

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 285
3339820 & 3339860

BETWEEN	DILPREET KAUR Applicant 3339820
AND	AMANDA GILBERT Applicant 3339860
AND	SUMMERSET GROUP HOLDINGS LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Hayley Johnson, advocate for the Applicants Greg Cain, counsel for the Respondent
Investigation Meeting:	3 February 2026 in Napier
Submissions received:	Up to 11 February 2026 from Applicant Up to 18 February 2026 from Respondent
Determination:	7 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicants in these two matters, Ms Dilpreet Kaur, and Ms Amanda Gilbert, worked for the respondent (Summerset) as caregivers at one of its Napier sites.

[2] At the end of May 2024, Summerset commenced a redundancy process and advised staff that it had fewer residents than expected, and the point had now been reached that it needed to reduce staffing numbers to match occupancy rates. I received evidence from the applicants' manager, Mr Marcel Philippi, and his manager, Ms

Jacquiline Cowan, that the site had been overstaffed in relation to the number of residents for some time. Summerset had attempted to find solutions including by not hiring replacement staff when existing staff left, and by asking and encouraging staff to work at its other site, however, overstaffing persisted.

[3] Accordingly, in late May 2024, Summerset put forward a proposal to reduce the number of caregivers by 13. After initial feedback and other staff changes, this was reduced down to 9. Both applicants were impacted.

[4] They met with Mr Philippi and Ms Cowan on 17 June 2024, and were advised that based on Summerset's selection criteria, they had scored the lowest, or almost the lowest, of all the caregivers, and that as a result, they would be selected for redundancy.

[5] Both applicants, with the assistance of a union representative, then requested that they be paid out their 4 weeks' notice plus 4 weeks redundancy compensation immediately, so that they would be free to search for other jobs. This was agreed to by Summerset, and their employment came to an end as of that day.

[6] Both applicants agreed that in late June, after they had left Summerset, their manager had contacted them to offer them further work, but that they had turned down this offer, because it was not the same shift pattern they had previously worked, and/or because it was fewer hours per week.

[7] In early September 2024, both applicants were advised by others who remained working at Summerset, that Summerset had hired new staff, including at least one other full-time caregiver to work the morning shift that had been worked by the applicants. They sought advice, and on 19 September 2024, filed a personal grievance claim for unjustified dismissal, on the basis that their redundancy was not genuine, as Summerset had promptly hired new staff into their old roles.

[8] Summerset resists that claim, and says that its staffing levels were driven by resident numbers and resident care needs, and that it was unforeseeable that there would be a need for new staff after a prolonged period of persistent overstaffing. It further says that it actively offered both applicants the work it did have even after the ending of their employment, but that both applicants declined what work was offered as it was not full time and was not for the morning shift. Summerset denies that it re-hired full-time caregivers into the morning shift, which was the role held by the applicants.

[9] Summerset also states that the applicants' did not raise their personal grievance claim within the statutory 90-day timeframe. It says that their last day at work, and of employment, was 17 June 2024, which was the date that they were paid out their notice in lieu, and their redundancy compensation at their request. It says that the last possible date on which they could have raised a personal grievance was therefore 15 September 2024, and by raising a grievance on 19 September, they are out of time to do so and cannot proceed with their claim.

[10] The applicants say that this is not correct, and that they only realised that their redundancy was not genuine when they learned, on about 9 September 2024, that Summerset was hiring new caregivers into the roles that they had previously occupied, and that by raising a grievance on 19 September, only 10 days later, they were well within time.

[11] I note for completeness that the applicants have not applied for leave to raise their grievance out of time, and Summerset does not claim that any prejudice would occur to it as a result of the personal grievance claims being raised 4 days late.

The Authority's investigation

[12] For the Authority's investigation written affidavits were lodged by Ms Kaur, Ms Gilbert, Ms Cowan, and Mr Philippi. As the applicants' attended certain key meetings together, their claims were consolidated for the purpose of hearing. It was originally intended that the matter would be determined "on the papers" but after receiving the affidavits, it became apparent that there were a number of unresolved factual disputes between the parties. The matter was set down for hearing, and further witness statements and documents were provided. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

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

The issues

[14] As set out in the Authority's minute of 15 July 2025, the issue to be determined is whether the applicants were within time to raise their personal grievance claims. Given the underlying facts, the critical issue to be determined is whether a breach occurred during the applicants' employment but only came to their notice at a later time when Summerset was recruiting for the same caregiver positions that the applicants had recently been made redundant from.

[15] As indicated in that minute, and after having the benefit of hearing the evidence, I am of the view that determining if and when a breach occurred, and if it did, when it came to the notice of the applicants, is inextricably intertwined with the substantive question of whether the applicants' redundancies were genuine.

Background & Discussion

[16] Ms Kaur and Ms Gilbert were employed by Summerset as caregivers, prior to being made redundant following a restructuring process.

[17] Both gave evidence that they had participated in the restructuring process. They were represented at the time their employment ended. With the assistance of their union representative both Ms Kaur and Ms Gilbert had negotiated the ending of their employment by reason of redundancy and had received payment of notice in lieu. Both gave evidence that they believed this would give them the best chance to be able to immediately commence looking for new employment.

[18] No particular dispute arises from this, and both Ms Kaur and Ms Gilbert explained that, at that time, they had reluctantly accepted their redundancy. After speaking with Mr Philippi in particular, they had understood that the reason for their employment ending was an insufficiency of work caused by low resident numbers. They both said that at the time, they believed that this was true, and that their redundancies were for a genuine reason. Accordingly, they raised no personal grievance following the ending of their employment on 17 June 2024.

[19] Ms Kaur said that at the end of August or beginning of September 2024, she saw Summerset advertising jobs on a recruitment website called "Indeed", and she was very upset to see that they were advertising her job again so soon after her termination, and without offering her more work.

[20] A copy of the job advert Ms Kaur relied on was provided in evidence. It indicated that Summerset was hiring full-time caregivers. Although Summerset had two sites in Napier, the copy of the advert did not specify which site the advert was for, and Ms Kaur had previously refused to work at the other site even after being asked. The job advert did not specify which shift Summerset needed caregivers to work, and Ms Kaur had previously told her manager Mr Philippi both before and after the ending of her employment that she would only work the morning shift, and was not willing or able to work the afternoon shift, night shifts, or swing shifts.

[21] Following questioning, Ms Kaur suggested that she had “clicked through” the advert, which was online, and was able to look at further job details which were not shown in the copy provided to the Authority. She said that she remembered that the job advertised was a full-time morning shift at her preferred site, which was what she had been told by her friend Ms Lovepreet Kaur who remained working at Summerset.

[22] Ms Gilbert said that she believed that Summerset was advertising her previous role and had hired for it based on what she had been told by Ms Lovepreet Kaur and by the wife of a resident at the facility who texted her around this time. Ms Gilbert said that she had been told that Summerset had hired new caregivers for what she was told was “her old role”. Upon questioning, she clarified that this meant the morning shift.

[23] No written statement or other evidence was provided by the wife of the resident who spoke with Ms Gilbert, or by Ms Lovepreet Kaur. No contemporaneous written records were provided which might shed further light on what Ms Gilbert believed to have occurred.

[24] Summerset disputes that it hired new caregiving staff to fill the roles previously held by Ms Kaur and Ms Gilbert. Mr Philippi in particular gave evidence on this point. He is the Care Centre Manager at the Te Awa facility where Ms Kaur and Ms Gilbert previously worked.

[25] Mr Philippi’s evidence was that there were no full-time morning shift roles available at the site where the applicants had previously worked. Mr Philippi said that he next hired someone to work a full-time morning shift at the Te Awa site in January 2025, which was over 6 months after the applicants ended their employment. He gave evidence that following the ending of the applicant’s employment, he had not hired and

had not needed to hire, any new staff to fill those roles. He said that it was not until six or seven months later that he had needed to hire more staff into similar positions at the Te Awa site, and this was because there were by that time, more residents and different residents in that facility.

[26] Mr Philippi said that he had been well aware of Ms Kaur and Ms Gilbert, and that they had been skilled and trained caregivers. Accordingly, he offered them further work at Summerset in July and August 2024. He said that it would have been preferable in his view if Summerset had been able to retain their services. However, after he had spoken to each of them, which he did separately, they both declined to undertake the work he was able to offer them.

[27] Mr Philippi explained that he had offered both applicants part time morning shift work and full time night shift and swing shift work, but that both of them had separately told him that this was not acceptable to them for personal reasons, and they were only willing to accept full time morning shift work at their original site. Therefore, they declined to accept further work even though this was offered to them on multiple occasions in around August and September 2024, at the same time Ms Kaur says she saw a job advert from Summerset.

[28] Ms Kaur and Ms Gilbert accepted this was so. Their evidence was clear that they wanted full time morning shift work, at only 1 of Summerset's Hawkes Bay sites, its Te Awa site. They were not willing to accept part time work, work that was on the afternoon shift, night shift, or swing shifts, or work at the other site which was further for them to travel. Accordingly, they declined offers of further work made to them by Mr Philippi as it did not fit their requirements. The evidence of Ms Kaur, Ms Gilbert, and Mr Philippi on this point is the same, and they shared an understanding of what had occurred.

[29] Both Ms Kaur and Ms Gilbert gave evidence that they had heard from others in early September that Summerset (they were not able to say who at Summerset) had hired caregivers to work the full-time morning shift at their preferred site. They were not able to say who was hired, or who did the hiring. The job advert in evidence from this time did not contain these details. Nevertheless, Ms Kaur and Ms Gilbert raised a personal grievance with Summerset on the basis of what they had been told, alleging

that their redundancy was not genuine, as new staff had been hired to replace them within a matter of weeks.

[30] The evidence from Mr Philippi was that this was not the case. His evidence was that he had done the hiring of new staff, but that it was not to replace Ms Kaur or Ms Gilbert. Instead, it was work that was not acceptable to either of them, and in fact, he had spoken with them both about this work prior, and they had declined to accept it.

[31] Turning now to consider what occurred, I am not persuaded on the evidence before me that Summerset hired new staff into the same roles previously performed by Ms Kaur and Ms Gilbert in August or September 2024.

[32] The advert relied on by Ms Kaur to show that this occurred does not say what she claims it said. After some prompting at the investigation meeting, Ms Kaur went further in her in-person evidence than in her written evidence and stated that she remembered being able to 'click through' the advert and that she had done this and seen the missing details needed to support her case. However, she had not taken any copies of this further detail, and it was not in evidence.

[33] I do not find this overly persuasive in light of her other evidence, which was that she only became concerned about the prospect that Summerset was hiring new staff after hearing this from Ms Lovepreet Kaur.

[34] I find it more likely than not that both Ms Gilbert and Ms Kaur formed the view that Summerset had hired at least one if not more full time caregivers for the morning shift at their previous place of work, based on what they were told by others rather than what they saw in the job advert, which was not specific. Neither of these people gave evidence at the investigation meeting as to what they knew or what they told the applicants.

[35] The question then becomes, is there evidence of a breach of obligation by Summerset that occurred during the applicants' employment but which they only became aware of at a later date? On the balance of probabilities, I find there is insufficient evidence of a breach of obligation by Summerset. The applicants have not been able to demonstrate it was more likely that not that Summerset hired new staff to replace them after making them redundant. Both Summerset and the applicants agree and accept that staff were hired into other positions which the applicants declined to

perform. What the applicants have not been able to establish is that Summerset was hiring into the same positions that they themselves occupied. This is denied by Mr Philippi who had responsibility for this. I find it is more likely than not that Summerset hired new staff to do work that the applicants knew about but had declined to do.

[36] The evidence is that Summerset made efforts to redeploy both applicants, and/or offer them new work as it became available, even after the termination of their employment. This is consistent with Summerset's duty of good faith and even though this work was not acceptable to the applicants, it does not suggest the redundancy process was not genuine. Further, the evidence is that both applicants knew that Summerset had other positions available at an early stage, as this was discussed during the redundancy process, as well as after it. Although this may not have been what the applicants would have preferred, they accepted redundancy and reconfirmed their decision by turning down other offers of work during the statutory 90-day period, prior to raising personal grievance claims outside the statutory 90-day period.

[37] In all these circumstances, I decline to allow those personal grievance claims to proceed. As will be clear from the above, this is on the basis that not only am I not persuaded that there was insufficient evidence that came to the applicants' attention after the expiry of the 90-day period, but also because I am not persuaded that there was sufficient evidence of a breach to support such a claim.

[38] No further orders are made.

Costs

[39] Costs are reserved. I note that the investigation meeting for these matters was concluded by 3.30pm at the latest. The parties are encouraged to resolve any issue of costs between themselves.

[40] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent 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 the applicants will 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.

[41] 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.¹

Claire English
Member of the Employment Relations Authority

¹ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1