

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 289
3338820

BETWEEN	CINNAMON JANE BIDDLE Applicant
AND	CLEVEDON PRESBYTERIAN TRADING AS CLEVEDON KIDZ Respondent

Member of Authority:	Nicola Craig
Representatives:	The applicant in person Mark Donovan, counsel for the respondent
Investigation Meeting:	On the papers
Submissions and other material received:	16 December 2025 and 10 February and 7 May 2026 from the applicant 5 and 13 February and 7 May 2026 from the respondent
Date of determination:	11 May 2026

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Cinnamon Jane Biddle (known as Cindy) worked for several years for Clevedon Presbyterian trading as Clevedon Kidz, an early childhood centre. Clevedon Presbyterian is a charitable organisation. Ms Biddle was initially an early childhood educator assistant and then completed an education degree and became a qualified teacher at the centre. In late 2021 Ms Biddle's employment was terminated as a result of not being vaccinated against Covid-19.

[2] Ms Biddle comes to the Authority arguing that she was unjustifiably dismissed. Clevedon Kidz responds that Ms Biddle did not raise a personal grievance within the 90-day period required in s 114 of the Employment Relations Act 2000 (the Act), as well as denying that it unjustifiably dismissed her in any event.

Issues and the Authority's process

[3] This determination examines the 90-day issue and also what I take as an informal application by Ms Biddle for leave to raise her grievance out of time.¹

[4] The parties agreed that these issues should be dealt with on a preliminary basis on the papers. Affidavits from Ms Biddle and Clevedon Kidz's former operations manager Greg Shaw were received. Both parties also provided submissions.

[5] Ms Biddle proposed a further mediation but Clevedon Kidz was reluctant to proceed with that before the preliminary determination was issued. No direction to mediation was made at that point.

[6] In preparation of the determination it became apparent that a relevant letter was not with the Authority. A follow up resulted in both parties providing it promptly.

[7] As permitted by s 174E of the Act this determination has not recorded everything received from the parties but has stated findings of fact and law and expressed conclusions.

Impact of Covid

[8] As well as earlier implications, in 2021 Clevedon Kidz was impacted by the Covid pandemic, as described by Mr Shaw, by:

- Closing entirely during the Covid-19 Alert Level 4 lockdown from 17 August 2021;
- Operating in "bubbles" from 22 September 2021;
- Ensuring staff had evidence of a negative test or exemption to keep working on site by 26 October 2021, in response to the COVID-19 Public Health Response (Required Testing) Order 2020; and

¹ Employment Relations Act 2000 (the Act), s 114(4)(a).

- Ensuring all staff were vaccinated when carrying out work at the centres from 16 November 2021, in response to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order).

Communications with Ms Biddle

[9] On 29 October 2021 Mr Shaw emails Ms Biddle a letter explaining its understanding of the effect of the Vaccination Order – including its view that she is covered by the order and it would be unlawful for her to continue her work at the centre with children present from 16 November 2021 if she has not received her first dose of the vaccine by 15 November 2021. A Ministry of Education information sheet is attached.

[10] Having received no response, Mr Shaw writes again on 1 November 2021, reiterating the effect of the 15 November 2021 deadline. Additional information is attached. He requests to meet with Ms Biddle on 3 November 2021.

[11] Ms Biddle responds on 2 November 2021, requesting more information and indicating she does not think her role requires vaccination.

[12] Mr Shaw replies the same day noting her right not to be vaccinated but indicating the Vaccination Order prevents her employment at the centre if she remains unvaccinated. He advises there are no alternative duties.

[13] On 3 November 2021 Ms Biddle takes a day of sick leave so Mr Shaw proposes rescheduling their meeting to the next day at 2pm. Ms Biddle responds on 4 November requesting additional time before meeting. Mr Shaw agrees, proposing an 8 November meeting.

[14] On 8 November Mr Shaw, the centre manager, Ms Biddle and her support person (a colleague) meet. The impact of the Vaccination Order is discussed. From the centre's perspective no alternative work arrangements are identified by anyone. Ms Biddle advises she does not wish to disclose her vaccination status and the centre confirms she will be regarded as unvaccinated. Ms Biddle says she will advise Clevedon Kidz between close of business on 15 November and opening of business on 16 November if she has received her first vaccination.

[15] Mr Shaw writes summarising the discussions and seeking urgent confirmation of her vaccination status by email.

[16] Ms Biddle responds to Mr Shaw on 16 November 2021 asking for further information about several matters including the provision of her employment agreement requiring her to be vaccinated, what consultation and risk assessment have occurred and any studies determining the safety and efficacy of the Pfizer vaccine.

[17] In that letter Ms Biddle advises she has not received her first vaccination. She includes the following statement:

I reserve the right to take a personal grievance in this matter, or take any other legal action that may be available to me.

[18] She states that she remains willing and available to work and any attempt to stand her down “is under duress”.

[19] Ms Biddle seeks to be placed on annual holidays from 16 November 2021.

[20] On 17 November Mr Shaw on behalf of Clevedon Kidz writes to Ms Biddle, advising that in the absence of evidence of first vaccination or any available alternatives to dismissal, notice of termination is given. Her last day of employment is to be 30 November 2021.

[21] The next day Mr Shaw follows up regarding the annual holidays request - the notice of termination takes precedence over Ms Biddle’s request to be paid out her holidays. He reiterates that her employment will end at the conclusion of her two week notice period on 30 November 2021. He does add that if she becomes vaccinated during her notice period, she would be allowed back to work.

[22] Clevedon Kidz does not receive any subsequent advice that Ms Biddle has been vaccinated and she does not return to work.

[23] Her employment finishes at the close of 30 November 2021.

[24] In April 2022 however, the centre manager, messages Ms Biddle, asking her if “now that some of the “crazy” is over” whether she would be interested in some work. Ms Biddle does not respond, telling the Authority she felt the offer did not address the harm caused to her and also if the “crazy” returned, the organisation would likely dismiss her again.

[25] There was then no contact between Ms Biddle and Clevedon Kidz between April 2022 and a little before November 2024.

[26] In her November 2024 statement of problem Ms Biddle refers to having “recently” requested copies of her employment agreements from the centre manager and raising the possibility of attending mediation. The centre manager replies that she does not consider that appropriate.

[27] Ms Biddle’s statement of problem is lodged in the Authority on 15 November 2024, well outside the 90-day period from the end of her employment.

The raising of grievances

[28] Employees are required to raise grievances with their employer within 90 days of the grievances occurring or coming to the notice of the employee, whichever is later.² In *Chief Executive of Manukau Institute of Technology v Zivaljevic* Judge Holden summarised the principles:

...A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. ... [t]he totality of communications ...might also constitute raising the grievance.

... The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee’s communications complied with s 114(2) ... by conveying the substance of the complaint to the employer.

...The employer must know what it is responding to; it must be given sufficient information to address the grievance.³

Ms Biddle’s mentions of a grievance

[29] Her statement of problem describes Ms Biddle making it clear to Mr Shaw and the centre manager that she was “considering a personal grievance”. Looking at the timeline above that was likely at the 8 November 2021 meeting.

[30] At this point Ms Biddle had not been dismissed, or even given notice of dismissal, and could be seen as raising a grievance in anticipation of either event actually occurring.⁴

² The Act, s 114.

³ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36] – [38] (footnotes omitted).

⁴ *Underhill v Coca-Cola Amatil (NZ) Ltd* [2017] NZEmpC 117 at [57].

[31] A short while later, Ms Biddle's 16 November 2021 letter refers to her reserving her right to take a personal grievance or other legal action.

[32] In her affidavit Ms Biddle recognises that her "expressing" her "grievance did not meet the precise legal standard." However, an objective assessment is needed, rather than relying solely on what either party considered the communications to mean.

Grievance not raised in time

[33] Ms Biddle's position is that she had a mistaken belief that her grievance was raised, seeing herself as having expressed her sense of injustice and her desire to challenge the decision. She describes only becoming aware that her letter did not meet the precise legal standard after she had lodged her statement of problem, presumably on receiving Clevedon Kidz's reply that the grievance was not raised in time.

[34] Ms Biddle's verbal and written messages suffer from several difficulties – being before dismissal itself occurred, not indicating a type of grievance and not stating that a grievance was actually being raised, rather than just contemplated or rights reserved.

[35] Cases such as *Creedy v Commissioner of Police* clearly establish that a grievance cannot be raised in advance, that is before the grievance occurs.⁵ Ms Biddle's references to considering a personal grievance and reserving her right to bring one both come before notice of termination is given, let alone her employment finishing.

[36] Both those actions do not actually amount to taking the action of raising a grievance. Indicating a possible future action is seen as different from actually raising one, and not enough to meet the test in 114 of the Act.

[37] An employee cannot effectively reserve their right to raise a grievance outside the 90-day period.⁶

[38] There is another difficulty that Ms Biddle did not identify what type of personal grievance she was considering raising or reserving her rights regarding. An employer must have sufficient information regarding what its employee wants it to address in an

⁵ *Creedy v Commissioner of Police* [2006] ERNZ 517 at [28]-[30]. Other aspects overturned on appeal, but not this point (*Commissioner of Police v Creedy* [2007] NZCA 311 and *Creedy v Commissioner of Police* [2008] NZSC 31).

⁶ *Marx v Southern Cross Campus Board of Trustees* [2016] NZEmpC 71 at [16] – [17].

attempt to resolve the matter.⁷ In the absence of a wider body of communications, references simply to “personal grievance” by themselves generally do not do that.

[39] The absence of responses from Clevedon Kidz indicting that these were not a satisfactory raising of a grievance, does not assist Ms Biddle in this instance.

[40] I conclude Ms Biddle did not raise a grievance within the 90 days as required by s 114 of the Act. Clevedon Kidz has not consented to her raising a grievance out of time.

Exceptional circumstances requirements

[41] The Authority may grant leave under s 114(4) of the Act for a grievance to be raised out of time if the delay in raising it was occasioned by exceptional circumstances and the Authority considers it just to do so.

[42] Under s 115 three example exceptional circumstances are described, of which the only one seeming potentially applicable to Ms Biddle’s situation is:

- (a) where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114(1).

Circumstances in this case

[43] Although there is evidence from Ms Biddle and her doctor which supports her being affected by the impact of her dismissal, she faces a problem that the exceptional circumstances must endure over not just the initial 90-day period but through the entire period of delay in raising the grievance.⁸

[44] Ms Biddle’s circumstances in the period from early December 2021 until November 2024 when her application was lodged in the Authority, are not fully detailed. This is a period covering over 2 years and 11 months.

[45] Ms Biddle describes her dismissal as coming as a profound shock to her. She had just completed her Bachelor of Early Childhood Education and was dedicated to building her career. Being dismissed was devastating, severely and immediately

⁷ *Creedy v Commissioner of Police* [2006] NZEmpC 43.

⁸ *Cronin-Lampe v Board of Trustees of Melville High School* [2023] NZEmpC 144.

impacting on her. She expresses feeling a deep sense of shame, failure and betrayal, having considered the Clevedon Kidz team as her whanau. She had worked there for about six years.

[46] In the 90-day period Ms Biddle expresses not being in a fit state to understand or act upon her legal rights - she lacked concentration and found it difficult to make clear decisions or seek professional advice.

[47] She refers to financial pressure to pay her mortgage, her student debt and basic living costs leading to further stress and distraction.

[48] Mr Shaw comments that based on his interactions with Ms Biddle, including their 8 November 2021 meeting and her letters of 1 and 16 November 2021, he always found her competent, focussed and composed. He did not find her letters the work of someone unable to “concentrate” or “make clear decisions”. He assesses them as technical and well-structured, as well as making specific demands for information including risk assessments, medical efficacy and legislative provisions. There is validity to his points but it is really the period after dismissal which needs to be the focus.

[49] Ms Biddle saw a local GP on 28 October 2025 who provided a medical certificate letter. The letter indicates the doctor has known Ms Biddle well for almost 30 years and continues:

In my opinion she was under significant stress around the time of the teacher’s mandate (NZ) from 15/11/21 as a result of the Covid Pandemic.

She was told that her job would be terminated on 31/11/2021 as she remained unvaccinated.

She was then given 90 days to lodge a personal grievance claim against this decision.

She was stressed as a result of knowing she was going to lose her job and the isolation required as she was unvaccinated. Therefore she did not make a claim within the required 90 days.

She remained without a job for the following 9 months and went into personal debt as a result.

[50] I accept that Ms Biddle’s dismissal had a negative impact on her. But was she so affected and traumatised by it that she was unable to properly consider raising a

grievance for the period? This is a demanding test with “very substantial injury” required.⁹ . It is not evident that that was the case. She had clearly been thinking about the possibility of a grievance before she was given notice. The period of almost three years is a long time to argue that the exceptional circumstances continued. Ms Biddle was able to find work, seemingly in early childhood work, around nine months after her dismissal. In the absence of sufficient ongoing illness or injury for the entire period, Ms Biddle has not established that there are exceptional circumstances warranting not raising her grievance for almost three years.

[51] For completeness I record that Ms Biddle’s employment agreement specifically identified that if an employment relationship problem is a personal grievance the employee must raise the problem with the employer “within 90 days of it occurring, or of the Employee first becoming aware of it”.¹⁰

If there were exceptional circumstances, considerations do not support granting leave

[52] Also, for the sake of completeness I go on to refer to evidence regarding whether, if ongoing exceptional circumstances were established, it would have been just to grant Ms Biddle leave.

[53] The delay in raising the grievance was over a very long period, almost as long as the limitation period for bring a grievance to the Authority after it is raised.¹¹

[54] Mr Shaw’s evidence is that the three-year delay in raising her personal grievance would cause significant prejudice to Clevedon Kidz if she is permitted to pursue her grievance out of time. It is now over four years since the events occurred with changes in staff and management. Especially, Mr Shaw is now no longer working for the organisation, rather he is living in Perth. He was however able to provide an affidavit.

[55] Mr Shaw’s evidence is that his recollection of events has naturally faded over time. He is thus also no longer able to easily reference operational records or consult with former colleagues. He considers that had the grievance been raised in late 2021 or early 2022 they could have addressed the matter while the events and relevant staff were still current.

⁹ *Telecom New Zealand Ltd v Morgan* [2004] 2 ERNZ.

¹⁰ Employment agreement, clause 34.

¹¹ The Act, s 114(6).

[56] These factors would weigh against it being just to grant leave.

Outcome and costs

[57] I conclude Ms Biddle did not raise her grievance in time and has not met the exceptional circumstances test – she is therefore not able to pursue her personal grievance.

[58] Clevedon Kidz has indicated that it seeks an order that its costs be reimbursed by Ms Biddle.

[59] Costs are reserved. The parties are encouraged to resolve the question of costs between themselves.

[60] Clevedon Kidz was successful in arguing that Ms Biddle should not be able to pursue a grievance against it. An investigation meeting was not required but affidavit evidence was provided. The starting point for a costs assessment is likely to be half the daily tariff of \$4,500 for a one day investigation meeting, being \$2,250.

[61] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Clevedon Kidz may lodge and serve a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ms Biddle then has 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.

Nicola Craig

Member of the Employment Relations Authority