

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 76
3045832

BETWEEN	LABOUR INSPECTOR Applicant
AND	SUNWIN TECHNOLOGIES LIMITED First Respondent
	RAMESH KUMAR KONEY Second Respondent
	PHANI KUMAR CHEVENDRA Third Respondent

Member of Authority: Vicki Campbell

Representatives: Sarah Blick, counsel for Applicant
Michael Witt, counsel for First Respondent
Beverly Edwards, counsel for Second and Third Respondents

Investigation Meeting: On the papers

Submissions Received: 15 January 2020 from Applicant
21 January 2020 from First Respondent
21 January 2020 from Second and Third Respondents

Determination: 20 February 2020

SECOND DETERMINATION OF THE AUTHORITY

- A. Sunwin Technologies Ltd is ordered to pay to the Labour Inspector the total sum of \$18,697.86 in 6 equal monthly instalments over a period of 6 months commencing on 1 March 2020. Instalments are to be paid on the 1st of each month and will consist of 6 payments of \$3,116.31.**

- B. As persons involved in the failure to pay wages Mr Koney and Mr Chevendra are ordered to pay to the Labour Inspector the arrears to the extent that Sunwin is unable to pay.**
- C. Each of the three respondents is ordered to pay penalties by instalment as follows:**
- i. Sunwin Technologies Limited – 11 instalments of \$1,969.83 plus one instalment of \$1,969.87;**
 - ii. Mr Koney – 11 instalments of \$501.83 plus one instalment of \$501.87.**
 - iii. Mr Chevendra – 11 instalments of \$501.83 plus one instalment of \$501.87.**
- D. Costs are reserved.**

Employment relationship problem

[1] In a determination dated 22 October 2019 I found Mr Koney and Mr Chevendra were persons involved in breaches of minimum standards under s 142W of the Employment Relations Act 2000 (the Act).¹ I made orders for the payment of arrears of wages and imposed penalties on all three respondents for the breaches.

[2] During the investigation of the substantive claims the parties invited me to make orders for the payments of the arrears of wages and penalties by instalment. I was satisfied payment by instalment would be appropriate and invited the parties to resolve that matter between them. I reserved leave for the Labour Inspector to return to the Authority in the event that no agreement could be reached.

[3] Despite the parties attempting to resolve the matter they have been unable to reach agreement and the Labour Inspector has asked the Authority to determine the matter. Submissions and relevant documents have been provided to the Authority to assist in my determination of this matter. As permitted by s 174E of the Act I have not

¹ *Labour Inspector v Sunwin Technologies Limited & 2 Ors* [2019] NZERA 603.

referred in this determination to all the submissions and documents received although I have carefully considered everything.

Payment by instalment

[4] Sections 131(1A) and 135(4A) of the Act deal with the payment of arrears of wages and penalties by instalment.

[5] Section 131(1A) of the Act allows payment by instalment only if the financial position “...of the employer...” requires it. Sunwin Technologies Limited was the employer and any orders for payment by instalment can only apply to Sunwin and not the persons involved in the failure to pay the wages, that is, Mr Koney and Mr Chevendra. This recognises the broader public policy role of ensuring the directors of companies work hard to ensure a company meets its obligations.

[6] In contrast s 135(4A) of the Act allows payment by instalment by “...any person”. This means the Authority may order payment by instalment in relation to the payment of the penalties imposed against each of the three respondents including Mr Koney and Mr Chevendra.

Arrears of wages

[7] In my earlier determination I recorded Sunwin’s acceptance that the following arrears of wages were owing and made orders accordingly:²

Mr Manpreet Singh	\$2,398.41
Mr Amrit Pal Singh	\$3,291.44
Mr Santosh Kumar Akuthota	\$4,662.47
Mr Thilak Paruchuri	\$5,425.82
Mr Vamish Kakkevenl	\$2,919.72
Total	\$18,697.86

[8] I consider the payment of wages to be a priority for those who have been denied their income. For that reason my orders for the instalment payments relating to the arrears of wages is over a short period than the instalment payments for the penalties imposed.

² Ibid at [18].

[9] After consideration of the information provided to the Authority I order Sunwin Technologies Ltd to pay to the Labour Inspector the total sum of \$18,697.86 in 6 equal monthly instalments over a period of 6 months commencing on 1 March 2020. Instalments are to be paid on the 1st of each month and will consist of 6 payments of \$3,116.31.

[10] To the extent that Sunwin is unable to meet the orders set out in paragraph [9] above, as persons involved in the failure to pay the wages, Mr Koney and Mr Chevendra are personally liable to make the specified payments.

Penalties

[11] In my earlier determination I imposed the following penalties on each of the three respondents:³

- | | |
|--------------------------------|----------|
| a) Sunwin Technologies Limited | \$23,638 |
| b) Mr Koney | \$6,022 |
| c) Mr Chevendra | \$6,022 |

[12] After consideration of the information provided to the Authority the Respondents are ordered to pay to the Authority the following penalties in 12 equal monthly instalments over a period of 12 months commencing on 1 April 2020 as follows:

- a) Sunwin Technologies Limited is ordered to pay 11 instalments of \$1,969.83 plus one instalment of \$1,969.87;
- b) Mr Koney is ordered to pay 11 instalments of \$501.83 plus one instalment of \$501.87.
- c) Mr Chevendra is ordered to pay 11 instalments of \$501.83 plus one instalment of \$501.87.

[13] Instalments are to be paid on the 1st of each month with the first instalment being paid on 1 April 2020.

³ Above n 1 at [66].

Costs

[14] Costs are reserved. The Labour Inspector has not indicated it will be seeking costs on this application, however, if the Labour Inspector intends to seek costs it should lodge and serve a memorandum within 28 days of the date of this determination. The respondents shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Vicki Campbell
Member of the Employment Relations Authority