

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

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

[2022] NZERA 597
3158561

BETWEEN	LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Applicant
AND	FLAVOUR GREENLANE LIMITED First Respondent
AND	FLAVOUR LIMITED Second Respondent
AND	YULIANA YULIANA Third Respondent

Member of Authority: Nicola Craig

Representatives: Matthew Hall, counsel for the applicant
Simon Greening, counsel for the respondents

Submissions and other information received: 4 and 8 November 2022 from the applicant and the respondents

Date of determination: 17 November 2022

CONSENT DETERMINATION OF THE AUTHORITY

[1] A Labour Inspector of the Ministry of Business, Innovation and Employment, Emilie Woodd, commenced proceedings against Favour Greenlane Limited, Flavour Limited and Yuliana Yuliana alleging breaches of minimum entitlements and minimum standards in respect of three workers.

[2] The parties advised the Authority that they have reached partial settlement in relation to arrears and breaches of minimum standards and sought to have the terms of the settlement recorded in a determination. A joint memorandum was filed on 4

November 2022 setting out the terms of the partial settlement. Accompanying the memorandum was an agreed statement of facts (ASOF).

[3] Flavour Greenlane Limited and Flavour Limited confirm that at various times between 15 January 2018 and 13 November 2020 they employed an employee I identify as worker M. Flavour Greenlane Limited confirms that at various times between August 2017 and October 2019 it employed two employees I identify as worker S and worker D.

[4] On the basis of the joint memorandum in terms of arrears I find that:

- (i) Flavour Greenlane Limited and Flavour Limited jointly and severally owe a total of \$25,088.45 gross to worker M in arrears of premiums, annual holiday pay and public holiday pay;
- (ii) The amount set out in sub-paragraph (i) above is in full satisfaction of the quantum of all arrears of premiums, annual holiday pay and public holiday pay in these proceedings in respect of worker M;
- (iii) Flavour Greenlane Limited owes a total of \$1,589.37 gross to worker S in arrears of annual holiday pay and public holiday pay;
- (iv) The amount set out in sub-paragraph (iii) above is in full satisfaction of the quantum of all arrears of annual and public holiday pay in these proceedings in respect of worker S;
- (v) Flavour Greenlane Limited owes a total of \$291.70 to worker D in arrears of annual holiday pay;
- (vi) The amount set out in sub-paragraph (v) above is in full satisfaction of the quantum of all arrears of annual holiday pay in these proceedings in respect of worker D; and
- (vii) Ms Yuliana shall jointly and severally pay the arrears set out in sub-paragraphs (i), (iii) and (iv) above to the extent that Flavour Greenlane Limited and Flavour Limited are unable to pay pursuant to ss 142Y(1)(c) and 142Y(2)(b) of the Employment Relations Act 2000 (the Act).

[5] In addition, also based on the joint memorandum, I find regarding penalties that:

- (i) Between 1 August 2017 and 13 November 2020 during the employment of workers M, S and D by it, Flavour Greenlane Limited breached minimum entitlements and standards provisions of the Act, the Holidays Act 2003 (the H Act) and the Wages Protection Act 1983 (the WP Act) as set out in paragraph 23 of the ASOF and paragraphs 3.1 to 3.7 of the statement of problem;¹
- (ii) Between August 2020 and 13 November 2020 during the employment of worker M by it, Flavour Limited breached minimum entitlements and standards provisions of the Act and the H Act as set out in paragraph 26 of the ASOF and paragraphs 3.8 to 3.11 of the statement of problem; and
- (iii) Ms Yuliana accepts she is a person involved in those breaches within the meaning of ss 142W(2) and 142W(3)(a) of the Act.

[6] As regards other matters, as per the joint memorandum I find and record that:

- (i) The parties acknowledge that in reaching this agreement, none of them have agreed to forgo minimum entitlements (being money payable under the Minimum Wages Act 1983, the WP Act and the H Act);
- (ii) Between 20 May 2022 and 20 July 2022 Ms Yuliana made three payments of \$2,000 to worker M for arrears owing to worker M;
- (iii) The remaining arrears owed to worker M shall be paid by Flavour Greenlane Limited, Flavour Limited and Ms Yuliana to worker M in monthly instalments of \$2,500.00 by 20 March 2023;
- (iv) The arrears owed to workers S and D shall be paid to the Labour Inspector (for the use of the workers) by 20 March 2023;
- (v) The parties agree that Flavour Greenlane Limited, Flavour Limited and Ms Yuliana will make the appropriate PAYE deductions and payments

¹ The relevant content of the ASOF and statement of problem will be set out in a subsequent determination looking at penalties.

to the IRD from the arrears owing to the affected workers. The parties agree that the premium arrears are not subject to any PAYE deductions; and

- (vi) The parties fully acknowledge that whilst the breaches are acknowledged and Flavour Greenlane Limited, Flavour Limited and Ms Yuliana are liable for penalties for the breaches, the imposition and quantum of penalties are at the sole discretion of the Authority.

[7] The parties seek and the Authority agrees to have the question of whether penalties are payable and, if so, the quantum of penalties dealt with on the papers based on the ASOF.

[8] A timetable has been set for the filing of submissions on penalties. A second determination will deal with the penalties question.

Nicola Craig
Member of the Employment Relations Authority