

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 231
3044631

BETWEEN A LABOUR INSPECTOR
 Applicant

AND GROCERYKING.CO.NZ (2016)
 LIMITED
 First Respondent

 QING LUO
 Second Respondent

Member of Authority: Andrew Dallas

Representatives: Miriam Long, counsel for the Applicant
 Diana Hudson, counsel for the Respondents

Investigation Meeting: On the papers

Date of Determination: 16 April 2019

CONSENT DETERMINATION

Employment relationship problem

[1] A Labour Inspector, Eva Belly, lodged proceedings in the Authority against Groceryking.co.nz (2016) Limited and Qing Luo (known as “Jade”) alleging breaches of minimum employment standards in respect of four employers and four other “helper 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 Groceryking.co.nz (2016) Limited and Ms Luo without recourse to an investigation meeting.

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

- (i) Groceryking.co.nz (2016) Limited is a registered company which trades as 'Groceryking', a convenience store in Dunedin.
- (ii) Ms Luo was at all relevant times the sole director and shareholder of Groceryking. She is the overall manager of the business. She oversees the employees, negotiates employment agreements and manages all aspects involving staff. She operates the ACE payroll system used in house and she provides payslips for the employees and manages who works on what day. She is responsible for record keeping and she liaises with the business accountant about operational and financial matters.
- (iii) A pro-active Labour Inspectorate investigation commencing in November 2017, found that Groceryking had breached several minimum employment standards in respect of its employees who over the relevant period were Wan-Ju Lee, Yue Xu, Ashlee Gibbs and Carlton Boyce. An additional four employees were identified as the investigation progressed.
- (iv) The breaches identified were systematic and related generally to inadequate record keeping. The Labour Inspector analysed the records for Ashlee Gibbs and determined there were arrears totaling \$1475.59. The arrears comprised of minimum wage arrears, public holiday arrears for underpayment for public holidays worked, incorrect payment of alternative holidays and no payment for unworked public holidays and final holiday pay.
- (v) There was no wage arrears owing for Carlton Boyce and Wan Ju Lee, however, no holiday entitlements were paid to them over the period reviewed.
- (vi) In June 2018, Groceryking provided bank statements to the Labour Inspector to verify payments made to the employees. It appeared that parts of the statements had been redacted. The Labour Inspector queried whether the redacted payments were wage payments for additional employees who had not been identified and requested confirmation from the first respondent about this. Groceryking replied through its lawyer that there had only ever been four employees and there were no additional employees.

- (vii) On 30 July 2017 the Labour Inspector made two further formal record requests requiring Groceryking to provide records for all not previously declared employees who were employed between 30 October 2017 and 1 April 2018 and all current and past employees who are or were employed between 28 May and 29 July 2018.
- (viii) Groceryking's lawyer then replied confirming the existence of additional employees (Tracey Sparks, Bella Huang, Mengxi Huang and Nathaniel Strange) whom Groceryking and Ms Luo had characterised as people who had 'helped out' but were not permanent employees. Groceryking had employed the additional employees between 2017 and 2018 but had not retained employment agreements, paid public holiday and final holiday pay or kept wage and time and holiday and leave records for them.
- (ix) The lawyer's response also contained a table setting out calculations for unpaid Holidays Act entitlements owing to Wan-Ju Lee and Carlton Boyce and stated that these would be paid on 6 August 2018.
- (x) Ms Luo's husband then asked the Labour Inspector to communicate with him on Groceryking and Ms Luo's behalf instead of with Ms Luo directly. On 20 September 2018, in response to a request to Ms Luo's husband and the lawyer for more information, the Labour Inspector received a response only from Groceryking and Ms Luo's lawyer advising that they were no longer acting for Groceryking and Ms Luo.
- (xi) The Labour Inspector issued an Improvement Notice on 29 September 2019 to Groceryking to remedy the breaches identified. The Improvement Notice was sent to Groceryking and Ms Luo's lawyers and Ms Luo's husband. It stipulated that Groceryking had to remedy the matters in it and show this had been done by 5 pm on 24 October 2018.
- (xii) The only response the Labour Inspector received to the Improvement Notice was an email from Groceryking and Ms Luo's lawyer advising that they were no longer instructed. The Labour Inspector emailed Ms Luo's husband asking him to confirm that the Improvement Notice had been received and that he would respond regarding it but did not receive a response.

- (xiii) The Labour Inspector heard nothing further from anyone regarding the Improvement Notice and on 7 November 2018, filed the Statement of Problem.
- (xiv) The Labour Inspector received a Statement in Reply dated 20 November 2018. The only matter that the Statement in Reply made clear is that the arrears owing to Ms Gibbs have been paid.
- (xv) Just prior to the issuance of this determination, Groceryking and Ms Luo provided further calculations from their accountant which established that in relation to the arrears referred to in paragraph (ix) above, there were no outstanding arrears owed to Carlton Boyce, only to Wan Ju Lee.

[4] Further, Groceryking accepts that it has breached minimum employment standards by failing to:

- (i) Provide minimum wages to an employee, Ashlee Gibbs, pursuant to section 6 of the Minimum Wage Act 1983 (the MWA);
- (ii) Retain employment agreements for Tracey Sparks, Bella Huang, Mengxi Huang and Nathaniel Strange, pursuant to section 64 of the Employment Relations Act 2000 (the Act);
- (iii) Keep wages and time records for Tracey Sparks, Bella Huang, Mengxi Huang and Nathaniel Strange pursuant to section 130 of the Act.
- (iv) Keep holiday and leave records for Tracey Sparks, Bella Huang, Mengxi Huang and Nathaniel Strange pursuant to section 81 of Holidays Act 2003 (the HA);
- (v) Provide final holiday pay to Ashlee Gibbs, Tracey Sparks, Bella Huang, Mengxi Huang and Nathaniel Strange pursuant to sections 16, 23, 24, 25, and 27 of the HA;

- (vi) Provide public holiday entitlements pursuant to the HA as follows:
- a) Wan Ju Lee and Carlton Boyce: breaches of section 49 of the HA (payment for an unworked public holiday which was an otherwise working day);
 - b) Ashlee Gibbs: breaches of sections 46, 49, 50, 56 and 60 of the HA (entitlement to public holidays, payment for unworked public holidays, payment at time and a half for worked public holidays, provision of and payment for an alternative holiday if an employee works on a public holiday).

[5] Ms Luo accepts she was a person involved in these breaches pursuant to section 142W of the Act and as a result she has also breached these minimum employment standards.

[6] The following breaches have been identified and categorised in the table below according to ‘step one’ in *A Labour Inspector v Preet PVT Limited*¹ for the Authority to consider penalties:

Breach of minimum employment standards legislation	Breaches Groceryking	Breaches Ms Luo
Employment Relations Act – 64 (Retain employment agreements)	4	4
Employment Relations Act - s130 (wages and time record)	4	4
Holidays Act – s 81 (Holiday and leave record)	4	4
Holidays Act – 16, 23, 24, 25, and 27 (Final holiday pay)	5	5
Holidays Act – s49 (Payment for unworked public holiday which was a working day)	2	2
Holidays Act – ss 46, 49, 50, 56 and 60 (payment for unworked public holidays, time and a half for worked public holidays, provision of and payment for an alternative holiday if an employee works on a public holiday)	1	1
Total penalties for first and second respondents	40	

¹ [2016] ERNZ 514 at 139.

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

Next steps

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

- (i) Are Groceryking.co.nz (2016) Limited and Qing Luo liable for the imposition of penalties for the contraventions of employment standards and if so, in what quantum?;

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

Costs

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

Andrew Dallas
Member of the Employment Relations Authority