang to change where she works to the corporate and compliance services team in centralised tasks. This change is the genesis of the employment relationship problem.

Ms Zhang opposes the change and seeks orders from the Authority to prevent this permanently. She also seeks a finding that HNZTWO’s actions have unjustifiably disadvantaged her in her employment. Ms Zhang seeks remedies in contractual damages and under s 123(1)(c)(i) of the Act for non-pecuniary loss suffered consequent to HNZTWO’s actions. She also seeks a finding that HNZTWO’s actions have breached the duty of good faith and the award of a penalty, a portion of which be awarded to her.

HNZTWO says the change is within the contemplation of the parties’ IEA and job description, that it has acted fairly and reasonably towards Ms Zhang in respect of the move and denies any remedies or a penalty are warranted. HNZTWO has suspended the change pending the Authority’s determination of this employment relationship problem.

[14] The scope of the 2024 settlement includes the employment relationship problem as described and is broad and necessarily so due to the broad matters Ms Zhang raised with the Authority including the range of factual findings and orders sought. The parties have resolved those issues, and they are unable to be revisited because the resolution agreed in 2024 was described as “full and final”. Events prior to March 2024 and which fall within the broad scope of the 2024 settlement cannot be relied on as part of these proceedings other than to provide context.

[15] A case management conference is to be convened.

### **Costs**

[16] Costs are reserved.

Marija Urlich  
Member of the Employment Relations Authority