

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA229
3145181

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	RBM COMMUNICATION LIMITED First Respondent
AND	VIRAL BHARATBHAI VALA Second Respondent
AND	DHARAM BHARATBHAI VALA Third Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Michelle Brown, Counsel for the Labour Inspector Neomal Perera, Counsel for the Respondent
Investigation Meeting:	On the papers
Determination:	1 June 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, a Labour Inspector, seeks penalties against the First Respondent, RBM Communication Limited, the Second Respondent, Mr Viral Bharatbhai Vala, and the Third Respondent, Mr Dharam Bharatbhai Vala, (the Respondents) as persons involved in the breach of minimum employment standards.

[2] The Respondents accept liability for penalties, although they are seeking some relief on the quantum.

Issues

[3] The issue for determination is the quantum of penalties to be awarded against the Respondents in respect of breaches of the Employment Relations Act 2000 (the ERA), the Minimum Wage Act 1983 (MWA), the Wages Protection Act 1983 (WPA) and the Holidays Act 2002 (HA).

Note

[4] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, documents submitted by the parties including an Agreed Statement of Facts, and on submissions from the parties.

Brief Background Facts

[5] The First Respondent is a limited liability company which trades as Vish Beauty Bar. It was incorporated on 3 June 2016. The Second Respondent is the sole director and shareholder of the First Respondent.

[6] The First Respondent operates seven beauty stores in Auckland, Wellington, Tauranga, Rotorua and Hamilton. It provides beauty, cosmetic and personal care.

[7] The Labour Inspector's claim relates to breaches that occurred at the store located in the Centre Place Shopping Mall, 501 Victoria Street, Hamilton Central, Hamilton ("the store"). The store hours are 9:00am to 6:00pm Monday to Saturday and 10:00am to 5:00pm on Sundays.

[8] The Second Respondent is the sole director and shareholder of the First Respondent. The Third Respondent is the Second Respondent's brother and worked for the First Respondent as an Area Manager. In that position he was in charge of the day to day running of the business from time to time, including when the Second Respondent was not available to do so.

[9] The breaches of minimum employment standards have affected three employees, Shalu (no surname), Vandana (no surname) and Pinal Patel, all of whom worked at Vish Beauty Bar in Hamilton which was operated by the First Respondent.

[10] Shalu was employed by the First Respondent from 5 January 2017 until June 2020. Vandana was employed by the First Respondent from 2 December 2016 until 22 September 2018. Pinal Patel was employed by the First Respondent from June 2018 and remained employed during the course of the Labour Inspector's investigation.

[11] The breaches of minimum employment standards by the First and Second Respondents as identified on the Agreed Statement of Facts involved:

- a. One breach of section 64 of ERA for failing to provide an individual employment agreement (IEA);
- b. Three breaches of section 65 of the ERA for failing to retain compliant IEA's for three employees;
- c. Three breaches of section 130 of the ERA for failing to keep compliant wage and time records for three employees;
- d. Three breaches of section 6 of the MWA for failing to pay minimum wage to three employees; and
- e. One breach of section 6 of the WPA for seeking the payment of a premium from one employee.
- f. Three breaches of sections 21, 24 and 25 of the HA for failing to correctly pay annual holiday pay to three employees;
- g. Three breaches of sections 49 and 50 of the HA for failing to pay unworked holiday pay and time and a half to three employees;
- h. Two breaches of section 56 and 60 of the HA for failing to provide alternative holidays to two employees;
- i. Two breaches of section 65 and 71 of the HA for failing to provide sick leave entitlements to two employees; and
- j. Three breaches of section 81 of the HA for failing to maintain compliant holiday and leave records for three employees.

[12] The Third Respondent was a person involved in the following breaches:

- a. Three breaches of section 6 of the MWA for failing to pay minimum wage to three employees; and
- b. One breach of section 6 of the WPA for seeking the payment of a premium from one employee.

[13] In the case of the Second and Third Respondent, they were persons involved in the breaches of minimum employment standards, the Second Respondent in his capacity as sole director of the First Respondent, and the Third Respondent in his capacity as Area Manager who exercised significant influence over the administration and management of the First Respondent.

[14] On 7 July 2021 the Second Respondent emailed the Labour Inspector and provided confirmation that the arrears had been paid to Shalu, Vandana and Pinal Patel.

[15] On 9 September 2021 the parties attended mediation and on 29 September 2021 the Labour Inspector filed an Agreed Statement of Facts signed by both parties in relation to wage arrears and breaches of minimum standards. The facts of this case are detailed within the Agreed Statement of Facts provided to the Authority.

[16] On 23 March 2022 the parties attended a Case Management Call where the Authority set the matter down for an Investigation Meeting to be held on 31 May 2022.

[17] On 30 May 2022 the parties filed a joint memorandum requesting that the matter be heard 'on the papers'. I granted that request.

Submissions of the Labour Inspector

[18] The Labour Inspector submits that, having determined the facts of this matter and the number and nature of breaches attributable to each Respondent, the only issue for determination by the Authority is whether a penalty should be imposed on each of the Respondents and, if so, in what amount.

[19] The Labour Inspector submits that penalties should be imposed by the Authority on the Respondents for their respective breaches.

[20] The Respondents submit that they do not challenge the legalities and principles of law mentioned in the Labour Inspector's submissions, but are seeking some relief in respect of the quantum of damages.

[21] The amount of any penalties ordered should be assessed by the Authority with reference to s 133A ERA as well as the Employment Court, in its judgments *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited*,¹ recently

¹ *Borsboom v Preet PVT Limited & Warrington Discount Tobacco Limited* [2016] NZEmpC 143.

summarised by the Court in *Nicholson v Ford* and *A Labour Inspector v Daleson Investment Limited*.² The Court in those cases confirmed the relevant considerations when assessing penalties. Some of which were later codified in the ERA.³

[22] The relevant considerations from both statute and case law are:

- a. The object stated in s.3; and
- b. The nature and extent of the breach or involvement in breach;
- c. Whether the breach was intentional, inadvertent or negligent;
- 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;
- e. Whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, and has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach;
- f. The circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee;
- 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;
- h. Deterrence, both particular and general;
- i. Culpability;
- j. Consistency of penalty awards in similar cases;
- k. Ability to pay; and
- l. Proportionality of outcome to breach.

² *Nicholson v Ford* [2018] NZEmpC ; ² [2019] NZEmpC 12; *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12

³ Employment Relations Amendment Act 2016, s 12.

Statutory Consideration 1 – Object of the Act

[23] The Labour Inspector submits that s 3 of the ERA states that its objects include (amongst others) to:

- a. recognise the implied mutual obligations of trust and confidence in the employment relationship and to require good faith behaviour within that relationship;
- b. promote the effective enforcement of employment standards, in particular by Labour Inspectors; and
- c. acknowledge and address the inherent inequality of power in employment relationships.

[24] It is submitted by the Labour Inspector that the Respondents took advantage of the inherent inequality of power in the employment relationship by intentionally failing to provide the affected workers their correct entitlements in respect of minimum wages and holiday pay. The conduct of the Respondents has fallen short of the good faith behaviour expected of employers in attempting to undermine the minimum employment standards.

[25] The Labour Inspector submits that the inherent inequality of power found in employer/employee relationships is amplified in this case as the immigration status of two affected workers was, to varying degrees, dependent on their employment. Shalu and Vandana were both first offered employment while they were on visitor visas. Shalu was required to work without pay to obtain work visa sponsorship from the First Respondent, making her dependent on her employment.

[26] The failures to pay correct minimum wages and holiday pay undermine employment standards and gave the First Respondent an unfair advantage in the marketplace.

[27] The Respondents submit that they have paid all arrears and sums due to the named employees. They submit that the errors were due to an oversight by the First Respondent's book keeping and accounting procedures rather than to constituting a deliberate attempt to any exploitation of vulnerable employees.

Statutory Consideration 2 – Nature and extent of the breach

[28] The breaches have been outlined in paragraph [11] and are also set out in paragraph [40] of the Agreed Statement of Facts. It is submitted by the Labour Inspector that the breaches were ongoing during the respective periods of employment of all three affected workers. There was a systemic and deliberate nature of these breaches in that they spanned a period of nearly four years.

[29] The Labour Inspector submits that penalties for a failure to pay minimum wage should be treated as one continuous breach per employee despite the fact that, in law, there are arguably a separate breach on each occasion where there is an underpayment per pay period. This position was agreed to by the parties and reflected in the Agreed Statement of Facts.

[30] Similarly, the breaches of sections 21, 24 and 25 of the HA relating to the calculation of holiday pay should be treated as a single breach per employee.

[31] The Labour Inspector also submits that breaches of sections 49 and 50 of the HA be treated as a single breach per employee.

[32] Breaches of sections 56 and 60 of the HA can also be treated as a single breach per employee.

[33] In adopting this position, the Labour Inspector submits there were a total of 24 breaches of minimum employment standards attributable to the First and Second Respondent and four breaches of minimum employment standards attributable to the Third Respondent.

[34] The maximum penalties available for individual breaches of minimum employment standards are \$10,000 and \$20,000 for individuals and corporations respectively. Using these figures the maximum penalties for the breaches outlined above, on a “per employee, per breach” basis, that may be awarded against each Respondent are as follows:

- a. \$480,000 against the First Respondent, in respect of 24 breaches of minimum employment standards which penalties are available.
- b. \$240,000 against the Second Respondent, in respect of 24 breaches of minimum employment standards for which penalties are available.
- c. \$40,000 against the Third Respondent, in respect of 4 breaches of minimum employment standards for which penalties are available.

[35] The next step would be to considering whether global penalties are appropriate. Some globalisation of penalties was accepted by the parties during mediation and has been reflected in the Agreed Statement of Facts.

[36] The Labour Inspector submits that the penalties should not be globalised any further across three different pieces of legislation.⁴

[37] The record keeping breaches under section 81 of the HA and section 130 of the ERA should be kept separate.

Statutory Consideration 3 – Whether the breach was intentional, inadvertent, or negligent

[38] The Labour Inspector submits that the breaches by the Respondents showed a high degree of intent.

[39] The Second Respondent was the Director of the First Respondent. It is apparent he was aware of the breaches and that those breaches were done deliberately for the following reasons:

- a. He was responsible for the day to day running of the business and hiring staff;
- b. He calculated and paid wages;
- c. he was responsible for keeping employment records;
- d. He accepted he did not pay employees for their training periods;
- e. He was aware of the cash back scheme where Vandana was required to pay back a certain amount of her wages in cash; He used the dual payment system that both Shalu and Vandana complained about in all of his stores. The system involved paying employees a set amount of wages at the minimum wage rate with any hours worked above those core hours paid in cash at a rate less than the applicable minimum wage.

⁴ *Borsboom (Labour Inspector) v Preet PVT Limited*, above n 1, at [139]. See also *A Labour Inspector v Bahn Thai Restaurant Limited* [2016] NZERA Christchurch 222 at [21].

[40] The Third Respondent was employed as Area Manager of the First Respondent from 1 September 2018 until 27 July 2020. As Area Manager, the Third Respondent oversaw the day to day running of the business from time to time, including when the Second Respondent was not present. He was also responsible for allocating hours and working locations to employees, approving holiday and leave requests, recruiting and hiring employees, monitoring sales and cash flow and attending to general employment matters.

[41] Both Shalu and Vandana were initially paid under the dual system of payment. They were paid minimum wage for 15 hours per week. Any hours worked over this were paid to them in cash at a rate below minimum wage. Shalu and Vandana's cash payments were calculated at \$10 and \$12 per hour respectively.

[42] In June 2017 Vandana asked the Third Respondent to pay wages for 35 hours worked per week into her bank account so she could show higher earnings when applying for future visas. This was agreed to by the Third Respondent, however she was told that she would have to pay back the applicable tax on 20 hours per week to compensate the business as the First Respondent had to pay more PAYE tax to Inland Revenue.

[43] The Labour Inspector submits that the cash-back scheme and the requirement by the Third Respondent for Vandana to pay a premium clearly show that the Respondents were acting intentionally. This is not a case where a lack of business acumen and poor record keeping is apparent, the Respondents clearly knew their obligations as employers and took steps to circumvent those requirements for commercial gain.

[44] As noted above, the Respondents submit that their previous accounting method was defective and they have since implemented the Crystal Payroll system to regularize the accounting system with the intention of minimising any possibility of errors in the calculations of payments due to their employees.

[45] The Respondents further submit that since commencing business all their employees have been afforded a paid half hour lunch break. Further that they were fully cooperative with the Labour Inspector and accepted the omissions on their part at an early stage in the investigation. As noted, they have paid in full all monies due to the employees.

Statutory Considerations 4 – Nature and Extent of any loss or damage

[46] In assessing the severity of the breaches, it is necessary to consider the nature and extent of loss or damage. The Labour Inspector submits that arrears owed to the three affected employees were difficult to quantify precisely due to the length of employment, the lack of

accurate records and the presence of cash payments, however concluded that arrears totalling \$31,876.96 were owed to three employees.

[47] On 7 July 2021 the Labour Inspector received confirmation from the Second Respondent that the identified arrears had been paid to the affected employees.

[48] It is submitted by the Labour Inspector that all three affected employees were denied the benefit of their money at the time they were entitled to it. The Respondents benefitted financially from the breaches through the retention of money which was rightfully owed to the affected employees.

Statutory Consideration 5 – Steps to mitigate effects of the breach

[49] As previously mentioned, the Labour Inspector acknowledges that the three affected workers who were owed money have had their arrears paid in response to the Labour Inspector’s investigation and these proceedings. However, the Labour Inspector submits that care should be taken to avoid attaching undue weight to the payment of monies that were owed as a mitigating factor. The Chief Judge of the Employment Court in the case of *Labour Inspector v Daleson Investment Limited* noted that:⁵

[33] 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.⁶ The Australian Fair Work Commission put it in the following way in *Fair Work Ombudsman v Australian Sales & Promotion Pty Ltd*:⁷

“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.”

[50] The Labour Inspector acknowledges that the Respondents have no prior history of breaching minimum employment standards.

[51] The Labour Inspector also acknowledges that the Respondents had a reasonable degree of cooperation with the investigation, they have admitted the breaches and have reached an Agreed Statement of Facts which has saved the need for a full Investigation Meeting.

[52] Whilst acknowledging the cooperation of the Respondents with the Labour Inspector’s investigation and the subsequent full payment of sums due to the named employees, I concur

⁵ [2019] NZEmpC 12.

⁶ See Employment Relations Amendment Bill (No 2) (196-1) (explanatory note) at 11; cited in *Preet*, above n 4, at [58]. ⁷ *Fair Work Ombudsman v Australian Sales & Promotion Pty Ltd* [2016] FCCA 2804 at [82].

with the Chief Judge's comments in *Daleson* concerning what should have been done prior to any investigation by the Labour Inspector, and note that the sums due to the named employees should have been paid from the outset of the employees employment with the First Respondent.

Statutory Consideration 6 – Circumstances of the breach, and any vulnerability

[53] The Labour Inspector notes that all three affected workers were Indian nationals who had come to New Zealand in search of employment opportunities. It is submitted that the inherent power inequality in employer/employee relationships was amplified in this case by the fact that Shalu and Vandana were to varying degrees, reliant on the support of their employer in respect of their immigration status.

[54] Vandana previously had discussions with the Third Respondent about increasing the amount of her weekly wages that were being paid into her bank account to assist her future visa applications because being able to show a higher level of income would increase her prospects of obtaining a future visa. In this sense, she was dependent on the Respondents. The Labour Inspector submits that this dependence created a heightened level of vulnerability. A vulnerability that was exploited by the Respondents.

[55] Shalu was initially employed whilst on a visitor visa. Shalu worked without pay for the first eight weeks of her employment. Shalu also worked during her paid parental leave but was not paid for that work and was told it was necessary to obtain sponsorship for her work visa from the First Respondent.

[56] Vandana had previously had conversation with the Third Respondent regarding her visa prospects. When Vandana ceased her employment with the First Respondent, the Third Respondent threatened Vandana by saying he would call Immigration New Zealand and tell them that she had been working illegally.

[57] The Labour Inspector submits that it is apparent that both Vandana and Shalu were vulnerable due to their immigration status. They relied on the Respondents to provide them with work and pay them what they were entitled to. Instead, they were paid using a dual payment scheme, they were not provided with employment agreements, they were not paid their minimum entitlements and in one case, a premium was required to be paid.

[58] In addition, there was the stress of working for a business where they felt threatened.

[59] I accept that the employees (as non-New Zealand nationals or residents) may have been vulnerable due to their unfamiliarity with New Zealand employment law and their entitlements under employment legislation, and how to access the information. That appears to be applicable in the circumstances of this case and is a factor which adds to the culpability of the Respondents.

Statutory Consideration 7 – Previous Conduct

[60] The Respondents had not come to the attention of the Labour Inspector prior to this investigation. The Second Respondent has been the director of the First Respondent since its incorporation in 2016 and there is no record of any breaches of minimum standards of employment in that time.

Additional Consideration 1 – Deterrence

[61] The Labour Inspector submits that the Authority should impose penalties on the Respondents that are consistent with the objects of the Act, particularly those relating to the need for employers to uphold principles of good faith, mutual trust and confidence.

[62] The exploitation of migrant workers has no place in New Zealand society and the Authority should impose penalties that reflect this. In a case such as this, a message needs to be sent to both the employers, persons involved and others who may be tempted to act in a similar manner that such non-compliance will not be tolerated. The imposition of a significant penalty should, it is submitted, go some way to achieve this.

[63] I observe that employers in New Zealand are expected and considered to know the minimum legal requirements in respect of their employees, and to adhere to them. Ignorance of the law is no defence.⁷ This requirement to adhere to the minimum legal requirements is especially pertinent given the facts of this case in which the affected employees are migrant workers on visas.

Additional Consideration 2 - Culpability

[64] The severity of the breaches should be considered in order to establish a provisional starting point for the penalties. Adjustments for any aggravating and ameliorating factors relating to the breaches should then be made.

[65] Aggravating factors in this case are:

- a. The quantum of arrears arising from the breaches,
- b. the length of employment of the affected workers,

⁷ *Labour Inspector v Cypress Villas Ltd* [2015] NZEmpC 157 at [29]

- c. the circumstances of the breaches (intentional conduct of the Respondents for commercial gain); and
- d. taking advantage of the employees' vulnerability as migrant workers with limited understanding of their entitlements as employees.

[66] The Labour Inspector submits that taking these aggravating factors into consideration, the penalty amounts should be adjusted as follows:

[67] Ameliorating factors are:

- a. The arrears have been paid;
- b. The First and Second Respondents cooperated with the Labour Inspector's investigation;
- c. The Respondents have accepted the breaches the Labour Inspector pleaded which has removed the need for a full Investigation Meeting and minimised costs to both parties.

Having regard to the above, the Labour Inspector submits that a provisional starting point of 50% of the maximum for each of the breaches relating to record keeping identified against all Respondents would be appropriate.

[68] The Labour Inspector also submits that a starting point of 70% of the maximum would be appropriate in relation to all other breaches.

[69] This was the position taken in *Labour Inspector v Saloni Enterprises Limited* which involved similar breaches of minimum employment standards over a sustained period affecting a small number of employees.⁸ The Labour Inspector submits that after having regard to the aggravating and ameliorating factors, applying the above discounts is appropriate in the present circumstances.

[70] The Labour Inspector accepts that the Authority may be persuaded to assess the Third Respondent's culpability at a level lower than that of the First and Second Respondent. The Third Respondent was not a director, nor is he being held liable as a person involved in all breaches of minimum employment standards present in this case. However, the Labour Inspector submits that any discount for culpability be modest as the Third Respondent was still

⁸ *Labour Inspector v Saloni Enterprises Ltd* [2021] NZERA 236.

a primary entity involved in the failure to pay minimum wage to all three employees and the seeking of a premium from Vandana.

[71] There are penalty determinations in Labour Inspector cases (post-*Preet*) that involve breaches in relation to a small number of employees. Because there were just three affected employees in this case it would be useful to have regard to those cases.

[72] In the recent decision of *Labour Inspector v La Wheat Limited* (which dealt with numerous breaches of two employees), the Employment Relations Authority adopted the following approach in relation to globalising penalties across employees:⁹

...I do believe that there will be only rare occasions when it would be appropriate and that it is not appropriate in this case, as Mr Patel and Mr Makkar were each impacted in their own way by the breaches in question.

[73] The Labour Inspector submits that globalising penalties for breaches across employees is not appropriate in this case. A more appropriate approach would be to assess the breaches on a per-breach, per-employee basis. This approach would achieve consistency with other cases relating to breaches of minimum employment standards affecting a relatively small number of employees.

[74] I accept the submissions of the Labour Inspector, but also take into consideration the Respondents submissions that they are currently providing gainful employment to 12 employees who are currently working without issues, and that they have remained viable and maintaining employment to those employees despite the economic pressures of the Covid-19 pandemic .

[75] At this stage, taking into consideration the aggravating and ameliorating factors, I accept the Labour Inspector's adjustment of the total penalties payable to:

- a) \$218,400 against the First Respondent;
- b) \$109,200 against the Second Respondent; and
- c) \$19,600 against the Third Respondent

⁹ *Labour Inspector v La Wheat Limited* [2019] NZERA 50 at [110].

Additional Consideration 4 – Ability to Pay

[76] The onus is on the employer to provide the Authority with up-to-date and accurate information in support of any submission that the employer is financially unable to meet a potential penalty award. In addition:¹⁰

Mere financial incapacity without more, is unlikely to be regarded as warranting a penalty reduction to nil, or next to nil, having regard to the relevant statutory scheme and its underlying objectives.

[77] The Labour Inspector is aware that the First Respondent has sold one of its stores to the Third Respondent. However, as the Respondents have not provided any evidence of their ability to pay, the Labour Inspector submits that no discount for financial capacity should be applied.

[78] No evidence has been filed by the Respondents in respect of an inability to pay penalties as awarded, and I therefore make no reduction at this stage.

Statutory Consideration 5 – Proportionality of Outcome

[79] The Labour Inspector submits that the quantum of penalties assessed by the Authority should be proportional to the severity of the breaches. Having considered all of the relevant factors mentioned previously, including the systemic and sustained nature of the breaches and the need for consistency with other cases of a similar nature, it is submitted that proportionality is achieved by calculating the breaches on a per breach, per-employee basis. However, it is submitted that while breaches such as the failure to pay minimum wage occurred on a weekly basis, this should be treated as a single breach.

[80] The Labour Inspector has annexed a schedule that provides an outcome that, having regard to all the factors considered above, it considers just and proportional. The Labour Inspector asks the Authority to determine this matter on the submissions it has provided.

[81] The Labour Inspector submits that the following penalty amounts, adjusted for proportionality are:

- a) \$60,000 against the First Respondent;
- b) \$30,000 against the Second Respondent; and

¹⁰ [2019] NZEmpC 12at [44].

- c) \$10,000 against the Third Respondent

[82] I have considered the submissions of the Respondents and, whilst acknowledging the factors that have been taken into consideration in arriving at the Labour Inspector's calculation of the appropriate penalties due, I also take into account the early cooperation of the Respondents with the Labour Inspector's investigation, the steps taken to ensure there is no further default, and the maintenance of employment of 12 employees during the difficult economic trading circumstances of the Covid-19 pandemic.

[83] I therefore consider it appropriate to reduce the penalties payable by a further 10%.

[84] The Respondents have requested that payment be made by instalments, however no information has been provided to support such a request pursuant to s 135(4A) of the ERA, and I decline to do so in the absence of such information.

[85] According I order that:

- i. **RBM Communication Limited to pay the Authority for transfer to a Crown Bank Account a total sum of \$54,000.00.**
- ii. **Viral Bharatbhai Vala to pay the Authority for transfer to a Crown Bank Account a total sum of \$27,000.00.**
- iii. **Dharam Bharatbhai Vala to pay the Authority for transfer to a Crown Bank Account a total sum of \$9,000.00.**
- iv. **All payments are to be made within 28 days of this determination.**

Costs

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

[87] If they are not able to do so and an Authority determination on costs is needed the Applicant may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the Respondent 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.

[88] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[89] 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.¹¹

Eleanor Robinson
Member of the Employment Relations Authority

¹¹ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].