

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 90  
5520467

BETWEEN	LABOUR INSPECTOR (TASNEEM BEGUM) Applicant
AND	GOLDLINK ENTERPRISES LIMITED TRADING AS MASALA INDIAN RESTAURANT (IN LIQUIDATION) First Respondent
AND	CHK HOSPITALITY LIMITED (IN LIQUIDATION) Second Respondent

Member of Authority: Vicki Campbell

Representatives: Rebecca Denmead for Applicant  
No appearance for First or Second Respondents

Investigation Meeting: 11 March 2015

Submissions Received: 19 March 2015 from Applicant

Determination: 25 March 2015

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**DETERMINATION OF THE AUTHORITY**

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- A. CHK Hospitality Limited (In Liq) is ordered to pay to Mr Singh the amount of \$2,160.03 for unpaid wages and holiday pay within 14 days of the date of this determination.**
- B. CHK Hospitality Limited (In Liq) is ordered to pay interest on the sum of \$2,160.03 at the rate of five percent per annum. Interest is to be calculated from 24 June 2012 until the amount owing is paid.**

- C. I order CHK Hospitality Limited (In Liq) to pay the sum of \$10,000 into the Authority within 14 days of the date of this determination.**
- D. CHK Hospitality Limited (In Liq) is ordered to reimburse the Labour Inspector for the Authority's filing fee in the sum of \$71.56.**

### **Employment relationship problem**

[1] The Labour Inspector claims Goldlink Enterprises Limited (In Liquidation) trading as Masala Indian Restaurant (Masala Mission Bay) and CHK Hospitality Limited (In Liquidation) (Masala Bucklands Beach) have failed to pay minimum wages, final holiday pay and public holiday payments totalling \$32,264.35 gross to Mr Gagandeep Singh a former employee of the two companies.

[2] On 10 March 2015 the Authority was advised that Goldlink Enterprises Limited (In Liq) had been put into liquidation. The liquidators did not consent to this matter proceeding against the now liquidated company. The claims against Goldlink Enterprises Limited (In Liq) were therefore not considered by the Authority.

[3] CHK Hospitality Limited (In Liq) had previously been put into liquidation on 2 September 2013. With the consent of the liquidator this matter proceeded to an investigation meeting. One previous matter against CHK Hospitality Limited (In Liq)<sup>1</sup> has been investigated and determined by the Authority.

### **Background**

[4] On 9 April 2014 Mr Singh made an informal complaint with the Labour Inspectorate alleging he had been underpaid wages and holiday pay when he worked at Masala Bucklands Beach and then at the Masala Mission Bay between June 2012 and May 2013.

[5] The Labour Inspector claims payment of outstanding wages and holiday pay and asks the Authority to award interest on the outstanding amount and to award penalties against CHK Hospitality Limited (In Liq).

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<sup>1</sup> *Tasneem Begum (Labour Inspector) v Bucklands Beach Limited (In Liq) & 10 ors* [2014] NZERA Auckland 479.

[6] The Labour Inspector seeks an order from the Authority that all or part of any penalties awarded against CHK Hospitality Limited (In Liq) be paid to Mr Singh pursuant to section 136(2) of the Employment Relations Act 2000.

[7] During the course of the Labour Inspector's investigation into Mr Singh's complaint Ms Joti Jain, represented both respondents, and denied Mr Singh worked for either Masala Bucklands Beach or Masala Mission Bay.

[8] On 9 February 2015 Ms Jain applied to have the investigation meeting postponed from 11 March 2015 to a later date. The application came the day before the date on which Ms Jain had agreed to provide to the Authority with a list of witnesses to be present at the investigation meeting and four days prior to the date on which Ms Jain was to have lodged and served witness statements.

[9] After giving careful consideration to Ms Jain's request the application was declined and Ms Jain was advised that the meeting would proceed on 11 March 2015 as scheduled and that Ms Jain and her witnesses were expected to attend the meeting on these dates.

[10] As set out earlier the Authority was advised on 10 March 2015 that Goldlink Enterprises Limited was in liquidation and that the liquidator did not consent to the matter proceeding.

[11] No appearance was made on 11 March 2015 at the investigation meeting on behalf of either of the respondents, albeit a representative of the liquidator for CHK Hospitality Limited (In Liq) was present.

### **The complaint**

[12] On 19 May 2014 Mr Singh completed a formal complaint form for the Labour Inspectorate claiming, among other things, that he had not been paid for the two weeks that he had worked at Masala Bucklands Beach.

[13] On 22 September 2014 Mr Singh was interviewed by the Labour Inspector. During that interview Mr Singh advised the Labour Inspector that he met with Mr Rajwinder Grewal, the Director and shareholder of CHK Hospitality Limited (In Liq)

in or about the beginning of June 2012 and commenced work that same day even though he did not have a work permit and was not legally entitled to work in New Zealand.

[14] Mr Singh advised the Labour Inspector that he worked for about two weeks with Mr Grewal at Masala Bucklands Beach and then moved to Masala Mission Bay. He confirmed to the Labour Inspector that for the two weeks he worked at Masala Bucklands Beach he was not paid.

### **Arrears of wages claim**

[15] The Labour Inspector met with Ms Jain on 30 April 2014 at the Mt Eden Masala Restaurant. Ms Jain has provided information to the Authority which confirms that she had responsibility for six of the Masala Restaurants including Bucklands Beach. Ms Jain denied Mr Singh had been employed at either of the two restaurants.

[16] The Authority has received evidence confirming Mr Singh undertook work at Masala Bucklands Beach and I am satisfied this work continued over a period of two weeks of working at that restaurant.

[17] I find the Labour Inspector has proven on the balance of probabilities that Mr Singh was not paid for the work he undertook at Masala Bucklands Beach and that he is owed minimum wages of \$2,000.03 gross.

[18] Mr Singh is entitled to the payment of holiday pay on his minimum wages of \$160.00 gross.

[19] CHK Hospitality Limited (In Liq) is ordered to pay to Mr Singh the amount of \$2,160.03 for unpaid wages and holiday pay within 14 days of the date of this determination.

[20] The Labour Inspector has applied for interest to be paid on the outstanding amounts. CHK Hospitality Limited (In Liq) is ordered to pay interest on the sum of \$2,160.03 at the rate of five percent per annum. Interest is to be calculated from 24 June 2012, the date Mr Singh left Masala Bucklands Beach to work at Masala Mission Bay, until the amount owing is paid.

## **Penalties**

[21] The Labour Inspector claims penalties against Masala Bucklands Beach for its:

- a) failure to pay minimum wages pursuant to section 10 of the Minimum Wage Act 1983; and
- b) failure to pay holiday pay pursuant to the Holidays Act 2003, section 75(2)(a).

[22] It is generally accepted that a penalty should be imposed for the purpose of punishment and deterrence. In *Tan v Yang & Zhang*<sup>2</sup> the Court set out the following non-exhaustive list of factors that may usefully be considered by the Authority when dealing with applications for penalties:

- a) The seriousness of the breach;
- b) Whether the breach is one-off or repeated;
- c) The impact, if any, on the employee/prospective employee;
- d) The vulnerability of the employee/prospective employee;
- e) The need for deterrence;
- f) Remorse shown by the party in breach; and
- g) The range of penalties imposed in other comparable cases.

[23] The failure to pay the minimum wage to an employee is inexcusable. A significant portion of the respondents' employees were recent migrants to New Zealand. Migrant workers working illegally in New Zealand may not feel able to complain about their working conditions as they could be deported back to their home country.

[24] The evidence shows that Mr Singh made more than one application for a work permit, none of which were granted. He acknowledged at the investigation meeting that he was working illegally and was aware of that at the time he started working at Masala Bucklands Beach. Workers like Mr Singh are vulnerable to exploitation due

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<sup>2</sup> [2014] NZEmpC 65.

to the conflict that would necessarily arise for them if they complain that they are not receiving minimum standards.

[25] The failure to pay the minimum wages to Mr Singh was serious. The breach was repeated during the two weeks he worked at Masala Bucklands Beach and was exacerbated by the denials of Ms Jain when interviewed by the Labour Inspector on 30 April 2014.

[26] Ms Jain did not attend the investigation meeting and throughout the correspondence with the Authority has continued to deny Mr Singh worked for Masala Bucklands Beach.

[27] I find that this case warrants the imposition of a penalty which will also serve as a deterrent message. I consider a penalty of \$5,000 for each breach to be justifiable.

[28] I order CHK Hospitality Limited (In Liq) to pay the sum of \$10,000 into the Authority within 14 days of the date of this determination. Pursuant to section 136(2) of the Employment Relations Act 2000, 50% of the penalty is to be paid to Mr Singh. The remaining 50% is to be paid to the Crown.

**Filing Fee**

[29] CHK Hospitality Limited (In Liq) is ordered to reimburse the Labour Inspector for the Authority's filing fee in the sum of \$71.56.

Vicki Campbell  
Member of the Employment Relations Authority