

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 577
3082656

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

AND HUNGRY WOK (NEW PLYMOUTH)
 LIMITED
 First Respondent

 WANGXIAN BAO
 Second Respondent

 KAM CHUNG CHENG
 Third Respondent

 JIA LIN ZHANG
 Fourth Respondent

Member of Authority: Peter van Keulen

Representatives: Amy Webster, counsel for the Applicant
 Jeff Goldstein, counsel for the first and third Respondents
 Simon Dench, counsel for the second and fourth respondents

Investigation Meeting: On the papers

Submissions Received: 26 October 2022 from all parties

Date of Determination: 7 November 2022

DETERMINATION OF THE AUTHORITY

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 breaches by Hungry Wok (New Plymouth) Limited and payment of arrears due as a result, which establish an outcome for the Labour Inspector's claims. These are set out in a joint memorandum of counsel dated 26 October 2022 (the Memorandum).

[3] Based on the Memorandum I find that Hungry Wok breached:

- a. Section 6 of the Minimum Wage Act 1983 by failing to pay minimum wage to one employee.
- b. Section 130 of the Employment Relations Act 2000 by failing to keep adequate wages and time records.
- c. Section 81 of the Holidays Act 2003 by failing to keep adequate holiday and leave records.
- d. Section 27 of the Holidays Act by failing to pay an employee's final holiday pay in the correct pay period.
- e. Section 49 of the Holidays Act by failing to pay an employee for public holidays that he did not work that were otherwise working days.
- f. Section 50 of the Holidays Act by failing to pay an employee at least time and a half for public holidays worked.
- g. Sections 50 and 60 of the Holidays Act by failing to provide an employee alternative holidays and/or correctly calculate payment for alternative holidays in relation to public holidays worked.
- h. Section 11 of the Wages Protection Act by deducting money from an employee's wages for accommodation without written consent.

[4] The parties also agree that Hungry Wok shall pay wage and holiday pay arrears as set out below. Whilst acknowledging that it does not agree with the hours and arrears claimed, Hungry Wok agrees to pay the amounts claimed in good faith accepting that the Authority can accept an employee's claim for arrears where insufficient wages and time records and holiday and leave records have been kept.

[5] Hungry Wok will pay the following amounts to the Labour Inspector by 17 November 2022:

- a. \$9,279.87 in minimum wage arrears.
- b. \$1,012.07 in annual holiday arrears.
- c. \$2,450.00 in alternative holiday pay arrears.
- d. \$423.53 in public holiday pay arrears.
- e. \$1,625.03 in interest on the arrears above, quantified using the Ministry of Justice Civil Debt Interest Calculator, from the day of the employee's last day of work (23 December 2017) until 17 October 2022.

[6] The Labour Inspector will distribute the arrears to the employee, deducting and paying the appropriate tax.

[7] If Hungry Wok does not pay the arrears in full by 17 November 2022, then additional interest shall become payable from 23 December 2017 until the date the Arrears are paid.

[8] Wangxian Bao and Kam Chung Chen:

- a. Were persons involved in the breaches by Hungry Wok.
- b. Had knowledge of the essential facts establishing the breaches by Hungry Wok.
- c. Will be personally jointly and severally liable to pay the arrears and interest set out above if Hungry Wok does not make payment by in full by 17 November 2022.

[9] The Labour Inspector withdraws its claims against Jia Lin Zhang; costs in respect of those claims shall lie where they fall.

[10] The remainder of the Labour Inspector's claims in this matter shall be stayed until such time as the arrears and interest are paid in full.

Peter van Keulen
Member of the Employment Relations Authority