

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 516  
3084452

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	RAJ KIWI LIMITED First Respondent
AND	RAJASEKAR CHELLAPPA Second Respondent

Member of Authority: Eleanor Robinson

Representatives: Greg La Hood, counsel for the Applicant  
Rajasekar Chellappa, representing for the Respondent

Submissions and/or further evidence 7 December 2020 from Applicant

Determination: 11 December 2020

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**SUPPLEMENTARY DETERMINATION OF THE AUTHORITY**

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[1] This determination serves to correct a genuine error in drafting determination [2020] NZERA 493 and clarify the remedies awarded as follows:

[2] In respect of paragraph [60] the reference to the Minimum Wage Act 1983 (MWA) should be corrected to the Holidays Act 2003 (the HA).

*Liability of Mr Chellappa*

[3] I find that Mr Chellappa was the sole director of Raj Kiwi during the period from 26 October 2016 to 8 August 2019 which primarily covers the period when the arrears owing to the named employees accrued. I am satisfied from the evidence that he was: “in a position to exercise significant influence over the management” of Raj Kiwi pursuant to s 142 of the Employment Relations Act 2000 (the Act). Further, that he did in fact exercise such control.

[4] As such this was the basis for the penalty of \$70,000.00 awarded against him as set out at paragraph [125] of determination [2020] NZERA 493.

*Payment of arrears*

[5] Further to the arrears ordered in determination [2020] NZERA 493 at paragraph [70] these are to be paid to the Labour Inspector for the employees within 14 days of the date of this determination.

[6] Interest is to be paid on the arrears owed at the rate of 5% until the arrears are paid in full in accordance with the Interest on Money Claims Act 2016.

[7] Pursuant to s 142Y of the Act a Labour Inspector may recover from a person involved in the breach if that person is a person within the meaning of s 142W. Mr Chellappa is a person involved in the breaches and may be held liable pursuant to s 142Y(2)(b) of the Act: “to the extent that the employer’s employer is unable to pay the arrears in wages or other money”.

[8] I determine that in the event that Raj Kiwi is unable to pay the arrears, Mr Chellappa is liable for the default in the arrears payments and associated interest.

*Penalty Apportionment*

[9] Determination [2020] NZERA 493 set out at paragraph [124] and paragraph [125] the proportion of the penalties ordered to be paid by Raj Kiwi and Mr Chellappa respectively.

[10] I further order that 60 per cent of the penalties ordered to be paid to the Authority to be paid into the Crown Trust Account are to be paid to the Labour Inspector for the employees. The employees are to be paid an amount of the penalty award proportional to the arrears amount awarded.

[11] Costs are reserved.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**