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**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 181  
3126734

BETWEEN	A LABOUR INSPECTOR Applicant
AND	HOUSE OF ISLAND STYLE LIMITED First Respondent
AND	DAMYANTI NARSEY Second Respondent
AND	PRAKASHCHANDRA NARSEY Third Respondent

Member of Authority:	Peter Fuiava
Representatives:	Tim Gray, counsel for the Applicant Adam Mapu, advocate for the Respondents
Investigation Meeting:	On the papers
Submissions received:	7 July 2021, 12 August 2021, 16 December 2021, and 11 February 2022 from the Applicant 6 August 2021 and 26 January 2022 from the Respondents
Determination:	4 May 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] This a claim for penalties brought by the Labour Inspector on behalf of two part-time and now former employees of the first respondent. In addition, the Labour Inspector seeks penalties against the second and third respondents under s 142W of the

Employment Relations Act 2000 (the Act) as persons involved in various breaches of employment standards under the Minimum Wage Act 1983 (MWA) and the Holidays Act 2003 (the HA).

[2] The respondents accept the Labour Inspector's investigation findings and its calculation of \$41,684.68 in outstanding wages and holiday pay entitlements. That amount was paid by the first respondent in July 2020.

[3] The issue for determination is the question of penalties.

### **Application for non-publication is declined**

[4] Before turning to the issue of quantum of penalties, Mr Mapu sought name suppression for the respondents. The Authority notes that the second and third respondents are married, aged in their 60s, are now both retired, and are New Zealand citizens of Fijian Indian descent. A non-publication order was sought on the basis that the couple would be winding down their retail clothing company which is the first respondent in this proceeding.

[5] While not expressly stated in this way, it is understood that publication could affect the second and third respondent's winding down of their business including the selling of any remaining clothing stock. In affidavits provided to the Authority (attested 6 August 2021) the second and third respondents further state that they expect to suffer reputational damage within their community in the event that their names or the name of their clothing business is published in any determination.

[6] The Labour Inspector opposes the respondents' application for non-publication.

[7] In determining whether the respondents' particular circumstances justify the grant of a non-publication order, I adopt as my starting point the principle of open justice which is fundamental to our common law system of civil and criminal justice.<sup>1</sup> The principle can be displaced by sound reasons. For the following reasons, I am not satisfied that there are sound reasons for displacing the presumption of open justice.

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<sup>1</sup> *Erceg v Erceg* [2016] NZSC 135.

[8] The first ground relied upon for a non-publication order had to do with the impact publication might have on the second and third respondent's efforts in disestablishing the first respondent as a going concern. That process however appears to have now been completed as the building in which the first respondent traded has recently been sold. In subsequent affidavits provided to the Authority (attested 15 December 2021), the second and third respondents advise that the building was sold for \$1.25 million and that the net proceeds of sale would be determined by their bank in January 2022. It is not known what those net proceeds amounted to in the end as that information was not provided.

[9] With the sale of the first respondent's retail building, there no longer appears to be a reason for the respondents' names not to be published. There remains however the issue of the second and third respondents' reputation and standing in their community. As noted above, the couple are in their 60s and have recently retired from working life. While the first respondent company remains on the New Zealand Companies Office as a registered company, it appears that the second and third respondents have no intention of operating it as they once did as the company's directors. It has not been demonstrated that the second and third respondents are without the emotional and psychological support of their adult children or that publication would result in the couple being ostracised from their social networks in New Zealand. Neither has it been shown that the second and third respondents cannot turn to their immediate family members for support, if required. They will by now have had ample opportunity to inform their family members of their present predicament with the Labour Inspector.

[10] There is a high public interest in the promotion and effective enforcement of minimum employment standards. When I consider the present facts both individually and cumulatively, I do not consider a perceived apprehension of a loss in reputation or standing in one's community to be a compelling enough reason to displace the presumption of open justice. I therefore decline the respondents' application for non-publication.

[11] However, given that the respondents have a right to challenge my decision to refuse their application for non-publication, I grant an interim non-publication so as to preserve their position for now.

[12] Accordingly, pursuant to cl 10 of schedule 2 of the Employment Relations Act 2000 (the Act), I grant an interim non-publication order prohibiting the publication of the respondents' names and identities which will stay in place for the next 28 days commencing after the date of this determination. If no appeal is filed within that time, the interim non-publication order will naturally lapse.

[13] Using a computer-generated string of three letters, which bear no resemblance to the parties' real names, the first, second, and third respondents have been referred to in this determination as WKY, BTM and MYP respectively. Additionally, using the same computer-generated randomiser, the two part-time employees of House of Island Style Limited (House of Island) have been referred to as EUN and REI.

### **The Authority's investigation**

[14] The parties have agreed that this matter can be dealt with on the papers. The Authority has received written submissions from Mr Gray and an affidavit in support from Labour Inspector Daniel Coyle (16 December 2021). For the respondents, Mr Mapu has filed submissions and two sets of affidavits from Mrs Narsey and Mr Narsey.

[15] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[16] I now turn to the issue of penalties.

### **Background**

[17] The facts are not in dispute. At the material time, House of Island Style operated as a clothing store in a large New Zealand city selling island style clothing for men and women.

[18] On 8 December 2019, MBIE received a complaint from a member of the public about House of Island Style. The informant stated that on their last visit, a staff member looked unhappy. The informant had spoken to the staff member who alleged they had not received the minimum wage and did not receive holiday pay. In response to that complaint, the Labour Inspectorate commenced an investigation.

[19] On 10 January 2020, Labour Inspectors Coyle and Seth Ong visited the retail premises of House of Island Style and spoke to Mrs Narsey and Mr Narsey. The couple advised that they had two part-time employees neither of whom were given sick leave because they were part-time workers and were not entitled to sick leave.

[20] Labour Inspector Ong spoke to Mohini Lata, a New Zealand citizen and of the same ethnicity as Mrs Narsey and Mr Narsey. Ms Lata stated that she worked Monday to Friday but that her hours were not fixed and that she was paid an average of 10 hours per week. Ms Lata further advised that the store was not open on public holidays and that she did not receive payment for an unworked public holiday.

[21] On 10 January 2020, the applicant issued House of Island Style a written request for records which included wages and time and other relevant records for the two employees in question. On 13 January 2020, Mrs Narsey and Mr Narsey hand delivered to the applicant the manual wages and time records for the employees.

[22] On 17 January 2020, the applicant spoke with Ms Lata's co-worker, Saleszni Kumar, who also worked part-time. Ms Kumar stated that she worked three days per week and that her hours varied. Although she was paid annual leave when Mr Narsey was away, Ms Kumar stated that she was not paid if she were to take leave of her own accord. Ms Kumar further stated that she did not take sick leave because she thought she was not entitled to any and that she had gone to work when sick.

[23] The Labour Inspectorate was later advised by an informant that while Mrs Narsey and Mr Narsey had provided it with wages and time records, those records only accounted for nine hours a week per employee. However, it was alleged that the couple kept a separate record in a notebook which showed that Ms Lata and Ms Kumar were each working 20 hours per week on average.

[24] On 18 March 2020, the labour inspectors revisited the business during which time it was put to Mrs Narsey and Mr Narsey that the wage and time record they had previously provided was not correct. Mr Narsey maintained that it was. Ms Lata was spoken to once more by the inspectors and was shown a copy of her wages and time record which had been supplied earlier. Ms Lata confirmed that it did not fully account for her hours and went on to state that she worked upwards to 21 hours per week. She

further stated that she had signed for her wages in two books, one which had been provided to the Labour Inspector, and a second notebook which was held by Mrs Narsey and Mr Narsey.

[25] The applicant challenged Mrs Narsey and Mr Narsey once more about the veracity of the supplied wages and time records to date. Mrs Narsey conceded that the hours contained in that record were not accurate and that the second notebook was kept at her home which she retrieved and provided to the Labour Inspector.

[26] After the second notebook was taken into account, the applicant found evidence of various breaches of the MWA and HA. For example, during the 2019-2020 tax years, the employees were each paid \$13 per hour in cash for hours worked in excess of nine hours officially recorded, a short fall of \$4.70 per hour below the applicable minimum wage rate. The total arrears owing from the tax year ending 31 March 2015 and 31 March 2020 to Ms Lata was \$11,536.65 (gross) and \$11, 811.43 (gross) for Ms Kumar.

[27] The applicant found that House of Island Style had failed to provide the employees with holiday pay where they did not work on a public holiday that was otherwise a working day for them. Over the tax years ending 31 March 2015 to 31 March 2020, a total of \$7,133.28 in unpaid entitlements was due to the employees (being \$3,566.64 each).

[28] The records further showed that House of Island Style had only provided three weeks annual holidays as opposed to the required four weeks. The total amount of unpaid holiday entitlements for each employee for the tax years ending 31 March 2015 to 31 March 2020 was \$11,203.22 (or \$5,601.66 each).

[29] Finally, it was noted that Mrs Narsey and Mr Narsey had previously stated that their two employees were not given sick leave because they were part-timers. The wages and time records that were provided did not indicate that sick leave had been taken by the employees who had both advised the Labour Inspector that they had not been paid when they were sick and could not attend work.

[30] On 27 July 2020, the applicant sent its investigation report along with the calculations of arrears owing to the two employees. The respondents accepted the calculations and paid the outstanding wages and holiday pay entitlements (amounting to \$41,684.68 for both employees) within a matter of days.

### **Relevant law**

[31] The starting point in the penalty-setting exercise is s 133A of the Act which states:

#### **Matters Authority and court to have regard to in determining amount of penalty**

In determining an appropriate penalty for a breach referred to in section 133, the Authority or court (as the case may be) must have regard to all relevant matters, including—

- (a) the object stated in section 3; and
- (b) the nature and extent of the breach or involvement in the breach; and
- (c) whether the breach was intentional, inadvertent, or negligent; and
- (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and
- (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and
- (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and
- (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.

[32] The seven statutory considerations expressly referred to in s 133A does not constitute an exhaustive list but the factors are mandatory considerations nevertheless. A full Court of the Employment Court in *Borsboom v Preet PVT* identified four additional considerations to the seven statutory mandatory considerations set out above:<sup>2</sup>

- when assessing deterrence, to do so both in relation to the particular person to be penalised and to the wider community of employers;
- when considering the seriousness of the breach, the degree of culpability of the person in breach;

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<sup>2</sup> *Borsboom v Preet PVT Ltd* [2016] NZEmpC 143, [2016] ERNZ 514 at [68].

- the general desirability of consistency in decisions; and
- when assessing a penalty or penalties, to stand back and evaluate whether the anticipated outcome is one which is proportionate to the breach or breaches for which the penalty is imposed.

[33] The full Court also identified a fifth consideration namely the need to have regard to a defendant's financial capacity or ability to pay a penalty.<sup>3</sup> However, in *Labour Inspector v Daleson Investment Limited*, Chief Judge Inglis made the following observation regarding the assessment of this factor:<sup>4</sup>

I pause to note that it is not uncommon for company fortunes to ebb and flow. Liability to pay a penalty is different from subsequent enforcement. This is particularly so in circumstances where Parliament has set out an extensive list of consideration and the financial circumstances of the defaulting party is not one of them. That is not to say that it is irrelevant – and s 133 makes it plain that the list is not exhaustive. It is clear however, that it is not a factor that Parliament itself considers pivotal to the penalty-setting exercise.

[34] In *Preet* the Employment Court set out a four-step approach to fixing penalties where there have been multiple breaches of minimum employment standards:<sup>5</sup>

- (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.

### **Penalties justified**

[35] Before the Authority considers each of the statutory and case law considerations noted above, it records that it is appropriate that penalties are imposed against each of the respondents. It is common ground that between the tax year ending 31 March 2015 and 31 March 2020, House of Island Style failed to:

- (i) pay wages at no less than the minimum wage rate in accordance with s 6 of the MWA, in the total amount of \$23,348.08;

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<sup>3</sup> *Borsboom v Preet*, at [79]-[80].

<sup>4</sup> *Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12, [2019] ERNZ 1 at [45].

<sup>5</sup> Above n 1, at [151].

- (ii) pay holiday pay to employees who did not work on public holidays that would otherwise be working days for them in accordance with s 49 of the HA, in the total amount of \$7,133.28;
- (iii) pay no less than four weeks' annual holidays in accordance with ss 16 and 21 of the HA, resulting in unpaid holiday entitlements of \$11,203.32; and
- (iv) provide employees with five days of paid sick leave as required in accordance with ss 63 and 65 of the HA.

[36] As directors and shareholders of House of Island Style and given that a false or misleading wages and time was knowingly provided to the Labour Inspector, it is just that penalties against Mrs Narsey and Mr Narsey are imposed as well. Neither respondent has suggested that they are not persons involved in a breach of employment standards under s 142W of the Act.

[37] I now turn to consider the mandatory statutory considerations, the additional relevant factors arising from the case law, and any other relevant considerations for this penalty-setting exercise.

## **Application**

### *Statutory consideration 1 – the object of the Act*

[38] The circumstances of this case reinforce the need to promote the following objects of the Act:

- (i) recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour;
- (ii) acknowledging and addressing the inherent inequality of power in employment relationships; and
- (iii) to promote the effective enforcement of employment standards.

[39] It was submitted by Mr Gray that the inherent inequality of power was heightened in this case because both the employers and the affected workers were of Fijian Indian descent. While it may have been reasonable of Ms Lata and Ms Kumar to expect better treatment by people with whom they shared linguistic and cultural ties, this area of the Authority's jurisdiction is replete of cases where sadly that is not so. In

any case, given the prejudicial effect on the second and third respondents before such an inference can be adopted, I would have preferred a written statement or a victim impact statement to that effect from Ms Lata and Ms Kumar which has not been provided.

*Statutory consideration 2 – the nature and extent of the breach*

[40] The total amount of unpaid entitlements arising between the 2015 to 2020 tax years amounted to \$41,684.68. It was suggested by Mr Gray that the true extent of unpaid entitlements may have extended beyond the six year limitation period. Again, in fairness to the respondents, it is noted that the labour inspector's evidence does not include information before the six-year period in question. In the absence of information that predates the tax year ending 31 March 2015, this assertion by Mr Gray cannot be taken any further.

*Identifying the number of breaches*

[41] There was a failure of House of Island Style to comply with s 6 of the MWA (the minimum wage breach), s 49 of the HA (the unworked public holidays breach), s 16 and 21 of the HA (the annual leave breach) and ss 63 and 65 of the HA (the sick leave breach). Mr Gray invited the Authority to treat the above breaches as four discrete breaches in relation to two affected workers, resulting in a total of eight breaches.

[42] In his submissions, Mr Mapu invited the Authority to strike out the two sick leave breaches (making a total of six breaches) on the ground that Ms Lata and Ms Kumar had never requested sick leave from their employers. However, it is observed that when the Labour Inspector spoke to Mrs Narsey on 10 January 2020, she was asked whether her staff called in sick and whether she paid them sick leave. Mrs Narsey's recorded response was that her two employees worked part-time and that they did not get sick leave.

[43] On 17 January 2020, a Labour Inspector telephoned Ms Kumar and asked about sick leave. Ms Kumar stated that she did not take leave because she thought she was not entitled to any and that she had consequently gone to work sick. The information and evidence before the Authority establishes that, even if Ms Kumar had asked her employer about sick leave, she would have been advised she was not entitled to any. Further, Mrs Narsey had advised the Labour Inspector that her two employees had

worked for her for 10 and seven years respectively. I would have expected Ms Lata and Ms Kumar to have claimed at least one sick day during their many years of service but they did not. I find that this was because neither had been made aware of their entitlement to sick leave by their employer.

*Maximum penalties available in respect of the breaches*

[44] The maximum penalty available in respect of a breach of the MWA, in the case of a company or other corporation, is \$20,000 per breach pursuant to s 10 of the MWA and s 135(2)(b) of the ERA.

[45] The maximum penalty available in respect of a breach of the HA, in the case of a company such as House of Island Style, is \$20,000 in accordance with s 75 of the HA and s 135(2)(b) of the Act.

[46] The maximum penalties available for each offence committed by an individual is \$10,000 per breach.

*Global penalties?*

[47] There are eight separate breaches. House of Island Style faces total maximum penalties of \$160,000, being \$20,000 per breach and Mrs Narsey and Mr Narsey each face total maximum penalties of \$80,000 being \$10,000 per breach. As discrete breaches in and of themselves, I find that none are amenable to globalisation.

[48] Therefore, the maximum total penalty available against House of Island Style in respect of eight breaches is \$160,000. The maximum total penalty available against Mrs Narsey and Mr Narsey is \$80,000.

*Statutory consideration 3 – whether the breach was intentional, inadvertent or negligent*

[49] Mrs Narsey and Mr Narsey hand delivered a first set of wages and time records for Ms Lata and Ms Kumar which was false and misleading information that accounted for only nine of the 20-21 hours per week that Ms Lata and Ms Kumar each worked on average. It was not until the veracity of that record was challenged by the Labour Inspector did Mrs Narsey disclose the second set of wages and time records.

[50] Both Mrs Narsey and Mr Narsey have, in their statement in reply, tried to attribute blame to their previous accountant for the “guidance” given to them on employment and tax matters. I regard that explanation with scepticism. The keeping of two sets of wages and time records enabled House of Island Style to maximise its profits by minimising its wages bill and PAYE tax liabilities for its employees. The breach was neither inadvertent nor negligent but intentional.

*Statutory consideration 4 – the nature and extent of any loss or damage*

[51] The unpaid entitlements to Ms Lata and Ms Kumar amounted to \$41,684.68 which is significant. There may have been no redress for either of them had it not been for a concerned member of the public who lodged a complaint with the Labour Inspector concerning House of Island Style. Compounding matters further for Ms Lata and Ms Kumar was the sustained nature of the breaches which took place over a six-year period during which time Ms Kumar (and possibly Ms Lata) had gone to work sick or not been able to look after a sick family at home without losing a paid shift.

*Statutory consideration 5 – steps to mitigate effects of the breach*

[52] In July 2020, the respondents repaid its workers the \$41,684.68 which was owed to them in minimum entitlements. In *Daleson*, the Chief Judge stated:<sup>6</sup>

While mitigating actions are relevant to the penalty-setting exercise, care needs to be taken not to create perverse incentives, encouraging employers to sit on their hands until forced, by virtue of a determination of the Authority, to pay what was previously due. The Australian Fair Work Commission put it in the following way in *Fair Work Ombudsman v Australian Sales & Promotion Pty Ltd*:

“I do not agree that payment of sums owed is evidence of contrition ... Belatedly doing what the law required to be done at an earlier time amounts to no more than the late performance of a duty.”

[53] While it is laudable that Mrs Narsey and Mr Narsey have made restitution towards Ms Lata and Ms Kumar, I note that they attributed some of the responsibility to their previous accountant which calls into question whether they have fully accepted responsibility for their actions. Be that as it may, it does appear to me that, in making payment, Mrs Narsey and Mr Narsey have shown urgency and a willingness to make things right albeit belatedly.

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<sup>6</sup> Above n 4, at [33].

*Statutory consideration 6 – circumstances of the breach and any vulnerability*

[54] Mrs Narsey and Mr Narsey state in their affidavits of 6 August 2021 that they had a great relationship with their employees and that their working relationship would have continued but for the closure of their clothing business. While Mrs Narsey and Mr Narsey may genuinely believe they had a great relationship with their staff, for the clear majority of Ms Lata and Ms Kumar's employment, there were multiple and sustained breaches of employment standards relating to the minimum wage, public holidays, annual leave and sick leave.

*Statutory consideration 7 – previous conduct*

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

*Additional consideration 8 – deterrence*

[56] While I accept that the respondents have made amends, there is still a need to hold Mrs Narsey and Mr Narsey accountable for the harm done to their workers and to promote in the couple a sense of responsibility or acknowledgement of that harm. Mr Gray submits that, in this case, a modest penalty would be capable of reinforcing the objects of the Act, in particular, the inequality of power in the employment relationship for part-time employed staff. I endorse that submission.

*Additional consideration 9 – culpability*

[57] Mr Gray submits that a provisional starting point of 70 percent of the maximum for each of the breaches identified against each respondent is appropriate. While I note that Mrs Narsey and Mr Narsey are in their 60s and have retired from work, they kept two wage and time records, the first of which was used in a misconceived attempt to throw the Labour Inspector off the trail. I agree with Mr Gray's starting point of 70 percent of the maximum to reflect culpability.

*Additional consideration 10 – consistency*

[58] A review of Employment Court and Authority imposed penalties show a number of significant orders where breaches of minimum wage and holiday pay have occurred.

[59] *Preet* involved two breaches of the MWA, four breaches of the HA and two other breaches. The Court ordered the employers of the five employees to pay a combined penalty of \$100,000.

[60] In *Labour Inspector v Shah Enterprise NZ Limited*, the Authority ordered penalties of \$32,000 against the respondent and \$16,000 against the respondent's director.<sup>7</sup> However, unlike the present case, the Authority in *Shah* was able to globalise four breaches down to three resulting in a starting point of \$60,000 for the respondent and \$30,000 for the respondent's director.

[61] In *Labour Inspector v Indy Supa Store Limited*, the Authority considered a small family run company that owned a single dairy.<sup>8</sup> Arrears of \$103,013.60 were ordered and penalties of \$61,000 for the company and \$12,000 were ordered against the two directors who were husband and wife. The breaches related to failing to pay minimum wages, multiple breaches of the HA, and failing to keep time and wage records.

*Additional consideration 11 – ability to pay*

[62] In response to a request from the Authority for further submissions concerning Mrs Narsey and Mr Narsey's financial position, Mr Gray provided an affidavit from Labour Inspector Coyle who stated that the couple were the current registered legal owners of four properties, with a total estimated value of between \$5.12m - \$5.85m. In a memorandum of 26 January 2022, Mr Mapu clarified that Mrs Narsey and Mr Narsey held these properties in their capacity as trustees and that the properties had no mortgages. It was further submitted that the respondents have never sought for a reduction in penalties on the basis of their ability to pay.

[63] While Mrs Narsey and Mr Narsey appear to be in a position to pay penalties, any penalty I impose on them and their company would effectively be funded from the same source. As a married couple, it is more probable than not that Mrs Narsey and Mr Narsey's finances are intermingled and while they are not without means, the pair appear to have retired and will be dependent on personal savings, superannuation, and other acquired assets from now on.

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<sup>7</sup> *Labour Inspector v Shah Enterprise NZ Limited* [2020] NZERA 505.

<sup>8</sup> *Labour Inspector v Indy Supa Store Limited* [2018] NZERA Christchurch 166.

*Additional consideration 12 – proportionality of outcome*

[64] The final step involves the proportionality or totality test, in which the Authority must consider whether the provision or penalty reached is proportionate to the seriousness of the breaches, and harm occasioned by them. This step is to ensure that the imposition of a penalty in the amount of it is just in all the circumstances.

[65] Mr Gray's end points of \$33,600 - \$42,000 for House of Island Style and \$16,800 - \$21,000 for Mrs Narsey and Mr Narsey respectively is in the ball park. However, further fine tuning is required on a totality basis that takes into account that arrears in minimum entitlements amounted to \$41,684.68 and that penalties will effectively be funded from the same purse.

[66] I reach penalty end points of \$30,000 for House of Island Style and \$15,000 each for Mrs Narsey and Mr Narsey.

*Should a portion of the penalty be paid to Ms Lata and Ms Kumar*

[67] Both Ms Lata and Ms Kumar have been compensated in terms of the Labour Inspector's investigation. As the Labour Inspector's submissions are silent on this point, I find that the whole of the penalty should be paid into the Crown Bank Account.

*Expenses*

[68] Having been successful with its claim, the applicant is entitled to be reimbursed the \$71.56 filing fee to bring the present application to the Authority. This is to be paid by the first respondent.

**Summary of Orders**

[69] The Authority makes the following orders:

- (i) The respondents are granted an interim non-publication order which will lapse 28 days following the date of this determination unless. I make this order as a temporary measure to preserve the status quo pending any appeal.

- (ii) The first respondent to pay \$30,000 into the Crown Bank Account as a penalty for breaches of the MWA and HA. Payment is to be made no later than 4 pm Friday 30 June 2022.
- (iii) The second and third respondents to each pay \$15,000 into the Crown Bank Account a penalty for being a person involved in breaches of the MWA and HA. Payment of these penalties to be made no later than 4 pm Friday 30 June 2022.
- (iv) The first respondent to reimburse the applicant the filing fee of \$71.56 which is to be paid no later than later than 4 pm Friday 30 June 2022.

### **Costs**

[70] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[71] If they are not able to do so and an Authority determination on costs is needed the Labour Inspector may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the respondents would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[72] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>9</sup>

Peter Fuiava  
Member of the Employment Relations Authority

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<sup>9</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].