

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 94
3038151

	BETWEEN	A LABOUR INSPECTOR Applicant
	AND	SYMROSE LIMITED First Respondent
	AMD	JASDEV SINGH THIND Second Respondent
Member of Authority:	Helen Doyle	
Representatives:	Jodi Ongley, counsel for the Applicant Peter Zwart, advocate for the Respondents	
Joint Memorandum setting out agreement and requesting consent determination and order as to penalty received:	13 February 2019	
Date of Determination:	20 February 2019	

**CONSENT DETERMINATION OF THE AUTHORITY AND ORDERS AS
TO PENALTY**

Joint Memorandum

[1] The Authority received a joint memorandum from Ms Ongley and Mr Zwart dated 13 February 2019. The parties have reached agreement in relation to facts and legal issues before the Authority. They have asked that the Authority issue a consent

determination resolving all factual matters between them.

Orders sought by consent

[2] The parties seek an order by consent that Symrose Limited (Symrose) pay arrears to its employee of \$26,167.47 on a basis to be agreed between the parties.

[3] The parties accept the breaches set out in appendix three to the memorandum. The Authority is asked to consider a penalties claim against Symrose and Mr Thind for breaches of minimum employment standards.

The agreed facts

[4] Symrose is an incorporated company which operates Symrose's Super Fresh in Christchurch. Symrose operates a dairy which sells a variety of foods and convenience type goods and was at the time operating 24/7.

[5] Jasdev Singh Thind is the sole director and shareholder of Symrose. Mr Thind is the person involved in Symrose to the extent he is an officer of the business. He oversees the employees, negotiates employment agreements and manages staff performance. He is responsible for record keeping and he liaises with the business accountant about operational and financial matters.

[6] For the relevant period Symrose employed a number of staff. One of whom, Manpreet Singh, a migrant employee, has laid complaints against Symrose and Mr Thind for minimum employment standard breaches, including minimum wage breaches.

[7] For the periods of his employment, Manpreet Singh worked 7pm – 7am without a day off. Not all of the hours that Manpreet Singh worked were recorded in the wage and time records.

[8] Both the first and second respondents have acknowledged breaches, and agreed to pay a total of \$15,000 in penalties for the following breaches:

- (i) Failure to pay Manpreet Singh no less than the minimum wage for all of the hours he worked.

- (ii) Failure to provide an employment agreement; not to the complainant, Manpreet Singh.
- (iii) Failure to provide accurate wage and time records.
- (iv) Failure to pay correct final pay.
- (v) Failure to pay correct sick leave.
- (vi) Failure to pay correct public holidays.
- (vii) Failure to provide for alternative public holidays.

[9] The complainant employee, Manpreet Singh will be paid a total of \$26,167.00 in arrears of wages and holiday pay as set out below.

Payments to be made to Manpreet Singh

1. Minimum wage

Minimum wage arrears pre 1/04/2017 (\$15.25 p/hr) = \$14,457

Minimum wage arrears post 1/04/2017 (\$15.75 p/hr) = \$28,680.75

Total minimum wage due = \$43,137.75

Wage arrears already paid to date = \$20,320.00

Arrears due :(\$14,457 plus \$28,680.75) - \$20,320.00 = \$22,817.75

2. Final Holiday Pay calculated at 8% of Gross Earnings for the entire period of employment from 2/01/2017 to 22/09/2017.

Total gross earnings = \$49,070.00

\$49,070.00 times 8% = \$3,925.60

Less

Final holiday pay already paid on 2 October 2017 and on 9 October 2017: \$1,157.68 and \$172.52 respectively.

Final holiday pay due = \$3,925.60 - (\$1,157.68 plus \$172.52) = \$2,737.22.

3. Public Holiday Pay (the half proportion) x 4 days which occurred on 14/04/2017, 17/04/2017, 25/04/2017 and 5/06/2017.

Half portion of the 4 x public holidays worked = \$402.50

Less

The half portion amount already paid \$192.50

Amount due \$210.00.

4. Alternative Holiday Entitlement = 4 days.

In accordance with ss56 and 60 of the Holidays Act, took the hours worked on the last day of work (4 hours) and multiplied this by the relevant hourly rate (\$17.50) = \$280.00.

5. Sick leave taken on Monday 14/08/2017

Relevant Daily Pay for Monday which is \$210.00

Less

Amount already paid = \$87.50

Amount due = \$122.50.

Total due \$26,167.47

Orders made for payment of arrears

[10] By consent the Authority orders in accordance with the assessments and calculations set out above that Symrose Limited pay to the Labour Inspector for the use of Manpreet Singh arrears in the sum of \$26,167.47.

Penalties claimed against Symrose and Mr Thind

[11] Penalties are claimed against Symrose and Mr Thind as a person involved for seven breaches. There is one breach of s 6 of the Minimum Wage Act. There is a breach under ss63A and 64 of the Employment Relations Act 2000 for the failure to provide an employment agreement (not to the complainant). There is a breach under s130 of the Employment Relations Act 2000 for the failure to provide accurate wage and time records. There is a breach under s25 of the Holidays Act 2003 in relation to final holiday pay. There is a breach under ss63 and 71 of the Holidays Act 2003 for a failure to pay sick leave correctly. There is a breach of ss50 and 55 for a failure

to pay for working on public holidays correctly. There is a breach of ss56 and 60 for a failure to provide an alternative public holiday.

[12] Symrose and Mr Thind have acknowledged breaches and agreed to pay a total of \$15,000 in penalties as follows:

- (i) Failure to provide an employment agreement; not to the complainant, Mr Singh;
- (ii) Failure to provide accurate wage and time records;
- (iii) Failure to pay minimum wage;
- (iv) Failure to pay correct final pay;
- (v) Failure to pay correct sick leave;
- (vi) Failure to pay correct public holiday, and
- (vii) Failure to provide for alternative public holiday.

[13] The Authority has considered the breaches which have been agreed to and identified in respect of each different Act. It is appropriate that where there are interrelated breaches of the same Act they have been regarded as one breach.

[14] Assessments in accordance with those set out in *Borsboom v Preet Pvt Limited*¹ have then been undertaken by the parties in appendix one attached hereto. At the outset the maximum penalty for each breach for both Symrose and Mr Thind is set out. There has been an assessment in accordance with the maximum for severity and any aggravating or mitigating factors have been considered. The means and ability of the persons in breach to pay the provisional penalty has been considered. I have stood back and considered whether the penalties which the parties have discussed are appropriate.

[15] I am satisfied that the amount the parties have discussed is appropriate and on that basis an order for payment of penalties is to be made.

¹ *Boorsboom v Preet Pvt Limited* [2016] NZEmpC 143, (2016) 10 NZELC 79072.

[16] I order Symrose Limited to pay to the Labour Inspectorate the penalties in the sum of \$12,600.

[17] I order Jasdev Singh Thind to pay to the Labour Inspectorate the sum of \$2,400 as set out.

Agreement as to payment

[18] The parties recognise the respondents' ability to pay and agree payment at the following rate:

- a. The payment of arrears is to be made in three lump sum payments of \$8,744.49 (less tax) per month on or before the first of the month, starting 1 March 2019;
- b. Penalties are to be paid at the rate of \$1,000 per month on the first day of the month, starting 1 June 2019.

Helen Doyle
Member of the Employment Relations Authority

Appendix One

<p>Minimum Wage Act</p> <ul style="list-style-type: none"> - Assessed at 30% of maximum for severity - Mitigation of employer's willingness to settle 50% 	<p>\$20,000 Symrose (First Respondent)</p> <p>7,000</p>	<p>\$10,000 Jasdev Thind (Second Respondent)</p> <p>\$2,500</p>
<p>Failure to Keep Accurate Wage Records</p> <ul style="list-style-type: none"> - Assessed at severity 25% including records never kept for the majority of the time 	<p>2,500</p>	<p>1,250</p>
<p>Failure to Keep Employment Agreement -Employer Only - First Respondent Only</p> <ul style="list-style-type: none"> - Assessed at severity of 15%. Shibhamdeep Singh is a close relative. He has not sought an agreement or a remedy. - Mitigation for employer's willingness to settle. 50% 	<p>1500</p>	<p>0</p>
<p>Final Holiday Pay- First Respondent Only</p> <ul style="list-style-type: none"> - Assessed at severity of 15%. This is a technical issue dependent on 1. Above. - Mitigation of employer's willingness to settle 	<p>1500</p>	<p>0</p>

50%		
Sick Leave - First Respondent Only <ul style="list-style-type: none"> - Severity assessed at 15%, to reflect the fact that payment was made. - Mitigation for employer's willingness to settle - 50%. 	1500	0
Working Public Holidays - First Respondent Only <ul style="list-style-type: none"> - Severity assessed at 15% payment was made. - Mitigation of employer's willingness to pay 50% 	1500	0
Alternative Holiday <ul style="list-style-type: none"> - Severity assessed at 15% payment was made - Mitigation of employer's willingness to pay 50% 	1500	0
Total	\$17,000	\$3,750
Consideration of the Respondent's liability to pay 20%	\$13,600	\$3,000

Proportionally		
Total Penalties	\$12,600	\$2,400