

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 178
3386043

BETWEEN RUMAN ANSARI
Applicant

AND THE CHIEF EXECUTIVE
ORANGA TAMARIKI –
MINISTRY FOR CHILDREN
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Applicant in person
Mele Sagaga counsel for the Respondent

Investigation Meeting: On the papers

Submissions and further information received: Up to 9 March 2026 from the Applicant
Up to 9 March 2026 from the Respondent

Determination: 25 March 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Ansari lodged a statement of problem seeking to advance a number of grievances against her former employer Oranga Tamariki - Ministry for Children (OT).

[2] OT responded noting there is a settlement agreement signed by both parties resolving all employment relationship matters between them. The settlement agreement is not signed by a mediator but one of the terms records that it became binding and enforceable “upon the signature of both parties”. OT relies on this to support its position that the settlement agreement is binding and enforceable and Ms

Ansari cannot now commence proceedings in the Authority against OT because the settlement agreement resolved all matters between the parties.

[3] Ms Ansari says her matters can proceed because the settlement agreement was not signed by a mediator and the matters she raises now were either not contemplated, not included or not resolved by the settlement agreement. Ms Ansari agrees the settlement agreement is signed by both parties but requested the Authority consider her claims despite the settlement agreement.

[4] In her submissions Ms Ansari raised a further issue regarding the settlement agreement which was not anticipated at the case management teleconference with the parties. This is referred to below and this determination does not resolve the additional issue.

The Authority's investigation

[5] At a case management teleconference the parties agreed the issue about to what extent the settlement agreement signed by the parties but not countersigned by a mediator is final and binding on the parties could be resolved as a preliminary issue on the papers. The parties provided written submissions.

Background

[6] Ms Ansari commenced employment with OT on 23 July 2007, initially as practice leader. She transitioned to a senior practitioner role approximately five years later. On 18 September 2017, she accepted a secondment to a hospital liaison social worker role. The role was a joint initiative between OT and the District Health Board (now Health New Zealand – Te Whatu Ora). A memorandum of understanding (MoU) was entered into between the two organisations. It is not disputed the role was extended multiple times over a six-year period and that Ms Ansari raised concerns on more than one occasion about these extensions without the role becoming permanent.

[7] Ms Ansari says it was her expectation the role would become permanent and she was given repeated verbal assurances about it becoming permanent. This never eventuated. Subsequently, a permanent position for a hospital liaison social worker was created and a recruitment process was commenced. Ms Ansari applied for the vacancy but was unsuccessful. As a result Ms Ansari raised a personal grievance on 16 February 2024. The parties attended mediation on 7 March 2024. A record of settlement was entered into and signed by the parties. Ms Ansari signed the agreement on 7 March 2024 and OT signed it on 19 March 2024.

[8] It had been intended the settlement agreement would be certified by a mediator. The mediator contacted Ms Ansari by email on 19 March 2024 for that purpose. Ms Ansari's representative emailed OT on 20 March 2024 advising she had been instructed there was no longer agreement between Ms Ansari and OT and the mediation file could be closed.

[9] On 30 June 2025, Ms Ansari lodged a statement of problem in the Authority seeking to advance a number of personal grievance claims.

Ms Ansari says there is jurisdiction to consider unresolved issues

[10] Ms Ansari submissions are:

- (a) the settlement agreement was not signed off and certified by a mediator under s 149 of the Act;
- (b) the matters now raised were either not contemplated or not included and not resolved in the settlement agreement;
- (c) there are ongoing breaches of statutory obligations and employer policies that fall outside the scope of the settlement agreement;
- (d) the mismanagement of Ms Ansari's employment and recruitment processes amount to a systemic and unjustified disadvantage;

- (e) there was disregard of OT's internal policies and the memorandum of understanding that have come to Ms Ansari's attention from comments made at mediation and which she believes are incorrect;
- (f) Ms Ansari says that her former representative did not query the information that Ms Ansari believes to be incorrect and has therefore misrepresented her case;
- (g) Ms Ansari may have entered into the settlement agreement without full understanding of its legal applications and other misleading information and assurances by her former representative.

The settlement agreement between the parties

[11] While the parties agreed the terms of settlement agreement are confidential, the following clauses are before the Authority for the purposes of enforcement and are disclosed for the purposes of this determination.¹ The remainder of the settlement agreement remains confidential between the parties.

[12] The following clauses are relevant:

- B. The parties have agreed to settle all issues the employee has or may have, arising out of or in the course of her employment with the employer, on the terms set out in this Record of Settlement.
- 10. Notwithstanding the termination of her employment, the employee will continue to be bound by and comply with the obligations relating to confidentiality and any other employment duties and obligations, that by their nature, survive termination of employment. The employer will also continue to be bound by and comply with all confidentiality and privilege requirements that arise from their professional obligations.
- 11. The fact and terms of the settlement will be confidential to the parties, except that:
 - (a) the parties may, where necessary, disclose any information to their advisers acting in their professional capacities, for enforcement purposes, or where required by law.

¹ Employment Relations Act 2000, s 149(3)(b).

...

- (c) In the event of a claim being asserted by one of the parties to this Agreement, this Agreement may be disclosed or submitted by the other party as evidence that matters raised in the claim or which could have been raised in the claim have been settled between them.
- 12. The Employee confirms that she has been advised of their right to seek independent legal advice prior to entering into the settlement agreement and has had the opportunity to seek that legal advice.
- 13. This is the full and final settlement of all matters between the Employee and Employer arising out of their employment relationship, including Oranga Tamariki will not be required to respond further to any information requests the Employee may have made, and nor will the Employee make any new requests in relation to matters arising out of her employment.
- 16. The parties agree that this agreement will become binding upon the signature of both parties. The mediator's signature is not required for this agreement to become final, binding and enforceable.

Certification by a mediator

[13] The effect of certification by a mediator is that terms of a settlement agreement become final and binding (s 149(3)(a)) and the terms cannot be cancelled under ss 36 to 40 of the Contract and Commercial Law Act 2017 (s 149 (3)(ab)). In addition, no party can bring the terms of a s 149 agreement, that is certified by a mediator, before the Authority or the court except for enforcement purposes (s 149(3)(b)). This provides a degree of finality that Parliament intended for settlement agreements in the employment jurisdiction. There are a number of policy reasons supporting that position.

[14] While Ms Ansari is correct that without certification settlement agreements under s 149 are not automatically enforceable, cl 16 of this particular settlement agreement presents some issues for Ms Ansari's submissions the agreement is not binding because there is no mediator's certification. The starting point is that Ms Ansari signed the settlement agreement on 7 March which was the day of mediation. OT signed the agreement on 19 March 2024.

[15] With both parties having signed the agreement, on a plain reading of its terms and in particular, cl 16, the agreement came into force on 19 March 2024 after both parties had signed the agreement. With reference to general contract law, when there has been offer and acceptance, an agreement or contract is formed and enforceable by the parties against each other. Acceptance is defined as:²

[49] An acceptance is a final and unqualified expression of assent to the terms of the offer. It indicates an unconditional willingness to be contractually bound that mirrors that of the offer. Whether acceptance has occurred depends upon the consideration of the words and documents that have passed between the parties and the totality of the offeree's conduct. If all the requirements for contract formation are met then the contract comes into force at the place and the time the acceptance has effect.

[16] Acceptance by Ms Ansari in the context of this settlement agreement was Ms Ansari was the signing of the agreement on 7 March. There is no evidence that Ms Ansari sought to withdraw from the agreement before 19 March, although I accept there is evidence she was seeking to withdraw on 20 March but by then it was too late. Clause 16 expressly sets out that on signing the parties agree the mediator's signature was not required for their agreement to become final, binding and enforceable.

[17] While Ms Ansari's representative recorded in the email to OT on 20 March that she was instructed agreement had not been reached, for the purposes of contract formation agreement had already been reached the day before (19 March). It was not open to Ms Ansari at that point to take the position no agreement had been reached.

New issues

[18] Ms Ansari says the settlement agreement does not cover or contemplate the longstanding breaches of OT policies or breaches of the MoU and that the matters now raised relate to different factual and legal issues to those settled by the agreement.

[19] The introductory paragraph at B of the settlement agreement is relevant to this submission. It is recorded at B the parties have agreed to settle all issues the employee

² Burrows, Finn and Todd on the *Law of Contract in New Zealand* (7th ed, LexisNexis, Wellington, 2022) at [41-42].

has *or may have*. The use of the word “may” in that sentence means not only current issues but also any future issues are within the ambit of the settlement agreement. Ms Ansari would be prevented from advancing any proceedings about employment relationship problems against OT.

[20] Clause 13 also provides the settlement agreement is the full and final settlement of all matters arising out of their employment relationship.

[21] The combination of cl 13, 16 and the introductory paragraph at B. lead me to the conclusion the settlement agreement was the expression of the parties’ intention that there would be finality to the ending of their employment relationship. This included preventing both parties from bringing claims arising from their employment relationship including “all issues Ms Ansari has or may have”.

[22] The terms of this settlement agreement are strongly focussed on finality and bringing the employment relationship problems between the parties to an end. OT also points out that the payments to Ms Ansari that were agreed to have also been paid.

[23] On the basis of the plain words of the settlement agreement between the parties, noting there was offer and acceptance and an exchange of consideration in the form of payments that were agreed to, the settlement agreement is final and binding on the parties. It is also final and binding in relation to all issues that Ms Ansari had at the time and any other issues arising from her employment that Ms Ansari may have in the future.

Two issues raised by Ms Ansari in submissions that were not previously raised

[24] Ms Ansari also records in her submissions that there was an imbalance of power and she was unaware of the settlement agreement’s full legal effect. Ms Ansari refers to an imbalance of power and lack of informed understanding particularly regarding the exclusionary effect of the settlement agreement. This was not in the statement of problem and it was not raised as an issue at the case management conference.

[25] Ms Ansari also says she disagrees with what OT said at mediation and as a result says she was not only mistaken about what she was agreeing to but also misled. The

statement of problem does in fact refer in passing to this issue but it was not clear Ms Ansari was seeking to have the settlement agreement set aside for this reason.

[26] I understand Ms Ansari's overall submission to be that she wishes to have the settlement agreement set aside based on her lack of understanding about what she was agreeing to and a further submission she was misled at mediation. She wishes to pursue her grievances against OT but her submissions on these new issues were not articulated beyond that.

[27] There are some major hurdles for Ms Ansari in advancing an argument the settlement agreement should be set aside based on evidence of what was said at mediation. This is because mediation is confidential and what was discussed in mediation cannot be used or disclosed outside of mediation. Section 148 of the Act says all information and discussions at mediation are confidential and also that no evidence about information from mediation is admissible in any proceeding.

[28] Ms Ansari faces a further hurdle because she was represented at mediation making it difficult to advance arguments about a lack of understanding. A number of cases before the Authority and the court refer to this. Nonetheless these issues have now been identified.

Outcome

[30] The settlement agreement between the parties is final and binding despite it not being certified by a mediator because the terms of the agreement expressly provided it would become final and binding upon the signature of both parties. The mediator's signature was not required for this agreement to become final, binding and enforceable.

[31] If Ms Ansari seeks to advance an application to have the agreement set aside based on reasons other than the meaning of the terms of the settlement agreement an amended statement of problem will need to be lodged 14 days from the date of this determination with an amended statement in reply to be lodged 14 days after the amended statement of problem.

Costs

[32] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[33] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Oranga Tamariki may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ruman Ansari then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[34] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.³

Sarah Kennedy-Martin
Member of the Employment Relations Authority

³ www.era.govt.nz/determinations/awarding-costs-remedies