

**ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING
PARTICULARS OF THE APPLICANTS.**

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2021-485-509
[2021] NZHC 3012**

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER	of an application for Judicial Review
BETWEEN	FOUR AVIATION SECURITY SERVICE EMPLOYEES Applicants
AND	MINISTER OF COVID-19 RESPONSE First Respondent
	ASSOCIATE MINISTER OF HEALTH Second Respondent
	ATTORNEY-GENERAL Third Respondent

Hearing:	21 and 22 October 2021
Appearances:	S J Grey and K M Henry for the Applicants A M Powell and K B Bell for the Respondents
Judgment:	8 November 2021

JUDGMENT OF COOKE J

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[1] The applicants for judicial review are four former Aviation Security Service employees. They challenge an order made by the Minister for COVID-19 Response (the Minister) under the COVID-19 Public Health Response Act 2020 (the Act). The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) requires aviation security workers who interact with arriving or transiting international travellers to be fully vaccinated.¹

[2] For the reasons explained in their affidavits the applicants did not want to be vaccinated and have been dismissed from their employment as a consequence. They have proceedings relating to that dismissal before the Employment Relations Authority but in these proceedings they challenge the legality of the Order made by the Minister.

[3] A related judicial review proceeding was recently considered by Churchman J, who dismissed a challenge to the Order.² Initially this challenge was to be heard together with that challenge on the understanding that the applicants' statement of claim would be amended to have a more confined scope.³ But the Court subsequently concluded that the applicants' case still involved broader factual assertions that could

¹ COVID-19 Public Health Response (Vaccinations) Amendment Order 2021, Schedule 2, cl 7.

² *GF v Minister of COVID-19 Response and Ors* [2021] NZHC 2526.

³ *GF v Minister of COVID-19 Response and Ors* [2021] NZHC 2337.

Conclusion

[143] I have carefully considered the applicants' challenge. That has included a consideration of Dr Febery's evidence, and particularly the publications and scientific papers that she put forward in her reply affidavit directed to the efficacy of the vaccine, and its impact on transmission. I have also considered Dr Thornley's evidence. I do not accept the applicants' challenge that the vaccine is experimental, unproven, unsafe and that it has little effect on transmission. I am satisfied that the vaccine is safe and effective, is significantly beneficial in preventing symptomatic infection of COVID-19 including the Delta variant, and that it significantly reduces serious illness, hospitalisation and death. I also accept that it is likely to materially assist in preventing the risk of an outbreak or the spread of COVID-19 originating from border workers having contact with potentially infected persons from overseas. More generally for the reasons I have explained in detail above I accept that the measure contained in the Order is demonstrably justified in a free and democratic society. I accept that the Order is within the empowering provision in the Act, and that it has not been implemented by an irrational decision, or one that involved a failure to consider relevant considerations.

[144] The applicants' challenge is accordingly dismissed.

[145] On the question of costs, should the respondents seek costs they should file and serve a memorandum (no more than 10 pages plus a schedule) within 10 working days which can be responded to by the applicants (no more than 10 pages plus a schedule) within 10 working days. Amongst the matters to be considered will be whether r 14.7(e) of the High Court Rules 2016 applies such that there should be no award of costs against the applicants, or a reduced costs award. This is on the basis that their fundamental rights under s 11 were limited, they have lost their employment as a consequence, and that there should be no impediment to their right to have access to the Court to challenge the potential legitimacy of the orders having those impacts in the circumstances of this case.