

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 33  
3330960

BETWEEN            JANN BEGG  
                                 Applicant  
  
AND                    ST GEORGE’S HOSPITAL  
                                 INCORPORATED  
                                 Respondent

Member of Authority:    Philip Cheyne  
  
Representatives:        Liz Lambert and Erika Whittome, advocates for the  
                                 Applicant  
                                 Paul White, counsel for the Respondent  
  
Investigation Meeting:    30 September 2025 in Christchurch  
  
Submissions received:    20 October 2025 and 4 November 2025 from the  
                                 Applicant  
                                 24 October 2025 from the Respondent  
  
Date of Determination:    21 January 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Jann Begg worked for St George’s Hospital Incorporated (SGH) for 27 years. The Covid-19 Public Health Response (Vaccinations) Order 2021 imposed duties on relevant PCBU<sup>1</sup> from 15 November 2021 not to allow an affected person to carry out certain work, and on affected workers not to carry out certain work, unless vaccinated.

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<sup>1</sup> Defined as a person conducting a business or undertaking who employs or engages an affected person to carry out certain work – see Covid-19 Public Health Response (Vaccinations) Order 2021 cl 5.

Ms Begg declined to receive Covid-19 vaccinations and her employment was terminated on 22 November 2021.

[2] Ms Begg lodged her statement of problem in the Authority on 24 October 2024. Her problem is described in the following ways.

[3] Ms Begg says that SGH unilaterally varied her employment agreement to require her to receive Covid-19 injections, in breach of her agreement and amounting to unfair bargaining. Ms Begg says that SGH breached its obligations under the Health and Safety at Work Act 2015. Her employment agreement was wrongly terminated without cause. Ms Begg was not an “affected person” under the Order and SGH did not carry out a risk assessment despite being required to do that, so disadvantaging her. Ms Begg says that she did not have to be vaccinated as she had to test for Covid-19 as a condition of being in her workplace. Lastly, Ms Begg says that she raised personal grievances within time regarding lack of proper consultation and the safety of the control SGH proposed to apply to her.

[4] To resolve the problem, Ms Begg is claiming reinstatement, reimbursement of lost remuneration, compensation, damages for breach of contract and common law, damages for breach of the statutory duties of good faith set out in the Employment Relations Act 2000 (the ERA) and the Health and Safety at Work Act 2015 (the HSWA).

[5] SGH says that Ms Begg did not raise any personal grievance with it at the time, her employment ended at her request on 22 November 2021 when she decided not to be vaccinated, that her employment agreement was never varied and that there was no failure by it to comply with the HSWA. Allegations of breaches of the HSWA are misguided.

### **The Authority’s investigation**

[6] The parties were directed to mediation, but matters were not resolved.

[7] Arrangements were made for an investigation meeting. Ms Begg and her husband (Stephen Thompson) both provided statements of evidence, attended to confirm their statements on oath and answer questions. Also, one of Ms Begg’s representatives lodged an affidavit. However, the representative was not involved at relevant times.

[8] Carol Ferguson is SGH's hospital manager and was Ms Begg's manager. Ms Ferguson provided a statement and attended to confirm it on oath and answer questions.

[9] For the most part, the relevant exchanges between SGH and Ms Begg were by letter and email. The parties provided a comprehensive bundle of documents beforehand and several other documents were provided during the meeting.

[10] Each party also provided written submissions following the meeting.

[11] In this determination, I will state relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders.

[12] I will first summarise the exchanges between Ms Begg and SGH before setting out and determining necessary issues.

### **The exchanges – 14 October to 2 December 2021**

[13] There was an employment agreement between SGH and Ms Begg as a "Clinical Info Manager", signed in August 2016. There was also a position description for that role issued in April 2016. It is common ground that both applied before and during the following exchanges.

[14] Ms Begg's usual place of work under the agreement was at St George's Hospital.

[15] The government introduced the Covid-19 Public Health Response (Vaccinations) Order 2021 (the Order) in April 2021. The Order applied to specific workers and PCBUs. It did not apply to Ms Begg in her employment at SGH.

[16] However, on 11 October 2021, the Prime Minister announced that the Order would be amended to require workers in the health and disability sector to be fully vaccinated.

[17] On 14 October 2021, SGH sent an all-staff email to its employees under the subject heading "Mandatory COVID-19 Vaccinations – St George's Hospital Employees". SGH summarised the proposed amendment, said that all colleagues at SGH were covered by the amendment and had to have had their first dose by 30 October and second dose by 1 December 2021. SGH requested vaccination status information

from its employees by 30 October 2021. It said that anyone who had not had their first vaccination by 30 October 2021 would not be able to continue in employment at St George's Hospital.

[18] Ms Begg consulted a doctor, who certified her as unable to attend work from 18 October 2021 but should be able to return to work on 1 November 2021. Ms Begg was later certified as unable to attend work on 29 October 2021 and should be able to return to work on 15 November 2021. Accordingly, Ms Begg was not at work during the following events.

[19] By letter dated 20 October 2021 to SGH, Ms Begg replied to the 14 October 2021 all staff email. She referred to good faith and asked what the next steps were in the process that may lead to termination of employment for staff who, due to concerns about safety and efficacy of the Pfizer vaccinee, were not vaccinated by 30 October 2021. Ms Begg also requested a copy of the Order.

[20] SGH responded on 21 October 2021. SGH said that it was relying on the Prime Minister's announcement which was set out on the COVID-19 website, as the Order was not yet available. That advice was that persons in health service organisations had to have had their first and second vaccinations by 30 October 2021 and 1 December 2021 respectively. Ms Begg could obtain the Order once available on the government website. For those who were unvaccinated, SGH would undergo a process prior to termination of employment, subject to the Order. SGH said that if a person was not able to work due to the Order, the notice period covering that time would appear to be unpaid.

[21] Ms Begg wrote again to SGH on 27 October 2021.<sup>2</sup> She said, that having worked loyally for SGH for over 26 years, the "latest directive" had caused her stress. Ms Begg explained why she was not prepared to take the Pfizer vaccine "at this point in time". She said she was prepared to work from home and was willing to negotiate options and referred to her financial position. Ms Begg asked about the effect of the new deadline date on the previous mentioned deadlines. She noted that her employment agreement did not require her to be vaccinated in her role. Mandatory vaccinations should only be considered when necessary and in the absence of other alternatives. Ms

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<sup>2</sup> Several iterations were provided to the Authority. It is now common ground that the letter sent on 27 October 2021 did not include the final half-page shown at page 25 of the bundle of documents or the version of that half-page annexed to Ms Ferguson's statement of evidence.

Begg referred to good faith and the HSWA. She comprehensively set out concerns about the vaccine, based on her health status and more generally. Ms Begg sought confirmation that SGH would “revoke the direction” or confirm her right to “informed consent”. She asked SGH to set out why the Order applied to her role and how it required her to undertake a “medical procedure”. Ms Begg sought an outline of SGH’s consultation and risk assessment for her role, when considering the Order. She also asked SGH to guarantee her safety and to acknowledge any adverse effects as a work accident if she did get vaccinated.

[22] Ms Begg said that, should her choice regarding not being vaccinated not be respected, then “I may exercise my right to file a personal grievance”. She said remained ready and able to perform her role.

[23] SGH replied on 28 October 2021. It noted that those employed by a certified provider working at premises where healthcare services were provided were required by the Order to be vaccinated, from 15 November 2021. SGH considered that Ms Begg could not effectively perform her role managing two teams, unless on site. SGH also referred to a provision in the Order which allowed for an exemption given Ms Begg’s health circumstances, based on an examination by a suitably qualified health practitioner. If Ms Begg sought an exemption, SGH would then need to consider whether it was safe for her to remain in her role. Ms Begg was asked to advise SGH about her intentions.

[24] On 1 November 2021, Ms Begg sent SGH a copy of her second medical certificate, covering 29 October 2021 to 14 November 2021. SGH thanked her for the information.

[25] Ms Begg replied to the 28 October 2021 letter on 2 November 2021. Ms Begg clarified that she had not said she would not receive the Pfizer vaccination, just that she would not have the Pfizer vaccination “at this time” due to her health concerns. She said she would consider her options: seeking an exemption or reconsider getting vaccinated. Ms Begg said she would confirm her response in time “to ensure I meet your indicated deadline of 15 November 2021.”

[26] In response on 2 November 2021, SGH said it appreciated the difficult decision being faced by many. It also was endeavouring to meet its obligations as a PCBU under the Order.

[27] On 5 November 2021 SGH sent a second all staff email to employees, acknowledging those who had provided the necessary information and summarising the information required under the Order from those who had not, ahead of 15 November 2021.

[28] Ms Begg wrote again to SGH on 10 November 2021. She confirmed that she would not at that time commit to taking the Pfizer vaccine. The reasons she set out mostly relate to the government's decision to mandate vaccination, not SGH's actions. However, Ms Begg did refer to her view that at least half of her work could be performed remotely and her willingness to do so on reduced hours. She asked for details of the process regarding her dismissal from her employment with SGH, prior to 15 November 2021.

[29] Ms Begg and SGH exchanged messages on Friday 12 November 2021. Ms Begg asked for confirmation that her 10 November 2021 message had been received and for advice about the next steps, never having been dismissed previously. She said she was still unwell. SGH said that it had received the earlier message and would respond probably on the Monday. Ms Begg then reported that she had made an appointment to see her doctor on the Tuesday (16 November 2021). SGH acknowledged that message.

[30] SGH replied again on 15 November 2021. It disputed Ms Begg's view that half or more of her role could be performed remotely. To perform her role Ms Begg needed to be on-site, but that required her to comply with the Order. From 16 November 2021, she could only be at work if vaccinated. SGH set out why it would place Ms Begg on leave without pay, but she could request annual leave. SGH would then need to confirm whether Ms Begg's Pfizer decision was final or whether she intended to be vaccinated with AstraZeneca. If Ms Begg was not vaccinated, SGH would notify her of its proposal to terminate her employment on notice, but unpaid because of her inability to work.

[31] Ms Begg responded on 16 November 2021. She said she had no choice but to accept SGH's decision not to support her working from home, but disagreed with its reasoning. Ms Begg confirmed that she would not take either vaccine. She said that she felt pressure from coercion and discrimination in the workplace and was sad that SGH had not valued or respected her contribution during her tenure. She asked that her

termination be effective immediately with no stand-down period and that she be paid in full the 4 week notice period, together with her leave and service entitlements.

[32] Ms Begg sent a follow up message on 22 November 2021. She said she was waiting for “official dismissal” so she could apply for income support. Ms Begg also requested payment in lieu of notice and payment of outstanding leave.

[33] SGW responded on 22 November 2021, confirming that Ms Begg’s employment had been terminated effective that date with no stand down period, in line with her request. SGH declined to pay in lieu of notice, repeating its view that as Ms Begg could not work, she had no entitlement to pay for the notice period. Leave and other entitlements would be paid the next day. SGH offered to acknowledge Ms Begg’s contributions over her 27 years’ service with an off-site farewell if she wished.

[34] Ms Begg wrote to SGH on Monday 29 November 2021 setting out “unresolved final payment issues” and “other concerns”. To summarise, Ms Begg queried whether she was entitled to payment for upcoming public holidays and noted that it was being investigated. She repeated the request for pay in lieu of notice and referred to the recent change in the law.<sup>3</sup> Ms Begg responded to SGH’s view about whether her role could be performed from home. She considered that SGH had no intention to bargain in good faith about that and noted that her employment was ended without payment of redundancy. Ms Begg declined any farewell, referring to negative comments about her in a letter from her team members. She ended by saying that she awaited confirmation about the “outstanding payments”, but would consider her legal options “including taking a personal grievance case”.

[35] Ms Begg took matters with SGH no further until this application to the Authority.

[36] To the extent necessary, I deal with matters raised in the statement of problem, outlined in earlier directions and referred to in submissions as follows.

### **SGH did not unilaterally vary Ms Begg’s employment agreement**

[37] Ms Begg says that SGH unilaterally varied her employment agreement to require her to get COVID-19 vaccinations to continue her employment.

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<sup>3</sup> See Employment Relations Act 2000, Schedule 3A, with effect from 26 November 2021.

[38] Clause 1 of the employment agreement permitted it to be varied in writing by agreement.<sup>4</sup> Ms Begg says that SGH breached this provision.

[39] The unilateral variation claim mischaracterises what happened. The requirement that Ms Begg be vaccinated in order to carry out her work at SGH resulted solely from the application of the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to SGH and to Ms Begg. The employment agreement was never varied, unilaterally or in any other way.

[40] Ms Begg characterises compliance with the Order as “conditional employment”. She says that the offer of conditional employment breached s 68(2)(c) of the Employment Relations Act 2000.

[41] The section provides that bargaining for an individual employment agreement is unfair if a party is induced to enter an agreement by oppressive means, undue influence or duress; and the other party knows or ought to know of that circumstance. The statutory provisions about unfair bargaining are not relevant – Ms Begg and SGH were not bargaining to vary their individual employment and there was no variation.

### **SGH did not fail to with the provisions of the HSWA**

[42] The Authority has jurisdiction to investigate and determine matters connected with the HSWA to the extent that they are employment relationship problems.

[43] Here, the employment agreement at clause 16.1 included a commitment by SGH to comply with the provisions of the Health and Safety at Work Act 2015 concerning safety, health and welfare matters in respect of Ms Begg’s employment and the provision of facilities.

[44] Ms Begg says that SGH used the Pfizer vaccine as a control for the Covid-19 disease and attempted to coerce her to take this medical treatment. She says that SGH failed to test work surfaces and the atmosphere in her workspace for the presence of Covid-19 and failed to ensure the safety of the vaccine it was using as a health and safety control in her workplace.

[45] The difficulty for Ms Begg is that the requirements, on her not to carry out certain work unless vaccinated and on SGH not to allow her to carry out certain work

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<sup>4</sup> There was a limited exception to this, but it did not apply to the present situation.

unless she was vaccinated, were not the result of SGH taking steps to meet its obligations under the HSWA. Those requirements were created by and applied to Ms Begg and SGH by the Order. SGH did not use the Pfizer vaccine as a control. SGH did not coerce Ms Begg to take any medical treatment. SGH just complied with the obligations under the Order.

[46] Whether SGH tested work surfaces and the work atmosphere for Covid-19 had no bearing on the obligations created by the Order.

[47] There was no failure by SGH to comply with obligations owed to Ms Begg in respect of her employment regarding safety, health and welfare.

### **SGH complied with good faith duties**

[48] In her statement of problem, Ms Begg seeks common law damages for breach of statutory duties of good faith, referring to ss 4 and 142 of the ERA and s 61(4)(g) of the HSWA.

[49] I assume Ms Begg intended to refer to s 61(3)(g) of the HSWA and perhaps clause 16.1 of the employment agreement. Section 61(1) creates a duty for PCBUs to have worker participation practices. Section 61(3)(g) includes the statutory good faith duty as a relevant factor when considering whether a PCBU has practices that provide reasonable opportunities for worker participation in improving work health and safety, to meet the duty under s 61(1). Section 61(4) then makes it an offence to breach s 61(1).

[50] However, reference to s 61 of the HSWA does not assist Ms Begg. Even if common law damages were potentially available for breach of a contractual duty to comply with a statute, Ms Begg's situation had nothing to do with whether SGH had worker participation practices that provided reasonable opportunities for worker participation in health and safety matters.

[51] Regarding the claim of common law damages for breach of good faith, Ms Begg refers to s 142 of ECA. That section provides a limitation period for actions other than personal grievances. However, the difficulties with Ms Begg's common law claim for damages do not turn on consideration of the limitation period.

[52] Damages for breach of the statutory duty of good faith are not available in the Employment Relations Authority.<sup>5</sup> Rather, Ms Begg would need to establish that SGH breached clause 3.1 of the employment agreement, causing her damage that is not too remote and is therefore recoverable. For convenience, I set out the clause:

3. Obligations

3.1 As a good employer, we will act in good faith, providing fair and proper treatment in all aspects of your employment.

[53] The claim cannot succeed because SGH acted in good faith, as explained below. Additionally, nearly all the pecuniary loss suffered by Ms Begg (lost remuneration) was caused by her decision not to be vaccinated, not by any failure by SGH to provide her with fair and proper treatment with respect to her employment. Given there was no contractual breach and no causation of loss, it is not necessary to consider whether some or all of Ms Begg's claim for common law damages would be limited by s 113 of the ERA.

[54] The exchanges started on 14 October 2024. SGH's message brought to Ms Begg's attention the likely effects of proposed amendments to the Order. Ms Begg was not treated unfairly or improperly by SGH bringing the announcement to her attention.

[55] Ms Begg referred to good faith on 20 October when she requested details of the "next steps, including timelines" for those staff concerned about Pfizer and a copy of the Order. SGH answered Ms Begg's questions to the extent that was possible on 21 October. It responding as it did, SGH acted in good faith.

[56] Ms Begg described the 21 October reply as a directive in her 27 October letter. SGH's emails of 14 October and 21 October were not "directives" by SGH. While Ms Begg may have experienced the stress and anxiety she described, it was not caused by any directive from SGH. SGH did no more than describe what it understood to be the Government's proposal and answer Ms Begg's questions as best it could. SGH's actions were taken in good faith.

[57] In her 27 October letter, Ms Begg suggested working from home, as had happened during lockdowns. SGH responded on 28 October with its view that her role as manager required her to be present on site, unless for a very short period, to supervise

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<sup>5</sup> See *Harte v Midwifery Employee Representation & Advisory Service Inc* [2025] NZEmpC 5,

and manage two teams. Nothing turns on who first mentioned this. It was raised, considered and reasonably responded to. SGH acted in good faith.

[58] In its 28 October letter, SGH refrained from responding to specific points made by Ms Begg about the Pfizer vaccine generally and with reference to her health circumstances, its efficacy, its consent status, her right to refuse medical treatment, the requirement for informed consent and other public policy points. None of those matters raised by Ms Begg engaged SGH's obligation to provide her with fair and proper treatment in all aspects of her employment.

[59] In the letter, SGH said that the Order required any person employed by a certified provider who works at premises where healthcare services are provided to be vaccinated. In describing the effect of the Order in this way, there was no failure by SGH to provide Ms Begg with fair and proper treatment in all aspects of her employment.

[60] SGH went on to describe steps Ms Begg could take to seek an exemption, what it would need to consider if she obtained an exemption and the relevant date, as provided by the Order. In doing this, SGH did not breach the contractual good faith duty it owed to Ms Begg.

[61] The communications on 2 November were consistent with good faith obligations.

[62] The second all staff email on 5 November acknowledged and thanked those who had provided vaccination details, set out the relevant date for information, detailed what was required and outlined some available help. In doing this, SGH did not breach the contractual good faith duty it owed to Ms Begg.

[63] Ms Begg's 10 November letter largely restated her views about the vaccine, efficacy, consent and public policy. Ms Begg annexed supporting data. She also confirmed that she would not comply with the mandate by receiving the Pfizer vaccine. She also said that she had tried to bargain in good faith about working from home. Ms Begg asked for details about the dismissal process.

[64] In its response on 15 November, SGH refrained from debating the views about the vaccine, efficacy, consent and public policy. That was not a breach of the contractual good faith duty owed to Ms Begg. SGH also responded to Ms Begg about

working from home, explaining why it disagreed with her view. SGH did not breach the contractual duty of good faith by holding and explaining the position that Ms Begg needed to work at the location set under employment agreement. SGH also asked Ms Begg whether she would receive the AstraZeneca vaccine and sought a prompt reply. That too was not a breach of the contractual duty.

[65] Next, Ms Begg confirmed that she would not be vaccinated, criticised SGH for the huge pressure, coercion and discrimination she said she had felt within the workplace and asked that her termination be effective immediately with no stand-down by payment of the 4 week notice period.

[66] SGH did not respond immediately, but nothing turns on the delay. SGH confirmed the termination of Ms Begg's employment on 22 November, offered to acknowledge her service and repeated its view that she was not entitled to pay during the notice period as she could not attend work. SGH paid Ms Begg her final pay on 23 November.

[67] The only element from this that might comprise a failure by SGH to provide fair and proper treatment to Ms Begg in all aspects of her employment was not paying her the contractual notice period. However, it is not necessary to further analyse or make findings about it. Assuming that non-payment was a breach of the contractual duty of fair and proper treatment, the loss suffered by Ms Begg would be limited to the notice payment. SGH paid Ms Begg in lieu of notice in early December 2021.

[68] It is common ground that the employment ended on 22 November. The contractual duty ended then too. During the life of the duty, there was no breach by SGH. Ms Begg suffered no loss with respect to the single point which might have constituted a breach.

[69] Ms Begg has not established a right to any common law remedy.

### **Personal grievances**

[70] There is a dispute about whether Ms Begg raised a personal grievance within time.<sup>6</sup> If a personal grievance was raised with SGH in time, no action in relation to that

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<sup>6</sup> See Employment Relations Act 2000 s114.

grievance can be commenced in the Authority more than three years after the date on which it was raised.<sup>7</sup>

[71] The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. No particular formula of words is required. Where there is a series of communications, they might individually or collectively raise a personal grievance. The issue is whether the nature of the complaint was a personal grievance as defined and whether the communications complied with the Act by conveying the substance of the complaint to the employer. The employer must know what it is they are responding to, be given sufficient information to address the grievance and respond to it on its merits with a view to resolving it.<sup>8</sup>

[72] Ms Begg says that she raised grievances about the lack of proper consultation and safety of the control that that SGH proposed to apply to her in the course of her employment, within 90 days of matters coming to her attention. She also says that she was unjustifiably dismissed. It is necessary to consider her communications.

[73] Ms Begg's correspondence on 20 October did not raise a personal grievance claim that her employment had been affected to her disadvantage by some unjustifiable action by SGH, but sought information.

[74] In her 27 October letter, Ms Begg raised various matters about the mandate, said that she was not prepared to be vaccinated, proposed working from home and other ways to manage risk, asked questions and then stated:

44. In all the circumstances, it is not unreasonable for me to exercise my rights to not be vaccinated and at this stage.

45. Should my choice not be respected, and you 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.

[75] It is not necessary to decide whether this letter on its own raised a personal grievance about SGH's actions. Even if this letter alone did not raise a grievance, I am

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<sup>7</sup> Employment Relations Act 2000 s114(6).

<sup>8</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36] – [38].

satisfied that the totality of Ms Begg's correspondence raised personal grievance claims.

[76] Ms Begg's 2 November email did not raise any grievance. However, in her 10 November correspondence, Ms Begg referred to her service and commented that she had done her best to negotiate working remotely.

[77] On 16 November Ms Begg said she disagreed with SGH's reasoning about working from home on reduced hours, that the whole process had been stressful and she felt pressure within the workplace and considered that SGH had not valued or respected her contribution. She asked for the termination to be effective immediately and for payment in lieu of notice.

[78] Ms Begg's 22 November correspondence repeated the point about payment in lieu of notice.

[79] Finally, on 29 November, Ms Begg said that her employer should act in good faith and pay her the notice period as she had not done anything wrong in order to have her employment terminated. She also said, in relation to SGH saying it could not continue her employment due to the Order, that not every decision could be hidden behind the "guise of a mandate". Ms Begg also said that she was fortified in her opinion that the situation created the perfect opportunity to end her employment without the need for redundancy. Ms Begg ended saying:

I await confirmation of a fair and reasonable decision regarding outstanding payments but in the interim will be considering what legal options I can pursue, including taking a personal grievance case.

[80] Ms Begg's statements that she may exercise her right "to file a personal grievance" and to "taking a personal grievance" suggest comparison with cases such as *Creedy v Commissioner of Police*.<sup>9</sup> A similar statement in that case was held to be insufficient to raise a grievance. However, in that case the employer had to seek further details. In the present case, SGH was able to respond substantively to the matters raised by Ms Begg. The present case differs from *Creedy*.

[81] Together, the correspondence between 27 October 2021 and 29 November 2021 presented Ms Begg's grievances about how SGH had handled the implementation of

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<sup>9</sup> *Creedy v Commissioner of Police* [2006] ERNZ 517.

the Order and her dismissal on 22 November 2021. Grievances were raised with SGH and this action was commenced in the Authority within time.

*Ms Begg was not unjustifiably disadvantaged by her employer*

[82] Most of the claimed disadvantages raised by Ms Begg are not attributable to SGH. The lawfulness of the Order, whether it complied with the Health and Safety at Work Act 2015, the safety and efficacy of the vaccine, its consent status, issues about informed consent, claimed breaches of the New Zealand Bill of Rights Act and patient rights, are not challengeable by personal grievance.<sup>10</sup> The Order was not an action by SGH, so the statutory test for justification does not apply to it.<sup>11</sup>

[83] However, two matters remain: first, Ms Begg's complaint that her role did not necessarily fall within the Order; and secondly that SGH did not agree to her working from home.

[84] On the first matter, Ms Begg questioned it on 27 October. SGH responded on 28 October. In summary, SGH said that the Order required any person employed by a certified provider who works at premises where healthcare services are provided must be vaccinated. Ms Begg acknowledged that and did not further dispute that she was covered by the Order if working at the hospital. There was no basis to dispute that the Order applied to Ms Begg in her employment by SGH. No grievance arises.

[85] Regarding the second matter, the definition of grievance that Ms Begg must satisfy is that her employment, or a condition of her employment, was affected to her disadvantage by some unjustifiable action by SGH. I will assume that Ms Begg was disadvantaged by SGH not agreeing to her working from home.

[86] Ms Begg had an opportunity to persuade SGH that she could work from home. However, SGH thought that the situation differed from the earlier lockdowns and explained its view to Ms Begg. I am satisfied that SGH's actions and how it acted with respect to not agreeing that Ms Begg could work from home were what a fair and reasonable employer could have done in all the circumstances at the time.

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<sup>10</sup> See for example *Robinson v Cromwell College Board of Trustees* [2016] NZERA 11 at [20].

<sup>11</sup> Employment Relations Act 2000 s 103A(2).

[87] I find that Ms Begg does not have a personal grievance of unjustified disadvantage.

*Ms Begg was not unjustifiably dismissed*

[88] SGH dismissed Ms Begg, so it must show that its actions and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[89] SGH was obliged to comply with the Order. Ms Begg was not vaccinated and did not intend to change that status. The Order prohibited SGH from allowing Ms Begg to carry out her work as she was not vaccinated. A fair and reasonable employer could dismiss an employee for that reason.

[90] SGH raised its concern that the Order prohibited it from allowing Ms Begg to carry out her work, gave her a reasonable opportunity to respond to that concern and genuinely considered Ms Begg's responses before dismissing her.

[91] I find that SGH justifiably dismissed Ms Begg.

*Other submissions*

[92] Ms Begg submits that employers are not authorised under the Health Act 1956 to direct employees not to attend work.

[93] However, SGH did not act under the Health Act 1956. Its actions were required by the COVID-19 Public Health Response (Vaccinations) Order 2021. The Order was made under the COVID-19 Public Health Response Act 2020. The provisions of the Health Act 1956 had no bearing on Ms Begg's situation.

[94] Reference is made to a prosecution under the Health and Safety in Employment Act 1992. In that case, the District Court held an employer had not failed to take all practicable steps, by not requiring the employee to do a blood test when it had no authority to enforce that by restricting employment.<sup>12</sup> In the present case, SGH was prohibited by the Order from allowing Ms Begg to carry out her work. The *Idea Services* case is not relevant to Ms Begg's situation.

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<sup>12</sup> *Department of Labour v Idea Services Limited* DC Hastings CRN 0802050068, 4 November 2008 at [73].

[95] I am referred to *Electrical Union 2001 Inc v Mighty River Power Ltd.*<sup>13</sup> That case was a dispute about whether the employer had contractual power to require random drug testing. It does not assist Ms Begg.

[96] It is submitted that SGH took “anticipatory action on what it thought the Order would require”. The only action taken by SGH before the Order came into effect on 25 October 2021 was to advise its employees what had been announced and respond to Ms Begg’s correspondence. There was nothing improper in doing this.

[97] There is reference to *HLI v VMZ*,<sup>14</sup> given use of the word “advice” in SGH’s email on 21 October 2021. As the Court held in that case, “advice” is not legally binding; the issue turns on the wording of the Order itself. Here, the wording of the Order prohibited SGH from allowing Ms Begg to carry out her work unless satisfied that she was vaccinated. That position was never in doubt, as follows.

[98] The following is based on words and definitions in the Order as at 25 October 2021. A relevant PCBU must not allow an affected person to carry out certain work unless vaccinated.<sup>15</sup> SGH was a relevant PCBU because it was the PCBU as defined under the HSWA who employs an affected person.<sup>16</sup> Ms Begg was an affected person because she belonged to a group.<sup>17</sup> She carried out certain work because her work was in respect of a group.<sup>18</sup> Group meant a group of affected persons specified in Schedule 2 of the Order. Under Schedule 2, at 7.3, workers who are employed by certified providers and who carry out work at the premises where health care services are provided are a group of affected persons. Certified providers meant persons (including SGH) certified under s 26(1) of the Health and Disability Services (Safety) Act 2001 to provide health care services.

[99] In summary, SGH could not allow Ms Begg to work at the premises and Ms Begg had a duty not to work at the premises.

[100] It is wrongly submitted that the duties of SGH in relation to Ms Begg were “exclusively” those listed by cl 11A of the Order. SGH also had a duty not to allow an

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<sup>13</sup> [2013] NZEmpC 197 at [50].

<sup>14</sup> *HLI v VMZ* [2022] NZEmpC 201 at [20].

<sup>15</sup> COVID-19 Public Health Response (Vaccinations) Order 2021 cl 8(1).

<sup>16</sup> Clause 4.

<sup>17</sup> Clause 4.

<sup>18</sup> Clause 4.

affected person to carry out work unless satisfied that the person was vaccinated also applied. The record keeping duties set in cl 11A permitted the employer to be satisfied of an affected worker's vaccination status.

[101] It is submitted that SGH could have activated the management of change process set out at clause 20 of the employment agreement. That clause provided for consultation, notice and compensation in certain defined circumstances. However, Ms Begg's position was not superfluous to SGH's needs, her duties, authority and status had not materially changed permanently and the skills requirement of the position had not changed. Clause 20 did not apply.

### **Summary and orders**

[102] By communicating with Ms Begg about the Order (as proposed and then enacted), SGH did not unilaterally vary her employment agreement to require her to receive Covid-19 injections.

[103] SGH did not breach the provisions of the Health and Safety at Work Act 2015 concerning safety, health and welfare matters in respect of Ms Begg's employment.

[104] SGH did not breach its obligation as a good employer to act in good faith, providing Ms Begg with fair and proper treatment in all aspects of Ms Begg's employment.

[105] Ms Begg was an affected person under the Order. The Order prohibited SGH from allowing Ms Begg to carry out her work, as she was not vaccinated.

[106] Ms Begg raised personal grievances within time but she does not have any personal grievance against SGH.

[107] Ms Begg's claims are dismissed.

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

[109] If the parties are not able to resolve costs, and an Authority determination on costs is needed, the respondent may lodge, and then should serve, a memorandum within 28 days of the date of this determination. From the date of service of that memorandum the applicant will then have 14 days to lodge a reply. 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.

Philip Cheyne  
Member of the Employment Relations Authority