

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 697
3066572

BETWEEN	A LABOUR INSPECTOR Applicant
AND	SALONI ENTERPRISES LIMITED First Respondent
AND	SALONI HOLDINGS LIMITED Second Respondent
AND	BENTERPRISES LIMITED Third Respondent
AND	BALWINDER SINGH Fourth Respondent
AND	JASWINDER KAUR Fifth Respondent

Member of Authority: Rachel Larmer

Representatives: Shona Carr, Counsel for the Applicant
Neomal Perera, Counsel for all of the Respondents

Investigation Meeting: On the papers

Submissions and further Information Received: 6 December 2019 from the Applicant and Respondents

Date of Determination: 6 December 2019

CONSENT DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Labour Inspector has filed a range of claims against the Respondents that relate to various alleged breaches of minimum code legislation entitlements and minimum employment standards in respect of two workers.

[2] The parties have advised the Authority that they have now reached a partial settlement in relation to the wage arrears and breaches of minimum standards aspects of the Labour Inspector's claims.

[3] The parties have confirmed that their partial settlement has not involved the forgoing of minimum entitlements (being monies payable under the Minimum Wage Act 1983 or Holidays Act 2003).

[4] The parties have asked the Authority to record the terms of their partial settlement in consent orders. Accordingly, the Authority now makes the following orders, by consent:

- (a) The First, Second and Third Respondents at various times between November 2015 and May 2018 employed Akshay KUMAR;
- (b) The First Respondent at various times between September 2014 and January 2019 employed Sarabjit KAUR;
- (c) The First, Second and Third Respondents jointly and severally owe a total of \$40,000 gross to Akshay KUMAR in arrears of wages, annual holiday pay, public holiday pay and alternative holiday pay;
- (d) The amount set out in paragraph [4]c above is in full and final satisfaction of the quantum of all arrears of wages, annual holiday pay, public holiday pay and alternative holiday pay that Akshay KUMAR is owed in connection with these proceedings;
- (e) The First Respondent owes a total of \$50,000 gross to Sarabjit KAUR in arrears of wages, annual holiday pay, public holiday pay and alternative holiday pay;
- (f) The amount set out in paragraph [4]e is in full and final satisfaction of the quantum of all arrears of wages, annual holiday pay, public holiday pay and alternative holiday pay owed to Sarabjit KAUR in connection with these proceedings;
- (g) The Fourth and Fifth Respondents shall jointly and severally pay the arrears set out in paragraph [4]c and [4]e above to the extent that the First, Second and Third Respondents are unable to pay;

- (h) The order in paragraph [4]g above is made pursuant to sections 142Y(1)(c) and 142Y(2)(b) of the Employment Relations Act 2000 (the Act).
- (i) Between November 2015 and May 2018 during their employment of Akshay KUMAR, the First, Second and Third Respondents breached the minimum entitlement and employment standards provisions of the:
 - (i) Employment Relations Act 2000;
 - (ii) Minimum Wage Act 1983;
 - (iii) Holidays Act 2003; and
 - (iv) Wages Protection Act 1983.
- (j) The breaches of the above legislation are the alleged breaches that are identified by the Labour Inspector in paragraph 1.29 of the Statement of Problem;
- (k) Between September 2014 and January 2019 during their employment of Sarabjit KAUR, the First Respondent breached the minimum entitlements and employment standards provisions of the:
 - (i) Employment Relations Act 2000;
 - (ii) Minimum Wage Act 1983;
 - (iii) Holidays Act 2003; and
 - (iv) Wages Protection Act 1983.
- (l) The breaches of the above legislation by the First Respondent are the alleged breaches that are identified by the Labour Inspector in paragraph 1.30 of the Statement of Problem;
- (m) The Fourth and Fifth Respondents are liable for penalties for the breaches identified above on the basis that they are “*persons involved in the breaches*”, within the meaning of sections 142W(2) and 142W(3)(a) and (e) respectively of the Act.
- (n) The arrears that the Respondents have been ordered to pay in this consent determination are to be paid to the Labour Inspector (for the use of the

workers who have been identified by the Labour Inspector as having been affected by these breaches) within 7 days of the date of this determination.

[5] The parties acknowledge that this consent determination does not address the Labour Inspector's application for penalties. That will occur in consultation with the parties, who have been given an opportunity to provide penalty related information, including but not limited to submissions, to the Authority before it assesses penalties.

[6] For the purposes of assessing penalties, all of the breaches identified in this determination have been acknowledged by the Respondents, who have expressly acknowledged to the Labour Inspector and to the Authority that they are all liable for penalties regarding these breaches that the parties agree have occurred.

[7] The amount of penalties to be imposed will be at the Authority's sole discretion.

Rachel Larmer
Member of the Employment Relations Authority