

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 420  
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5620232  
5620222

BETWEEN                    LABOUR INSPECTOR of  
                                  MINISTRY OF BUSINESS  
                                  INNOVATION AND  
                                  EMPLOYMENT  
                                  Applicant

A N D                        NEELAM AHUJA, CHIRAG AHUJA  
                                  and RHYTHM AHUJA (re  
                                  Khoobsurat Limited (in  
                                  liquidation))  
                                  Respondents

A N D                        NAARI COLLECTION LIMITED  
                                  (in liquidation) and NEELAM  
                                  AHUJA and CHIRAG AHUJA  
                                  Respondents

A N D                        KHOBSURAT COLLECTIONS  
                                  LIMITED (in liquidation) and  
                                  NEELAM AHUJA and CHIRAG  
                                  AHUJA  
                                  Respondents

Member of Authority:    Eleanor Robinson

Representatives:        Sarah Blick, Counsel for Applicant  
                                  Greg Bennett, Advocate for Respondents

Investigation Meeting:    9 December 2016 at Auckland

Submissions Received:    5 and 9 December 2016 from Applicant  
                                  and Respondents

Date of Determination:    23 December 2016

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**DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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## **Employment relationship problem**

[1] Shortly before the commencement of an Authority Investigation Meeting on 5 October 2016, there were complaints made by witnesses for the Applicant that they were subjected to threats in connection with their proposed appearance as witnesses in that investigation process.

[2] This determination is brought by the Authority on its own motion to determine whether or not a penalty should be imposed on the Respondents, Mrs Neelam Ahuja, and/or Mr Chirag Ahuja and/or Ms Rhythm Ahuja on the basis that they were responsible for obstructing or delaying the Authority's investigation pursuant to s 134A of the Employment Relations Act 2000 which states:

### **134A Penalty for obstructing or delaying Authority investigation**

- (1) *Every person is liable for a penalty under this Act who, without sufficient cause, obstructs or delays an Authority investigation, including failing to attend as a party before an Authority investigation (if required).*
- (2) *The power to award a penalty under subsection (1) may be exercised by the Authority-*
- (a) of its own motion; or*
- (b) on the application of any party to the investigation.*

## **Background Facts**

[3] The Authority held an investigation meeting on 5 and 6 October 2016 and has issued a determination in relation to that matter<sup>1</sup>. In that determination, Neelam Ahuja, Chirag Ahuja and Rhythm Ahuja were determined to be jointly and severally liable for minimum wage and holiday payments entitlements due to ex-employees of Indian retail clothing stores of which they were directors or officers, including Ms Nandni and Ms Kumar.

[4] Shortly prior to the Authority's investigation meeting commenced on 5 October 2016, the Applicant, a Labour Inspector, raised the matter of two of its witnesses, Ms Kalpana Nandni and Ms Renuka Kumar, having been contacted by a person, or persons, in relation to their giving of evidence in those proceedings.

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<sup>1</sup> Determination [2016] NZERA Auckland 400 on 8 December 2016

[5] Specifically the Labour Inspector claimed that an attempt had been made to deter Ms Nandni and Ms Kumar from giving evidence before the Authority in the case before the Authority involving the Respondents, Neelam Ahuja, Chirag Ahuja and Rhythm Ahuja.

[6] The Investigation Meeting was delayed whilst I discussed the matter with Ms Blick and Mr Bennett separately. When the Investigation Meeting resumed some 15 minutes later, I informed the parties that I regarded the allegations of attempted witness intimidation and the possible interference with the associated administration of justice most seriously.

[7] This matter was reserved for further determination following further investigation regarding whether or not a penalty pursuant to s 134A of the Act should be imposed upon the Respondents for acts or omissions that delayed or obstructed the Authority's investigation of the Labour Inspector's application.

[8] During the further investigation held on 9 December 2016, I heard evidence from the Labour Inspector witnesses, Ms Nandni and her husband, Ms Kumar, and Mr David Myatt, a Labour Inspector with the Ministry of Business Innovation and Employment (MBIE).

[9] Neelam, Chirag and Rhythm Ahuja attended the Investigation Meeting, but declined to give evidence on the basis that if one or more of the Respondents were found to have breached s 134A of the Act, they could face the potential of a criminal trial.

[10] I have been advised by the Applicant and Respondents that although complaints have been made to the Police, the Police has closed its file and is not proceeding further at this stage. Moreover whether or not the Police chooses to proceed to take action against the Respondents in this matter is not a factor that for my consideration.

### **Background facts**

#### *Ms Nandni: events 3 October 2016*

[11] Ms Nandni was previously employed at Naari Collections Limited, an Indian clothing retail store, from September 2012 until late June 2015. During the period of her employment Mrs Neelam Ahuja and Mr Chirag Ahuja were directors of Naari Collections Limited.

[12] Ms Nandni said that on 30 September 2016 she was served a summons by Mr Myatt. The summons required her to attend the Authority investigation meeting which was scheduled to start at 10.00 a.m. on Wednesday 5 October 2016.

[13] On the evening of Monday 3 October 2016 Ms Nandni was at home with her family. At approximately 10.30 p.m. a man came to her home. Mr Nitesh Prasad, Ms Nandni's

husband, said he had answered the front door. There was a man standing on the doorstep wearing a hoody type of garment and he had a number of tattoos on his face. One of them was situated across his nose and read "BLACK POWER". The man also had a beard.

[14] Mr Prasad stepped just outside the front door of the house to talk to the man. He said the man referred to matters connected with Ms Nandni's previous employment, including the mention of a clothing store. Ms Nandhi then joined them outside the house.

[15] Ms Nandni described the man as tall and thin and fairly light skinned with a beard and moustache. She also described him as having a Black Power tattoo across his cheeks and nose.

[16] Although the man did not mention his name, Mr Prasad said he told him and Ms Nandni that she should not be making trouble with her old employer. The man had explained that Black Power had been paid money to threaten Ms Nandni.

[17] Ms Nandni said the man had said the case was about her and some other employees who alleged they had not received proper payment. He mentioned such information as the fact that Ms Nandni had worked in a clothing store, the dates when she worked there, the times when she worked there, that a Labour Inspector was involved and that the company behind the clothing store was being liquidated.

[18] Ms Nandni said the man did not say who paid him, but he described two people to them. She said the description sounded like Mr Chirag Ahuja, and his father, both of whom she knew from her period of employment at Naari Collections Limited.

[19] Ms Nandni said the man had told them that some other members of his gang had believed they should come and physically assault her and her husband; however, the man had said he did not think that was the right thing to do initially. This was because he had been given a photograph of her family and he felt it would be hard on a family if it was not necessary.

[20] Mr Prasad and Ms Nandni said the man had walked away up their driveway and when he came back he showed two photographs printed out on A4 paper. Ms Nandni said one was a photograph of her alone, the other was one of her with her family and she believed the pictures may have been from her Facebook page. Mr Prasad said the photographs showed Ms Nandni, himself and their young son, but was not completely sure exactly what was in the two photographs, except that they were of his family.

[21] Ms Nandni said in addition to her husband, she had a young son and she was also pregnant with her second child at the time. Although the man who had visited them did not hurt them, she was very frightened to think that her family might be hurt by gang members.

[22] She said the last thing the man had told her before leaving was that she should phone her old boss, and let him know that gang members had visited her to warn her not to show up in Court. He had then left saying that he would be back the following night.

[23] Mr Prasad explained that he and Ms Nandni ran a cleaning business which involved getting up very early in the morning. As it was after the visit from the man, he had gone to bed and was aware that Ms Nandni was making telephone calls but did not get involved in them.

[24] Ms Nandni said she did not have contact details for Mr Chirag Ahuja, but she did have a cell phone number for his sister, Ms Rhythm Ahuja, and she phoned her from her husband's telephone after the man had left.

[25] Ms Nandni said that Rhythm Ahuja denied knowing to what she was referring when she described what had happened that night, but then added that she (Ms Nandni) should not be presenting a case to the Authority. She advised Ms Nandni that she should take care of her family and she should not go to the Police because *'they could not help people against things like Black Power who could do anything to people'*.

[26] Shortly after that call had been made, Ms Nandni said that at approximately 11.00 p.m., a call came through to her husband's telephone from Ms Neelam Ahuja from Rhythm Ahuja's telephone number. Ms Neelam Ahuja is Chirag and Rhythm's mother.

[27] Ms Nandni said she had asked Ms Neelam Ahuja why she and members of her family were being threatened, and Mrs Neelam Ahuja responded that 'bad things can happen when you mess with people' and advised her to do as Black Power had told her to do.

[28] Ms Neelam Ahuja had asked why Ms Nandni was accusing Mr Chirag Ahuja of sending Black Power, and made a comment to the effect that the pain Ms Ahuja had felt on seeing Black Power with a photograph of her son was similar to the pain she felt of her son, Chirag, being taken to court. Ms Nandni said she had found the comment about Chirag informative as she had not mentioned him to either Rhythm Ahuja or during the call with Mrs Ahuja.

[29] Telephone records provided to the Authority indicated that there was an outgoing call made on 3 October 2016 at 10.39pm and a later incoming call at 11.13pm.

*Events 4 October 2016*

[30] The following morning Ms Nandni said she telephoned Mr Myatt to tell him what had happened. Mr Myatt had told her to inform the Police as soon as possible and then to take their advice for keeping safe. He asked her if she could send him a screenshot record of the phone calls with Rhythm Ahuja and Mrs Neelam Ahuja from the previous evening, and she did so.

[31] Ms Nandni said that as she and her husband operated their own cleaning business, they had gone to work and carried out work for their clients. They had contacted the Police later that day, and she had subsequently provided her statement at the Police Station to the Police.

[32] Mr Myatt said that after speaking with Ms Nandni on 4 October 2016, he had spoken to the Labour Inspectorate management. For health and safety reasons he was instructed to arrange a morning taxi pick up the following day, 5 October 2016, to take Ms Nandni to the Investigation Meeting. The fare for the taxi collection was to be charged to an MBIE taxi charge card.

[33] Mr Myatt was also instructed to contact the Police for advice regarding instances of witness intimidation. He telephoned Senior Sergeant Spencer Matthews at the Counties Manukau Police to whom he had previously spoken on a different matter. Senior Sergeant Matthews had urged him to have the intimidated parties make statements to the Police and suggested that the Labour Inspectorate might consider placing them in a motel at least for the night.

[34] Senior Sergeant Matthews asked Mr Myatt to email him the names and addresses of the intimidated parties in order that he could pass the information on to the patrol officers at the nearest station. Mr Myatt emailed him the details shortly afterwards.

[35] Mr Myatt then telephoned Ms Nandni to let her know about the change to her transport arrangements. He also notified Ms Nandni that he needed to give her a taxi charge card for her travel to the Investigation Meeting the following morning. Ms Nandni advised that she would not be home until later that evening as she was out working with Mr Prasad, so they arranged for Ms Nandni to collect the taxi charge card from him at his home later that evening.

[36] Mr Myatt said he had also been instructed by the Labour Inspectorate to contact the other witnesses who would be appearing in the Authority's investigation meeting to ensure that they were safe, and ascertain whether they had been approached. If they had been

approached, his instruction was to take the same measures as had been implemented in Ms Nandni's case.

[37] Ms Myatt said he then telephoned the other witnesses on 4 October 2016, Ms Kumar, Ms Anita Prasad, and Azimun Misha, to confirm that all was well with them, and that he would pick them up the following morning to take them to the investigation meeting. Neither Ms Kumar, Ms Prasad nor Ms Nisha reported any issues at that time.

*Ms Kumar*

[38] Ms Kumar was previously employed at Khoobsurat Limited, an Indian clothing retail store. She was employed from July 2011 to December 2011. During the period of her employment Mrs Neelam Ahuja and Mr Chirag Ahuja were directors and Ms Rhythm Ahuja was an officer of Khoobsurat Limited.

[39] At approximately 5.10 p.m. on 4 October 2016 Mr Myatt received a call from Ms Kumar who said she had just received a phone threat from someone claiming to be a Black Power gang member.

[40] Ms Kumar said on the afternoon of Tuesday 4 October 2016 she was working at a shop in Papatoetoe. The shop was very busy at that time and there was one other staff member in the shop with her. Shortly after 5 p.m. she received a telephone call from a man she did not know, but who knew her name.

[41] Ms Kumar said the man claimed to be a Black Power gang member and had an accent similar to that of a Pacific Islander. The man had used profane language during the call, and told her that she should withdraw her case from the Labour Department. The man gave her details about her car registration number, where her car was parked, and he knew her home address.

[42] Ms Kumar said she had denied that her car was parked where the man said it was, however he had replied that he would see her at her car, or alternatively at her home with her husband at 6 p.m. sharp.

[43] Ms Kumar said she immediately told the other staff member what had occurred. She had been very busy with customers and had not heard anything of the call. Ms Kumar then called Mr Myatt. She said she was very frightened and wanted Mr Myatt to know what had happened and to ask for help.

[44] Mr Myatt had asked her if she could remain in the shop until after closing time, but she said she could not do so. Mr Myatt then told her to close the shop at the usual time, but to

(i) stay away from her car, (ii) call the Police immediately, (iii) keep out in the open in any public areas, and (iv) wait for him to meet her.

[45] Ms Kumar said she closed the shop at 5.30 p.m. and walked with the other staff member to the Countdown supermarket which was close to where she worked. Mr Myatt had called her while she was enroute to Countdown to advise he was on his way and would be with her soon. The other staff member waited a little time with her but then had to leave.

[46] When Ms Kumar arrived at Countdown, she had called the Police, told them what had happened, and that she was very scared for her family. She had been on the telephone with the Police when Mr Myatt arrived and he had also spoken to the Police. He had explained the situation to the Police.

[47] Mr Myatt said the Police had advised that Ms Kumar was to go home, check if there was anything strange or dangerous outside and then call them again if so. Ms Kumar said she and Mr Myatt went together to where her car was parked, checked it was safe for them, and that there was no-one in the vicinity who could threaten them. They then got into Ms Kumar's car and she dropped Mr Myatt at his car. He then followed Ms Kumar to her home.

[48] When they arrived at Ms Kumar's home, she and Mr Myatt looked carefully at the area around her home. As there was no cause for alarm, they had entered the house where Mr Kumar's 15 year old daughter and her 18 month old son were already at home. Ms Kumar said to her relief they were safe and had not received any threats.

*Events on the evening of 4 October 2016*

[49] Mr Myatt stayed with Ms Kumar and her family for protection until her husband arrived home from work. When Ms Kumar's husband arrived home, Mr Myatt introduced himself and explained what had happened and offered to take the family to a motel to stay the night if that would make them feel safer.

[50] Ms Kumar said she and her husband decided they would like to accept the offer, and Mr Myatt told them what to pack while he watched the road. When they were ready they followed Mr Myatt to a motor lodge not far from where they lived.

[51] After seeing them safely into the motel, Mr Myatt told them that one of his colleagues would collect Ms Kumar the following morning and take her to the Investigation Meeting. There were no incidents at the motel that night.

[52] Mr Myatt said after he arrived home shortly afterwards, Ms Nandni called to tell him that she and her husband had had to go directly home for her husband to provide a statement to the Police and could not, as arranged, collect the taxi charge card from him.

[53] Mr Myatt said he agreed to come out to Ms Nandni's home as he wished to liaise with the Police as well as to give Ms Nandni the taxi charge card. By the time he arrived at Ms Nandni's house, she had already given a statement to the Police, who had left. A minute or so later Ms Nandni received a phone call from the Police saying they had forgotten to take a separate statement from her husband. A Police Constable called at Ms Nandni's home a short while later. He advised that whilst he could take a statement from Mr Prasad on site, it would be better if Mr Prasad could go to the Police Station to do so.

[54] Mr Myatt said Mr Prasad was reluctant to leave his wife, child, and his mother in law and niece, who also lived in the home, alone, so he volunteered to stay with them while Mr Prasad was away.

[55] After Mr Prasad returned home later that evening, Mr Myatt made the offer of motel accommodation to the family, but they decided it would be too disruptive to uproot the whole household for one night. However as they were still nervous about the possibility of another visit from a gang member, Mr Myatt volunteered to stay with them and did so until around 11 p.m., which was after the time given for the intended return visit had passed. After that time, Ms Nandni and Mr Prasad decided the family would be safe by themselves at that point and Mr Myatt went home.

[56] All the Labour Inspector's witnesses, including Ms Nandni and Ms Kumar, attended the Investigation Meeting the following morning on 5 October 2016.

### **Determination**

[57] Mr Bennett submits that the allegations are of witness intimidation, a serious offence, and submits that the standard to be applied should not be the civil standard of proof.

[58] This is a penalty action on the Authority's own motion arising from the penalty provisions in s134A of the Act. In *Xu v McIntosh* which case involved a penalty action, Chief Judge Goddard stated:<sup>2</sup>

*In all instances, that is to say in both the personal grievance and the penalty action, the standard of proof required to be attained to discharge the relevant burden of proof is the standard applying in all*

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<sup>2</sup> [2004] 2 ERNZ 448

*civil cases: proof on the balance of probabilities. In criminal cases, the higher standard of proof beyond reasonable doubt is required, but that has no application in this Court except when it is exercising a criminal jurisdiction or is contemplating imprisonment for disobedience to an injunction or a compliance order.*

[59] Section 142S of the Act as amended in 2016 states:

***142S Standard of proof***

*To avoid doubt, in proceedings under this Part for a declaration of breach, pecuniary penalty order, compensation order, or banning order, the standard of proof is the standard of proof that applies in civil proceedings.*

[60] In *Radius Residential Care Ltd v The New Zealand Nurses Organisation Inc* Chief Judge Colgan referred to s 142S of the Act and held that the civil standard of balance of probabilities applied, but commented:<sup>3</sup>

*... I conclude that where a person faces an application for a statutory penalty in addition to a claim for damages arising out of the same breach, the civil standard of proof (balance of probabilities) is to be approached by applying a higher than simple requirement of probability over improbability ....*

[61] In this case, having heard the evidence I find that there is a higher than simple requirement of probability that Neelam, Chirag and/or Rhythm Ahuja instructed persons unknown to visit Ms Nandhi. This is based on the facts known by the unknown males who contacted Ms Nandni and Ms Kumar which were pertinent to the case to be heard by the Authority on 5 and 6 October 2016.

[62] I find the following information provided by the unknown man to Ms Nandni to be accurate and detailed information in relation to her previous employment at Naari Collections Limited and the case due to be investigated two days later, namely:

- the case was in connection with a clothing store
- the case involved her and other employees not receiving proper payment

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<sup>3</sup> [2016] NZEmpC 112 at [98]

- the man knew the dates and times Ms Nandni had worked at Naari Collections Limited
- the case involved a Labour Inspector
- the company involved in the case had been liquidated

[63] The man had not mentioned the name of the person who had instructed him, but provided information as to who had issued him with instructions to visit Ms Nandni: Mr Prasad was advised it was Ms Nandni's '*ex-employer*'; Ms Nandni was given descriptions of two men which she recognised as matching that of Chirag Ahuja and his father, both of whom she knew from her employment at Naari Collections Limited.

[64] In addition the man had assumed that she would understand to whom he was referring and would know the telephone number to call to advise her previous employer of the visit.

[65] I find that the detailed information provided to Ms Nandni would have been within the compass of knowledge of a small number of people with an interest in the case before the Authority on 5 and 6 October 2016 not proceeding: namely Neelam, Chirag and Rhythm Ahuja.

[66] The advice given to Ms Nandni as delivered by the man who visited her home on 3 October 2016 was that she should not attend the '*court*'. I find that given the proximity of the man's threatening visit to Ms Nandni on the night of 3 October 2016 to the Investigation Meeting on 5 October 2016, and the detailed nature of the information provided, that reference was to that particular Investigation Meeting.

[67] I also find it significant that Neelam Ahuja mentioned Chirag Ahuja during the telephone call with Ms Nandni when discussing the man's threatening visit, although Ms Nandni had not mentioned Chirag to either Rhythm or Neelam Ahuja.

[68] In the case of Ms Nandni, I find that on the standard of proof to be applied, that Chirag Ahuja obstructed the Authority's Investigation Meeting on 5 October 2016.

[69] I have considered whether or not Neelam and Rhythm Ahuja also attempted to obstruct the Authority's process in the case of Ms Nandni. I find that there is evidence that while Rhythm Ahuja denied knowing anything about the visit that night to Ms Nandni, she tried to deter Ms Nandni from giving evidence at the impending Authority Investigation Meeting and being involved in the Authority's process by:

- advising Ms Nandni '*to take care of her family*';

- advising her not to involve the Police; and
- stated a view that the Police would not be able to help her against Black Power gang members.

[70] I find that Neelam Ahuja also tried to deter Ms Nandni from giving evidence and being involved in the Authority's process by her response when Ms Nandni told her about the threat to herself and her family, that "*bad things happen when you mess with people*" and her advice to Ms Nandni that she do as instructed by the Black Power visitor.

[71] Neelam Ahuja also referred to Chirag Ahuja in connection with the visit that night to Ms Nandni, although Ms Nandni had not mentioned Chirag to either her or Rjhythm Ahuja during her conversations with them. I find this indicates Neelam Ahuja had been aware of Chirag Ahuja being involved in the visit to Ms Nandni.

[72] I find that Neelam and Rhythm Ahuja had a vested interest in the Investigation Meeting not proceeding on 5 and 6 October 2016, and that they were complicit in what had occurred that night at Ms Nandni's home,

[73] In the case of Ms Nandni, I find that on the standard of proof to be applied, that Neelam and Rhythm Ahuja obstructed the Authority's Investigation Meeting on 5 October 2016.

[74] In respect of Ms Kumar, I accept that the information provided to her, namely that the case involved the Labour Department, points towards the involvement of the Respondents. The advice given to her was to withdraw her case relating to the Labour Inspector. It was coupled by the threat that the man who threatened her would see her at her car providing information about the registration number and where it was parked; or at her home where she had young children awaiting her return.

[75] The Respondents were those with a vested interest in the case brought by the Labour Inspector not proceeding in the Authority the following day. I find that there is sufficient detail provided to meet the required standard of proof for a penalty action.

[76] I accept that Ms Nandni and Ms Kumar were not deterred from giving evidence by the threats made to them and their families; however following the Employment Court decision in *Ho v The Chief of Defence Force*<sup>4</sup> I consider that the point is whether or not the potential was there for deterrence. It is important for the administration of justice that there is a complete absence of such pressure.

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<sup>4</sup> [2005] ERNZ 93

[77] It is important that parties have access to potential witnesses whose evidence is usually given voluntarily. Such evidence is helpful to the Authority in determining the merits of a matter. The evidence of such witnesses should not be impeded by their being fearful of the repercussions to them and their families if they do so. To intimidate witnesses, either actually or potentially, obstructs the Authority from arriving at a determination of the truthfulness of the issues before it, or being able to assess the seriousness of what is before it.

[78] I am satisfied that my investigation was obstructed by the fact that the Applicant witnesses, Ms Nandni and Ms Kumar, were placed under unnecessary and undue pressure in the giving of their evidence as a result of the intimidatory contacts on 3 and 4 October 2016.

[79] I find that Neelam, Chirag and Rhythm Ahuja were responsible for that pressure being applied, and that they subverted or pre-empted the effective application of the dispute resolution process in this case. This is not the intention of the Act.

[80] It is most important that attempts to impede the Authority in carrying out its statutory duty to investigate employment relationship matters are not left unchecked, but addressed as appropriate by penalty action as a deterrent measure. Parties to employment relationships must be able to have confidence in the Authority that it will without any undue delay be able to carry out an investigation into an employment relationship problem.

[81] In *Tan v Yang* Judge Inglis set out factors to be considered when determining a penalty:<sup>5</sup>

- the seriousness of the breach;
- whether the breach is one-off or repeated;
- the impact, if any, on the employee/prospective employee;
- the vulnerability of the employee/prospective employee;
- the need for deterrence;
- remorse shown by the party in breach; and
- the range of penalties imposed in other comparable cases

[82] These factors are now mainly encapsulated in s 133A of the Act. In *Borshoom v Preet PVT Limited* the Court expanded the factors to be taken into consideration when determining whether or not a penalty should be imposed namely: <sup>6</sup>

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<sup>5</sup> [2014] NZEmpC 65 at [32]

- when assessing deterrence, to do so both in relation to the particular person to be penalised and to the wider community of employers;
- when considering the seriousness of the breach, the degree of culpability of the person in breach;
- the general desirability of consistency in decisions on penalties; and
- when assessing a penalty or penalties, to stand back and evaluate whether the anticipated outcome is one which is proportionate to the breach or breaches for which the penalty is imposed.

[83] Had the conduct occurred whilst Ms Nandni and Ms Kumar were still employed, a penalty for breach of the good faith requirements would have been indicated. A party to an employment relationship who fails to comply with the duty of good faith is liable to a penalty if it was deliberate, serious or sustained, or intended to undermine the employment relationship.

[84] Whilst I accept the employment relationship between Neelam, Chirag and Rhythm Ahuja and Ms Nandni and Ms Kumar had ended some time earlier than these events, I consider that there are ongoing obligations of good faith owed by the parties during an Authority investigation, noting that s 181 of the Act requires the Authority, if requested by the Court, to submit a report giving its assessment of the extent to which the parties involved in an investigation: “*have acted in good faith*”.

[85] In considering this matter, I have taken note of the refusal of Neelam, Chirag and Rhythm Ahuja to give evidence at the Investigation Meeting held on 9 December 2016 to be significant.

[86] I find that obstruction of the Authority’s Investigation meeting on 5 and 6 October 2016 took place and that Neelam, Chirag and Rhythm Ahuja were responsible for that obstruction. I consider it necessary and in the public interest to impose penalties which not only punishes Neelam, Chirag and Rhythm Ahuja, but which will additionally act as a deterrent to others who may contemplate engaging in such behaviour.

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<sup>6</sup> [2016] NZEmpC 143 at [68]

[87] In light of the serious nature of what occurred, the penalties should be set to reflect the Authority's disapproval of such behaviour. I determine that penalties of \$10,000.00 are appropriate in each instance as set out below:

*Ms Nandni*

[88] I order Neelam Ahuja to pay \$10,000.00 as a penalty pursuant to s 134A of the Act. I order that 50% of that penalty be paid to the Crown and 50% to Ms Nandni pursuant to s 136(2) of the Act.

[89] I order Chirag Ahuja to pay \$10,000.00 as a penalty pursuant to s 134A of the Act. I order that 50% of that penalty be paid to the Crown and 50% to Ms Nandni pursuant to s 136(2) of the Act.

[90] I order Rhythm Ahuja to pay \$10,000.00 as a penalty pursuant to s 134A of the Act. I order that 50% of that penalty be paid to the Crown and 50% to Ms Nandni pursuant to s 136(2) of the Act.

*Ms Kumar*

[91] I order Neelam Ahuja to pay \$10,000.00 as a penalty pursuant to s 134A of the Act. I order that 50% of that penalty be paid to the Crown and 50% to Ms Kumar pursuant to s 136(2) of the Act.

[92] I order Chirag Ahuja to pay \$10,000.00 as a penalty pursuant to s 134A of the Act. I order that 50% of that penalty be paid to the Crown and 50% to Ms Kumar pursuant to s 136(2) of the Act.

[93] I order Rhythm Ahuja to pay \$10,000.00 as a penalty pursuant to s 134A of the Act. I order that 50% of that penalty be paid to the Crown and 50% to Ms Kumar pursuant to s 136(2) of the Act.

[94] Turning now to consider the implications of what occurred in respect of Ms Nandi and Ms Kumar on 3 and 4 October 2016 I observe that Ms Nandni and Ms Kumar were very frightened by what occurred, personally and for their families. It is to their credit that they were prepared to give evidence in the Investigation Meeting despite what had occurred.

[95] Attempts to intimidate witnesses in any judicial process are totally unacceptable. The Court stated in *United Foods IUOW v Talley* that:<sup>7</sup>

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<sup>7</sup> [1992] 1 ERNZ 756 (LC) at [8]

*The court ... must, in the exercise of its jurisdiction generally, act in accordance with equity and good conscience. The court in so doing can and should ensure that its jurisdiction is not frustrated and that the rights of parties are not defeated by the deliberate act of any person. What could be more inequitable than that a party wishing to invoke the jurisdiction of the Court should be deterred from so doing by arrogant and overbearing conduct? What could be more unconscionable than that a witness should be deterred by threat of reprisals from giving evidence truthfully? The questions thus posed almost answer themselves.*

[96] I also consider that what occurred to be a possible contempt of the Authority. I therefore direct that a copy of this determination is made available to the Solicitor-General, and that any further information requested by the Solicitor-General be forwarded to her.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**