

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 267
3340900

BETWEEN LUBOSLAVA KECER
 Applicant

AND SPECTRUM CARE LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Erika Whittome and Liz Lambert, advocates for the
 Applicant
 Saadi Radcliffe and Paul McBride, counsel for the
 Respondent

Date of Investigation Meeting: 22 January 2026 in Auckland

Submissions received: 30 January 2026 from the Applicant
 4 February 2026 from the Respondent

Date of determination: 1 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The respondent, Spectrum Care Limited (Spectrum) is a registered charity. Spectrum employed the applicant, Ms Luboslava Kecer, as a Community Support Worker – Residential (CSWR) for intellectually disabled people from September 2018 to 23 December 2021. Although Ms Kecer’s title was recorded in her job offer as “Community Support Worker – Home Support”, the parties have referred to her job as “CSWR” throughout these proceedings.

[2] Ms Kecer’s employment was ended because her CSWR role was subject to mandatory vaccination, so she could not do her usual role unless vaccinated, she declined to be vaccinated and there were no redeployment opportunities available for her.

[3] Ms Kecer lodged a statement of problem (SoP) with the Authority on 21 November 2024 which made a number of unclear or confusing claims. When asked to clarify what claims Ms Kecer wanted investigated and determined, her advocate in a memorandum dated 12 November 2025 said Ms Kecer wanted to pursue claims that Spectrum's implementation of the Order:

- (a) Involved breaches of her employment agreement, specifically:
 - (i) Clause 4 (variation) as it unilaterally varied her employment agreement and the CEA on which it was based, because she did not sign a written variation.
 - (ii) Clause 46 (occupational health and safety) as it created an unsafe workplace because it used the vaccine to control COVID-19 and it "attempted to coerce [her] to take this medical treatment" and it failed to ensure the safety of the vaccine.
 - (iii) Clause 59 (termination of employment) as it involved termination or suspension of her without cause.
 - (iv) Clause 61 (disciplinary policy) as it amounted to unlawful disciplinary action against her.
- (b) Unilaterally varied her terms and conditions of employment by requiring her to be vaccinated without her agreement.
- (c) Breached its obligation to provide a safe workplace because Spectrum did not protect her from the hazard of the vaccine
- (d) Breached good faith by "attempting to coerce [her] to take this medical treatment [the vaccine]".
- (e) Unjustifiably disadvantaged her in her employment.
- (f) Unjustifiably dismissed her.

[4] The Authority was also informed via the memorandum dated 12 November 2025 that Ms Kecer withdrew or was not pursuing the following claims in her SoP:

- (a) Common law damages for breach of good faith and of the Health and Safety at Work Act 2015 (the HSWA).
- (b) Foreseeable damages occasioned by loss of employment.

- (c) Other damages for breach of good faith.
- (d) That Spectrum was legally required to apply to the Minister of COVID-19 Response (the Minister) under clause 12A of the Order for an exemption from vaccination for her, even though she had not requested that.¹
- (e) That Spectrum's implementation of the Order amounted to "unfair bargaining" in breach of s 68(2)(c) of the Employment Relations Act 2000 (the Act).

[5] The SoP was served on Spectrum by the Authority via email on 27 November 2024. Spectrum disputed the Authority's jurisdiction over the claims Ms Kecer had made. Spectrum also denied that any of Ms Kecer's claims had merit.

The Authority's investigation

[6] The Authority held an in-person investigation meeting (IM) in Auckland in January 2026.

[7] The parties lodged an Agreed Statement of Facts (ASoF) on 28 November 2025. The ASoF described Ms Kecer's role as "Community Support Worker – Residential (CSWR)" and the parties used that same name for her role in these proceedings, so that has been reflected in this determination.

[8] Ms Kecer lodged a witness statement prior to the IM and she gave evidence in-person at the IM. Ms Kecer's advocate Ms Erika Whittome lodged an affidavit prior to the IM, but did not give evidence.

[9] Spectrum had two witnesses who lodged witness statements and who attended the IM to give evidence in-person; Mr Thushara Gooneratne, Employment Relations Lead, and Mr Piri Rutherford – Service Manager, who was Ms Kecer's manager.

[10] The parties lodged a joint bundle of relevant documents and a chronology. Witnesses gave evidence under oath or affirmation. They were questioned by the Authority and cross-examined by the opposing party.

¹ This claim appeared in Ms Kecer's submissions that were lodged after the investigation meeting.

[11] Spectrum presented oral and written submissions at the IM after the evidence had been completed. At Ms Kecer's advocate's request, she lodged written submissions after the IM, with Spectrum then lodging reply submissions to these.

[12] Although the IM was originally intended to investigate the disputed jurisdiction issues, the parties addressed all issues in their evidence, in their questioning of the other party's witness(es) and in their submissions. Because the parties had an opportunity to be heard on everything that Ms Kecer has placed before the Authority, all such matters have been covered in this determination.

Material Facts

[13] Spectrum is a "certified provider" under the Covid-19 Public Health Response (Vaccinations) Order 2021 (the Order), providing support services to disabled people in the community.

[14] Spectrum was funded by the Government (and provided services) to assist clients to live in their homes or community, including by providing them disability support services.

[15] Ms Kecer was offered employment by letter dated 21 September 2018 for the position of "Community Support Worker – Home Support" with her responsibilities set out in the attached job description. This offer letter recorded the parties' notice period was two weeks. Her salary grade was stated to be "Step LO of Community Support Worker grade". Ms Kecer signed her acceptance of this offer on 24 September 2018.

[16] Ms Kecer's terms and conditions of employment were in an individual employment agreement based on the Spectrum and Public Service Association (PSA) Collective Employment Agreement dated 2017, which expired on 30 September 2019 (the CEA).

[17] The CSWR job description is dated December 2017. The CSWR role provides general assistance, home management, care and support to people with disabilities, as per the job description. The role included providing care and support services within client homes or places of residence, working in private residential premises occupied by clients who are being supported, as well as travelling with them to and from private premises and various other places in the community.

[18] Clause 12 of the CEA referred to Community Support Workers (CSWs), and it set out their salary scale in clause 12.2.1. The rate of pay that applied to a Community Support Worker

included the greater of the rates of pay set out in the Care and Support Workers (Pay Equity) Settlement Act 2017 (the Settlement Act) or the CSW Salary scale from the CEA that was in place immediately prior to the commencement of the Settlement Act.

[19] Ms Kecer was paid increased remuneration as a CSWR, including in terms of Pay Equity and achievement of relevant qualifications, so there was no doubt she was employed to work in a CSW role as set out in the CEA, on which her individual employment agreement was based.

Relevant timeline

- 17 September 2018 - Ms Kecer was employed as a Community Support Worker - Residential.
- June 2021 - Ms Kecer went on leave and did not return to the workplace after that. This absence resulted from her being overseas on leave, then being in managed isolation upon her return from overseas, and due to the COVID-19 Level 3 and Level 4 lockdowns in Auckland during which Spectrum had paid CSWR's to stay at home.
- 6 October 2021 - Spectrum commenced a 14 day consultation process on a draft vaccination policy, which included its risk assessment of COVID-19 for direct support roles, which included (among others) the CSW roles which required the provision of direct support to disabled people who were Spectrum clients, typically indoors in a residential environment.
- 11 October 2021 - Spectrum informed employees of the Government announcement of mandatory vaccinations for health and disability workers that had to occur by 30 October 2021 (with that date being subsequently extended).
- 12-14 October 2021 - PSA and Spectrum held joint meetings with employees about the Government's vaccination mandate. Employees were advised the Government mandate had overtaken Spectrum's draft vaccination policy and that Spectrum had interpreted the Order to mean all employees of the Spectrum Foundation Group had to be vaccinated. The first vaccination was required by 30 October 2021 and the second by 1 December 2021, and Spectrum informed employees it could not permit them to work in their usual roles if they were unvaccinated.

- 20 October 2021 - Ms Kecer emailed her co-ordinator Sheena Reddy, Residential Service Manager, a number of questions about the vaccination survey Spectrum had sent employees. The survey provided information and explained who the Order said was an “affected person” in the health and disability sector, exemptions, disclosure of vaccination status, and what would happen if someone chose to remain unvaccinated.
- 25 October 2021 - At 11.59pm, mandatory vaccination for specified groups in the health and disability sector came into effect via the Order. Spectrum did not implement its draft vaccination policy because it was superceded by the Order that went into effect on 25 October 2021. Spectrum did however send Ms Kecer a copy of the risk assessment it had done for all roles in the organisation, which had been undertaken when it was considering whether or not to introduce its own vaccination policy.
- 28 October 2021 – Ms Kecer sent a letter to Spectrum’s Executive Board disputing that she was covered by the Order. She said the purpose of her letter was to explain why she would not be getting vaccinated. Ms Kecer raised safety concerns and referred to a lack of safety data. She also disputed the vaccines’ effectiveness and suitability to prevent infection or transmission of COVID-19. Spectrum was asked to revoke the direction that she had to be vaccinated to do her usual role. Ms Kecer also stated:

Should my choice [not to be vaccinated] not be respected, and you elect to disadvantage my employment by linking my employment with a participating in a trial for an experimental treatment that does not guarantee the prevention of transmission of COVID-19, then **I may** exercise my right to file a personal grievance. (emphasis added)
- 3 November 2021 - Mr Dunn, General Manager People & Culture, emailed a letter to Ms Kecer that asked about her vaccination status, provided information about the vaccine mandate, and set out the process that would apply to unvaccinated employees. This included setting up an individual meeting to discuss (among other things) whether she had any reason to consider her role was not covered by the Order, her intentions regarding vaccination, whether other suitable arrangements could exist regarding performance of her role and whether any redeployment opportunities were available to her if she elected not to be vaccinated. Ms Kecer was also put on notice that if no alternative options were available, and she remained unvaccinated, then she would likely be given two weeks’ notice of termination if there were no suitable redeployment opportunities for her.

- 8 November 2021 - Spectrum responded to the questions Ms Kecer had raised in her emails dated 20 and 28 October and 5 November 2021. Among other answers, Spectrum said it could not provide Ms Kecer with the outcome she had requested in her 28 October 2021 letter (to rescind the vaccination mandate) because the Order was binding on the parties. If Ms Kecer disagreed with that view then Spectrum again invited her to explain why she thought the Order did not apply to her role. However, she never did so.
- 12 November 2021 - Ms Kecer provided a medical certificate that she was unfit to work for five days from 15 November 2021.
- 15 November 2021 – From this date the Order prevented Spectrum from allowing unvaccinated staff to continue providing health and disability services/support to clients if their role fell within Part 7 of Schedule 2 of the Order.
- 22 November 2021 – Ms Kecer emailed Spectrum asking for an agenda for their consultation meeting the next day, which was sent to her. Ms Kecer also said that “Spectrum ... taking disciplinary action ... ending in a dismissal ... [meant] you are failing in your Duty of Care [under the HSWA].” She asked for the studies and evidence on the safety and efficacy of the vaccine and for the medical and scientific evidence the vaccine mandate was based on. Ms Kecer repeated her previous view that vaccines were untested and unsafe.
- 23 November 2021 – A 40-60 minute Teams meeting was held which was attended by Ms Kecer, her co-ordinator Ms Reddy, Mr Rutherford (who was Ms Kecer’s manager), and Terina Ngata who attended as the Human Resources representative. Ms Kecer was given another opportunity to address whether (and if so why) she disputed the Order covered her role, she explained her reasons for not being vaccinated, there was a discussion about whether there were any alternatives to vaccination and about the fact there were no known redeployment opportunities available for her. After discussing these matters, Ms Kecer was given two weeks’ verbal notice of termination during this meeting, with the notice period stated to start the next day, on 24 November 2021.
- 26 November 2021 - Schedule 3A of the Act came into force. This increased the required minimum notice for dismissals related to non-vaccination to four weeks or contractual notice, whichever was the longer. It also set out some other obligations.

- 1 December 2021 – Written termination letter was sent to Ms Kecer, which advised that her notice period was being increased to four weeks, so her employment would terminate on 21 December 2021 and not on 1 December 2021, as she had been verbally advised during the 23 November 2021 Teams meeting. This letter confirmed Spectrum’s previously advised view that Ms Kecer’s role was covered by the Order, that changes could not be made to her role to enable her to continue doing it as an unvaccinated employee and that there was no other suitable roles available for her to do. Ms Kecer was informed that if she became vaccinated prior to her last day of employment then her notice could be rescinded.
- 21 November 2024 - Ms Kecer lodged her SoP with the Authority.
- 27 November 2024 – The Authority served the SoP Spectrum, which was the first time Spectrum saw it.

Relevant legislation

[20] The following legislation is relevant to Ms Kecer’s claims:

- (a) Covid-19 Public Health Response Act 2020 (the Response Act). Section 9 of the Response Act allowed the Minister for COVID-19 Response (the Minister) to make orders according to the criteria in that section.
- (b) Covid-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into effect at 11.59pm on 30 April 2021.² The Order had a number of amendments, with the relevant ones for the purposes of Ms Kecer’s claims being those that related to workers in the health and disability sector.
- (c) COVID-19 Public Health Response (Required Testing and Vaccinations) Amendments Order 2021 (the Amendment Order).³ Some clauses came into effect at 11.59pm on 6 November 2021 and the rest of the clauses at 11.59pm on 7 November 2021. The previous definition of “care and support worker” was replaced from 11.59pm on 6 November 2021 with a new definition. Clause 8 of Amendment Order came into effect at 11.59pm on 7 November 2021 and it

² LI 2021/94.

³ SL 2021/358.

prohibited an affected person from carrying out certain work unless they were vaccinated or exempt.

- (d) COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021⁴ (Amendment No 3). Amendment No 3 came into effect at 11.59pm on 25 October 2021 and it provided definitions for “care and support services”; “care and support worker”; “certified provider”; “health care services”; and “home or place of residence”.
- (e) COVID-19 Public Response (Vaccinations) Legislation Act 2021 (the Vaccinations Act). The Vaccinations Act came into force on 26 November 2021 and it imposed duties on PCBUs not to allow, and affected workers not to carry out, specified work unless they were vaccinated. It defined “affected worker”; “specified work”; and “vaccinated”. Clause 17C(2) of the Vaccinations Act required PCBUs to notify each affected worker who carried out specified work for it that they could not do so unless vaccinated. Clause 17E(1) required an affected worker to provide the PCBU with information about their vaccination status. If they failed to do so then clause 17E(3) of the Vaccinations Act required the PCBU to treat the affected worker as if they were unvaccinated.
- (f) Covid-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 (the Regulations)⁵ came into force on 15 December 2021. The Regulations introduced an assessment tool that a PBCU may, but was not required to, use to ascertain whether it was reasonable to require its workers not to carry out work for it unless they were vaccinated. This assessment tool did not apply to roles covered by the mandatory vaccination requirements in the Order but it has been included as ‘relevant legislation’ because Ms Kecer has relied on it.

[21] The relevant amendments made to the Order for Ms Kecer’s purposes were those that occurred from 25 October 2021 to 21 December 2021, and which related to the mandatory vaccination of workers who fell within the group in Part 7 of Schedule 2 of the Order which related to workers in the health and disability sector, as set out below.

[22] At 11.59pm on 25 October 2021, Part 7 of Schedule 2 of the Order imposed a vaccination mandate on specified groups in the health and disability sector.

⁴ LI 2021/325.

⁵ SL 2021/418.

[23] Spectrum relied on Items 7.3 and 7.4 in Part 7 in Schedule 2 of the Order, as having imposed a vaccination mandate on Ms Kecer's CSWR role:

- (a) Item 7.3 covered "Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided."
- (b) Item 7.4 covered "care and support workers".

[24] This first definition of a "care and support worker" in clause 4 of the Order, that applied from 11.59pm on 25 October 2021 until 11.58pm on 6 November 2021, stated:⁶

Care and support worker means a person employed or engaged to carry out work that includes going to the home or place of residence of another person (not being the home or place of residence of a family member) to provide care and support services.

[25] The first definition applied during Spectrum's initial consultation with Ms Kecer., which meant it was necessary and appropriate for Spectrum to have raised the effect of the Order with Ms Kecer.

[26] However, a second amended definition of "care and support worker" came into effect at 11.59pm on 6 November 2021. This second amended definition stated:⁷

Care and support worker means a person employed or engaged to provide care and support services within a home or place of residence.

[27] It was this second broader definition of "care and support worker" that applied when Ms Kecer was given two weeks' verbal notice on 23 November 2021 and this second definition remained in effect until her employment ended on 21 December 2021.

[28] The definition of "care and support services" that came into effect on 25 October 2021⁸ remained the same for both the first and second definitions of "care and support worker".

[29] The clause 4 definition in the Order of "care and support services" stated:

Services funded by Ministry of Health, a DHB, or ACC and provided to a person for the purpose of –

⁶ Clause 4 of Amendment No 3.

⁷ Clause 7(2) in the Amendment Order.

⁸ Amendment No 3 (LI 2021/325).

- (a) assisting the person to continue to live in the person's home or in the community (such as personal care and household management services;
- (b) [...]
- (c) If the person has a disability, assisting the person to work in the community.

[30] The definition of “care and support services” recognised that a range of services that could be provided to support the person receiving them not just to maximise their level of participation in everyday life, but to also support them to live in their home or in the community.⁹

What is Ms Kecer claiming?

[31] There was a lack of clarity about what exactly Ms Kecer was claiming. A close examination of the various matters she has raised throughout the Authority's process was therefore required.

The SoP information

[32] Ms Kecer's SoP stated she had raised her personal grievance claims with Spectrum by email on 28 October 2021.

The CMC information

[33] During the case management conference (CMC) held on 19 November 2025, Ms Kecer's advocate changed that position and instead said Ms Kecer relied solely on the email she had sent to Ms Reddy on 22 November 2021 as having raised her personal grievance claims.

Ms Kecer's witness statement

[34] Ms Kecer's witness statement claimed she had raised written personal grievance claims with Spectrum on 20 and 28 October and on 5, 12 and 22 November 2021 and had also verbally raised a personal grievance claim during the Teams meeting on 23 November 2021.

⁹ *CSN v Royal District Nursing Service New Zealand Ltd* [2022] NZEmpC 123, at [80].

Ms Kecer's oral evidence

[35] When giving her oral evidence during the IM, Ms Kecer said she had not raised any personal grievances during the 23 November 2021 Teams meeting and that she only relied on the email dated 22 November 2021 to have raised her personal grievance claim. Ms Kecer also said she was not pursuing a dismissal grievance.

Ms Kecer's submissions

[36] Ms Kecer's advocate verbally confirmed at the conclusion of the evidence during the IM that Ms Kecer was not pursuing a dismissal grievance claim and that was confirmed in the submissions she lodged.

[37] Ms Kecer's written submissions lodged after the IM changed the two alleged breaches of good faith claim that had been identified prior to the IM, namely:

- (a) Spectrum had attempted to coerce or threaten Ms Kecer into being vaccinated, as stated in the SoP.
- (b) Spectrum had failed to properly consult Ms Kecer about the Order, as stated in her memorandum dated 12 November 2025.

[38] This 12 November 2025 memorandum had been lodged at the Authority's request prior to the CMC because it was not clear from the SoP what claims Ms Kecer wanted the Authority to determine, or whether the Authority had jurisdiction over the claims she wanted to pursue.

[39] It was therefore surprising that the two previously identified alleged breaches of good faith had morphed into multiple new alleged breaches of good faith which had been raised for the first time in Ms Kecer's submissions lodged after the IM. These new breach of good faith allegations/intended claims were as follows:

- (a) Ms Kecer did not have a vaccination clause in her employment agreement so Spectrum had to get a written variation from her if it wanted her to be vaccinated. This was also the relied on for one of Ms Kecer's breach of contract claim, which for the first time was put forward in her submissions as also amounting to an alleged breach of good faith claim.
- (b) Spectrum could not dismiss Ms Kecer unless she had agreed to a contract variation. Again, this was another of Ms Kecer's breach of contract claims

which she put forward in her submissions for the first time as also giving rise to a new breach of good faith claim.

- (c) Spectrum had to compensate Ms Kecer if it was going to dismiss her. This was an entirely new breach of good faith claim raised for the first time in submissions.
- (d) Spectrum had to either apply for an exemption for Ms Kecer (a claim she had previously withdrawn on 12 November 2025) or negotiate with her to end her agreement. This was a new breach of good faith claim that appeared for the first time in submissions. It appeared to be based on the mistaken assumption that Spectrum could not dismiss Ms Kecer unless she had agreed to end her employment.
- (e) Spectrum's failure to pay Ms Kecer an "exit package" was a breach of good faith. The first time this claim was made was in Ms Kecer's submissions.

[40] Ms Kecer's advocate in her written submissions said s 113(1) of the Act did not apply to any of Ms Kecer's claims because redundancy became "payable on dismissal". This was the first time a redundancy situation and/or a redundancy payment had been claimed by Ms Kecer.

[41] Ms Kecer's advocate submitted that Spectrum breached the HSWA because it "never went to and failed to go to any of the workplaces Ms Kecer worked at to test for itself if the workplaces themselves were hazardous".

[42] Ms Kecer's submissions said Spectrum did not implement the Order correctly which had disadvantaged her and that she had raised a disadvantage grievance about how Spectrum "was handling the hazard that was supposed to be existing in the workplace". Ms Kecer also submitted that Spectrum was "on notice by the letter [which was an email] dated 22 November 2021 that they needed to do due diligence in their workplaces".

[43] Ms Kecer's dismissal was said to have been a "disciplinary dismissal" which amounted to "disciplinary action" against her. This 'disciplinary dismissal' claim was raised for the first time in submissions.

[44] Ms Kecer also submitted that Spectrum, as the PBCU, failed to carry out a "risk assessment" under s 33AB of the Response Act which came into force on 26 November 2021, using the assessment tool prescribed by the Regulations in accordance with s 33AA of the Response Act. This was another new claim raised for the first time in submissions.

[45] Ms Kecer also submitted that Schedule 3A of the Act, which also came into force on 26 November 2021, meant she did not need to be vaccinated because it provided for her to be medically examined or tested instead of being vaccinated.

Issues to be determined

[46] It was initially agreed the disputed jurisdiction issues would be the subject of an in-person IM in January 2026. However, during the course of this IM all aspects of Ms Kecer's case (as they were known to be at that time) were investigated by the Authority. Ms Kecer's submissions also covered all of her claims, including new claims which were not recorded in the SoP or identified in the 12 November 2025 memorandum.

[47] The Authority believed it was able to form a final view about all these matters, which it considered would be the most timely and cost effective way of resolving all employment relationship problems between these parties. That approach intended to bring closure to the Authority proceedings, with the exception of costs.

[48] Accordingly, the following issues have been determined so these proceedings can be brought to completion:

- (a) Was Ms Kecer's role covered by the Order?
- (b) Did the Order require Ms Kecer to be vaccinated to continue doing her usual CSWR role?
- (c) Did Schedule 3A of the Act permit Ms Kecer to undergo medical examinations and/or rapid antigen testing instead of being vaccinated?
- (d) Did s 33AA and/or s 33AB of the Response Act require Spectrum to carry out a "risk assessment" of Ms Kecer's CSWR role?
- (e) Was Spectrum legally required to apply under clause 12A of the Order for an exemption from vaccination Ms Kecer?
- (f) Did Spectrum breach its good faith obligations to Ms Kecer?
- (g) Did Spectrum breach its obligation under the HSWA to provide Ms Kecer with a safe workplace?
- (h) Did Spectrum breach Ms Kecer's employment agreement?
- (i) Was Ms Kecer's dismissal a disciplinary dismissal?

- (j) Was Ms Kecer made redundant?
- (k) Was Ms Kecer legally entitled to an “exit package”, a “redundancy payment” and/or other “compensation”?
- (l) Does the Authority have jurisdiction over any personal grievance claims?
- (m) What if any claims can Ms Kecer pursue?
- (n) What costs and disbursements should the successful party be awarded?

Was Ms Kecer’s role covered by the Order?

Ambit of the Order

[49] From 11.59pm on 14 July 2021 the stated purpose in clause 3 of the Order was to require “certain work to be carried out by affected persons who are vaccinated.” Clause 7 of the Order imposed a duty on an “affected person” not to carry out “certain work” unless they were “vaccinated”, as defined in clause 4 of the Order.

Relevant definitions

[50] The following definitions in clause 4 of the Order are relevant to Ms Kecer:

- (a) “certain work”, in relation to an affected person, meant paid or unpaid work that the affected person carried out in respect of a group specified in Schedule 2 of the Order.
- (b) An “affected person” meant “a person who belongs to a group (or whose work would cause them to belong to a group)”.
- (c) A “group” meant “a group of affected persons specified in the second column of an item of the table set out in Schedule 2” of the Order.
- (d) Item 7.3 in the table set out in Schedule 2 of the Order specified:

Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided
- (e) Item 7.4 in the table set out in Schedule 2 specified “Care and support workers”.
- (f) “certified provider” was defined as a person “certified under section 26(1) of the Health and Disability Services (Safety) Act 2001 to provide health care services of any kind”.

- (g) “health care services” had the same meaning as in section 4(1) of the Health and Disability Services (Safety) Act 2001 (the HDSS Act).

[51] The HDSS Act defined the relevant terms as follows:

- (a) “health care services” means services that are hospital care, residential disability care, rest home care, or **specified health or disability services.**” (emphasis added)
- (b) “health care services of any kind” means services that are hospital care of any kind, residential disability care of any kind, rest home care of any kind, or specified health or disability services of any kind.”
- (c) “specified health or disability services”, meant services of any kind declared under section 7 to be services to which the HDSS Act applied. This included the services in s 5 of the HDSS Act.
- (d) “health or disability services” as defined in s 5 included “**services provided to people with disabilities [...] for their care or support or to promote their independence;** (emphasis added)
- (e) “specified health or disability services” pursuant to s 7 could be extended and declared by Order in Council.

Analysis

[52] The Employment Court in *Young v Port of Tauranga Ltd* said a “broad and precautionary approach” was appropriate when assessing what was covered by the Order.¹⁰ The Court also said in *GF v Comptroller, NZ Customs Service* that given what the Order was intended to achieve, if there was ambiguity a broader construction was to be preferred.¹¹

[53] There was no dispute that Spectrum is a certified provider under s 26(1) of the HDSS Act, as per the Ministry of health certification that was produced to the Authority.

[54] Ms Kecer’s CSWR role fell within the definition in s 5 of the HDSS Act of “health or disability services” because it was specifically created to provide “care or support” services to “people with disabilities [...] to promote their independence”. That is also exactly what Ms Kecer’s job required her to do.

¹⁰ *Young v Ports of Tauranga* [2025] NZEmpC 2, at [38].

¹¹ *GF v Comptroller, NZ Customs Service* [2023] NZEmpC 101, at [170].

[55] In terms of Item 7.3 in Part 7 of Schedule 2 of the Order, Ms Kecer was employed by a certified provider [Spectrum] to carry out work at the premises [being the residential homes of clients, vehicles used to transport clients and at the community facilities the clients attended] where health care services are provided [to clients Spectrum was contracted to support].

[56] In terms of Item 7.4 in Part 2 of Schedule 2 of the Order:

- (a) The title of Ms Kecer's role "Care and Support Worker – Residential" expressly stated that she was a "care and support worker".
- (b) Spectrum's "Community Support Worker (CSW) – Practical Responsibilities" document set out the responsibilities of that role. This included providing general assistance, home management, care and support to a group of people with disabilities living in the community ...".
- (c) The CSW Practical Responsibilities document recorded "work typically occurs inside in private homes ...".
- (d) Ms Kecer was paid as per the CEA in accordance with the CSW pay scale.
- (e) Ms Kecer worked under a "Home Support Agreement" dated September 2018 which set out the contracted "home support services" Spectrum provide the clients Ms Kecer was employed to work with.
- (f) Ms Kecer in her witness statement acknowledged her role involved her working at people's private homes giving home care, assisting with household duties and personal care. She also said she sometimes drove clients in her own car to appointments.
- (g) Ms Kecer's CSWR role required her to have close contact with potentially vulnerable clients.

[57] The evidence established Ms Kecer's CSWR role fell within Items 7.3 and/or 7.4 in Part 7 of Schedule 2 of the Order.

[58] Accordingly, Ms Kecer's CSWR role was within the Part 7 "group in the health and disability sector" of workers who had to be vaccinated, making her an "affected person" under the clause 4 definition in the Order. Because Ms Kecer's CSWR role belonged to a group specified in Items 7.3 and 7.4 in the table set out in Schedule 2 of the Order, she was covered by the vaccination mandate.

First definition of “care and support worker”

[59] The definition of “care and support worker” that applied to Ms Kecer on 26 October 2021 (which was the date Spectrum advised her the Government imposed mandatory vaccination dates had been changed) was the definition in clause 4 of the Amendment No 3 that came into effect at 11.59pm on 25 October 2021, namely;

Care and support worker means a person employed or engaged to carry out work that includes going to the home or place of residence of another person (not being the home or place of residence of a family member) to provide care and support services.

[60] It was therefore necessary and appropriate for Spectrum to consult with Ms Kecer about the effect the Order had on her CSWR role, on her personally and potentially on her ongoing employment. That fact Spectrum did so could not amount to a breach of any contractual or statutory obligations, so any such claims Ms Kecer may have made, or wanted to make, about that could not succeed.

Second definition of “care and support worker”

[61] The definition of a care and a support worker was widened by a subsequent government amendment that took effect in accordance with clause 7(2) of the Amendment Order which came into effect at 11.59pm on 6 November 2021. This second amended definition stated:¹²

care and support worker means a person employed or engaged to provide care and support services within a home or place of residence.

[62] Workers who are employed or engaged by certified providers and carry out work at the premises at which “health care services”, as defined in s 4(1) of the HDSS Act, are provided. As defined by sections 5 and 7 of the HDSS Act, “health care services” included services provided to people with disabilities to promote their care or support or to promote their independence. That was exactly what Ms Kecer was employed to provide to Spectrum’s clients.

¹² Amendment Order (SL 2021/358).

[63] As stated in clause 3 of the Order, as at 20 November 2021, the purpose of the Order was to require “certain work to be carried out by affected persons who are vaccinated” to prevent or limit the risk of COVID-19 spreading.

[64] Ms Kecer’s CSWR role required her to do “certain work”, so she was an “affected person” because she belonged to the groups in Items 7.3 and 7.4 of Part 7 in Schedule 2 of the Order. Specifically, the following clause 4 definitions of the Order applied to Ms Kecer:

- (a) “certain work”, in relation to an affected person, means work that the affected person carries out (whether paid or unpaid) in respect of a group specified in Schedule 2”.
- (b) An “affected person” meant “a person who belongs to a group (or whose work would cause them to belong to a group)”.
- (c) A “group” meant “a group of affected persons specified in the second column of an item of the table set out in Schedule 2”.

[65] Item 7.3 of Schedule 2 in its second column specified:

Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided.

[66] Item 7.4 of Schedule 2 in its second column specified “care and support workers”.

[67] Accordingly, Ms Kecer’s CSWR role was covered by both Items 7.3 and 7.4 of Schedule 2 of the Order. Spectrum and Ms Kecer were therefore legally obliged to comply with the vaccination mandate in the Order.

[68] Even if that interpretation was wrong, the evidence established that Spectrum had a genuine belief, based on reasonable grounds that Ms Kecer’s CSWR role was covered, which was justified. Ms Kecer never explained why her CSWR role did not fall within Part 7 of Schedule 2 of the Order.

Did the Order require Ms Kecer to be vaccinated to continue doing her usual CSWR?

[69] Spectrum is a “certified provider”, as per clause 4 of the Order. Ms Kecer was “a care and support worker” as per s 7(2) of Amendment Order Ms Kecer was a worker who was carrying out “certain work” that had been specified in relation to workers in the health and disability sector.

[70] Ms Kecer's CSWR role fell within clauses 7.3 and/or 7.4 in Part 7 of Schedule 2 of the Order. She was therefore an "affected person" as defined in clause 4 of the Order. Accordingly, clause 8 of the Amendment Order applied to Ms Kecer from 11.59pm on 7 November 2021, which imposed a duty on her (as an affected person) not to carry out "certain work" (meaning her CSWR role) unless she was vaccinated or "an exempt person."

[71] Clause 8(1) of the Order prohibited Spectrum from allowing an affected person (such as Ms Kecer) from carrying out health care services (as defined in clause 4 of the Order, which included her CSWR role), unless she was vaccinated.

[72] Accordingly, any claim Ms Kecer has made, or wanted to make, that the Order did not apply to her, or that she did to have to be vaccinated to be able to continue doing her normal CSWR role, or that Spectrum breached its contractual and/or statutory obligation by not permitting her to continue undertaking her usual CSWR role unless she was vaccinated, could not succeed.

Did Schedule 3A of the Act permit Ms Kecer to undergo medical examinations and/or rapid antigen testing instead of being vaccinated?

[73] Ms Kecer's claim that Schedule 3A of the Act, which came into effect on 26 November 2021, meant she could elect to undergo medical examinations and/or rapid antigen testing instead of being vaccinated as mandated by the Order could not succeed. Clause 7 of the Amendment Order prevented Ms Kecer from electing those alternative options because the Order required her to either had to be vaccinated or exempt from vaccination, and Ms Kecer was neither.

[74] Schedule 3A of the Act:

- (a) Imposed a new right on an employee to take reasonable paid time off work to be vaccinated.
- (b) Introduced new notice requirements that applied to an employee who was unable to meet the vaccination duty imposed under the Response Act with at least four weeks' notice or their contractual notice if that was more favourable.
- (c) Required an employer to have ensured "reasonable alternatives" that could have avoided the employee's termination had been exhausted.

- (d) Provided for notice to be cancelled if the employee became vaccinated or was otherwise permitted to perform their work under a COVID-19 Order before the notice period had ended, unless that would “unreasonably disrupt” the employer’s business.

[75] Spectrum met the obligations imposed by Schedule 3A of the Act. It consulted with Ms Kecer, it considered whether she could continue to work as an unvaccinated employee, it considered alternatives to dismissal but there were not any, and it extended her original notice to four weeks. Ms Kecer was given multiple opportunities to explain why her CSWR role was not covered by the Order, if that was her view. However, she never did so.

[76] None of these actions by Spectrum breached its contractual or statutory obligations to Ms Kecer, so any such claims she had made, or wanted to make, to that effect could not succeed.

Did s 33AA and/or s 33AB of the Response Act require Spectrum to carry out a “risk assessment” of Ms Kecer’s role?

[77] Ms Kecer’s CSWR role was covered by the Order. Accordingly, the assessment tool created by the Regulations, as provided for by s 33AA of the Response Act, was not relevant to Ms Kecer because the government had already identified her CSWR as being covered by the mandatory vaccination requirements of the Order.

[78] Ms Kecer’s reliance on s 33AB of the Response Act was misguided. Her claim that Spectrum could not dismiss her without having first conducted a “risk assessment” under s 33AB of the Response Act, using the assessment tool in s 33AA of the Response Act could not succeed.

[79] Use of the assessment tool was not mandatory. As expressly stated in clause 5 of the Regulations, this tool was intended to help a PCBU ascertain whether it was reasonable for it to require workers not to carry out work for the PCBU unless they were vaccinated.

[80] As stated in s 33AA(2) of the Response Act, the tool was offered as a means of assessing the risk and adverse effects of COVID-19 in respect of ensuring the health and safety of workers and workplaces to support the public health response to COVID-19. Spectrum could not use the assessment tool to override the Order, contrary to what Ms Kecer appears to have suggested.

[81] Section 33AB of the Response Act gave PCBUs the option of conducting a work assessment in order to assist them meet the duty of care they had under s 36 of the HSWA. The assessment tool could assist them with that exercise. Section 33AB(2) of the Response Act expressly stated use of the tool was discretionary. Clause 5 of the Regulations also made it clear use of the assessment tool was discretionary

[82] While the assessment tool could have been relevant to Spectrum's consideration of whether it should implement its own vaccination policy, that was overtake by the implementation of the Order.

[83] If Ms Kecer is alleging that she could not have been dismissed for being unvaccinated without Spectrum first undertaking a "risk assessment" of her work using the vaccinations assessment tool, then that claim could not succeed.

[84] If Ms Kecer was claiming that the Order only applied if the vaccinations assessment tool in clause 7 of the Regulations had also assessed that she had to be vaccinated, then that claim also could not succeed.

[85] Neither Ms Kecer or Spectrum could use the vaccination assessment tool to circumvent or undermine the obligations imposed on them by the Order. It would have been an offence for Spectrum to have allowed Ms Kecer to undertake her usual CSWR role without being vaccinated. It also could have been an offence by Ms Kecer to have done so while unvaccinated.

Was Spectrum legally required to apply for a clause 12A in the Order exemption from vaccination for Ms Kecer?

[86] Because Ms Kecer in her SoP said Spectrum did not "explore" applying for an exemption under clause 12A of the Order, the Authority has determined whether Spectrum had any liability for that. Although that was withdrawn as a claim on 12 November 2025 (prior to the IM) it was raised again in the submissions Ms Kecer's advocate lodged on 30 January 2026, after the IM.

[87] The Authority wanted to bring closure to that potential issue, so it has made the following findings:

- (a) There was no contractual, statutory or other legal obligation or requirement on Spectrum to have applied for (or "explored") an exemption from vaccination for Ms Kecer under clause 12A of the Order.

- (b) Ms Kecer did not ask Spectrum to apply for an exemption for her.
- (c) The requirements for an exemption to be granted by the Minister pursuant to clause 12A of the Order did not exist regarding Ms Kecer's situation.
- (d) There was no evidence or other information that an exemption from vaccination for Ms Kecer was necessary or desirable to prevent significant disruption to health services, which was what s 12A(4)(a)(ii)(B) of the Order required.
- (e) The health care services Ms Kecer provided in her CSWR role to Spectrum's clients continued without "significant disruption" after her dismissal, which established an exemption was not "necessary or desirable", as required by s 12A(4)(a) of the Order.

[88] To the extent Ms Kecer has made, or intends to make, a claim against Spectrum for not applying for (or "exploring") an exemption for her, that claim could not succeed.

[89] The evidence did not establish the criteria for an exemption under clause 12A of the Order applied to Ms Kecer and/or her CWSR role. Even if there were to have been a situation which could have potentially supported an exemption application to the Minister under clause 12A(1) of the Order, Spectrum was not legally required to have sought such an exemption.

[90] Ms Kecer never raised the possibility of an exemption before her employment ended. No grounds for an exemption pursuant to clause 12A(4)(a)(ii) of the Order were raised at the time and none have been suggested to date. Ms Kecer's claim that Spectrum had to apply for an exemption for her not supported by either the evidence or applicable legislation.

Did Spectrum breach its good faith obligations to Ms Kecer?

[91] Ms Kecer's claim that Spectrum breached its good faith obligations to her because it 'attempted to coerce her to become vaccinated' did not succeed. There was no coercion by Spectrum, which left it up to Ms Kecer to decide whether she wanted to be vaccinated or not. Spectrum also respected Ms Kecer's choice to not be vaccinated.

[92] In terms of the reference in the SoP to "in good faith, my employer could have applied for an exemption for me, but did not", if that was intended to be a breach of good faith claim, it could not succeed. Ms Kecer did not meet the exemption requirements, and Spectrum was not legally required to apply for an exemption, particularly when Ms Kecer had not asked it to.

[93] In terms of the new alleged breaches of good faith that were raised for the first time in Ms Kecer's advocate's submissions that were lodged after the IM, these are not before the Authority, because they were not recorded in the SoP.

[94] These new alleged breach of good faith claims were also misguided and were not established on the evidence. However, they have been specifically addressed by the Authority in this determination, so that it was clear to the parties that all matters placed before the Authority at any time in its process have been dealt with.

[95] In particular, it was not a breach of Spectrum's duty of good faith to dismiss Ms Kecer without paying her "compensation". There was no contractual or statutory right to compensation. Nor had Ms Kecer sought to be paid compensation before her employment ended.

[96] Ms Kecer's claim that good faith required Spectrum to "negotiate" with her to end her employment could not succeed. Spectrum was required to "consult" with Ms Kecer about the effect of the Order on her CSWR role, on her personally and on her ongoing employment. The evidence established that appropriate consultation had occurred. If Ms Kecer was claiming that Spectrum could not end her employment unless she had agreed (after negotiations) to it ending, then that claim could not succeed.

[97] Ms Kecer's new alleged breach of good faith claims that "an exit package was owed" and/or that Spectrum had to provide her with an "exit package" could not succeed. Ms Kecer had no contractual or statutory entitlement to an exit package. Nor did she request that before her employment ended.

[98] Ms Kecer's potential breach of good faith claim that she was entitled to a "redundancy payment" on her dismissal could not succeed. She was not made redundant. Ms Kecer had no contractual or statutory right to redundancy compensation, so it could not be a breach of good faith for Spectrum not to have paid her redundancy compensation.

[99] Ms Kecer's claim that Spectrum breached the good faith requirements imposed by s 61(3)(g) of the HSWA could not succeed. The Authority does not have jurisdiction over alleged breaches of the HSAW, which are dealt with by WorkSafe New Zealand.

[100] To the extent that Ms Kecer was claiming that Spectrum breached good faith by not providing a safe workplace (because it said she had to be vaccinated to be able to continue

doing her normal CSWR role), then that claim could not succeed. Spectrum had to comply with the Order and would have committed an infringement offence if it had allowed Ms Kecer to do her usual CSWR role while unvaccinated, as stated by s 17C(1) and (3) of the Response Act.

[101] Ms Kecer has withdrawn her damages claim for an alleged breach of good faith and she did not claim a penalty in her SoP for a breach of good faith. Even if Ms Kecer had included a penalty claim in her SoP, it would have been barred by s 135(5) of the Act.

[102] Section 135(5) of the Act required a penalty action to be commenced within 12 months of the date the breach became known (or ought to have been known) to the person bringing the penalty action. This imposed a non-extendable 12-month limitation period in relation to any penalty claims. Commencement occurs when the penalty action is lodged with the Authority.

[103] Any breach of good faith had to have occurred while Ms Kecer was still employed, and her employment ended on 21 December 2021. Her SoP was lodged on 21 November 2024, but it did not contain any penalty claims. Even if it had, the Authority did not have jurisdiction over any penalty claims because they were not commenced within the 12 months' time-limit.

Did Spectrum breach its obligation under the HSWA to provide Ms Kecer with a safe workplace?

[104] Clause 3 of the Order stated that the purpose of mandatory vaccination was to “limit the risk of, or outbreak or spread of COVID-19...”.¹³ Section 4 of the Response Act recorded that its purpose was to support a public health response to COVID-19. Spectrum was legally required to comply with the COVID-19 legislation the Government had implemented.

[105] Ms Kecer's claim that Spectrum breached the HSWA could not succeed. The Authority did not have jurisdiction over alleged breaches of the HSWA.

[106] To the extent that Ms Kecer's alleged breach of the HSWA claim could potentially be fashioned into a new claim the Authority has jurisdiction over, the Authority has responded to all of the different matters Ms Kecer has raised about that to date. Specifically, the Authority finds that Spectrum's implementation of, and/or compliance with, the Order:

- (a) Did not create an unsafe workplace.

¹³ Clause 3 of the Order and s 4 of the Response Act.

- (b) Did not cause the workplace to become unsafe.
- (c) Did not unlawfully expose Ms Kecer to a “workplace hazard”, as she has alleged.
- (d) Did not “fail to protect Ms Kecer from the vaccine hazard”.
- (e) Did not breach its Health and Safety Policy.
- (f) Did not breach any of its health and safety obligations regarding Ms Kecer.
- (g) Was legally required, meaning that in accordance with s 8 of the Order it could not have allowed Ms Kecer to undertake her usual CSWR role because she was not vaccinated.

[107] Accordingly, any claims Ms Kecer has made or wanted to make, involving claims that Spectrum had not met its health and safety obligations could not succeed.

Did Spectrum breach Ms Kecer’s employment agreement?

[108] Ms Kecer claimed that Spectrum:

- (a) Breached clauses 4, 46, 59 and 61 of her employment agreement
- (b) Unilaterally varied her employment agreement by “a unilateral decision ... to terminate without cause”.
- (c) Could not dismiss her unless she had agreed in writing to vary her employment agreement.
- (d) Breached her employment agreement because it failed to comply with its good faith obligations to her.
- (e) Breached her employment agreement by failing to provide a safe workplace.

[109] None of these claims could succeed.

Clauses in the employment agreement

[110] Clause 4 of Ms Kecer’s employment agreement was a variation clause, that did not apply to Ms Kecer’s situation. The Order did not require her employment agreement to be varied.

[111] Clause 46 of Ms Kecer's employment agreement was an occupational health and safety clause, which required compliance with all relevant legislation. Compliance with the Order was not a breach of this clause.

[112] Clause 59 of the employment agreement dealt with termination and required two weeks' notice or pay in lieu. Spectrum did not breach this clause because Ms Kecer received more than two weeks' notice of termination. Furthermore, Ms Kecer was not terminated or suspended without cause, as she alleged in the 12 November 2025 memorandum, so any such claims could not have succeeded.

[113] Clause 61 of the employment agreement was not relevant as it set out the Disciplinary Policy. Ms Kecer was not subject to any disciplinary action, so Spectrum could not have breached this clause.

Did a unilateral variation occur and/or was a written variation required?

[114] Spectrum's compliance with the Order was mandatory, so that was not a unilateral variation of her employment agreement. Spectrum did not unilaterally "terminate without cause".

[115] The Order did not require Ms Kecer to enter into a written variation of her employment agreement. Her employment could justifiably be ended if she was unable to continue doing her CSWR role while unvaccinated and there were no alternatives or redeployment opportunities available or her. That is what occurred.

[116] These claims could not succeed.

Alleged breach of good faith (again)

[117] Ms Kecer's claim that Spectrum breached her employment agreement because it breached the duty of good faith in s 4 of the Act could not succeed. The evidence established Spectrum had met its good faith obligations to Ms Kecer.

[118] Spectrum provided Ms Kecer with access to relevant information about the Order and its potential impact on her, her CSWR role and her ongoing employment. Spectrum repeatedly invited Ms Kecer to explain why she believed her CSWR role was not covered by the Order, (if she believed that) but she failed to do so.

[119] Spectrum consulted with Ms Kecer individually about her personal situation. It considered and responded to her feedback. It gave her a chance to respond to its preliminary view that dismissal was appropriate because there were no redeployment opportunities available before it made a final decision.

[120] Any claims by Ms Kecer that Spectrum failed to properly consult with her about the effect of the Order could not succeed.

Failure to provide a safe workplace (again)

[121] Ms Kecer's claim that Spectrum breached its implied obligation to provide her with a safe workplace because it "never went to any of the workplaces [she] worked at to test for themselves if the workplaces themselves were hazardous" could not succeed. There was no obligation for Spectrum to have done so.

[122] The purpose of the Order was to provide a safe workplace for as many people as possible, and to protect the health and safety of the inherently vulnerable clients Spectrum (and Ms Kecer) supported. Spectrum was entitled to rely on the Order to have met its health and safety obligations to its clients and employees. Spectrum did not have to undertake additional site visits to establish whether vaccination was appropriate if the role was covered by the Order.

Was Ms Kecer's dismissal a disciplinary dismissal?

[123] Ms Kecer's claim, raised for the first time in her submissions, that she was dismissed for a disciplinary reason could not succeed. There was no disciplinary process, no disciplinary allegations, no disciplinary action and no disciplinary outcome. Ms Kecer's dismissal was not a "disciplinary dismissal", so this claim could not succeed.

[124] Ms Kecer knew why she was dismissed because that was communicated to her during the Teams meeting held on 23 November 2021. The written dismissal letter Spectrum sent her also explained why she had been dismissed.

[125] Spectrum advised Ms Kever in the dismissal letter that the Order meant she could not continue to do her CSWR role as an unvaccinated employee, changes could not be made to that role that would have enabled her to avoid the vaccination mandate in the Order, she did not have an exemption, and there were no alternatives available (so that option had been exhausted) and there were no other roles she could be redeployed into.

[126] Ms Kecer knew that, because these were all matters she had been consulted about before she was dismissed. She had also been advised her notice could be withdrawn if she became vaccinated before her employment had ended.

Was Ms Kecer made redundant?

[127] Ms Kecer's claim, made for the first time in her submissions, that she had been made redundant could not succeed for the same reasons stated above. There was no redundancy process, Ms Kecer's role had not been disestablished and she knew she had not been made redundant. This intended new claim could not succeed.

Was Ms Kecer legally entitled to an "exit package", a "redundancy payment" and/or other "compensation"?

[128] Ms Kecer's claims, made for the first time in her submissions, that she was entitled to an "exit package" and/or other "compensation", including a "redundancy payment" was without a legal or factual foundation, so could not succeed.

[129] Ms Kecer never raised these matters during the consultation process or while she was still employed. Nor did she try to negotiate any such payments with Spectrum before her employment ended.

[130] Ms Kecer had no statutory or contractual entitlement to any such payments. Accordingly, Ms Kecer's claims (as recorded in her submissions) that failure to pay her an exit package, compensation and/or a redundancy payment breached some sort of unspecified legal obligation Spectrum had to her could not succeed.

Does the Authority have jurisdiction over any personal grievance claims?

Relevant law

[131] Section 114 of the Act deals with the raising of personal grievances. Section 114(7)(b) of the Act required Ms Kecer to have raised her dismissal and disadvantage personal grievance claims within 90-days of these actions occurring or coming to her attention, whichever was the later.

[132] Ms Kecer's employment ended on 21 December 2021 so the latest date she could have potentially raised a personal grievance claim was 90-days after that.

[133] Section 114(6) prohibits a personal grievance action being commenced in the Authority more than three years after the date it was raised with the employer. An action is “commenced in the Authority” when a validated statement of problem is lodged with the Authority.

[134] Ms Kecer’s SoP was lodged with the Authority on 21 November 2024, so she cannot pursue any personal grievance claims that she may have raised with Spectrum prior to 21 November 2021.

Potential unjustified dismissal grievance?

[135] Ms Kecer never raised a dismissal grievance with Spectrum in the 90 days after her employment had ended on 21 December 2021. If Ms Kecer had not withdrawn her dismissal grievance, the Authority would have determined it had no jurisdiction over it.

What personal grievance claim did Ms Kecer say she had raised with Spectrum?

[136] Section 1 of Ms Kecer’s SoP, which asks an applicant to identify the problem or matter they wanted the Authority to resolve, stated (among other things):

I raised grievances about the lack of proper consultation and safety of the control that my employer was proposing to apply to me in the course of my employment. ...

[137] Ms Kecer’s reference to “the control” in this context was to the COVID-19 vaccine.

[138] In paragraph 61 of her SoP Ms Kecer stated:

I advised my employer that should my choice [not to be vaccinated] not be respected, and they elect to disadvantage my employment by linking my employment with participating in a trial for an experimental treatment that does not guarantee the prevention of transmission of COVID-19, then **I may** exercise my right to file a personal grievance. (emphasis added)

[139] This referred to a six page letter dated 28 October 2021 Ms Kecer had sent Spectrum’s Executive Board. This letter did not appear to have raised a disadvantage grievance claim as it was couched in future terms about what would happen if Ms Kecer’s decision to not be vaccinated was not respected. Her decision about that was respected, so no grievance could have arisen.

[140] However, to the extent this letter dated 28 October 2021 could have potentially raised a disadvantage grievance, any such claim was barred by s 114(6) of the Act because it was not “commenced with the Authority” within three years of 28 October 2021.

12 November 2025 memorandum

[141] In the memorandum Ms Kecer’s advocate lodged on 12 November 2025, in response to the Authority’s request for clarification of the issues she wanted investigated and determined, the unjustified disadvantage grievance of “failure to consult” about the Order was said to have been raised in Ms Kecer’s letter dated 28 October 2021 to Spectrum’s Board.

[142] The memorandum was contradictory because it had also stated that Ms Kecer “will rely solely on the letter written to the respondent on 22 November 2021 to raise her personal grievances ...”. This reference to letter should have read “email”, as there was only one emailed communication that occurred on that date, not an email and a letter. However, no mention was made of an alleged failure to consult in Ms Kecer’s email dated 22 November 2021.

[143] The only other reference to “disadvantage” in that memorandum stated Ms Kecer claimed “disadvantage of an unsafe workplace as a personal grievance.” That meant the 22 November 2021 email was relied on as having raised an “unsafe workplace” grievance claim with Spectrum. However, the Authority noted that Ms Kecer had not been in the workplace (and had not attended work or done any work) since she went on leave in June 2021. Factually, that disadvantage claim (even if it had been properly raised) could not succeed.

[144] The 12 November 2025 memorandum also said that “testing and vaccination are not steps that can be required of workers in an employment setting”... which was said to have “relevance in the personal grievance claim question of what could a ‘good employer’ in this case a PCBU have done in that situation?”. However, no mention was made of this claim in Ms Kecer’s email dated 22 November 2021.

[145] The 12 November 2025 memorandum said the failure to provide a safe workplace claim was based on Spectrum not protecting Ms Kecer from the hazard of the vaccine. Such a claim was misguided, and cannot have given rise to a valid personal grievance claim that the Authority had jurisdiction over.

[146] Spectrum left the decision about whether or not to be vaccinated up to Ms Kecer to make for herself. Spectrum did not coerce, threaten or pressure her to become vaccinated.

Spectrum had no contractual, statutory or common law obligation to “protect” Ms Kecer from the vaccine, so any such claims could not succeed.

[147] It was not clear if this part of Ms Kecer’s submissions was referring to a specific personal grievance claim, or if so what type of grievance what grievance this was referring to, or when it was raised. However, the 12 November 2025 memorandum had recorded Ms Kecer was pursuing a dismissal grievance, so presumably it must have related to that. If so, then the dismissal grievance was subsequently withdrawn.

[148] Even if it was intended to be some other sort of grievance, that was misguided and had no prospect of success. As repeatedly stated, mandatory vaccination for Ms Kecer’s CSWR role was imposed by the Order and Spectrum was required to comply with that. To put it into the language used in Ms Kecer’s memorandum, a ‘good employer’ had to comply with its legal obligations.

Ms Kecer’s evidence

[149] Ms Kecer in her witness statement claimed that personal grievances were raised by her “on 20 & 28 October and 5, 12 & 22 November 2021 and verbally on 23 November 2021 in a meeting with management.”

[150] That evidence contradicted what was stated in the 12 November 2025 memorandum and what the Authority had been told during the CMC held on 19 November 2025. It also contradicted what Ms Kecer said when she gave her oral evidence at the IM.

[151] During the IM, Ms Kecer said she only raised a disadvantage grievance in her email dated 22 November 2021. Ms Kecer specifically told the Authority that she did not raise any personal grievance claims during the Teams meeting that was held on 23 November 2021.

[152] When asked to explain the discrepancies in her evidence, Ms Kecer said the other references to her having raised grievances in her witness statement had been drafted by her advocate. When asked which version the Authority should rely on, the witness statement or what she said during her evidence, Ms Kecer said her oral evidence to the Authority during the IM should be preferred.

Communications prior to 20 November 2021

[153] The Authority did not consider that Ms Kecer’s written communications dated 20 and 28 October or 5 and 12 November 2021 either individually or collectively had raised a disadvantage grievance claim (or for that matter any other grievance claims). These communications had not adequately communicated to Spectrum that Ms Kecer had a complaint that could amount to a disadvantage grievance.

[154] Ms Kecer’s complaints in these communications were about the lack of safety of the vaccine, its ineffectiveness to prevent COVID-19 and the unlawfulness of the Order which were not issues that Spectrum was able to resolve.

[155] Even if Ms Kecer had raised a personal grievance before 21 November 2021, it would have been barred by s114(6) of the Act that stated:

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.

[156] The only possible communication that would not have been barred by s 114(6) of the Act was the email Ms Kecer sent on 22 November 2021.

Examination of the 22 November 2021 email

[157] Ms Kecer’s email dated 22 November 2021 asked for an agenda for the Teams meeting that was going to be held the next day, which Spectrum provided to her. She also:

- (a) Said Spectrum was taking disciplinary action against her (it was not).
- (b) Claimed Spectrum had failed its duty of care under the HSWA (it had not).
- (c) Raised safety concerns about the vaccine and said Spectrum had to “assess the risks and benefits” of the vaccine and its “efficacy and safety in its long-term effects ...(it did not).
- (d) Sought medical and scientific evidence from Spectrum (which it was up to the Government to provide).
- (e) Cited sections of the HSWA and stated, “the vaccines are untested, uncertified and therefore unsafe” (Spectrum was entitled to rely on the Government’s safety information).

[158] No disadvantage grievance was validly raised in Ms Kecer's email dated 22 November 2021 because none of the matters she referred to could have been resolved by Spectrum.

[159] Even if the matters raised in the 22 November 2021 email were capable of having raised a disadvantage grievance, Ms Kecer said this email was simply a repetition of the same concerns she had raised in her previous communications with Spectrum. To that extent, restating the same concerns at a later date did not avoid the s 114(6) in the Act bar on commencing a personal grievance action more than three years after it had been raised with the employer because repetition cannot restart the three-year time frame.

[160] Even if Ms Kecer had raised a personal grievance with Spectrum, what she complained about was the requirement she had to become vaccinated to be able to continue doing her usual CSWR role. That complaint was not capable of giving rise to an unjustified disadvantage to her employment because the action Ms Kecer was complaining about was not one that Spectrum was responsible for.

[161] The New Zealand Government was responsible for the Order. The Authority cases of *Robinson v Cromwell College Board of Trustees*; *Bastion v Cashmere Primary Te Pae Kereru School Board* and *Joynt v Accessible Properties* determined that an employer would not have unjustifiably disadvantaged an employee merely because the employer was complying with its legal obligations, such as those imposed by the Order and the Response Act.¹⁴

[162] Because Spectrum was legally required to comply with the Order, it could not allow Ms Kecer to work within the homes and places of residence of its clients. The Authority did not have jurisdiction to investigate a disadvantage grievance relating to coverage of the Order in circumstances where:

- (a) The Order was lawful.
- (b) Spectrum was covered by the Order in relation to Ms Kecer's role.
- (c) Spectrum was legally required to comply with the Order.
- (d) Ms Kecer's complaint was that she wanted to be able to continue doing her usual CSWR role but as an unvaccinated employee.

¹⁴ *Robinson v Cromwell College Board of Trustees* [2026] NZERA 11; *Bastion v Cashmere Primary Te Pae Kereru School Board* [2025] NZERA 841; and *Joynt v Accessible Properties* [2026] NZERA 235.

¹⁴ *Robinson*, above n14.

[163] Even if a complaint that was capable of amounting to a disadvantage grievance had been raised in the email dated 22 November 2021, that was not a new grievance, but (according to Ms Kecer's own evidence) had merely repeated her previous complaints.

What if any claims can Ms Kecer pursue in the Authority?

[164] There are no claims Ms Kecer can pursue in the Authority.

[165] The lack of clarity (despite the Authority's best endeavours) of Ms Kecer's claims, the ambiguous and changing nature of her evidence and the fact new matters have been raised for the first time in submissions made this matter challenging to investigate. That has resulted in this comprehensive determination to ensure everything has been addressed so there are no unresolved claims/issues, and the parties can have closure in terms of the Authority's investigation process.

[166] Spectrum's dispute regarding the Authority's jurisdiction over Ms Kecer's claims was successful.

[167] In so far as Ms Kecer had raised any personal grievance claims prior to 22 November 2021, the Authority did not have jurisdiction over these because she did not commence her action in the Authority within three years of supposedly having raised her grievance.

[168] Ms Kecer did not raise any personal grievance claims within the 90-day time-limit required by s 114(1) of the Act, specifically:

- (a) The content of Ms Kecer's letter dated 22 November 2021 was not capable of raising a disadvantage grievance because it took issue with the Order, which Spectrum was legally required to comply with and about the safety and efficacy of the vaccine, which Spectrum had no power to address.
- (b) To the extent the 22 November 2021 letter did raise complaints that Spectrum could have addressed, this was merely restating what Ms Kecer said she had previously raised with Spectrum. It was therefore barred by s 114(6) of the Act because she did not commence a personal grievance about such matters within three years of any such grievance having arisen and merely repeating the same complaints/concerns at a later date cannot avoid the three year time-bar.

[169] Ms Kecer's breach of good faith, and breach of contract/employment agreement claims were without merit, so could not succeed.

[170] Spectrum complied with its good faith obligations. Spectrum also cannot have breached Ms Kecer's employment agreement merely by observing the legal obligations the Order had imposed on it. The Order also did not require a signed variation to be made to the applicable CEA and/or Ms Kecer's individual terms and conditions of employment for it to be effective.

[171] Likewise, Spectrum's implementation of the Order did not breach:

- (a) Any implied health and safety obligations to Ms Kecer.
- (b) Any express or implied terms in her employment agreement.
- (c) Its good faith obligations in s 4 of the Act.
- (d) Its obligation to consult with her about the effect the Order had on her role and on her ongoing employment.

[172] The new claims Ms Kecer made for the first time in her submissions were not before the Authority, were misguided, and had no prospect of success. She was not dismissed for a disciplinary reason, or made redundant and she was not entitled to any extra payments.

[173] Spectrum complied with its consultation obligations, so any claims by Ms Kecer that it failed to properly consult with her about the Order could not succeed. Ms Kecer was given repeated opportunities to explain why she believed the Order did not apply to her CSWR role, (had she believed that at the material time), so the fact she did not do so suggested she was aware that it did.

[174] This determination has therefore concluded all matters Ms Kecer has brought to the Authority's attention, with the exception of costs. There was no jurisdiction over her disadvantage grievance claim(s). Her other claims which are properly before the Authority could not succeed. Ms Kecer's potential new claims, raised for the first time in her submissions, were without merit, so also could not succeed.

What costs and disbursements should be awarded?

[175] Spectrum as the successful party is entitled to a contribution towards its actual legal costs. The parties should attempt to agree on costs, based on the current notional daily tariff of \$4,500.00 for this one day investigation meeting.

[176] If agreement on costs cannot be reached, Spectrum has 28 days within which to lodge its costs submissions. Ms Kecer then has 14 days within which to lodge her costs

submissions. If a costs determination is sought, the parties are invited to identify any factors they say should result in the notional daily tariff of \$4,500.00 being adjusted.

Rachel Larmer
Member of the Employment Relations Authority