IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 156
3327860

	BETWEEN	HEIDI MARIE SAMSON Applicant
	AND	ROYAL NEW ZEALAND PLUNKET TRUST Respondent

Member of Authority:	Peter Fuiava
Representatives:	Elizabeth Lambert, advocate for the Applicant Blair Scotland, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	10 October and 28 November 2025 and 12 March 2026 from the Applicant 12 December 2025 and 11 March 2026 from the Respondent
Determination:	16 March 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] The issue this preliminary determination resolves is whether or not Heidi Samson, a former Plunket nurse, raised a personal grievance against her then employer, the Royal New Zealand Plunket Trust (Plunket or the employer), within the relevant employee notification period of 90 days.

How was the preliminary issue investigated?

[2] Following a telephonic case management conference with the representatives on 16 September 2025, timetabling directions by consent were made for the filing of written submissions which have been received and considered. With the agreement of the representatives, I have determined this preliminary issue on the papers.

What happened?

[3] Ms Samson commenced working for Plunket on 25 May 2009 until her employment ended on 30 November 2021 because she could not meet the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order), which applied to her role as a Plunket nurse.

[4] The Order was introduced on 28 April 2021 and required "affected persons" to not carry out certain work unless they had received an approved COVID-19 vaccination or were granted an exemption from the Order.

[5] On 25 October 2021 coverage of the Order was expanded to include groups in the health and disability sector. Although employed as a Plunket nurse, Ms Samson did not wish to be vaccinated and for a time was providing virtual services to clients at her local clinic.

[6] On 7 November 2021, the Order was amended so that it applied to only those nurses who provided health services to patients in person.

[7] On 12 November 2021, the chief executive of Plunket advised all employed staff that notwithstanding the amendment, the organisation's position had not changed and that all employees were required to be vaccinated against COVID-19.

[8] Ms Samson says that her employer's actions in implementing the Order disadvantaged her employment due to Plunket's decision not being compliant with Sch 3A of the Employment Relations Act 2000 (the Act) which relevantly stated at the time:

> **Schedule 3A**
> **Provisions relating to COVID-19 vaccinations**
>
> …
>
> **3 Termination of employment agreement for failure to comply with relevant duties or determination**
>
> (1) This clause applies to the following employees:
>
> (a) an employee who has a duty imposed by or under the COVID-19 Public Health Response Act 2020 not to carry out work (however described) unless they are—
>
> …

(iii) otherwise permitted to perform the work under a COVID-19 order

…

(4) Before giving a termination notice … the employer must ensure that all other reasonable alternatives that would not lead to termination of the employee's employment agreement have been exhausted.

(5) A termination notice … is cancelled and is of no effect if, before the close of the period to which the notice relates, the employee becomes—

…

(b) otherwise permitted to perform the work under a COVID-19 order.

[9] On 15 October 2024, some 34-and-a-half months after Ms Samson's last day of employment with Plunket, she lodged a statement of problem with the Authority that alleged that Plunket had unjustifiably disadvantaged her with her employment and had unjustifiably dismissed her also. However, as it was unclear from Ms Samson's statement of problem as to when those personal grievances were first raised with Plunket, she was directed by me to provide further particulars in an amended statement of problem (ASOP) which was lodged with the Authority on 31 October 2025.

[10] According to that document, Ms Samson claims to have raised with Plunket a disadvantage grievance on 1 October 2021. While it is still unclear when her unjustified dismissal grievance was raised, subsequent submissions from her representative Ms Lambert, point to grievances being raised from 1 October to 30 November 2021.

[11] Plunket's representative Mr Scotland submits that Ms Samson's letter of 1 October 2021 does not constitute the raising of a personal grievance as it does not sufficiently put Plunket on notice that she had a problem that she wanted her employer to resolve. It was further submitted that a subsequent letter from Ms Samson dated 12 November 2021 does not raise a personal grievance either. According to Plunket, as Ms Samson failed to raise any personal grievances with it within the statutory timeframe set out in s 114 of the Act, it does not consent to these being raised out of time.

What is the relevant law?

[12] For Ms Samson to have raised her personal grievances of unjustified disadvantage and unjustified dismissal in time, s 114 of the Act requires her to have done so within the applicable employee notification period of 90 days. That period of

time starts from the date on which the action alleged to amount to the personal grievance occurred or when it comes to the employee's notice, whichever is later.

[13] The leading authority on the question of what is required to raise a personal grievance claim is *Creedy v Commissioner of Police* in which it was held that what is important, is that the employer is made aware sufficiently of the grievance to be able to respond.[1] It is also unnecessary for all of the detail of the grievance to be disclosed in its raising.[2]

[14] The applicable principles were summarised relatively recently by her Honour Judge Holden in *Chief Executive of Manukau Institute of Technology v Zivaljevic,*[3]:

> [36] The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.
>
> [37] It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.
>
> [38] It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

Communications to be considered cumulatively

[15] The Authority is not bound by the parties' pleadings but instead focuses on resolving the employment relationship problem however it is described.[4] While the ASOP draws particular focus on Ms Samson having raised a disadvantage grievance with Plunket on 1 October 2021, I have taken into account various written communications from Ms Samson on a totality basis.

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[1] *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].
[2] At [37].
[3] *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132.
[4] The Act, s 160(3).

[16] This matters because Ms Samson's letter of 1 October 2021 fails to sufficiently raise a personal grievance of any type under s 103 of the Act with her employer. Instead of bringing to Plunket's attention an employment relationship problem that she wanted to be resolved, her letter instead asks a series of questions for example: What risk assessment analysis had Plunket relied on? Has it only looked at medical information from the New Zealand government and New Zealand virologists or had it considered medical research and journals from around the world? Have other alternatives to vaccination been explored? And what medical insurance did Plunket have in place should staff suffer side effects?

[17] While the letter asked several questions about the efficacy and safety of the COVID-19 vaccine, nowhere does it raise a personal grievance.

[18] During this period of time, Ms Samson was providing virtual services to clients. This is apparent from an email dated 27 October 2021 from the clinical leader for the Central Region to several Plunket staff. In that email, staff are informed that Ms Samson would be working at the Whakatane clinic and doing "virtual work" and would be providing virtual service to clients.

[19] When Ms Samson did not get a response from Plunket to her letter of 1 October 2021, she emailed HR and Careers on 4 November 2021 the following:

> To date I have not received any answers to my questions emailed to you directly on 01-10-2021 regarding the proposed new immunisation policy and the covid 19 immunisation. I also note there is no mention of my questions in the answers to questions that Plunket have replied to. I have attached my questions again and would like an immediate reply to these please. Failure to do so would imply you have no credible answers or do not wish to answer my questions.

[20] On 9 November 2021, two days after the Order was amended so that it would apply to those nurses who provided health services to patients in person, Ms Samson had a conversation with the clinical services manager – Central Region and emailed the manager the following question:

> Could you please put in writing what you said to me on the phone today including the fact that you said you will contact HR with my query about being able to work in non-client contact position without being vaccinated.

[21] The manager emailed Ms Samson on 9 November 2021 at 4 pm advising her that Plunket had decided that all nursing positions would require vaccination, "as we all work as part of a team and with client interaction". This was followed up by a letter from the manager on Plunket's behalf (9 November 2021) to Ms Samson making clear that because of the nature of the work and physical interactions with clients, all roles were in the medium to high-risk category which required the work to be performed by people who were vaccinated against COVID-19.

[22] As Ms Samson did not wish to be vaccinated, she was subsequently stood down from her role for two weeks from 16 November 2021.

[23] On 15 November, Ms Samson emailed the clinical services manager that there were no longer any internet connection issues for her at home and that there was no feasible reason why she could not successfully work from home until "better options appear". In a further letter from Ms Samson dated 12 November 2021, she states that she is "very concerned" that Plunket "may require me to be fully vaccinated to work as a Registered Plunket Nurse." To guard her own health, and citing s 83 of the Health and Safety at Work Act 2015, which gives a worker the right to cease or refuse to carry out unsafe work, Ms Samson stated:

> Consequently, I am unable to work in the Eastern Bay of Plenty's Whakatane Plunket clinic … and any other Plunket clinics/offices within New Zealand until the risk conditions of the workplace are remedied or mitigated. I am happy to continue working from home in the meantime while this situation is being remedied.

[24] When I consider all of Ms Samson's communications to Plunket, I am satisfied that she has raised a personal grievance of unjustified disadvantage with respect to her employer's decision for all staff to be vaccinated notwithstanding the amendment to the Order. Ms Samson had made it plain to her employer that the Order and Plunket's actions had affected her employment to her disadvantage, that she did not wish to be vaccinated but wanted to continue working and could do so safely from home, and for such time until other better options appeared.

[25] Be that as it may, I find that Ms Samson has not raised a personal grievance of unjustified dismissal. There is no communication either on its own or in conjunction with other material that unequivocally puts Plunket sufficiently on notice of a problem or issue that needs to be resolved. Following the termination of Ms Samson's

employment on 30 November 2021, she had 90 days from that date or until 28 February 2022 to raise such a grievance of unjustified dismissal but she did not. This grievance is well outside the 90-day employee notification period and Plunket does not consent for it to be raised now.

Conclusion

[26] When Ms Samson's written letters and emails are individually and cumulatively considered, for the reasons given, a personal grievance of unjustified disadvantage was raised by 12 November 2021. While I have jurisdiction to investigate this grievance further, I do not have jurisdiction to investigate Ms Samson's unjustified dismissal grievance. For this to go any further, leave would have to be granted by the Authority which would require exceptional circumstances occasioning the delay. However, the threshold is high and even if such grounds existed, given the inordinate delay with the grievance being raised now, I would need convincing that the grant of leave was also just.

Costs

[27] Costs are reserved.

Peter Fuiava
Member of the Employment Relations Authority