

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 112
3029091

BETWEEN A LABOUR INSPECTOR
 Applicant

AND HAI UNG IN PARTNERSHIP WITH
 VUOCHHUOR UNG trading as SOUTH
 DUNEDIN SATAY HOUSE
 First Respondent

AND VUOCHHUOR UNG IN PARTNERSHIP
 WITH HAI UNG trading as SOUTH
 DUNEDIN SATAY HOUSE
 Second Respondent

Member of Authority: Andrew Dallas

Representatives: Alistair Miller, counsel for the Applicant
 John Farrow and Fiona R McMillian, counsel for the
 Respondents

Investigation Meeting: On the papers

Date of Determination: 10 August 2018

CONSENT DETERMINATION

Employment relationship problem

[1] A Labour Inspector, Sacha Hodgson lodged proceedings in the Authority against Hai Ung and Vuochhuor Ung trading as the South Dunedin Satay House alleging breaches of minimum employment standards in respect of two employees.

[2] At the request of the parties, this consent determination resolves a factual dispute between them. The resolution of these factual matters clears the way for consideration by the Authority of the potential imposition of penalties on Mr Ung and Ms Ung without recourse to an investigation meeting.

[3] By consent and by this determination the agreed facts are:

- (i) In 2007, the Labour Inspectorate dealt with a complaint from three employees who alleged Mr Ung and Ms Ung had failed to provide them with payment of minimum wage per hour for every hour worked and annual holiday pay, along with other entitlements.
- (ii) Jo-Ann Duff, the Labour Inspector who investigated the business practices of Mr Ung and Ms Ung at the time, identified further breaches of minimum employment standards along with the failure to pay minimum wage, including a failure to keep wage and time records for all employees and a failure to provide individual employment agreements to all employees. Arrears of \$292.44 (gross) outstanding minimum wages and holiday pay were collected on behalf of one employee and Mr Ung and Ms Ung were provided with educational material on minimum employment standards and the requirement to provide them.
- (iii) On 14 November 2017, the business was visited by Labour Inspectors Sacha Hodgson and Jessica Lemon.
- (iv) Following her visit, Ms Hodgson commenced an investigation into Mr Ung and Ms Ung's employment practices and systems to check compliance with minimum employment standards.
- (v) On 4 December 2017, the Labour Inspector requested wage and time records and holiday and leave records for two employees.
- (vi) On 7 December 2017, Mr Ung and Ms Ung provided a sample of an updated wage and time record for employee Chanrithy Vong. Following a review of the sample record supplied, the Labour Inspector determined it to be non-compliant with record-keeping requirements under section 130 of the Employment Relations Act 2000 (the Act).

- (vii) On 18 December 2017, Mr Ung was interviewed via telephone by the Labour Inspector. His accountant, Brian Cuthbertson of BC Cuthbertson Accounting spoke on his behalf.
- (viii) During the meeting, Mr Ung was asked why he had not kept full and accurate records for his employees. Mr Ung, through his accountant, said that he forgot, and accepted that the following breaches of minimum employment standards had occurred:
 - (a) Failure to keep full and accurate wage and time records for Mr Vong in breach of section 130 of the Act;
 - (b) Failure to keep full and accurate holiday and leave records for employee Mr Vong in breach of section 81 of the Holidays Act 2003; and,
 - (c) Failure to keep full and accurate holiday and leave records for employee Sy Dung Tran, in breach of section 81 of the Holidays Act.

[4] This determination is enforceable under s 137(1)(b) of the Act.

Next steps

[5] The following issue is reserved for further determination by the Authority:

- (a) Are Mr Ung and Ms Ung liable for the imposition of penalties for the contraventions of the Act and Holidays Act and if so, in what quantum?;

[6] An Authority Officer will contact the parties shortly to discuss a timetable for a sequential exchange of submissions on this matter.

Costs

[7] Costs are reserved pending disposal of all matters before the Authority.

Andrew Dallas
Member of the Employment Relations Authority