



[2] They have requested the Authority issue a determination by consent recording the terms of the partial settlement agreement.

### **Agreed Terms**

[3] The parties agree on the following:

#### **Agreed Facts**

1. The First and Second Respondents agree the facts as set out in the Statement of Problem are accepted.

#### **Breaches Accepted by First Respondent**

2. The parties accept that the First Respondent breached:

- a. sections 4B and 130 of the Employment Relations Act 2000 by failing to keep at all times full and accurate wages and time records for 13 employees;
- b. section 6 of the Minimum Wage Act 1983 by failing to pay minimum wage for all hours worked by Mandeep Verma (Mr Verma) during his employment;
- c. section 81 of the Holidays Act 2003 by failing to keep at all times full and accurate holidays and leave records for 13 previous employees;
- d. section 63 of the Holidays Act 2003 by failing to provide paid sick leave to Mr Verma on one occasion when he required it despite having an entitlement to five days of sick leave;
- e. section 49 of the Holidays Act 2003 by failing to provide full payment to Mr Verma for four unworked public holidays which fell on otherwise

working days;

- f. section 50 and section 55 of the Holidays Act 2003 by failing to provide time and a half payments to Mr Verma for all hours worked on 13 public holidays;
- g. section 56 of the Holidays Act 2003 by failing to provide seven alternative holidays to Mr Verma for working on public holidays which occurred on otherwise working days;
- h. section 16 of the Holidays Act 2003 by failing to provide at least four weeks of annual holidays to Mr Verma (he was paid for annual holidays when he was actually working);
- i. section 21 of the Holidays Act 2003 by failing to accurately calculate payments for annual holidays resulting in underpayments affecting Mr Verma;
- j. section 23, 24 and 25 of the Holidays Act 2003 by failing to accurately calculate final holiday pay resulting in underpayments affecting Mr Verma; and
- k. section 4 of the Wages Protection Act 1983 by failing to pay the entire amount of the wages payable to Mr Verma without deduction (in relation to hours worked, but not paid and also the failure to pay Mr Verma for 11 alternative holidays at the end of his first and second periods of employment).

### **Involvement of Second Respondent**

- 8. The parties accept that the Second Respondent:
  - a. was a person involved in the above breaches;

- b. had knowledge of the essential facts that establish the above contraventions; and
- c. is personally liable to pay the arrears set out below as the First Respondent is no longer trading and unable to pay.

### **Payment of Arrears**

- 9. In relation to the above breaches, the parties have agreed that the Second Respondent will pay **\$24,182.36** (gross) to the Applicant being:
  - a. \$14,873.18 — Minimum Wage (s 6 MWA)'
  - b. \$110.50 — Sick Leave (s 63 HA)<sup>2</sup>
  - c. \$323.62 — Public Holidays Unworked (s 49 HA)<sup>3</sup>
  - d. \$920.41 — Public Holidays Worked, Time + Half (ss 50 and 55 HA)<sup>4</sup>
  - e. \$1,171.47 — Public Holidays Worked — Alternative Days (s 56 HA)<sup>5</sup>
  - f. \$144.06 — Annual Holiday Arrears (s 21 HA)<sup>6</sup>
  - g. \$3,405.92 — Final Holiday Pay Arrears (ss 3, 24 and 25 HA)'
  - h. \$3,233.20 — Public Holidays Worked —Alt Days Unlawfully Deducted (s 5 WPA)<sup>8</sup>
- 10. The Applicant agrees to the Second Respondent making the above payment according to the following payment plan:
  - a. \$4,166.06 to be paid by 28 September 2022; and
  - b. \$1000.00 per month payable on:
    - 31 October 2022;
    - 30 November 2022;
    - 31 December 2022;
    - 31 January 2023;
    - 28 February 2023;
    - 31 August 2023;
    - 30 September 2023;
    - 31 October 2023;
    - 30 November 2023;
    - 31 December 2023;

- 31 March 2023;
- 30 April 2023;
- 31 May 2023;
- 30 June 2023;
- 31 July 2023;
- 31 January 2024;
- 28 February 2024;
- 31 March 2024;
- 30 April 2024; and

c. A final payment of \$1,016.30, payable on 30 May 2024.

11. The Second Respondent agrees that if any payment in the above plan is received more than 3 working days late (**Default Situation**), the entire amount of arrears still owing will become payable immediately, along with interest (discussed below) and the Applicant will have the right to seek a Compliance Order from the Authority.
12. The Second Respondent agrees to notify the Applicant when each payment has been made, by emailing a screenshot of the payment to [Hannah.mills@mbie.govt.nz](mailto:Hannah.mills@mbie.govt.nz), on the same date that the payment is made.
13. The Applicant agrees to forgo its claim for interest on the arrears, unless there is a Default Situation, at which point the parties agree interest will be immediately payable on all outstanding arrears (quantified using the Ministry of Justice Civil Debt Interest Calculator) until paid in full, backdated to 11 March 2021, being the date Mr Verma's third period of employment ended.
14. The Applicant will attend to distribution of the arrears to Mr Verma, including deduction and payment of tax, as appropriate.
15. The Applicant will not seek costs, except for costs which relate to seeking penalties.

**Remaining Issues for Determination:**

16. The parties agree the remaining issues for the Authority to determine are as follows:
  - a. Whether penalties should be imposed against the First Respondent in relation to the identified breaches of employment standards, and if so, how much;
  - b. Whether penalties should be imposed against the Second Respondent in relation to his involvement in the identified breaches of employment standards, and if so, how much; and
  - c. Costs as between the Applicant and First/Second Respondents (in relation to seeking penalties).

**Order**

[4] By consent and by this determination, the terms outlined above become orders of the Authority and a notice of direction on remaining issues will be issued.

David G Beck  
Member of the Employment Relations Authority