

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 278
3061672

BETWEEN	A LABOUR INSPECTOR Applicant
AND	SS & PK JADOR LIMITED First Respondent
AND	SATNAM SINGH JADOR Second Respondent

Member of Authority: Sarah Kennedy

Representatives: Sarah Blick, counsel for the Applicant
Sarah G E Ongley, counsel for the Respondents

Investigation Meeting: On the papers

Date of Determination: 30 June 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The proceedings involve claims brought by a Labour Inspector (Inspector) following an investigation into compliance with minimum employment entitlements and standards by SS & PK Jador Ltd, a limited liability company and one of its directors, Satnam Singh Jador.

[2] The first Respondent trades as Clevedon Road Liquor (“CRL”) and it operates at 78 Clevedon Road, Papakura, Auckland. Satnam Singh Jador (“Mr Jador”) and Pervinder Kaur Jador (“Mrs Jador”) are registered as directors of the first Respondent.

[3] In May 2018, concerns about minimum entitlements were raised with the Ministry of Business, Innovation and Employment by Vijay Saini who alleged that as an employee of CRL he often worked more hours than what his contract allowed for.

[4] The Inspector conducted an investigation into the complaint and proceedings were later commenced in the Authority in relation to breaches of minimum employment standards and entitlements concerning a sample of four employees, offering and receiving a premium for one employee and failure to keep time and wage and holiday and leave records for nine employees (both past and present).

[5] Following discussions between the Inspector, CRL and Mr Jador, including mediation on 15 March 2019, an agreed statement of facts was filed in the Authority recording that the parties had reached settlement at mediation in respect of all matters including full and final settlement of the arrears claims pleaded by the Inspector in these proceedings.

[6] The parties agree that Mr Jador is a person involved in the employment standards breaches for the purpose of s 142W of Employment Relations Act 2000, (“ER Act”) and therefore he is liable as an individual to any penalty imposed on him by the Authority.

[7] The Inspector now seeks penalties for 34 breaches under the Minimum Wage Act 1983, Employment Relations Act 2000, Holidays Act 2003 and the Wages Protection Act 1983 against both CRL and Mr Jador.

The Authority’s investigation

[8] The penalties in this matter have been determined on the papers. The information considered comprised the agreed statement of facts and affidavits including those of Navin Kumar, accountant, Varinder Singh (Mr Jador’s nephew), the Inspector, Vijay Saini (past employee and complainant), and Mr Jador. Both parties attached appendices setting out their respective penalty calculations and relevant case law.

[9] Through counsel for CRL and Mr Jador, wrong-doing is accepted. Apology letters to four current and past employees accepting responsibility and acknowledging the stress caused were attached to submissions.

[10] Having regard to s 174E of the ER Act, it has not been necessary to refer to all the information placed before the Authority in this matter. All material provided has, however, been considered.

[11] As permitted by 174C(4) of the ER Act, the Chief of the Authority has decided that exceptional circumstances exist to allow this written determination to be issued outside the three month timeframe required by s 174C(3) of the ER Act.

Submissions on penalties

[12] Both parties provided written submissions and are in agreement as to the number and type of breaches, the maximum penalties available and the Inspector's approach to globalisation.

[13] CRL and Mr Jador accept that 34 breaches occurred as follows:

8.1 Three employees did not receive pay for work done at least at the rate of the minimum wage;

8.2 A premium was sought and received from one employee for their continued employment;

8.3 Annual holiday pay was not calculated and paid correctly to a current employee;

8.4 Annual holiday pay was not calculated and paid correctly to three former employees on termination of employment;

8.5 Public holiday pay was not paid correctly to four employees;

8.6 Alternative holiday pay was not paid correctly to four employees;

8.7 Accurate wage and time records were not kept for nine employees;

8.8 Accurate holiday and leave records were not kept for nine employees.

[14] A total of \$97,361.66 in arrears has been paid by weekly instalment over a month, with the final amount being paid on or about 29 June 2020.

[15] The Inspector seeks penalties in the range of \$120,000 to \$130,000 for CRL and \$40,000 to \$50,000 for Mr Jador. On behalf of the Respondents it is submitted that penalties of \$30,000 for CRL and \$10,080 for Mr Jador would be appropriate.

Penalty analysis

[16] I agree with the parties that for the purposes of determining penalties, the Authority must assess the statutory considerations set out in s 133A of the ER Act and take account of the guidance set out in the relevant case law, including *Borsboom v Preet PVT Ltd*, *A Labour Inspector v Prabh Limited*, and *A Labour Inspector v Daleson Investment Limited*.¹

[17] In *Preet* the Employment Court set out a four-step approach to fixing penalties where there have been multiple breaches of minimum employment standards:

- (a) Step 1 – Identify the nature and number of breaches.
- (b) Step 2 – Assess the severity of breaches considering both aggravating and mitigating factors.
- (c) Step 3 – Consider the means and ability of the respondent to pay.
- (d) Step 4 – Ensure that the amount arrived at after the first three steps is proportionate to other cases and the extent of the breaches.

[18] In *A Labour Inspector v Matangi Berry Farm Limited*,² the Court applied an approach to penalty setting which assessed the factors in s 133A of the ER Act and then applied those and other considerations identified in *Preet* using the four step process to quantify the penalty. This is generally consistent with the approach set out in the parties' submissions and it is the approach I will use.

The object of the Act stated in s 3

[19] While it is mandatory for the Authority to have regard to all the objects of the ER Act when considering penalties, I agree with the parties that promoting good faith,

¹ *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143; *A Labour Inspector v Daleson Investment Limited* [2018] NZEmpC 110; and *A Labour Inspector v Prabh Limited* [2018] NZEmpC 110.

effectively enforcing employment standards, and acknowledging and addressing the inherent inequality of power in employment relationships are particularly relevant in penalty matters, especially those involving migrant employees. I was reminded that effective enforcement of employment standards is particularly important in this case because failures to pay minimum wage and holiday pay undermines employment standards, impacts directly on employees and also creates an unfair advantage in the marketplace.

The nature and extent of any loss or damage suffered

[20] With reference to the agreed summary of facts there are six types of breaches that give rise to the imposition of penalties in this case:

- (a) Breaches of s 6 of the Minimum Wage Act 1983, being a failure to pay employees at not less than the minimum rate of wages for all hours worked;
- (b) A breach of s 12A of the Wages Protection Act 1983, constituting a premium charged in relation to employment;
- (c) Breaches of ss 21, 24 and 25 of the Holidays Act 2003, relating to payment of annual holiday pay;
- (d) Breaches of ss 50, 56 and 60 of the Holidays Act 2003, relating to failure to pay an employee for public holidays and alternative holidays;
- (e) Breaches of s 130 of the ER Act 2000, relating to failing to maintain accurate wage and time records.
- (f) Breaches of s 81 of the Holidays Act 2003, relating to failing to maintain holiday and leave records.

[21] Each of the Acts allows for penalties to be imposed³ with the maximum penalty for a single breach by a company of \$20,000 and \$10,000 for individuals. With 34 breaches there is potential total liability for penalties amounting to \$680,000 for CRL and \$340,000 for Mr Jador as a consequence.

² *Labour Inspector v Matangi Berry Farm Limited* [2020] NZEmpC 43.

³ Minimum Wage Act 1983, s 10; Holidays Act 2003, ss 75(1) and 76; Wages Protection Act 1983, ss 12A, 13; and Employment Relations Act 2000, ss 133 and s 135(2) (a) and (b).

[22] The Inspector submits these are significant breaches in that the employees lost the use of the money they were entitled to at the time it became due reducing the employer's costs and giving an unfair advantage over competitors. It is also acknowledged that Mr Saini was dismissed from his employment and a personal grievance was pursued by him as a separate matter which has now been settled between the parties.

[23] CRL and Mr Jador say they were not trying to seek a financial advantage, they paid for contracted hours of work above the minimum wage and it was only the additional hours of work that were paid below the minimum wage. This was because the employees wanted additional work or felt they needed it for immigration or security reasons. Mr Jador says that the arrangements were in place to help everyone and he now understands what he did was wrong and fully admits and regrets those mistakes.

[24] In summary, seeking and receiving a premium from Mr Saini is accepted. Annual leave, public and alternative holiday pay entitlements were not calculated or paid correctly to any of the employees sampled. The required record keeping was either non-existent or non-compliant with minimum standards. There were two sets of wage and time records, one set accurately recording contracted hours (but falsely reflecting the actual hours worked by employees), and the other set reflecting the true nature and longer hours worked by the employees. Pay for the additional hours (over and above the contracted hours) were calculated from the second set of records and paid at less than the minimum wage.

Whether the breach was intentional, inadvertent or negligent

[25] CRL and Mr Jador say their actions were not intentional and arose out of a misunderstanding about how New Zealand law operates and a genuine willingness to help the employees. They say Mr Saini asked Mr Jador for a premium arrangement because Mr Saini's work visa was about to expire and wanting permanent residency, he asked for his employer's support. Mr Jador told him he could not afford to promote him to manager which is how the premium arrangement came about. Mr Jador says "I genuinely thought I was helping him and his family out" but also accepts that he now knows it (offering and accepting a premium) was wrong.

[26] The Inspector submits that these breaches are intentional and refers to the two sets of records to demonstrate that the conduct was intentional. Aggravating this was the fact that the second set of records were not provided to the Inspector during her investigation but it is accepted these were provided promptly after proceedings were filed and current counsel was engaged.

[27] Given the two sets of records and the combination of underpaid wages caused by paying for additional hours separately and often in cash, a premium arrangement and failure to calculate and pay all types of leave and holiday pay, I find there was a systematic disregard for minimum employment standards and a deliberateness about breaches that cannot wholly be explained by a misunderstanding of New Zealand law.

[28] I also note that Mr Jador has run businesses in New Zealand since 1996. In these circumstances I do not consider the actions of CRL and Mr Jador can be correctly characterised as inadvertent or negligent and I consider the breaches were intentional.

Whether any amounts have been paid in compensation, reparation or restitution, or steps taken to avoid or mitigate any actual or potential adverse effects of the breach

[29] It is agreed that all arrears owing have been paid and that once current counsel was engaged CRL and Mr Jador were co-operative, adopted an attitude of remorse and demonstrated a willingness to resolve matters. In addition, the arrears were paid within one month of the parties' agreement so as not to put further pressure on the employees. Several types of loans were taken out and staff hours and Mr and Mrs Jador's wages were reduced.

[30] I note the apology letters to four employees affected by these breaches along with submissions that this demonstrates genuine remorse and a new understanding of the impact on the employees. The Inspector agrees there is now acceptance of responsibility and steps have been taken to rectify the default.

[31] I accept there has been a change in the attitude of CRL and Mr Jador once new counsel came on board and the arrears were paid promptly. I am also informed that CRL and Mr Jador have undertaken multiple steps to ensure they now understand New Zealand employment law. These include implementing a new electronic payroll system, providing employee access to complete employment records, overtime hours

have been drastically cut and are paid appropriately and human resources and employment law specialists are on hand.

[32] While the Employment Court has said payment of monies owing is not evidence of contrition and amounts to no more than the late performance of a duty,⁴ I consider that the swift payment of arrears and acknowledgment by CRL and Mr Jador demonstrates remorse, an acceptance of responsibility and a willingness to invest in compliance which goes some way towards mitigation.

The circumstances in which the breach, or involvement in the breach, took place, including the employee's vulnerability

[33] The minimum standards breaches identified by the Inspector took place over a period of approximately four years and related to a sample of four employees. The failure to adhere to minimum record keeping rules relates to nine employees (both current and past). Three of the four sampled employees had their visa status tied to their employment at one stage or another. The evidence includes working long hours, not being paid at minimum wage for additional hours worked or receiving statutory public holiday and leave entitlements, sleeping at the shop and the possibility of visa holders, (or visa applicants) and family members being affected if there was no longer employment for a primary visa holder with CRL.

[34] Mr Jador's submission is that these were not vulnerable employees because they were either part of his extended family or were friends of the family and in all cases approached Mr Jador for work. He says because of this, the employees were always treated well so it was not a situation where an employer was taking advantage of immigration or visa status.

[35] It is also submitted on the Respondents' behalf that there was a genuinely held but mistaken understanding about New Zealand employment law because it was Mr Jador's belief that employee overtime could be paid in cash at less than the minimum wage. He was also motivated to help his employees who often asked for more work than he could afford to pay for. It is further submitted there is no evidence to suggest the employees were in a vulnerable position because all four employees were either students or had worked in other jobs in New Zealand prior to working for CRL and Mr Jador assisted all four with getting visas or other jobs.

⁴ *Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [33].

[36] I note that Mr Jador proactively contacted the then Department of Labour in 2014 regarding calculation of holiday pay and that he either misunderstood or was given incorrect advice. Even if Mr Jador could rely on this, it cannot be overlooked that there are more breaches than calculating holiday pay. There is acceptance by Mr Jador that he now knows that seeking and receiving a premium was wrong and that false and/or deficient sets of employment records were kept for at least four years.

[37] While I do not doubt that Mr Jador held some genuine concern for the employees, I find these employees were in a particularly vulnerable position by virtue of their immigration status alone.⁵ CRL and Mr Jador knew this, in fact, they made a habit of employing family or friends for the specific stated intention of helping them with their visa and immigration status. The Court has accepted there is an inherent vulnerability that comes about when employment is linked to visa status which was the case with three of CRL's employees at various stages over the four year period in the sample investigated by the Inspector.

Whether the company has previously been found in proceedings under the Act or any other enactment, to have engaged in similar conduct.

[38] There is no evidence to suggest that the Respondents have engaged in similar conduct in the past.

Preet step one - number and nature of breaches

[39] In *Preet*, the Employment Court observed it may be appropriate to consider whether multiple but materially identical breaches arising from a particular course of conduct should be treated as a global single breach (noting care should be taken to ensure a global approach does not result in an artificially low penalty)⁶

[40] In *Labour Inspector and Parihar*,⁷ the Court accepted the parties' proposed approach to globalisation and viewed the obligations to keep wage and time and holiday and leave records as a single breach per employee. Notably in that case the Court expressed a concern that "If the maximum penalty is related to each breach, an enormous total is reached, requiring an artificial approach to discounting to reach a realistic level of eventual penalties".

⁵ Above n3 at 36.

⁶ *Borsboom* above n1 at 100 and 141.

⁷ *Labour Inspector and Parihar* [2019] NZEmpC 145 at [39].

[41] *Labour Inspector v Matangi Berry Farm Limited*,⁸ is also instructive on globalising penalties. In *Matangi* the Court globalises failures across 207 employees and 118 employees down to a single breach for each type of default; failure to retain employment agreements, failure to keep holiday and leave records and failure to pay annual holiday pay. This meant globalisation reduced 532 breaches (based on a count per employee affected) down to just three. By this analysis, the conduct leading to the breach(es) formed the basis on which the Court assessed the quantum of penalties available rather than concentrating on the number of breaches on a per-employee basis.

[42] As already noted there are 34 breaches in this case across four different statutes amounting to total liability of \$680,000 for CRL and \$340,000 for Mr Jador before any globalisation or analysis.

[43] As to what breaches in this case might be globalised, the parties agree that:

- (a) Penalties for failures to pay minimum wage should be approached as separate breaches meaning on a per-employee basis and should not be globalised;
- (b) The penalty for seeking and receiving a penalty is in relation to one employee;
- (c) Twelve breaches for failing to calculate and pay all types of holiday pay can be partially globalised and counted as eight breaches; and
- (d) Eighteen breaches of record keeping requirements under both s 81 of the Holidays Act and s 130 of the ER Act can be globalised to one breach per-employee and counted as 9 breaches.

[44] I agree with the parties approach other than to the record keeping breaches. Following the approach set out in *Matangi* it is my view that the record keeping breaches can be globalised further by assessing them as one globalised breach per Act which equates to an overall total of two record keeping breaches for all employees. Therefore with reference to paragraph [13] above, and after further globalisation on the basis I have set out, the penalties are assessed and identified as follows:

⁸ *Matangi Berry Farm* above n2.

- (a) Three breaches of failing to pay minimum wage and one breach for seeking and receiving a premium are separate breaches (four breaches = \$80,000 for CRL and \$40,000 for Mr Jador)).
- (b) Twelve breaches for failing to correctly calculate and pay annual holiday, public holiday and alternative holiday pay become eight breaches (eight breaches = \$160,000 (CRL) and \$80,000 (Mr Jador));
- (c) Eighteen record keeping breaches become single breaches of each Act amounting to two breaches (two breaches = \$40,000 (CRL) and \$20,000 (Mr Jador)).

[45] The Inspector's claim in this case involves a small company running a single store, and a husband and wife who are in effect, the company, but on the other hand the maximum penalties available are not insignificant given the number of breaches.

[46] With reference to the methodologies in *Parihar* and *Matangi*, partial globalisation appears to be the reasonable and just way to approach this matter and avoids an artificial approach in arriving at an eventual penalty. I am satisfied that the globalisation adopted does not artificially reduce the maximum penalty threshold that might otherwise be available (leading to an artificially low penalty) because the seriousness of the breaches is addressed as a separate step in the penalty analysis and taken into account in calculating the final quantum.

[47] Partial globalisation as set out above reduces the total number of breaches from 34 to 14 and the starting point for quantum to \$280,000 for CRL and \$140,000 for Mr Jador before considering and making adjustments for aggravating and ameliorating factors.

Preet step 2 – severity of breaches

[48] Counsel for the respondent submits the failures to maintain wage, time, holiday and leave records are at the less serious end of a scale of seriousness and should be assessed at 40 percent of the maximum. This is because the record keeping methodology was not for a misleading purpose, but rather it allowed the employer to calculate and pay employees for additional time worked over and above contracted hours (albeit at a rate lower than minimum wage).

[49] There is a conflict in the evidence about how the premium arrangement came about with Mr Saini and for whose benefit it was instigated. In any event the agreed statement of facts records that when Mr Saini failed to complete the additional hours required, he paid back any hours he did not work up to the required hours. The parties also agree an estimated total of \$4460.50 was sought and received from Mr Saini, which constituted a premium charged for continued employment.

[50] The Inspector submits there are a number of factors increasing seriousness and culpability being the number of affected employees, loss of use of the money they were entitled to at the time it became due and the nature of the breaches in that they were serious, ongoing and repeated over approximately four years. It was also noted the Respondents have been operating the CRL since 2008 and employing employees over that time.

[51] The four sampled employees clearly suffered losses evidenced by the combined arrears totalling \$97,361.66 and therefore the failures by CRL and Mr Jador have also resulted in an obvious consequential financial advantage to both Respondents.

[52] I have already found above there was deliberateness to the record keeping breaches and noted the Inspector has recorded there is vulnerability in this case by virtue of immigration status and I agree. The breaches represent ongoing systemic failures (as opposed to one-off or isolated conduct) in the approach to basic minimum employment standards that employees can expect in New Zealand and included a premium arrangement with one employee.

[53] I have drawn a distinction between the seriousness of the record keeping breaches and the other breaches because of the deception involved in keeping two sets of records and initially failing to provide the second set. For those reasons I agree with the Inspector that the seriousness of the record keeping breaches is at the more serious end of the scale and therefore set the starting point for the two record keeping breaches at 80 percent of the maximum which comes to \$32,000 for CRL and \$16,000 for Mr Jador.⁹

[54] I assess the remaining 12 breaches to also be serious because they represent a systematic approach over approximately four years to employees' statutory

⁹ 2 x \$16000 = \$32,000 for CRL and 2 x \$8000 = \$16,000 for Mr Jador.

entitlements causing losses to vulnerable employees and a consequential benefit to the employer, and set those at 60 percent of the maximum which comes to \$144,000 and \$72,000 respectively.¹⁰

[55] This brings the working totals to \$176,000 and \$88,000 respectively before considering ameliorating factors, ability to pay and proportionality. While it has been held that payment of monies owing is not evidence of contrition and amounts to no more than the late performance of a duty,¹¹ I consider that the swift payment of arrears, investment in compliance and acknowledgment by CRL and Mr Jador demonstrates an acceptance of responsibility and remorsefulness.

[56] I have taken into account the Respondents' submissions that contracted hours were paid above minimum wage. The Inspector accepts a reduction in penalty quantum of 40 percent to be a fair assessment for ameliorating factors. In the overall circumstances I consider a 50 percent reduction in the maximum at this stage to be a fair assessment. This further reduces the totals to \$88,000 and \$44,000 when ameliorating factors are taken into account.

Preet step 3 - ability to pay.

[57] Mr Jador submits that as a small business the financial impact has been tough and has had a real impact on the financial viability of the business. He notes he has cut back staff hours and both he and his wife have reduced their wages from \$1500 to \$1200 per week. Loan payments have been reduced to interest only and a small business loan of \$22,600 was taken out with IRD that had to be repaid before the end of the year (2020). Mr Jador has reimbursed the employees' arrears totalling \$97,361.66, paid legal fees and settled the additional claims made by Mr Saini.

[58] The affidavit of Navin Kumar, accountant, confirms there are significant personal and company debts including from another business that failed and loans. Business records are attached to Mr Kumar's affidavit for CRL and A & N Jador Limited, the entity that owned the failed business. These show evidence of Mr and Mrs Jador's home loans and no other personal financial information for Mr or Mrs Jador was provided.

¹⁰ 12 x \$12,000 = \$144,000 and 12 x \$6000 = \$72,000 respectively.

¹¹ *Labour Inspector v Daleson* above n4 at 33.

[59] The Inspector notes the business is still trading and there has been an ability to repay significant arrears promptly so there appears to be access to urgent funds if required but accepts that a 20 percent reduction could apply if the Authority were so minded. I agree there appears to be the ability to access money evidenced via shareholder advances and payment of the arrears, which means similarly the shareholder must also have the ability to access money. However, it is accepted that a large penalty will impact on the both Respondents and as a consequence, the Jador family and current employees.

[60] In these circumstances, a 20 percent reduction is appropriate bringing the totals to \$70,400 and \$35,200.

Preet step 4 - proportionality of outcome (totality) and consistency

[61] CRL and Mr Jador submit that the penalty range arrived at for both Respondents by the Inspector (\$120,000 - \$130,000 for CRL and \$40,000 - \$50,000 for Mr Jador) is grossly excessive for a small single store owner operated business. A distinction was drawn between this and a large company involving multiple directors from different families. They say any fine will be borne by one family and this is that family's only business and source of income meaning a large penalty would be crippling for Mr Jador, his family, his business and the people who he employs.

[62] CRL and Mr Jador also submit that the issue of double punishment is alive in this case because there is no real separation so what CRL incurs by way of penalty will in fact be borne by Mr Jador and his family. In *A Labour Inspector v Sampan Restaurant Limited*¹² the Court noted that where a company and a shareholder or director of that company are being fined for the same offence, the issue of double punishment for small business owners may still be considered.

[63] The Inspector accepts that application of the proportionality test will lead to a reduction in penalties to achieve a measure of consistency with other cases but notes that this discount is largely necessary because of the number of discrete breaches committed by the respondents.

[64] Penalties should be set at a level which both punishes a party for its breaches and deters it from future non-compliance of minimum standards. The Authority must

¹² *A Labour Inspector v Sampan Restaurant Limited* [2018] NZEmpC 69 at [34].

take into account whether any penalty would be significantly out of proportion to the gravity of the breaches, and whether there is a real risk that it could be of such magnitude as to create a significant risk of non-payment.¹³

[65] In *A Labour Inspector v Nekita Enterprises Limited*,¹⁴ the Authority assessed similar determinations whereby multiple breaches of employment standards (said to be in excess of 10 and up to 1075) by an employer were found. A review of determinations issued between 2018 and 2020 found penalties ranging from \$4,000 up to \$160,000 were imposed.

[66] In *Nekita*, the breaches were considered serious with the main difference being there were only minor acts of mitigation by the respondent in that case. Penalties of \$90,000 were awarded against the company and \$36,000 against the person involved in the breach. *Nekita* involved a dual payment system in place for approximately four years (similar to CRL) and failure keep wage and time and holiday and leave records. Four employees were not paid minimum wage and associated holiday pay.

[67] *A Labour Inspector v Indy Supa Store Limited*¹⁵ is another Authority determination similar to this matter as it involved a small family run company that owned a single dairy. Arrears of \$103,013.60 were ordered and penalties of \$61,000 for the company and \$12,000 were awarded against two directors for failing to pay minimum wages, multiple breaches of the Holidays Act 2003 and failing to keep time and wage records. The Authority recognised and took into account that the finances of the directors, who were husband and wife owners, were intermingled and that they had some family responsibilities.

[68] In two other decisions involving migrant workers, the Authority awarded \$120,000 in penalties in a case involving the employer making explicit threats to the employees and payment of premiums but no penalties for record keeping.¹⁶ In the other case the Authority awarded penalties of \$55,000 against the company and \$27,000 against the person involved in the breaches for significant record keeping breaches concerning 19 employees.¹⁷

¹³ *Borsboom* above n1 at 147.

¹⁴ *Labour Inspector v Nekita Enterprises Limited* [2020] NZERA 509.

¹⁵ *A Labour Inspector v Indy Supa Store Limited* [2018] NZERA 166.

¹⁶ *A Labour Inspector v Pegasus Energy Limited* [2018] NZERA 26.

¹⁷ *A Labour Inspector v New Zealand Mountain Hunting Ltd* [2019] NZERA 568.

[69] In *A Labour Inspector v Kenel*,¹⁸ a penalty of \$30,000 was awarded. It was the employer's first offence, the breaches were considered to be intentional and affected 17 migrant workers.

Conclusion

[70] In recognition that this is the first action for penalties for employment breaches, that the directors and shareholders of CRL are being fined for the same offence as CRL, and taking into account consistency with other cases and proportionality I reduce the total by applying a discount of approximately 30 percent at this stage. Then standing back and rounding the quantum the total penalties would amount to \$50,000 for CRL and \$20,000 for Mr Jador. It is clear these penalty sums are within the range of current penalty orders made by the Authority and the Court.

[71] I am satisfied these sums are proportional to the nature of the breaches in this case, and reflect the gravity by which the law should regard the failures by CRL and Mr Jador to comply with minimum employment standards. Further reduction is not warranted.

Orders

[72] SS & PK Jador Limited is ordered to pay penalties of \$50,000 to the Labour Inspector. This sum must be paid by it into the Crown Bank account.

[73] Mr Jador is ordered to pay penalties of \$20,000 to the Labour Inspector. This sum must be paid by him into the Crown Bank account.

Costs

[74] Costs are reserved. The parties are invited to resolve the matter between them. If they are unable to do so, the Labour Inspector has 28 days from the date of this determination in which to file and serve a memorandum on costs. CRL and Mr Jador have a further 14 days in which to file and serve a memorandum in reply.

¹⁸ *A Labour Inspector v Kenel* [2021] NZERA 133.

[75] The parties could expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless particular circumstances or factors require an adjustment upwards or downwards.

Sarah Kennedy
Member of the Employment Relations Authority