

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 498
3159446

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	SPRINGS JUNCTION CAFÉ AND MOTOR INN LIMITED First Respondent
AND	JERRY GORDON HOHNECK Second Respondent
AND	JIA LING GUO (aka MARA GUO) Third Respondent

Member of Authority: Helen Doyle

Representatives: Amy Webster, counsel for the Applicant
Ashley-Jayne Lodge, counsel for the First and Second
Respondents
Christopher Newman, counsel for the Third Respondent

Joint memorandum: 29 September 2022

Date of Determination: 4 October 2022

CONSENT DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a joint memorandum dated 29 September 2022 counsel have set out an agreement the parties have reached about issues between them. The parties request that the agreement be incorporated into a consent order by the Authority. The agreement confirms that the parties have had the opportunity to obtain independent advice and that while discussions and mediation

are confidential, that will not extend and apply to the terms incorporated into the consent order by the Authority.

[2] The parties have not agreed the issue of whether there should be imposition of penalties against the first and/or second respondents and/or if so, the quantum of penalties. This may be dealt with on the papers with an agreed statement of facts or by way of a limited investigation meeting.

[3] By consent the Authority makes the following findings and orders.

Breaches by the First Respondent

[4] The First Respondent breached:

- (a) Section 6 of the Minimum Wage Act 1983 by failing to pay the Complainant at least the minimum wage for all hours worked.
- (b) Sections 50 and 55 of the Holidays Act 2003 (HA) by failing to pay at least time and a half for six public holidays the Complainant worked.
- (c) Section 56 of the HA by failing to provide the Complainant with alternative holidays and/or correctly calculate his pay for alternative holidays in relation to eleven public holidays he worked.
- (d) Section 63 of the HA by failing to allow the Complainant to take sick leave on 25 November 2020 when he was sick and failing to pay sick leave entitlements as required.
- (e) Section 23 of the HA by failing to calculate the Complainant's final holiday pay correctly.
- (f) Section 81 of the HA by failing to keep adequate holiday and leave records.
- (g) Section 130 of the Employment Relations Act 2000 (ERA) by failing to keep adequate wage and time records.
- (h) Section 69ZD of the ERA by failing to provide meal breaks on at least 71 occasions from the start of the Complainant's employment to 22 March 2022.

Involvement of the Second Respondent

[5] The Second Respondent was:

- (a) A person involved in the above breaches.
- (b) Had knowledge of the essential facts that established the above contraventions.
- (c) Will become personally liable to pay the arrears set out below in the event the First Respondent does not pay by the deadline set out below.

Payment of arrears

[6] The parties acknowledge that the arrears arose in the difficult context of the Covid-19 pandemic. The First and Second Respondents do not accept the extent of the hours claimed but have agreed to pay the full amount in good faith and accepting the Authority's ability to accept the Complainant's claim as proved in the absence of wage and time records under 132(2) of the ERA.

[7] The First Respondent is ordered to pay \$33,165.72 gross to the Applicant by 7 October 2022 being:

- (a) \$27,694.01 in minimum wage arrears.
- (b) \$1,972.14 in annual holiday arrears.
- (c) \$88.24 in sick leave arrears.
- (d) \$1,815.31 in alternative holiday arrears.
- (e) \$1,596.02 in public holiday arrears.

[8] The Applicant will attend to the distribution of these arrears to the Complainant, including deduction and payment of tax as appropriate.

[9] The Applicant agrees to withdraw its claim of interest on the arrears, unless there is default by the First Respondent, at which point the parties agree interest will be payable on all outstanding arrears (quantified using the Ministry of Justice Civil Debt Interest Calculator) until paid in full, backdated to 20 December 2020, being the date the Complainant's employment ended.

[10] The parties agree the issue of costs, as between the Applicant and the First and Second Respondents, will be dealt with once these proceedings are complete and the issue of penalties has been determined.

Stay of proceedings against Third Respondent

[11] The proceedings against the Third Respondent are stayed until such time as the above arrears are paid in full.

[12] Once the arrears have been paid in full, the parties agree to the proceeding against the Third Respondent being withdrawn, with costs to lie where they fall. The Applicant will file a notice with the Authority withdrawing all proceedings against the Third Respondent.

Helen Doyle
Member of the Employment Relations Authority