

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 449
3082900 & 3082901

BETWEEN A LABOUR INSPECTOR
Applicant

AND INDIAN CUISINE NZ
LIMITED (IN
LIQUIDATION)
First Respondent

AND PREMIER BRANDS
LIMITED
Second Respondent

AND RONEEL SURAJ SINGH
Third Respondent

AND REENA ROSHINI LATA
Fourth Respondent

Member of Authority: Robin Arthur

Representatives: Shona Carr and Tim Gray, counsel for the Applicant
Imran Kamal, liquidator of the First Respondent
Roneel Singh, director of Second Respondent and in
person as Third Respondent
Reena Lata, in person as Fourth Respondent

Investigation Meeting: On the papers

Determination: 2 November 2020

CONSENT DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination is issued by consent of the parties to two applications lodged in the Authority by Labour Inspector Emilie Woodd. Following mediation on 15 July 2020 the parties reached agreement on the facts, a schedule of breaches of statutory employment standards and the amount of arrears owed to affected employees. On the basis of that agreement the parties asked the Authority to issue a consent determination

as to the breaches and arrears payable, to make orders for the payment of the arrears and to reserve the issue of quantification of penalties for the admitted breaches with a timetable to be set for making submissions on that issue.

[2] This determination adopts the agreed statement of facts signed by or on behalf of the parties on 10 September 2020 in respect of both matters. Roneel Suraj Singh and Reena Roshini Lata were respondents in both matters but a different company was named as a respondent in each matter, that was Indian Cuisine NZ Limited (ICNZL) in matter 3082900 and Premier Brands Limited (PBL) in matter 3082901. For the purposes of the agreed statement of facts and this determination both matters have been treated as an amalgamated proceeding with ICNZL identified in the intituling as First Respondent and PBL identified as Second Respondent.

The agreed facts

The respondents

[3] ICNZL, now in liquidation, was incorporated as a limited liability company on 4 November 2014. Between November 2014 and 31 May 2018 ICNZL operated the India Bar and Restaurant located at 120 Main Highway, Ellerslie.

[4] ICNZL entered liquidation in June 2019. On 16 June 2019 Imran Kamal was appointed liquidator (the Liquidator). The Liquidator consented to proceedings being brought against ICNZL in the Authority.

[5] PBL was incorporated as a limited liability company on 17 June 2015. Between 1 June 2018 and November 2019, PBL operated the India Bar and Restaurant located at 120 Main Highway, Ellerslie. The restaurant operated initially by ICNZL and then PBL had continued to trade under the same name, and the existing employees were transferred from ICNZL to PBL from 1 June 2018 onwards.

[6] Roneel Suraj Singh was at all material times, and remains, the sole director and sole shareholder of both ICNZL and PBL and, as such, was an officer of each company, and a person in a position to exercise significant influence over the management or administration of both ICNZL (from 1 April 2016 onwards) and PBL.

[7] Reena Roshini Lata is the wife of Roneel Singh and was responsible for calculating and processing wage and holiday payments to employees of both ICNZL

and PBL, and was therefore in a position to exercise significant influence over the management or administration of both ICNZL (from 1 April 2016) and PBL. Reena Lata acted on the instructions and under the supervision of Roneel Singh in all business related matters.

The complaint

[8] On 4 December 2018 the Inspector received a complaint from Govind Ram, a former employee of ICNZL and PBL. He alleged ICNZL and PBL had failed to pay the minimum wage for all hours worked. He further alleged that ICNZL and PBL did not pay him time and a half for working on public holidays or annual holidays on the termination of their employment.

[9] On 10 December 2018 the Inspector received a complaint from Suresh Singh, a former employee of ICNZL and PBL. He alleged that ICNZL and PBL had failed to pay the minimum wage for all hours worked. He further alleged that ICNZL and PBL did not pay him for sick leave taken, nor time and a half for working on public holidays or annual holidays on termination of his employment.

[10] On 23 January 2019 the Inspector commenced an investigation into ICNZL and PBL about those complaints in order to determine their compliance with minimum employment standards. The investigation involved a site visit on 9 May 2019 to the premises operated by ICNZL and PBL, the giving of a notice to supply records, and interviews with affected employees and with Roneel Singh and Reena Lata.

[11] On completing her investigation, the Inspector concluded that between December 2014 and May 2018, ICNZL had failed to pay certain employees the minimum wage, had failed to pay time and a half or provide alternative holidays where employees had worked on public holidays, had not paid employees for public holidays on which they had not worked which were otherwise working days, and had failed to keep compliant holiday and leave and wage and time records, in breach of its obligations under the Minimum Wage Act 1983 (“MWA”), the Holidays Act 2003 (“HA”) and the Employment Relations Act 2000 (“ERA”). Those breaches affected three employees.

[12] The Inspector further concluded that between June 2018 and June 2019, PBL had failed to pay certain employees the minimum wage, had failed to pay time and a

half or provide alternative holidays where employees had worked on public holidays, had not paid employees for public holidays on which they had not worked which were otherwise working days, had failed to keep compliant holiday and leave and wage and time records, and had failed to provide compliant written employment agreements, in breach of its obligations under the MWA, the HA and the ERA. Those breaches affected 21 employees.

[13] In the period between the commencement of the investigation and the commencement of proceedings on 19 November 2019, PBL paid arrears owed to nine employees in full, leaving only 12 employees to which arrears are owed.

[14] The claims against ICNZL, PBL, Roneel Singh and Reena Lata proceeded to mediation on 15 July 2020. Agreement was reached that arrears amounts owing to Govind Ram and Suresh Singh would be recalculated on the basis that they worked, on average, at least 55 hours per week over 6 days in most weeks for periods after 1 April 2016. Arrears amounts owing to Shivam Chopra were recalculated on the basis that he worked, on average, at least 5 hours per week over 4 days in most weeks.

[15] The Liquidator chose not to attend the mediation and has advised the Inspector that ICNZL has no means to pay arrears owed to any of the employees.

[16] The nature and number of breaches of employment standards have been accepted by the respondent in a schedule which was attached to the statement of facts agreed by the parties and is attached as a schedule to this determination.

Breaches by ICNZL: Pre-1 April 2016

- *Govind Ram*

[17] The investigation established that ICNZL did not keep compliant wages and time records or holiday and leave records for Govind Ram, in breach of its obligations under section 130 of the ERA and section 81 of the HA.

[18] In the period between December 2014 and 1 April 2016, Govind Ram was employed as a chef by ICNZL working, in most weeks, 60 hours per week, six days per week. He was paid weekly by bank transfer. The amount of payments varied from week to week during this period.

[19] ICNZL failed to pay minimum wage to Govind Ram amounting to \$5,699.94 during this period.

[20] Govind Ram worked on 10 public holidays between December 2014 and 1 April 2016. He was not paid at least time and a half for working on public holidays as required by section 50 of the HA, nor was he provided with an alternative holiday for working on those days that were otherwise working days, as required by section 56 of the HA. ICNZL failed to pay Govind Ram \$727.50 for worked public holidays.

[21] Govind Ram did not work on one public holiday between December 2014 and 31 March 2016, which was otherwise a working day for him. He was not paid for this day as required by section 49 of the HA, and was entitled to receive \$147.50 based on his relevant daily pay.

[22] In total, the amounts payable in connection with the six breaches of minimum employment standards relating to Govind Ram between December 2014 and 31 March 2016 are \$6,574.94, for which ICNZL is entirely liable.

[23] As ICNZL is in liquidation, the Inspector has sought determination of this amount so the determination may be filed as proof of debt with the Liquidator.

Breaches by ICNZL, Roneel Singh and Reena Lata: Post-1 April 2016

- *Govind Ram*

[24] The Inspector's investigation established that ICNZL did not keep compliant wages and time records or holiday and leave records for Govind Ram, in breach of its obligations under section 130 of the ERA and section 81 of the HA.

[25] In the period between 1 April 2016 and 31 May 2018, Govind Ram was employed as a chef by ICNZL working, in most weeks, at least 55 hours per week, six days per week. He was paid weekly by bank transfer. The amount of payments varied from week to week during this period.

[26] Govind Ram worked on eight public holidays between 1 April 2016 and 31 May 2018. He was not paid at least time and a half for working on public holidays as required by section 50 of the HA, nor was he provided with an alternative holiday for working on those days that were otherwise working days, as required by section 56 of the HA.

ICNZL failed to pay him correctly for worked public holidays, and to provide alternative holidays.

[27] Govind Ram took a period of annual leave of approximately nine weeks from about 18 June 2016 to 18 August 2016, and although he received a payment for those annual holidays, the amount paid was less than his entitlement to four weeks annual holidays, calculated in accordance with sections 16 and 21 of the HA.

[28] Govind Ram did not receive any accrued annual holiday pay on termination of his employment. Roneel Singh stated that he did not pay the annual holidays because Govind Ram owed him \$6,000 for a personal loan taken. The Inspector calculates that \$11,007.39 (gross) in arrears was owed to Govind Ram for annual holidays at the termination of his employment with ICNZL.

[29] Govind Ram did not work on one public holiday between 1 April 2016 and 31 May 2018, which was otherwise a working day for him. He was entitled to receive not less than his relevant daily pay pursuant to section 49 of the HA, but was not paid for this day.

[30] In total, the parties agree that the amount of arrears payable by ICNZL in connection with the seven breaches of minimum employment standards relating to Govind Ram between December 2014 and 31 May 2018 totalled \$14,000.

[31] However, the parties have agreed that in recognition of the \$6,000 personal loan provided by the respondents to Govind Ram, the total amount payable shall be reduced accordingly to \$8,000.

[32] During the course of Govind Ram's employment, Roneel Singh accommodated Govind Ram in a two-bedroom unit, which he shared with Suresh Singh. Roneel Singh paid the weekly rent and the monthly electricity bill for that accommodation, and provided Govind Ram with three meals a day from the restaurant. The parties acknowledge that the provision of these benefits did not relieve the respondents of their obligations to comply with minimum employment standards.

- *Suresh Singh*

[33] The investigation established that ICNZL did not keep compliant wages and time records or holiday and leave records for Suresh Singh, in breach of its obligations under section 130 of the ERA and section 81 of the HA.

[34] In the period between March 2017 and 31 May 2018, Suresh Singh was employed as a chef by ICNZL working, in most weeks, at least 55 hours per week, six days per week. Suresh Singh was paid weekly by bank transfer. The amount of payments varied from week to week during this period.

[35] ICNZL failed to pay minimum wage to Suresh Singh during this period.

[36] Suresh Singh worked on eight public holidays until 31 May 2018. He was not paid at least time and a half for working on public holidays as required by section 50 of the HA, nor was he provided with an alternative holiday for working on those days that were otherwise working days, as required by section 56 of the HA. ICNZL failed to pay him correctly for worked public holidays, and to provide alternative holidays.

[37] Suresh Singh did not receive any accrued annual holiday pay on termination of his employment.

[38] In total, the parties agree that the amount payable in connection with the six breaches of minimum employment standards relating to Suresh Singh between March 2017 and 31 May 2018 is \$9,600.

[39] During the course of Suresh Singh's employment, Roneel Singh accommodated Suresh Singh in a two-bedroom unit, which he shared with Govind Ram. Roneel Singh paid the weekly rent and the monthly electricity bill for that accommodation, and provided Suresh Singh with three meals a day from the restaurant. The parties acknowledge that the provision of these benefits did not relieve the respondents of their obligations to comply with minimum employment standards.

- *Shivam Chopra*

[40] The Inspector's investigation established that ICNZL did not keep any wages and time records or holiday and leave records for Shivam Chopra, in breach of its obligations under section 130 of the ERA and section 81 of the HA.

[41] In the period between June 2017 and 31 May 2018, Shivam Chopra was employed by ICNZL working, in most weeks, at least five hours per week, four days per week. Shivam Chopra was paid in food.

[42] On the basis that Shivam Chopra worked for ICNZL but was not paid money for those services, ICNZL failed to pay minimum wage to Shivam Chopra during this period.

[43] Shivam Chopra did not work on two public holidays between June 2017 and 31 May 2018, which were otherwise working days for him. He was entitled to receive not less than his relevant daily pay pursuant to section 49 of the HA, but was not paid for these days.

[44] Shivam Chopra did not receive any accrued annual holiday pay on termination of his employment.

[45] In total, the parties agree that the amount payable in connection with the five breaches of minimum employment standards relating to Shivam Chopra between June 2017 and 31 May 2018 is \$4,200.

[46] The parties accept that, as a consequence of the 17 breaches of minimum employment standards by ICNZL in relation to the three affected employees above between 1 April 2016 and 31 May 2018, a total of \$21,800 remains owing.

[47] As persons involved with these breaches of minimum employment standards, Roneel Singh and Reena Lata accept that they are liable to pay these amounts to the extent that ICNZL is unable to do so, in accordance with section 142Y(2)(b) of the ERA.

Breaches by PBL, Roneel Singh and Reena Lata

- *Govind Ram*

[48] The Inspector's investigation established that PBL did not keep compliant wages and time records for Govind Ram in breach of its obligations under section 130 of the ERA. PBL supplied the Inspector with a summary of holidays taken by Govind Ram, which did not meet the requirements of section 81 of the HA.

[49] In the period between 1 June 2018 and 23 November 2018, Govind Ram was employed as a chef by PBL working, in most weeks, at least 55 hours per week, six days per week. Govind Ram was paid weekly by bank transfer. The amount of payments varied from week to week during this period.

[50] PBL failed to pay minimum wage to Govind Ram during this period.

[51] Govind Ram took a period of unpaid leave of approximately 8 weeks from about 11 July 2016 to 11 September 2018. He did not take any paid holidays during his employment with PBL. He did not receive any accrued annual holiday pay on termination of his employment.

[52] In total, the parties agree that the amount payable in connection with the four breaches of minimum employment standards relating to Govind Ram between 1 June 2018 and 23 November 2018 is \$2,400.

[53] During the course of Govind Ram's employment, Roneel Singh accommodated him in a two-bedroom unit, which he shared with Suresh Singh. Roneel Singh paid the weekly rent and the monthly electricity bill for that accommodation, and provided Govind Ram with three meals a day from the restaurant. The parties acknowledge that the provision of these benefits did not relieve the respondents of their obligations to comply with minimum employment standards.

- *Suresh Singh*

[54] The Inspector's investigation established that PBL did not keep compliant wages and time records for Suresh Singh in breach of its obligations under section 130 of the ERA. PBL supplied the Inspector with a summary of holidays taken by Suresh Singh. The summary did not meet the requirements of section 81 of the HA.

[55] Between 1 June 2018 and 8 December 2018, Suresh Singh was employed as a chef by PBL working, in most weeks, at least 55 hours per week, six days per week. Suresh Singh was paid weekly by bank transfer. The amount of payments varied from week to week during this period.

[56] PBL failed to pay minimum wage to Suresh Singh during this period.

[57] Suresh Singh worked on two public holidays during his employment for PBL, both of which were otherwise working days for him. He was not paid at least time and a half for working on public holidays as required by section 50 of the HA, nor was he provided with an alternative holiday for working on those days that were otherwise working days, as required by section 56 of the HA.

[58] In total, the parties agree that the amount payable in connection with the five breaches of minimum employment standards relating to Suresh Singh between 1 June 2018 and 8 December 2018 is \$2,100.

[59] During the course of Suresh Singh's employment, Roneel Singh accommodated him in a two-bedroom unit, which he shared with Govind Ram. Roneel Singh paid the weekly rent and the monthly electricity bill for that accommodation, and provided Suresh Singh with three meals a day from the restaurant. The parties acknowledge and agree that the provision of these benefits did not relieve the respondents of their obligations to comply with minimum employment standards.

- *Shivam Chopra*

[60] The investigation established that PBL did not keep any wages and time records or holiday and leave records for Shivam Chopra, in breach of its obligations under section 130 of the ERA and section 81 of the HA.

[61] In the period between 1 June 2018 and 9 May 2019, Shivam Chopra was employed by PBL working, in most weeks, at least five hours per week, four days per week. Shivam Chopra was paid in food.

[62] On the basis that Shivam Chopra worked for PBL but was not paid money for those services, PBL failed to pay minimum wage to Shivam Chopra.

[63] Shivam Chopra did not work on three public holidays between 1 June 2018 and 12 May 2019, which were otherwise working days for him. He was entitled to receive not less than his relevant daily pay pursuant to section 49 of the HA, but was not paid for these days.

[64] Shivam Chopra did not receive any accrued annual holiday pay on termination of his employment.

[65] In total, the parties agree that the amount payable in connection with the five breaches of minimum employment standards relating to Shivam Chopra between 1 June 2018 and 12 May 2019 is \$4,500.

- *Eighteen other employees*

[66] The Inspector's investigation also reviewed PBL's wage and time records and holiday and leave records for an additional 18 employees.

[67] The investigation established that PBL did not keep compliant wages and time records for any of the additional 18 employees, in breach of its obligations under s 130 of the ERA. The investigation further found that PBL did not keep compliant holiday and leave records for 16 of those 18 employees, in breach of its obligations under section 81 of the HA.

[68] PBL failed to provide employment agreements for 10 of those 18 employees, in breach of its obligations under section 65 of the ERA.

[69] Based on PBL's records, the investigation established PBL had not paid 16 of 18 employees their correct annual holiday entitlements on termination of their employment, in an amount totalling \$2,286.79.

[70] PBL failed to pay five of those 18 employees minimum wage for each hour worked, in an amount totalling \$329.65.

[71] PBL failed to pay two of those 18 employees at least time and a half for working on public holidays as required by section 50 of the HA, in an amount totalling \$71.93.

[72] PBL failed to provide three of those 18 employees with alternative holidays for working on days that were otherwise working days, as required by section 56 of the HA, to the value of \$568.27.

[73] PBL failed to provide three of those 18 employees with their correct entitlements to payment for unworked public holidays which fell on otherwise working days, as required by section 49 of the HA. The unpaid entitlements to those employees totalled \$250.50.

[74] In total, PBL's 73 breaches of minimum employment standards in relation to the 18 other employees deprived those employees of \$3,507.14.

[75] PBL subsequently made remedial payments to 13 of 18 other employees who had not received their correct minimum entitlements. It has entirely cleared the arrears owed to nine of those employees.

[76] In respect of these 73 breaches of minimum employment standards, the outstanding amount owed to the other employees totals \$1,838.36.

[77] As persons involved with these breaches of minimum employment standards, Roneel Singh and Reena Lata accept that they are liable to pay these amounts to the extent that PBL is unable to do so, in accordance with section 142Y(2)(b).

Summary

[78] The respondents accept the following amounts are owed to the following employees for breaches of their minimum entitlements:

A. Pre-1 April 2016 ICNZL amounts owed

Govind Ram	\$6,574.94
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B. 1 April 2016 – 31 May 2018 ICNZL amounts owed

Govind Ram	\$8,000.00	(\$14,000 with \$6,000 personal loan deducted)
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Suresh Singh	\$9,600.00
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Shivam Chopra	\$4,200.00
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Subtotal	\$21,800.00
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C. 31 May 2018 onwards PBL amounts owed

Govind Ram	\$2,400.00
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Suresh Singh	\$2,100.00
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Shivam Chopra	\$4,500.00
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Gurjot Deol	\$572.88
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Vijeta Verma	\$130.16
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Pooja Deore	\$221.18
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Tejas Verma	\$93.26
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Karan Arora	\$64.02
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Felix Marratukalam	\$18.73
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Shukhbam Chopra	\$21.57
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Parveen Prasad	\$311.76
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Dharmendra Negi	\$404.57
Subtotal	\$10,838.13
Total (B + C)	\$32,638.13

Findings and orders

[79] By consent the facts agreed by the parties are adopted as the findings of the Authority as to the nature and number of breaches of employment standards, the admissions of Roneel Singh and Reena Lata as persons involved in breaches of employment standards and the arrears due to the employees.

[80] By order under s 131 of the ERA ICNZL and PBL must pay the arrears due to the affected employees by no later than 28 days of the date of this determination. In respect of ICNZL this order is made for the purpose of enabling the Inspector to lodge this determination with the Liquidator as a proof of debt.

[81] Payment of those arrears must be made to the Inspector for the use of the employees identified as affected by the breaches of employment standards in respect of their employment with ICNZL and PBL.

[82] The issue of penalties for the accepted breaches of minimum employment standards is reserved to allow for submissions from the parties before the amounts of any penalties to be imposed are determined. PBL, Roneel Singh and Reena Lata have indicated they wish to make written submissions regarding their financial circumstances as that is a factor for consideration in setting penalties. Accordingly at the time of issue of this determination an Authority Officer will also advise the parties of a proposed timetable for submissions on penalties so, once confirmed, those submissions can be lodged according to that timetable. The parties have already agreed this remaining issue is to be determined on the papers.

Robin Arthur
Member of the Employment Relations Authority

Schedule of breaches

Respondent: Indian Cuisine NZ Limited (pre-1 April 2016)

Number of affected employees: 1

Number of breaches: 6 (no penalties are sought in relation to these breaches)

Type of breach	Number of breaches
Failure to pay minimum wage, s 6 MWA	1
Failure to pay time and half, s 50 HA	1
Failure to provide alternative holiday, s 56, HA	1
Failure to pay unworked otherwise working day, s 49 HA	1
Failure to keep compliant holiday/leave record, s 81 HA	1
Failure to keep compliant holiday/leave record, s 130 ERA	1
Total number of breaches	6

Respondent: Indian Cuisine NZ Limited (post-1 April 2016)

Number of affected employees: 3

Number of breaches: 17

Type of breach	Number of breaches
Failure to minimum wage, s 6 MWA	2
Failure to pay time and half, s 50 HA	2
Failure to provide alternative holiday, s 56 HA	2
Failure to pay unworked otherwise working day, s 49 HA	2
Failure to pay holiday pay on termination, ss 24, 25 HA	3
Failure to keep compliant holiday/leave record, s 81 HA	3
Failure to keep compliant holiday/leave record, s 130 ERA	3
Total number of breaches	17

Respondent: Premier Brands Limited

Number of affected employees: 21

Number of breaches: 86

Type of breach	Number of breaches
Failure to minimum wage, s 6 MWA	8
Failure to pay time and half, s 50 HA	3
Failure to provide alternative holiday, s 56 HA	4
Failure to pay unworked otherwise working day, s 49 HA	4
Failure to pay holiday pay on termination, ss 23, 27 HA	18
Failure to keep compliant holiday/leave record, s 81 HA	18
Failure to keep compliant holiday/leave record, s 130 ERA	21
Failure to provide individual employment agreements, s 65 ERA	10
Total number of breaches	86

Respondent: Roneel Singh (as a person involved with breaches of minimum employment standards by Indian Cuisine NZ Limited (after 1 April 2016) and Premier Brands Limited)

Number of affected employees: 21

Number of breaches: 87

Type of breach	Number of breaches
Failure to minimum wage, s 6 MWA	10
Failure to pay time and half, s 50 HA	5
Failure to provide alternative holiday, s 56 HA	6
Failure to pay unworked otherwise working day, s 49 HA	6
Failure to pay holiday pay on termination, ss 23, 24, 25, 27 HA	21
Failure to keep compliant holiday/leave record, s 81 HA	18
Failure to keep compliant holiday/leave record, s 130 ERA	21
Total number of breaches	87

Respondent: Reena Lata (as a person involved with breaches of minimum employment standards by Indian Cuisine NZ Limited (after 1 April 2016) and Premier Brands Limited)

Number of affected employees: 21

Number of breaches: 87

Type of breach	Number of breaches
Failure to minimum wage, s 6 MWA	10
Failure to pay time and half, s 50 HA	5
Failure to provide alternative holiday, s 56 HA	6
Failure to pay unworked otherwise working day, s 49 HA	6
Failure to pay holiday pay on termination, ss 23, 24, 25, 27 HA	21
Failure to keep compliant holiday/leave record, s 81 HA	18
Failure to keep compliant holiday/leave record, s 130 ERA	21
Total number of breaches	87