

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 391
3068072

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT, AUCKLAND Applicant
AND	SUNSHINE VALLEY FARMS LIMITED First Respondent
AND	RAVI RAGU WALLABH Second Respondent
AND	RAGU NARAYAN WALLABH Third Respondent
AND	MINAXI RAGUVIR WALLABH Fourth Respondent

Member of Authority: Rachel Larmer

Representatives: Tim Gray, counsel for the Applicant
David Hayes, counsel for the Respondents

Investigation Meeting: On the papers

Information from the Parties: 27 July 2022 from Applicant and Respondents
12 August 2022 from Applicant

Date of Determination: 15 August 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This matter involves claims made by a Labour Inspector against each of the named respondents. A five day in person investigation meeting in the Authority was set down for August 2022.

[2] In the course of preparing for the Authority's investigation meeting, the parties have resolved the substantive claims, with the exception of the penalty related claims, by way of an Agreed Statement of Facts filed with the Authority on 27 July 2022.

Authority's investigation

[3] This determination is based on the joint memorandum the parties and Agreed Statement of Facts the parties filed on 27 July 2022.

[4] The parties asked the Authority to issue a determination recording the agreed terms on which the Respondents' liability for the Labour Inspector's non-penalty related claims had been resolved.

[5] This determination set out the Authority's findings and orders regarding liability for all but the penalty claims. It is therefore based on the Agreed Statement of Facts the parties provided together with the additional information the Labour Inspector filed on 12 August 2022.

Material facts

[6] The first respondent is a duly incorporated company registered in New Zealand operating a vegetable grower business and farm in Bombay, Auckland.

[7] On 23 July 2018 the Labour Inspector commenced an investigation into the first respondent to determine its compliance with minimum employment standards. The investigation involved visiting the workplace and interviewing the employer representatives and some (then) current and former workers.

[8] The Labour Inspector's investigation found that at all relevant times the employees referred to in the applicant's Amended Statement of Problem (namely Ms Elisapeta Enoka and Ms Rowena Fauatea) were employed by the first respondent and that the respondents had failed to comply with minimum employment standards including:

- (a) Failing to pay minimum wages;
- (b) Failing to pay annual and public holiday leave entitlements;
- (c) Failing to pay sick leave;
- (d) Making deductions from wages for accommodation without written consent;
- (e) Failing to keep and maintain wage, time, holiday and leave records;
- (f) Failing to provide written employment agreements.

[9] The respondents have now accepted and agreed with the Labour Inspector's findings as set out in the investigation report dated 24 June 2019, her subsequent findings set out in her emails of 4 February 2022 and 22 February 2022, and her calculations of arrears including that:

- (a) Ms Elisapeta Enoka's (Ms Enoka's) hours of work as accepted by the Labour Inspector were her true hours of work;
- (b) Ms Enoka was an employee of the first respondent between 18 May 2015 and 27 January 2018;
- (c) Ms Enoka could not lawfully work for the first respondent during the time she was employed by the first respondent due to her immigration status and the respondents were aware of this;
- (d) The first respondent paid Ms Enoka between \$7.00 and \$7.50 per hour during her employment, which was always below the applicable minimum wage in place at the material time;
- (e) Ms Enoka worked public holidays as specified in the Labour Inspector's investigation report but she was not paid time and a half for the days she did work. She was also not paid for otherwise working days that she did not work;
- (f) Ms Enoka was not provided alternative days for the public holidays she worked;
- (g) The first respondent did not provide Ms Enoka with any annual holiday entitlement during her employment;
- (h) Ms Enoka was not paid for sick leave taken during the course of her employment, as specified in the Labour Inspector's investigation report;
- (i) Ms Enoka did not provide written consent to the weekly deduction from her wages of \$50 to cover her accommodation costs;

- (j) Ms Rowena Fauatea (Ms Fauatea) was an employee of the first respondent between 10 September 2018 and 11 October 2018;
- (k) The first respondent paid Ms Fauatea at the rate of \$7.00 per hour during her employment, which was always below the applicable minimum wage at the material time;
- (l) The first respondent did not provide Ms Fauatea with any annual holiday entitlement during her employment;
- (m) The first respondent did not provide Ms Enoka or Ms Fauatea with a written employment agreement;
- (n) The first respondent did not keep any wage and time or holiday and leave records for employees;
- (o) The second, third and fourth respondents were directly involved in Ms Enoka's employment arrangements because they were all were involved in management and administration of the first respondent.

Respondents' acknowledgements

[10] The first respondent acknowledges that wage arrears are owing in the amount of \$86,341.45, which is broken down into arrears owing under the following headings:

- (a) \$59,711.37 in minimum wage arrears due to Ms Enoka;
- (b) \$16,669.92 in annual leave arrears due to Ms Enoka;
- (c) \$1,083.40 for sick leave taken by Ms Enoka, which was not paid by the first respondent;
- (d) \$6,422.73 in payment for outstanding public and alternate holiday entitlements due to Ms Enoka;
- (e) \$2,142.62 in minimum wage arrears due to Ms Fauatea;
- (f) \$311.41 in annual leave arrears due to Ms Fauatea.

[11] The first respondent accepted the Labour Inspector's findings that it breached minimum entitlement provisions as follows:

- (a) Section 6 of the Minimum Wage Act (the MWA) for not paying Ms Enoka and Ms Fauatea the minimum wage for hours worked;
- (b) Section 65 of the Employment Relations Act 2000 (the Act) for failing to provide a written individual employment agreement to Ms Enoka, Ms Sna Perulale, Suamalie Mapusaga, Tomasi Lapa, Rowena Fauatea, Faaasoa Toafia, Laumata Tuifao and Patisepa Ah Fua (referred to as “*the identified employee*”s);
- (c) Section 130 of the Act for failing to keep and maintain a wage and time record for the identified employees;
- (d) Section 49 of the Holidays Act 2003 (the HA03) for not paying Ms Enoka for public holidays on days that were otherwise working days;
- (e) Section 56 of the HA03 for failing to provide alternative holidays to Ms Enoka for public holidays worked;
- (f) Section 60 of the HA03 for failing to pay Ms Enoka for days taken as alternative holidays;
- (g) Section 16 of the HA03 for failing to provide Ms Enoka with her annual leave entitlement;
- (h) Section 24 of the HA03 for failing to pay Ms Enoka her annual leave entitlement as calculated under that section;
- (i) Section 25 of the HA03 for failing to pay Ms Enoka her annual leave entitlement as calculated under that section;
- (j) Section 63 of the HA03 for failing to provide Ms Enoka with her sick leave entitlement;
- (k) Section 71 of the HA03 for failing to pay Ms Enoka for work days that were taken as sick leave;
- (l) Section 72 of the HA03 for failing to pay Ms Enoka for work days that were taken as sick leave in the applicable pay period;
- (m) Sections 4 and 5 of the Wages Protection Act (the WPA) for making deductions from her wages without the written consent of Ms Enoka;
- (n) Section 81 of the HA03 for failing to keep holiday and leave records for the identified employees.

Interest

[12] The parties agreed that the first respondent will pay interest on the above wage arrears in accordance with clause 14 of Schedule 3 of the Employment Relations Act 2000 (the Act).

[13] Accordingly, the Authority orders that the first respondent pays interest under the Interest on Money Claims Act 2016 on the full amount of the wage arrears;

- (a) Ms Enoka has been awarded in this determination from 28 January 2018 until the arrears she is owed has been repaid in full; and
- (b) Ms Fauatea has been awarded in this determination from 16 October 2018 until the arrears she is owed has been repaid in full.

[14] The amount of interest to be paid is to be calculated in accordance with the civil debt interest calculator on the Ministry of Justice website.

Persons involved in breaches of employment standards

[15] The parties have agreed that the second, third and fourth respondents were persons involved in the breaches identified at paragraph [11] of this determination, in accordance with the provisions in s 142W of the Act.

[16] Pursuant to s 142Y(2)(a) and (b) of the Act the Authority grants the Labour Inspector leave to seek to recover any amounts the first respondent has been ordered to pay, but is unable to pay, from the second and/or third and/or fourth respondents.

Penalty claims

[17] The outstanding penalty claims the Labour Inspector has made will be subject to an in-person investigation meeting that will be held in Auckland in August 2022.

Costs

[18] Costs are reserved and will be dealt with by an exchange of memorandum once the outstanding penalty claims have been resolved or determined.

Rachel Larmer
Member of the Employment Relations Authority