

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 306  
3334900

BETWEEN                      JANICE CONNOR  
Applicant

AND                              MOUNT ALBERT GRAMMAR  
SCHOOL BOARD OF  
TRUSTEES  
Respondent

Member of Authority:        Jeremy Lynch

Representatives:             Erika Whittome and Liz Lambert, advocates for the  
Applicant  
Paul Robertson, counsel for the Respondent

Investigation Meeting:      On the papers

Submissions and Other  
Material Received:          26 September 2025, 3 December 2025, and 19 February  
2026 from the Applicant  
19 November 2025 and 16 December 2025 from the  
Respondent

Date of Determination:      18 May 2026

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Janice Connor was employed by the Mount Albert Grammar Board of Trustees (the Board) in the role of Careers Administrator, under an employment agreement dated 31 January 2018.

[2]     On 6 November 2021 the New Zealand government amended the Covid-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order) such that employees employed in the education sector were unable to work unless they were vaccinated against Covid-19.

[3] Ms Connor was not vaccinated, and as such was ultimately given four weeks' notice of her termination on 11 January 2022.

[4] Although she says in her amended statement of problem lodged on 1 September 2025, that she was "wrongly dismissed", Ms Connor does not claim a personal grievance for unjustified dismissal. She does however say that her employment was unjustifiably disadvantaged by the Board's actions in respect of events leading up to her dismissal, specifically regarding the requirement for her to be vaccinated. She says that a series of written communications with the Board is evidence that she raised a grievance within the statutory 90-day timeframe as required under the Employment Relations Act 2000 (the Act).

[5] Despite not expressly claiming unjustified dismissal in her statement of problem or in her affidavit, Ms Connor advances this as a claim in her submissions.

[6] The Board denies that Ms Connor was unjustifiably disadvantaged (or unjustifiably dismissed). The Board says the first occasion it became aware that Ms Connor was claiming she had a personal grievance was when it was served with her statement of problem in January 2024, approximately two years after the dismissal. The Board says that as this is well outside of the 90-day statutory time limit, Ms Connor has not validly raised any personal grievance.

[7] The Board does not consent to Ms Connor raising her personal grievance outside of the statutory 90-day time limit, and as such says that the Authority lacks jurisdiction to investigate Ms Connor's personal grievance claim.

[8] Ms Connor's amended statement of problem includes claims (inter alia) that the Board breached the provisions of the employment agreement, and the duty of good faith. However, this determination deals only with the preliminary jurisdictional issue of whether Ms Connor raised a personal grievance within the statutory 90-day timeframe.

### **The Authority's investigation**

[9] By consent, this preliminary issue is determined on the papers.

[10] The Authority has received information, including submissions and supporting affidavit evidence from the parties.

[11] Ms Connor lodged an affidavit sworn on 26 September 2025. Ms Connor also lodged closing submissions on this date.

[12] For the Board, an affidavit sworn on 20 November 2025 was lodged by Patrick Drumm, the Principal of Mt Albert Grammar. The Board lodged its submissions in accordance with timetable directions.

[13] Ms Connor lodged what she described as reply submissions on 3 December 2025. On 10 December 2025, the Board objected to the contents of Ms Connor's reply submissions, saying that they were not strictly submissions in reply, but instead raised significant new allegations and legal arguments, including a copy of an affidavit affirmed in February 2024, given as part of an unrelated proceeding and involving completely different parties. There can be no dispute that the information contained in this unrelated affidavit from February 2024 was not available to the Board during the period of Ms Connor's employment.

[14] Rather than lodging a redacted version of her reply submissions, leave was granted to the Board to lodge further submissions in response to Ms Connor's 3 December 2025 submissions. The Board's further submissions were lodged on 16 December 2025. Leave was granted for Ms Connor to lodge further reply submissions to the Board's December 2025 submissions, by 19 January 2026.

[15] Ms Connor's representative overlooked this deadline. In February 2026, Ms Connor lodged her further reply submissions, together with information provided by the Ministry of Education in response to a request made under the Official Information Act 1982.

[16] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[17] The Authority has carefully considered all the material provided.

### **Issues**

[18] The issues for determination in this application are:

- (a) whether within the statutory 90-day time period, Ms Connor raised her personal grievance for unjustified disadvantage (or unjustified dismissal)?
- (b) Whether either party should be required to contribute to the other's costs?

## **Background**

[19] Following further changes to the Vaccination Order, all employees carrying out work at registered schools who may have contact with students, or would be at the school at the same time as students, were required to have received their first dose of an approved Covid-19 vaccine by 15 November 2021.<sup>1</sup> In addition, under the Vaccination Order, the Board was required to notify its employees of their duty to be vaccinated,<sup>2</sup> and keep a register of its employees' vaccination status.<sup>3</sup>

[20] Despite Ms Connor's submission that this was a requirement of the Board's, this was in fact a requirement under the Vaccination Order, made by the Minister for Covid-19 Response.

[21] On 25 October 2021, the Board made a written request of Ms Connor to provide it with information as to her vaccination status.

[22] On 4 November 2021, Ms Connor provided a copy of a vaccination exemption, issued by a general practitioner (GP). Ms Connor says that her vaccination exemption met the requirements under the Vaccination Order in place at the time, and was therefore a valid exemption. Shortly after Ms Connor submitted her GP-issued vaccination exemption, the requirements of the Vaccination Order were changed so that only exemptions issued by the Director General of Health New Zealand were valid. Ms Connor did not provide such an exemption.

[23] There is no dispute that from mid November 2021, Ms Connor worked from home. She says she was able to fulfil the requirements of her role whilst working remotely. Ms Connor describes this period of working from home as being "locked out".

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<sup>1</sup> Covid-19 Public Health Response (Vaccination) Order 2021, cls 7 and 8, cl 9.1 of sch 2.

<sup>2</sup> Above n 1, at cl 10(2).

<sup>3</sup> Above n 1, at cl 11A(2).

[24] The Board wrote to Ms Connor on 8, 20 and 30 December 2021 about her vaccination status, the requirements under the Vaccination Order, and requested to meet with her.

[25] Ms Connor wrote to the Board on 8 December 2021 declining the request to meet.

[26] The Board wrote to Ms Connor again on 30 December 2021, inviting her to attend a Zoom meeting to be held on 3 January 2022. Ms Connor did not respond to this invitation to meet. Ms Connor says the proposed meeting time was outside of her working hours and therefore “was unacceptable to me as my personal time is just that – my personal time not to be coerced to interfere with my body...”.

[27] On 3 January 2022, the Board wrote to Ms Connor, offering “one final opportunity to meet” via a Zoom meeting to be held on 10 January 2022.

[28] On 5 January 2022, the Board’s external HR advisor wrote to Ms Connor, setting out the Board’s efforts to date to address with her, the requirements of the Vaccination Order. This email sets out:

As your position requires you to be at school when students and staff are at school, and engaging with the school’s students and other stakeholders, it is highly unlikely that other alternative work arrangements can be found for you. Working on line is not practical or appropriate. Accordingly, it is likely that your employment at MAGS will be terminated on notice.

[29] Ms Connor wrote to the Board on 10 January 2022. Her email is lengthy, but other than reiterating that she had submitted a vaccination exemption issued by her GP, there is little by way of direct response to the Board’s concerns as to her vaccination status and the requirements of the Vaccination Order.

[30] The following day, on 11 January 2022, the Board gave Ms Connor written notice of the decision to terminate her employment. The dismissal letter sets out that Ms Connor’s employment:

... is being terminated on the basis that you are not vaccinated, and you cannot carry out your work without being in breach of the Order. Your employment will be terminated on notice.

[31] Ms Connor responded to the notice of her termination by email, also on 11 January 2022. She wrote to the Board “Thank you for the attached letter... I have enjoyed my time at MAGS, and accept your decision including final pay arrangements”.

[32] In accordance with the Board's dismissal letter, Ms Connor's last day of employment was 14 January 2022, and she received payment in lieu of notice.

### **Relevant law**

[33] Section 114 of the Act provides that a personal grievance must be raised with the employer within a period of 90 days. The period begins with the date on which the action alleged to amount to the personal grievance occurred, or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised outside of the statutory 90-day timeframe.

[34] A grievance is raised with the employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.<sup>4</sup>

[35] In *Chief Executive of Manukau Institute of Technology v Zivaljevic*, Her Honour Judge Holden summarised the applicable principles for raising a personal grievance:<sup>5</sup>

[36] The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there have been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

[37] It does not matter what an employee intended his or her complaint to be, or preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act, and if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

[38] It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

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<sup>4</sup> Employment Relations Act 2000, s 114(2).

<sup>5</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36]-[38].

[36] Section 114(2) of the Act, and the issue of how a grievance is raised with an employer, were considered by the Employment Court in *Creedy v Commissioner of Police*:<sup>6</sup>

It is the notion of the employee wanting the employer to address the grievance that means it should be specified sufficiently to enable the employer to address it. So it is insufficient, and therefore not a raising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of personal grievance as, for example, unjustified disadvantage in employment... As the court determined in cases under the previous legislation, for an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular formula of words needs to be used. What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.

[37] In *Shaw v Bay of Plenty District Health Board*, the Court of Appeal observed that "... not every criticism of an employer or the culture within a workplace, will obviously constitute a personal grievance".<sup>7</sup>

[38] Under s 114(4) of the Act, the Authority has a discretion (after giving the employer an opportunity to be heard) to grant an employee leave to raise a personal grievance out of time, if it is satisfied that the delay in raising the grievance was occasioned by an exceptional circumstance, and considers it just to do so.

[39] The Board disputes all of Ms Connor's claims, and says that her personal grievance has not been raised within the statutory 90-day timeframe. The Board does not consent to Ms Connor's grievance being raised out of time.

[40] Ms Connor has not filed an application seeking leave to bring a grievance out of time under s 114(3) of the Act. Rather, Ms Connor's position is that her grievance has been raised within the statutory 90-day timeframe.

### **Ms Connor says her employment was disadvantaged**

[41] At its simplest, Ms Connor's personal grievance for unjustified action causing disadvantage to her employment, is based on the requirement for her to be vaccinated against Covid-19 so she could continue working at the school.

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<sup>6</sup> *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].

<sup>7</sup> *Shaw v Bay of Plenty District Health Board* [2022] NZCA 241 at [19].

[42] Ms Connor says her employment was unjustifiably disadvantaged by the Board's actions in respect of:

- (a) not accepting her GP-issued vaccination exemption;
- (b) the “stress of [the Board’s] ‘no-job no-job’ coercion which seriously took its toll on my mental well-being”;
- (c) the Board’s “demand to take a medicine [which] can only arise from a judicial judgement as a mandate”, and highlighting that the Board had failed to “supply a court verified copy of the judicial ruling in which the mandatory order derives from”;
- (d) potential breaches of the Privacy Act 2020 and the Bill of Rights Act 1990, as the Board does not have authority to access and store the private medical information of its employees;
- (e) being “coerced to take a vaccine with a safety report that was extremely concerning...”;
- (f) the Board’s failure to consult with her over significant change to her job (that is, the requirement to be vaccinated);
- (g) The Board’s failure to meet its obligations under the Health and Safety at Work Act 2015; and
- (h) the ongoing threat to her employment unless she agreed to be vaccinated.

[43] A significant issue for Ms Connor, is that the actions she complains of (largely concerning the requirement that she be vaccinated in order to continue working at the school), were not a requirement of the Board’s. Rather, this was a requirement of the New Zealand government, when it amended the Vaccination Order. By and large, the actions she complains of as being unjustified, are not actions for which the Board was responsible.

[44] The validity of the Vaccination Order has been tested by judicial review. The High Court has held the Vaccination Order was justified when it was implemented and remained justified for the period until it was revoked.<sup>8</sup> The lawfulness of the Vaccination Order was upheld by the Court of Appeal, also in the education sector.<sup>9</sup>

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<sup>8</sup> *NZDSOS Inc v Minister for Covid-19 Response* [2022] NZHC 716.

<sup>9</sup> *NZDSOS Inc v Minister for Covid-19 Response* [2022] NZCA 74.

[45] In this case, the vaccination Order clearly expressed that the Board “must not allow” employees covered by the Order to carry out work unless they were vaccinated against Covid-19 or exempt.

[46] It follows then, that the Board’s obligations under the Vaccination Order applied to Ms Connor. Ms Connor worked for an education service covered by the Vaccination Order. Her work was covered by the Vaccination Order, and she was in an affected person under the Vaccination Order. The Board could not allow Ms Connor to work unless she was vaccinated against Covid-19 (or exempt – in accordance with the prescribed exemption process, administered by the Ministry of Health).

[47] In respect of Ms Connor, there is no issue as to the Board having to justify its actions. The Board was obliged to comply with the Vaccination Order, and it did so.

[48] The Authority has previously determined that it does not have jurisdiction to determine if an employer’s actions were unjustified, when the actions complained of are those of the employer complying with the vaccination Order.<sup>10</sup>

[49] To the extent that Ms Connor’s personal grievance is based upon the implementation of the vaccination Order being unjustified because she viewed the safety of the relevant Covid 19 vaccination as questionable, is not something which the Authority is able to investigate and determine. The Vaccination Order provided for specific vaccines. The Order applied to the parties, and all the Board did was to meet its statutory obligations.

[50] Despite not having jurisdiction to determine whether the Board’s actions were unjustified merely because it acted in compliance with the terms of the Vaccination Order, for completeness, all the communications relied on by Ms Connor as raising her personal grievance are analysed below.

### **The communications relied on by Ms Connor as raising her personal grievance**

[51] Ms Connor says that on 25 October 2021 the Board advised of the requirement for her to be vaccinated, and in her affidavit accepts that this is the date from which the statutory 90-day time period commences.

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<sup>10</sup> *Pretorius v Board of Trustees of Taupo Intermediate School* [2022] NZERA 664; and *Bastion v Cashmere Primary Te Pae Kereru School Board* [2025] NZERA 841.

[52] However, her reply submissions set out that the statutory 90-day period runs from 4 November 2021 (the date on which she provided her GP-issued medical exemption), and therefore she had until 2 February 2022 to raise a grievance.

[53] Under s 114(1) of the Act, Ms Connor had 90 days to raise her grievance (in this case in relation to the requirement to be vaccinated) beginning on the date the action occurred, or came to her notice. As she sets out in her affidavit, she first became aware of this requirement on 25 October 2021. Accordingly, this is the date from which the statutory 90-day time period commences, in respect of the disadvantage grievance(s).

#### *4 November 2021*

[54] Ms Connor says that in submitting her GP-issued exemption on 4 November 2021, this was her “raising that there was a disadvantage for me to be vaccinated, and so I thus sought a remedy which was the exemption...”.

[55] Ms Connor submits that sending her GP-issued exemption, constituted the raising of a disadvantage grievance “... because she had serious concerns with her employer’s requirement for her to be vaccinated. She wanted to the employer to accommodate her exemption and treat her as an exempt person...”

[56] As in *Zivaljevic*,<sup>11</sup> the issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act, and if the communications conveyed the substance of the complaint to the employer. The Authority is satisfied that Ms Connor’s 4 November 2021 email, attaching her GP-issued exemption, does not form the basis of a personal grievance.

#### *5 November 2021*

[57] On 5 November 2021, Ms Connor emailed the Deputy Principal, asking whether or not her GP-issued exemption was accepted by the Board.

[58] Ms Connor says she never received a response to her question, and that the actions of the respondent ignoring her request to accept her exemption became a disadvantage...”

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<sup>11</sup> Above n 5.

[59] The Board submits that asking such a question of an employer is not evidence of the raising of a grievance. I accept this submission.

[60] Ms Connor's 5 November 2021 email does not meet the requirements of s 114 of the Act, and therefore does not form the basis of a personal grievance.

[61] In addition, despite Ms Connor saying that the lack of response from the Board "became a disadvantage" for her, there is no evidence that she raised this issue as a disadvantage grievance – either on 5 November 2021, or on any subsequent occasion.

[62] As in *Zivaljevic*, the Board must be given sufficient information to address the grievance. In not raising the issue of the Board's alleged lack of response as to whether it accepted her exemption, Ms Connor cannot be said to have raised a personal grievance.

*11 November 2021*

[63] On 11 November 2021, Mr Drumm wrote to Ms Connor, advising (inter alia) that she would need to work from home from 16 November 2021, until her exemption had been received, and the parties had met to formulate the appropriate health and safety measures to enable Ms Connor to be able to work safely.

[64] Ms Connor's evidence is that Mr Drumm "... knew that my 7A exemption was a disadvantage to his requirement for me to be vaccinated..."

[65] Under s 103(1)(b) of the Act, an unjustified disadvantage personal grievance must be based on a claim that the employee's employment, or one or more conditions of the employee's employment is affected to that employee's disadvantage by some unjustifiable action by the employer. Ms Connor cannot be said to have a personal grievance because Mr Drumm's wish for Ms Connor to be vaccinated was 'disadvantaged' by her exemption certificate.

[66] The 11 November 2021 email from Mr Drumm to Ms Connor is not evidence of Ms Connor having raised a personal grievance.

*14 November 2021*

[67] On 14 November 2021, Ms Connor wrote to Mr Drumm confirming that she had discussed working arrangements with her direct manager, who had agreed that she would continue to work from home for the remainder of the year.

[68] Ms Connor submits that “she had raised a disadvantage and communicated a remedy for that disadvantage which was remotely working for the rest of the year...”

[69] As the Board submits, “this proposal was accepted by the employer – the applicant did work from home for the rest of the year”.

[70] Ms Connor’s 14 November 2021 email does not raise a grievance, nor is it evidence that the Board accepted a grievance had been raised.

*23 November 2021*

[71] On 23 November 2021, Ms Connor’s direct manager wrote to Mr Drumm “Due to the Vaccine Mandate and [Ms Connor] unable to be vaccinated she will not be able to continue her role here at MAGS from the 1st of January”.

[72] Ms Connor submits that being permitted by her manager to work from home for the remainder of the year was a remedy for the disadvantage. Ms Connor submits that her manager acknowledged that disadvantage had been raised, and “assisted [Ms Connor] in proposing a remedy”.

[73] However, in her affidavit, Ms Connor sets out that she “wanted to raise concerns with [the Board] but was unsure of the process to do so...”. The Board submits that this is evidence of Ms Connor confirming that she did not raise any concerns at the time. I accept this submission.

[74] The confirmation by her manager to Mr Drumm, that Ms Connor would be working from home for the rest of the year is not evidence that the Board had accepted a disadvantage grievance had been raised. The evidence suggests that the Board supported Ms Connor’s working from home. As such, the 23 November 2021 email from Ms Connor’s manager to Mr Drumm is not evidence of a disadvantage occurring, or of a personal grievance being raised.

*1 December 2021*

[75] On 1 December 2021, while she was working from home, Ms Connor sent her manager an email. The email is largely about operational work matters, but also includes Ms Connor complaining that it felt like she lacked support, and was lacking in sleep.

[76] Ms Connor’s evidence is that this email raises a disadvantage personal grievance “about the stress of the school’s no-job no-job coercion”. Ms Connor sets out that she was suffering from “severe stress and psychological duress to take the vaccination” which she “considered dangerous”.

[77] The Board submits that as this email was not sent to the principal, or referred to in other correspondence, Ms Connor cannot rely upon this email as being notice to the Board of a personal grievance being raised. I accept this submission. As the Court held in *Zivaljevic*, Ms Connor’s communication needed to convey the substance of the complaint to her employer.

[78] The evidence of Mr Drumm, is that had he been made aware of this, he would have encouraged Ms Connor to use the support available to all staff in the school, such as confidential support via the guidance department and/or through EAP counselling.

[79] Ms Connor’s 1 December email to her line manager is more akin to the type of criticism of her employer and/or the culture within the workplace which the Court in *Shaw* held does not necessarily constitute a grievance.<sup>12</sup>

[80] In addition, as noted above, the requirement that an unvaccinated employee such as Ms Connor could not attend the school premises was not at the instigation of the Board, but of the government by way of the vaccination Order. Any stress suffered by Ms Connor as a result of having to work away from the school’s premises cannot be attributed to an action of the Board’s.

#### *1 December 2021*

[81] Also on 1 December 2021, Ms Connor couriered a letter to the Board. The letter (described as a ‘Notice’) is difficult to follow. It refers to “the common laws of England”, the Imperial Laws Application Act 1988, and threatens that if the Board fails to answer the questions posed in the letter, a “maximum sentence of seven year imprisonment” could apply.

[82] Ms Connor’s letter also appears to accuse the Board of “attempts to murder, administering poisons or other destructive thing”.

[83] Attached to Ms Connor’s letter was a copy of what she describes as “the safety

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<sup>12</sup> *Shaw* above n 7.

report to demonstrate MedSafe’s record of injury and death from this particular vaccine”.

[84] The Board submits that the letter appears to be a “cut and paste of a sovereign citizen letter found on the internet”. Ms Connor does not dispute this.

[85] Mr Drumm’s evidence is that the Board understood this letter to be a criticism of the government and/or the Vaccination Order, not a complaint about any process of the Board’s own initiative.

[86] Ms Connor’s letter asks the Board to provide her with certain information relating to the provisions of the New Zealand Bill of Rights Act 1990, and the Privacy Act 2020.

[87] As the Court held in *Creedy*,<sup>13</sup> Ms Connor was required to sufficiently specify her grievance in order that the Board may address it. The Board must be able to understand what it is to address. Ms Connor’s 1 December letter does not comply with these requirements, and is therefore inconsistent with the provisions of s 114(2) of the Act. As such, Ms Connor’s 1 December 2021 notice does not raise a grievance.

#### *8 December 2021*

[88] On 8 December 2021, in response to his request for a meeting, Ms Connor wrote to Mr Drumm, advising that she was seeking independent medical and legal advice, and should be in a position to discuss these matters in the New Year.

[89] Advising that medical and/or legal advice was being obtained does not constitute the raising of a personal grievance, and neither is it evidence of a disadvantage.

[90] Ms Connor’s 8 December 2021 email does not meet the requirements of s 114 of the Act.

#### *10 January 2022*

[91] On 10 January 2022, in response to an email from the Board’s external HR advisor, Ms Connor says she raised a number of disadvantage grievances. She says the email from the HR advisor lacked good faith; she criticised what she says was the

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<sup>13</sup> Above n 6.

Board's use of "templated letters"; that the Board had adopted a predetermined outcome and that her GP-issued vaccination exemption remained valid.

[92] Given that the email from the HR advisor was largely given to emphasising the importance of the Board's request to meet with her, it is difficult to see how the letter cannot have been in good faith.

[93] Ms Connor's dissatisfaction with the Board's use of templated letters is not the basis for a grievance that her employment had been unjustifiably disadvantaged.

[94] Ms Connor's reply email raises an objection to her being required to respond to the Board's meeting request during the holiday period. Although Ms Connor is clearly unhappy about having to participate in an employment process during what she says is "a period of unpaid leave", I am not satisfied that this aspect of her 10 January 2022 email raises a grievance.

[95] Ms Connor's email appears to be critical of the requirement to be vaccinated, and of the safety of the vaccine, but as set out above, these were not of the Board's making, but requirements under the government's Vaccination Order. As such, this type of criticism does not raise a grievance. The Authority notes that Ms Connor's email appears to recognise that the requirements of the vaccination Order were not at the instigation of the Board, as she says: "I acknowledge the situation NZ Govt has put you and other schools in...".

[96] Ms Connor also raises the issue of a written proposal she made to work from home in 2022. She says:

I wrote a proposal which was submitted by my manager... to yourself on November 23rd. To date there has been absolutely no reply or engagement with myself or [my manager] regarding this. There has been NO reference to this proposal and any communication from MAGS – by either an acknowledgement or indication of willingness to discuss it. This is very disappointing as I thought (incorrectly) that I was a valued member of the MAGS staff...

The fact that you or [the HR advisor] have no idea how I manage this role is insulting to say the least...

...

...I bring to your attention the zero acknowledgment of my proposal... Given my position is rather unique, and I have proven effective working outside the school, I also raise the issue of not having been consulted for any health and safety risk assessment nor have I been furnished with a copy of one (in the event someone thinks they know better how I could conduct the Gateway business)... I also require information regarding my proposal and that or an

amended version could fit with any H & S analysis. Looking at all communications from MAGS I do not believe any of this has been considered.

...

I look forward to hearing from you personally, addressing the above concerns I have raised.

[97] In reading the email as a whole, it is clear that Ms Connor was dissatisfied with the approach the Board had adopted in terms of how the impact of her vaccination status affected her employment, and had proposed a solution to the Board's concerns.

[98] It is apparent that the proposal that Ms Connor work from home in 2022 was made as an attempt to resolve the parties' stalemate.

[99] That Ms Connor considered this proposal had not been addressed or acknowledged is also made clear in her email.

[100] I am satisfied that Ms Connor's 10 January 2022 email raised a personal grievance for unjustified disadvantage in respect of the Board's failure to respond to her proposal to continue working from home.

*No assessment as to strength or merits at preliminary stage*

[101] Despite the above finding (which has been made based on untested affidavit evidence), the Authority notes that no assessment as to the strengths or merits of Ms Connor's grievance is required at this preliminary stage. To do so will require further evidence and submissions. All that is required at this stage is a mere threshold assessment as to whether a grievance was raised in time.

[102] The Authority is unable to make any assessment as to the strength of Ms Connor's established grievance at this preliminary stage.

**The totality of Ms Connor's communications**

[103] The Authority is also required to consider whether the totality of Ms Connor's communications constitutes the raising of a personal grievance.<sup>14</sup>

[104] Having considered the above communications in totality, I find no additional personal grievance is raised.

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<sup>14</sup> *Zivaljevic* above n 5, at [36].

### **No evidence of an unjustified dismissal grievance being raised**

[105] Ms Connor's affidavit sets out evidence in respect of her unjustified disadvantage claims. However it is silent as to any claim that she raised a personal grievance for unjustified dismissal.

[106] Ms Connor's submissions set out that she considers that her written communications of 4, 5, 14 and 23 November 2021, 1 and 8 December 2021, and 10 January 2022 raised disadvantage grievances, as well as an unjustified dismissal grievance.

[107] There is no dispute that Ms Connor was not given notice of her dismissal until 11 January 2022. She could not be seen to be raising a grievance prior to this date, in anticipation of her dismissal actually occurring.<sup>15</sup>

[108] Ms Connor relies on the Authority's determination in *Pike v Nelmac* to support the position that an unjustified dismissal grievance can be raised in anticipation of a dismissal.<sup>16</sup>

[109] I do not accept that Ms Connor could raise an unjustified dismissal personal grievance in advance of the termination of her employment, or even in advance of being given notice of termination. I am not bound by *Pike*. In any event, Ms Connor's situation is not analogous with *Pike*. There is no evidence to show that Ms Connor advised the Board that if she was dismissed this would be unjustified. Although she notes a concern that the Board did not appear to be complying with its obligations of good faith, alleging a breach of good faith is not the same as raising a personal grievance for unjustified dismissal (particularly in circumstances where a dismissal has not yet occurred).

[110] Correspondence provided by Ms Connor discloses that on 9 February 2022, she raised a tort claim with the Board, seeking damages in the sum of \$25,000,000.00. The Board's 31 March 2022 letter in response declined denied Ms Connor's claim for damages, and noted there was no basis for such a claim.

[111] For completeness I note that seeking an award of damages in respect of a tort claim is not evidence of raising a personal grievance for unjustified disadvantage or for

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<sup>15</sup> *Underhill v Coca-Cola Amatil Ltd* [2017] NZEmpC 117 at [57].

<sup>16</sup> *Pike v Nelmac* [2024] NZERA 461.

unjustified dismissal.

### **Outcome**

[112] Ms Connor raised a personal grievance for unjustified disadvantage on 10 January 2022. This is within the statutory 90-day timeframe (beginning on 25 October 2021), and as such is a validly raised personal grievance.

[113] A case management conference is to be scheduled to progress the investigation of the remaining issues of this employment relationship problem, and to discuss further mediation.

### **Costs**

[114] Costs are reserved.

Jeremy Lynch  
Member of the Employment Relations Authority