

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2022] NZERA 348  
3087832

BETWEEN                    A LABOUR INSPECTOR OF THE  
                                      MINISTRY OF BUSINESS  
                                      INNOVATION AND EMPLOYMENT  
                                      Applicant

AND                            KAM BIK CO LIMITED  
                                      First Respondent

                                      KAM CHUNG CHENG  
                                      Second Respondent

                                      BIK YING CHENG  
                                      Third Respondent

Member of Authority:        Peter van Keulen

Representatives:            Toli Sagaga, counsel for the Applicant  
                                      Jeff Goldstein, counsel for the Respondents

Investigation Meeting:      On the papers

Submissions Received:      19 July 2022 from both parties.

Date of Determination:      27 July 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     During the course of the Authority's management of this matter, the parties were able to resolve their employment relationship problem.

[2] As part of that resolution the parties have agreed a summary of facts and have agreed what they believe is a suitable outcome for the Labour Inspector's claims. These are set out in a joint memorandum of counsel dated 19 July 2022 (the Memorandum).

[3] I have reviewed the statement of problem, the statement in reply, the documents attached to the statement of problem and statement in reply, the agreed summary of facts and the submissions set out in the Memorandum.

[4] Based on that assessment I find that Kam Bik Co Ltd failed to pay:

- a. Minimum wage to three employees pursuant to s 6 of the Minimum Wage Act 1983.
- b. Annual holidays to three employees pursuant to ss 24, 25, 27 and 77 of the Holidays Act 2003.
- c. Public holiday pay to three employees pursuant to ss 25, 27 and 77 of the Holidays Act.
- d. Alternative holiday pay pursuant to ss 50, 60, 61 and 77 of the Holidays Act.
- e. Sick leave pay to one employee pursuant to s 65, 68 and 77 of the Holidays Act.

[5] I also make the following findings and orders:

- a. Kam Chung Cheng was a person involved in all of the breaches recorded in paragraphs [4](a) – [4](e) above.
- b. Kam Bik Co Ltd instructed Jian Fen Li to pay two employees, De Juan Hua and Yi Liang, their agreed wages.
- c. Mr Cheng personally instructed Ms Li to pay the two employees their agreed wages and in setting the agreed wages Mr Cheng mistakenly took into account the fact that the two employees were provided with full board and accommodation as part of their employment.

- d. The amount of wage and holiday pay arrears owing to the three employees arising out of the breaches of minimum standards in paragraphs [4](a) – [4](e) above is set out at appendix two of the Memorandum (the Arrears).
- e. Kam Bik Co Ltd has paid the Arrears to the Labour Inspector.
- f. The Labour Inspector has acknowledged receipt of the Arrears and will use the payment for the benefit of the three employees.
- g. As a result of payment of the Arrears, Kam Bik Co Ltd has now met its obligations to the three employees in terms of minimum standards and the Labour Inspector no longer seeks penalties against Kam Bik Co Ltd or Mr Cheng for the breaches and it withdraws its claim against Bik Ying Chen.
- h. All issues arising between the parties under this matter are resolved and no further action is required by the Authority.
- i. Costs shall lie where they fall.

Peter van Keulen  
Member of the Employment Relations Authority