IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2023] NZERA 126
3072932

	BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Applicant
	AND	WOOP LIMITED Respondent
Member of Authority:	Rachel Larmer	
Representatives:	Tim Gray and Joshua Barlow, counsel for the Applicant Peter Kiely and Scott Worthy, counsel for the Respondent	
Investigation Meeting:	1 and 2 November 2022 at Auckland	
Submissions Received:	16 November 2022 from the Applicant 30 November 2022 from the Respondent 14 December 2022 from the Applicant	
Date of Determination:	14 March 2023	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This matter involved a claim by the Labour Inspector for penalties to be imposed on Woop Limited (Woop) for admitted breaches that occurred between 1 June 2016 and 26 October 2018 of:

(a) s 6 of the Minimum Wage Act 1983 (the MWA);

(b) ss 23, 27 and 81 of the Holidays Act 2003 (the HA03); and

(c) ss 65 and 130 of the Employment Relations Act (the Act).

[2] These breaches related to seven employees who were engaged by Woop as "*interns*", under internship agreements prepared by three different French Tertiary Educational Institutes, as part of their course of study at those educational institutes. The seven interns affected by the breaches that resulted in these penalty proceedings are referred to in this determination as "*the affected employees*".

[3] Mr Thomas Dietz, who is one of Woop's director's and is its main shareholder, is a French national. Mr Dietz set up the internship arrangement because he had personally worked as an intern on overseas internship placements, when he was a student studying at a French Educational Institute, and he had found them to be highly beneficial.

[4] Mr Dietz considered that Woop, as a fast moving, expanding start up business, could offer interns valuable practical on the job learning and experience that would be beneficial to their studies.

[5] The breaches arose because the internship arrangements, while compliant with the study requirements of the three French Educational Institutes, were not managed by Woop in a way that fully complied with its New Zealand employment law obligations.

[6] Mr Dietz said that was "*a genuine mistake*", arising from a misunderstanding about how many working hours the interns were paid for as some of their time in the workplace was considered by Woop to be non-paid study or learning time, instead of working hours.

[7] The internship agreements required the interns to be present in Woop's workplace for 40 hours per week. The Labour Inspector considered that all of that time (at least 40 hours per week) that six of the affected employees were in Woop's workplace should have been treated as working hours, meaning that they should have been paid at least the minimum wage for all of those hours.

[8] The Labour Inspector identified that these six affected employees did not receive their correct minimum wage or annual holiday entitlements, because they were only paid for 20 hours work per week, so Woop's treatment of at least half of the time these employees were at work as "*non-working hours*" breached employment legislation.

[9] Woop had paid six of the affected employees their minimum entitlements, but it had calculated their wages paid based on a 20-hour (not 40-hour) work week. Woop's view was

that six of the affected employees had not worked for more than 20 hours a week, because the extra 20 hours per week they at were present in the workplace (as required by the internship agreements) did not involve them doing "*work*" for Woop.

[10] Instead, Woop said these six affected employees had been undertaking self-directed 'on the job' learning, which was a way for them gain valuable practical experience that was consistent with their study requirements.[1]

[11] However, despite that fundamental difference in views, Woop ultimately accepted that the Labour Inspector's interpretation of the total number of "*working hours*" for six of the affected employees should prevail. Based on the available evidence, that was a realistic concession to make. Woop therefore accepted that it had underpaid six of the seven affected employees their minimum wage and annual holiday entitlements.

[12] That admission resulted in the Labour Inspector pursuing penalties on behalf of six of the affected employees for breaches of the Act, MWA and HA03. Penalties were also pursued for record keeping breaches and failure to keep legally compliant employment agreements for all seven of affected employees.[2]

[13] Woop acknowledged it owed six of the affected employees a total of $61,133.65 in wage arrears, $4,890.69 of which consisted of annual holiday pay arrears with $56,242.96 being owed for wage arrears for hours worked in excess of 20 hours per week. Woop voluntarily paid the full amount of all wage arrears, plus interest, the six affected employees, so no wage arrears are outstanding.

[14] The parties entered into a Statement of Agreed Facts dated 6 September 2022 that recorded what the parties had agreed regarding the admitted breaches.

[15] Therefore in addition to admitting to wage arrears related breaches of the MWA and HA03, Woop also admitted the following breaches had occurred for all seven affected employees, namely failure to keep and provide legally compliant:

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1 Woop pointed out that after it ended the internship arrangements two interns were replaced with only one full time paid employee, which it said supported the reasonableness and genuineness of its view that the interns had only actually performed 20 hours' work per week.

2 Ms Smague did not have wage arrears related penalties pursue on her behalf.

(a) Individual employment agreements, in breach of the requirements of s 65 of the Act;

(b) Wage and time records in breach of s 130 of the Act, and

(c) Holiday and leave records, in breach of s 81 of the HA03.

[16] The Labour Inspector submitted that total globalised penalties of between $50,000 and $70,000 should be imposed on Woop for its breaches.

[17] Woop criticised the Labour Inspectorate's investigation and submitted that it was so unfair that no penalties should be imposed on it. Alternatively, Woop submitted that if penalties were to be imposed, then the total penalty should not exceed $26,000.

The issues

[18] The following issues were to be determined:

(a) Should penalties be imposed on Woop for its admitted breaches of employment law obligations?

(b) If so, what penalties should be imposed?

(c) Should any penalties imposed be paid to the affected employees instead of, or as well as, the Crown?

(d) What if any costs and disbursements should the Labour Inspector be awarded?

Authority's investigation

[19] The Authority conducted a two-day in-person investigation meeting.

[20] The Authority heard oral evidence from two Labour Inspectors. Ms Wiran (Summer) Liu was the original Labour Inspector who authored the investigation report and she issued these proceedings against Woop.

[21] The second Labour Inspector was Ms Emilie Woodd. She was the Labour Inspector who had responsibility for this mater at the time of the Authority's investigation meeting. Mr Thomas Dietz, Woop's CEO and major shareholder also gave in-person evidence to the Authority.

[22] Some of the affected employees, and other Labour Inspectorate employees, attended the Authority's investigation meeting by Zoom, in a listening only (observer) capacity.

[23] The Authority denied the Labour Inspector's attempt to call the affected employees to give evidence remotely during the investigation meeting because the disputed nature of their evidence, and time zone limitations associated with hearing their evidence, would have unnecessarily extended this into a very lengthy investigation meeting that would have been out of proportion to what was at stake.

[24] The Authority considered that it had enough evidence to enable it to appropriately assess penalties without needing to conduct a seven day investigation meeting, as the Labour Inspectorate's approach would have required.

[25] The Statement of Agreed Facts, statements the affected employees had made to the Labour Inspectorate as part of its investigation and other communications between them, Woop and the French Educational Institutes were all before the Authority, so could be relied on by both parties.[3]

[26] Obtaining oral evidence from the affected employees was considered disproportionate to the likely impact it could potentially have on the final penalty that would be imposed. It was therefore not viewed as material enough evidence that warranted extending the investigation meeting to the length that would have been required had the affected employees been permitted to provide oral evidence.

[27] The Labour Inspectorate very strongly advocated for the affected employees at all stages in this process, and the documents provided to the Authority had also fully reflected their views about the breaches that occurred. The Authority therefore believed that it was aware of, and in a position to assess, the views of the affected employees based on the available evidence.[4]

[28] The Authority concluded that the two Labour Inspectors who gave oral evidence were (because of their communications with the affected employees) able to appropriately convey the evidence the affected employees wanted to provide to the Authority, so in the interests of

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3 More than 580 pages of documents were filed with the Authority for its penalty investigation. Woop also submitted eleven videos.

4 Hearing from the interns, who all needed interpreters and who had very limited availability due to time zone differences, would have been 'over the top' in all the particular circumstances of this case.

running a timely and efficient investigation meeting the evidence the affected employees was ruled inadmissible.

[29] Both parties filed written submissions after the investigation meeting.

Should penalties be imposed on Woop for its admitted breaches of employment law obligations?

[30] Woop was very critical about the quality of the Labour Inspectorate's investigation, to extent that it submitted penalties should not be imposed on it to reflect the "*inadequate and incomplete*" nature of the investigation that had occurred.

[31] Woop pointed to further inquiries it said the Labour Inspector should have made, but did not do. Woop disputed the weight the Labour Inspectorate had placed on information provided by the affected employees, and noted that many other previous interns had been happy with their internships with Woop.

[32] Woop alleged that the decision to seek penalties had been pre-determined and it pointed out that proceedings were filed with the Authority before the deadline Ms Liu had given Woop to provide feedback on her investigation report had expired.[5] It also claimed the Labour Inspector had failed to obtain positive information some of the affected employees had recorded in their LinkedIn profiles about their work with Woop.

[33] Woop took issue with the information that had been recorded by Labour Standards Contact Centre on the initial complaint sheet when it triaged the third party telephone complaint when it was first received, saying that suggested the matter was treated as an exploitation of migrant labour case - when it was not

[34] Woop said it found out for the first time during the Authority's investigation meeting that:

(a) The two Labour Inspectors held different views on whether or not Woop's admitted breaches were deliberate;[6] and

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5 That appeared to have been done to ensure the 12-month deadline for filing a penalty claim was complied with.

6 Ms Liu believed Woop's breaches were deliberate while Ms Woodd believed they were negligent.

(b) The Labour Inspectorate had not viewed (or pursued) this matter as "*an exploitation of migrant labour*" case but as a "*non-compliant business model*" case.

[35] Woop suggested that had it known this information, then it may have been able to avoid these penalty proceedings. The Authority disagreed with Woop's view about that. It was clear the Labour Inspectorate viewed these breaches as so serious as to warrant penalties, and it has aggressively pursued that position. While some aspects of the original proceedings were resolved by agreement, there was no realistic prospect of these penalty claims being dropped by the Labour Inspectorate given the stance it has adopted.

[36] Woop's various criticisms were denied by the Labour Inspectorate.

[37] The Authority did not consider that any of Woop's criticisms of the Labour Inspectorate were relevant to the issue of whether or not penalties should be imposed on it. While criticisms of a Labour Inspector's investigation are relevant to the issue of liability, in this case Woop had accepted liability for the breaches.

[38] Woop had agreed in the Statement of Agreed Facts that the breaches subject to these penalty proceedings had in fact occurred. The issue was therefore whether the breaches were sufficiently serious to attract penalties. The Labour Inspectorate believed they were and the Authority agreed with that view.

[39] Labour Inspector's have a wide discretion in terms of how they address breaches of employment legislation. That can be seen by some of the decisions that were made that have decreased the ambit of the Authority's investigation in this matter. There was nothing ultra vires regarding the exercise of the Labour Inspector's discretion to lodge these wage arrears and penalty proceedings with the Authority.

[40] While best practice would have been to hold off filing these Authority proceedings until after the time Woop had been given to respond to Ms Liu's investigation report had expired, the 12-month deadline for filing penalty claims meant that was not always possible.[7]

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[7] Section 135(5) of the Act required penalty claims to be commenced within 12 months of the breach becoming known (or when it ought reasonably to have become known) to the person bringing the penalty claim.

[41] Mr Dietz had been interviewed as part of the Labour Inspector's investigation and he had been given an opportunity to read back and correct his statements to the Labour Inspector before she finalised her report. Woop therefore had some opportunity to be heard before these proceedings were lodged.

[42] The Labour Inspector did not act outside of her powers or authority by filing proceedings on a date that meant the penalty claims could be pursued. Subsequent to proceedings being filed, Woop has had a full opportunity to respond to the alleged breaches and to the penalties claimed, so it has not been treated unfairly.

[43] It was not unusual within the context of wage arrears cases, particularly those involving the Labour Inspectorate, for an employer to assert that although employees were present in the workplace for more hours than they had been paid to work, such employees were not "*working*" for all of the hours that they were in the workplace, so were not entitled to be paid the arrears that had been claimed.

[44] It was appropriate for the Labour Inspectorate to take public action that addressed that type of mindset by an employer.

[45] The fact that Woop initially had a different view about whether or not six of the affected employees had worked more than 20 hours a week was not relevant to the issue of whether or not penalties should be imposed on it, because the Statement of Agreed Facts admitted that six of the affected employees had worked at least 40 hours a week, but had only been paid for 20 hours work per week.

[46] Woop chose to engage in non-standard employment arrangements (the internship agreements) without taking advice to ensure that these would be implemented and operated in a way that ensured compliance with its employment law obligations or with minimum employment standards. It was appropriate for the Authority to impose penalties on Woop for the various breaches that occurred as a result of those failures.

[47] The purpose of penalties is to punish those who breach minimum standards, to deter companies and individuals from committing employment breaches, to eliminate unfair competition and to compensate those who have been affected by breaches. All of those factors apply in this case.

[48] Penalties are required to signal public disapproval of Woop's conduct and to deter it, and other employers, from operating in a way that is inconsistent with minimum code legislation. Accordingly, penalties are to be imposed on Woop for its admitted breaches of the MWA, HA03 and Act.

What penalties should be imposed on Woop?

Relevant law

[49] When assessing penalties, the Authority is required to take into account the various factors identified in s 133A of the Act.

[50] The Authority was also guided by the Employment Court decisions in *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited*[8] as summarised by the Court in *Nicholson v Ford*[9] and *A Labour Inspector v Daleson Investment Limited.*[10]

[51] The Employment Court in the above cases confirmed that the relevant considerations, including those specified by s 133A of the Act, when assessing penalties are:

(a) Statutory consideration 1 – the object of the Act

(b) Statutory consideration 2 – the nature and extent of the breach

- Identify the nature of the breaches;
- Identify the number of the breaches;
- Identify the maximum penalty available in respect of each identified breach;
- Consider whether global penalties are appropriate.

(c) Statutory consideration 3 – whether the breach was intentional, inadvertent, or negligent

- Assess the severity of the breach;

(d) Statutory consideration 4 – the nature and extent of any loss or damage

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8 [2016] NZEmpC 143.
9 [2018] ERNZ 393.
10 [2019] NZEmpC 12.

(e) Statutory consideration 5 – steps to mitigate effects of the breach

(f) Statutory consideration 6 – circumstances of the breach, and any vulnerability

(g) Statutory consideration 7– previous conduct

(h) Additional consideration 8 – deterrence

(i) Additional consideration 9 – culpability

(j) Additional consideration 10 – consistency

(k) Additional consideration 11 – ability to pay

(l) Additional consideration 12 – proportionality of outcome

[52] Penalties have been assessed in accordance with the above considerations.

Statutory consideration 1 – the object of the Act

[53] The s 3 objects of the Act that were relevant in this case included:

(a) Recognition of the implied mutual obligations of trust and confidence inherent in employment relationships;

(b) The requirement of mutual good faith behaviour by parties in an employment relationship;

(c) Promotion of the effective enforcement of employment standards, particularly by Labour Inspectors;

(d) Acknowledgment of the inherent inequality of power in employment relationships; and

(e) Recognition that *"productive employment relationships"* were built through the *"promotion of good faith"* in the employment relationship.

[54] Section 4B of the Act reflects the importance of an employer keeping legally compliant and accurate employment records relating to minimum entitlement provisions as being one of the three *"key provisions"* accompanying the Act's objects.

[55] Section 4B of the Act requires employers to keep records in sufficient detail to demonstrate compliance with minimum entitlement provisions, as defined in s 5 of the Act. Section 4B(2) of the Act provides that obligation is in addition to the requirements of any other provisions, such as ss 65 and 130 of the Act and s 81 of the HA03, relating to record keeping.

[56] These objects were particularly relevant in this case that involved young overseas students. Woop's failure to pay the affected employees correctly, and its failures to keep legally compliant employment records or written employment agreements for the affected employees, arose within what can be described as a distinct power imbalance.

[57] The affected employees were in New Zealand for a short period of time, they were away from their friends, family and educational institute. English was their second language and none of them had any previous experience working in New Zealand, so were not familiar with New Zealand employment law obligations.

[58] The Authority did not accept Woop's submission that it had engaged in good faith behaviour, because its genuine view (at the time the breaches occurred) was that the affected employees had only been working for half of the time they were in the workplace because the other half of their time at work had been spent on learning activities, and not work activities.

[59] That view was unreasonable. There was more than enough evidence to alert Woop that six of the affected employees were in fact working in excess of 20 hours per week. Woop's failure to ensure these affected employees either worked for no more than 20 hours a week, or were paid at least the minimum wage for all hours they had worked in excess of 20 hours per week, amounted to a breach of good faith.

[60] Failure by an employer to pay employees their minimum entitlements under the MWA and HA03 was inconsistent with good faith behaviour and fundamentally undermined the trust and confidence inherent in the employment relationship.

Statutory consideration 2 – nature and extent of the breach

Nature of breaches

[61] The admitted breaches included failure to:

(a) Pay six affected employees the applicable minimum wage (in breach of s 6 of the MWA);

(b) Pay correct annual holiday pay upon termination to six affected employees (in breach of ss 23 and 27 of the HA03);

(c) Keep legally compliant employment documentation for seven affected employees (namely wage and time records required by s 130 of the Act and holiday and leave records required by s 81 of the HA03); and

(d) Provide legally compliant individual employment agreements for seven affected employees, in breach of s 65 of the Act.

[62] The breaches of the MWA and HA03 meant that six affected employees who worked for Woop during 2018 were owed in total $66,0024.34, which the Labour Inspector pointed out represented less than half the minimum wage due to them based on their agreed hours of work, as recorded in the Statement of Agreed Facts.

Number of breaches

[63] The minimum wage breaches (of s 6 of the MWA), the annual leave breaches (of ss 23 and 27 of the HA03), the employment agreement breaches (of s 65 of the Act) and the record keeping breaches (of s 130 of the Act and s 81 of the HA03) involved discrete breaches of separate obligations in relation to each of the seven affected employees, resulting in 33 total breaches of Woop's legal obligations.

Maximum penalty available in respect of the breaches

[64] Because Woop is a company, the potential maximum penalty that could be imposed on it was $20,000 per breach. Because there were 33 breaches, the total maximum potential penalty available against Woop was $660,000 (representing 33 breaches x $20,000 per breach).

Should globalisation occur?

[65] The record keeping breaches that occurred of s 130 of the Act (wage and time records) and s 81 of the HA03 (holiday and leave records) involved the same type of breach (namely, failure to keep employment records).

[66] It was therefore appropriate to treat these as one breach per affected employee. This recognised that there was a single course of conduct by Woop that had resulted in those breaches.

[67] Globalisation therefore reduced the total potential maximum penalty from $660,000 to $520,000.

Statutory consideration 3 – whether the breach was intentional, inadvertent, or negligent?

[68] The parties' dispute about this penalty assessment factor required the Authority's in-person investigation meeting. Woop urged the Authority to conclude that the breaches were inadvertent because:

(a) The interns came to New Zealand (except for one affected employee) under agreements provided by the French educational institutions. These were topflight institutions and the agreements they provided to Woop stipulated minimum terms and stipends. The intern agreements were signed by the relevant educational institution, the intern and Woop;

(b) The internship agreements provided for tasks, activities and learning to be performed and for the interns to be present in Woop's workplace for 40 hours per week. The internship agreements did not state that the interns would be working for 40 hours per week;

(c) Mr Dietz had previously worked under an internship agreement when he was a student, so he believed the arrangements made with the interns were compliant with New Zealand law;

(d) Woop (with the benefit of hindsight) accepted it should not have solely relied on the internship agreements, because they were not compliant with New Zealand employment law, however Woop said it did not know that until after the Labour Inspector had identified problems to it;

(e) Woop believed the interns were only working for 50 percent of their time and with the other 50 percent of their time in its workplace being used solely for 'on the job' learning opportunities;

(f) Woop accepted it was mistaken about that, which was reflected in its admission of the breaches and its immediate cessation of the internship programme after the Labour Inspector identified concern about it.

[69] The Authority accepted that Mr Dietz had initiated the internship opportunities at Woop with good intentions, because (due to his personal experiences as an intern) he viewed the internship arrangement as mutually beneficial for all involved.

[70] Woop criticised the Labour Inspectorate for the *"uncritical adoption of the dissatisfied interns' point of view"* because it believed that the benefits of the internship arrangement to the affected employees had been overlooked.

[71] Woop emphasised to the Authority how it believed the affected employees had benefited considerably by obtaining workplace experience within a fast-moving start-up industry, and by being exposed to unique 'hands on' learning experiences that enhanced their subsequent marketability in their chosen field.

[72] While the internship arrangement had some benefits for all involved, the reality was that six of the affected employees worked at least 20 hours a week for Woop without being paid for that time.

[73] The fact that they may have obtained other non-monetary benefits for working that time ('on the job' experiences they would not otherwise have been exposed to) did not alleviate the need for these six affected employees to be paid at least the minimum wage for every hour they worked.

[74] Woop's submission that the breaches were inadvertent was not accepted. Neither was the Labour Inspectorate's submission that the breaches were intentional.

[75] The Authority considered the breaches were likely negligent. In particular:

(a) Woop should have obtained legal advice on the legality of the internship agreements before entering into them;

(b) Woop had complied with its employment law obligations regarding its employment of other (non-intern) employees, including casual, part time, fixed term employees and regarding its employment of a student who lived in New Zealand;

(c) That compliance demonstrated Woop knew about, and complied with, its legal obligations for other employees, so it should have exercised that same care regarding its internship arrangements with the seven affected employees;

(d) The requirement for interns to be in the workplace for 40 hours per week when they were supposedly only working 20 hours per week for Woop was indicative

of negligence, because there was no structure or process in place to ensure that interns only worked for a maximum of 20 hours per week;

(e) It should have been clear from the nature and type work that the six affected employees were undertaking and from the benefit that work had to Woop, that six of the affected employees were working more than 20 hours per week;

(f) There were enough red flags to have reasonably alerted Woop to the fact there could be a potential minimum wage issues associated with the length of time the six affected employees were present in its workplace and the activities they were engaged in when there;

(g) If Woop was going to pay its interns for only 20 hours work per week then it had to have a process in place to ensure that they did not work for any more hours than that;

(h) Alternatively, if the interns worked more than 20 hours in any week then Woop needed to have an accurate system in place to ensure they were paid at least the minimum wage for any hours over 20 hours a week;

(i) Woop's failure to put any arrangements in place to monitor or manage the interns' actual working hours was negligent;

[76] Woop's view that six of the affected employees had only worked for no more than 20 hours a week for it was arbitrary. Woop had not consulted with the interns about that. Woop had not issued them with instructions to limit their working hours to no more than 20 hours a week.

[77] Woop had not put in place a learning programme, to ensure that interns were actually undertaking 20 hours of learning per week and not just continuing to undertake their usual work activities, but without pay, under the guise of 'self-directed learning'. Woop did nothing to monitor, manage or oversee the unpaid 'learning experiences' it believed the six affected employees were having on its work premises for at least 20 hours a week.

[78] The evidence established that the interns were more likely than not actually working on activities that benefited Woop's business while they remained in the workplace for more than 20 hours a week, as opposed to merely observing or shadowing other more experienced employees or doing study, self-directed learning or other course work.

[79] The work being done by the six affected employees was work other paid employees would have had to do if the affected employees had not done it. It was not realistic for Woop to view such activities as unpaid learning time.

[80] Although the interns would have learned and gained experience as a result of their placement at Woop, the focus was on actually working by undertaking activities that other employees would have done, had the interns not been available.

[81] The Authority did not accept that these were inadvertent breaches because Woop decided to enter into the internship agreements, and it decided to pay six of the affected employees for only 20 hours per week without making sure that they had not worked in excess of 20 hours per week. The breaches therefore cannot be said to have occurred accidentally, or without conscious decisions being made by Woop's management.

[82] Woop did not engage in deliberate breaches that were intended to deprive the seven affected employees of their employment rights. Woop had been complying with its legal obligations regarding other employees, and it had acted consistently (such as in its reporting to Inland Revenue) with its view that the affected employees were only working for 20 hours a week. The evidence did not establish that Woop had deliberately sought to exploit the affected employees.

[83] Although the internship agreements had been predominantly supplied (with one exception) by the French tertiary education providers (the French TEPs) the renumeration was not fixed by the French TEPs but was a matter of agreement between Woop and the affected employees. Accordingly, there was no restriction under the internship agreements on Woop paying the interns in accordance with New Zealand minimum code legislation.

[84] Woop retained considerable control over the content of the internship agreements because, although the pro forma internship agreements were provided by the French TEPs, other critical details such as the activities, renumeration and other benefits were specified by Woop. It was also up to Woop to ensure it ran all aspects of its business in a legally compliant manner, regardless of what other agreements it had been given by other entities.

[85] The Authority heard evidence that the affected employees worked outside of the terms of the internship arrangements by working nights, weekends and additional hours above those specified in the internship agreements. That was recognised in the Statement of Agreed Facts,

so it was a red flag that should have been picked up by Woop when the six affected employees were still employed by it.

[86] In such circumstances it was unreasonable for Woop to believe that the interns were working for no more than 20 hours per week and that anything in excess of that involved "*learning*" activities only and not unpaid work, without closely monitoring/managing such an arrangement.

[87] A document prepared by two of the affected employees (which aimed to assist Woop with the optimisation of their Friday night boxing process of the food orders it had received), had costed the hourly wage of an intern at $7 per hour, whereas the hourly wage for an employee had been costed at $17.50 per hour. That was another red flag that should have been followed up on by Woop.

[88] Another red flag appeared in an email that Mr Dietz sent to one of the affected employees, upon receipt of her resignation, that stated that she had been "*working for a company on a 40-hours basis with monthly indemnities*".

[89] That affected employee was told that she not entitled to renumeration for every hour she worked. That showed Woop knew, or ought reasonably to have known, that there were potential minimum wage issues associated with the payment arrangements that applied to six of the affected employees.

[90] This evidence was sufficient to have alerted Woop to the fact that there could be issues around how it has managed its interns and in particular about compliance with minimum wage entitlements. The fact that was not addressed by Woop at the time was negligent.

Statutory consideration 4 – the nature and extent of any loss or damage

[91] The financial loss or damage involved in the breaches was the $66,024.34 (gross) total wage arrears that was owed to six of the affected employees.

[92] Two of the affected employees raised concerns during their internships, which were addressed with them by Woop at the time. There has clearly been a difference of opinion between the dissatisfied interns, the Labour Inspectorate and Woop about the value of the interns' tasks and internship to their learning experience.

[93] Woop submitted that the dissatisfaction of the affected employees was not a "*loss*" that should be recognised under this assessment criteria, because there was a difference in views about the value of the experience Woop had provided to them. The Authority agreed with that submission.

[94] However, it was also appropriate for the Authority to recognise the non-financial effects the breaches likely had on the affected employees, (putting aside the disputed value of their internship experience with Woop). The affected employees were in a different country, supporting themselves without their usual support network around them. Not receiving their statutory tights and entitlements was likely inherently stressful for them.

[95] Woop also derived a financial benefit, that its competitors who were complying with their minimum wage obligations did not, because the effect of the wage arrears breaches meant Woop had benefited from work being performed by six of the affected employees that had cost it less than the minimum wage rate.

[96] Regardless of Woop's view that the work performed by six of the affected employees was not at the same standard or of the quality it would have expected from a paid employee, Woop still clearly derived a financial and operational benefit from the way it managed the internships.

Mandatory statutory consideration 5 – compensation, reparation or restitution, steps to avoid or mitigate breach

[97] Mr Dietz pointed out that the affected employees had received additional benefits and experiences that rewarded them in addition to their normal wages, such as free lunches twice a week, free food baskets every Tuesday, expenses-paid trips to Wellington, including meals in some of the city's best restaurants and mobile phone subscriptions. One of Woop's managers also organised and hosted a ski week for the interns.

[98] Woop fully cooperated with the Labour Inspectorate during its unannounced visit in November 2018 and thereafter, including by providing all information sought. It took immediate steps to halt its internship programme in December 2018, after being alerted by the Labour Inspector to issues associated with it.

[99] Woop also accepted and acknowledged breaching its employment obligations to the seven affected employees. Woop has repaid the six affected employees all of the wage arrears

they were owed. Woop also paid interest on the amounts it owed to ensure that the six affected employees were not left out of pocket.

[100] Mr Dietz expressed regret for the breaches and contrition in his evidence to the Authority.

[101] The Labour Inspector urged the Authority to take care not to attach undue significance to the payment of wage arrears to six of the affected employees as a mitigating factor. The Authority accepted that and acknowledged that the payment of wage arrears was no more than late performance of a statutory duty to pay the affected employees not less than the minimum wage for every hour they had worked.

[102] The payment of interest also reflected the fact that Woop had the benefit of the $66,024.34 that should have been paid to six of the affected employees back in 2018.

Statutory consideration 6 – circumstances of the breach and any vulnerability

[103] Mr Dietz made it clear that he and Woop never intended to operate the internship arrangements in a way that contravened New Zealand law or breached minimum legal requirements in any way. He explained in detail his own experiences as an intern, under the similar arrangements Woop had used.

[104] The Authority accepted that evidence, but noted that the way in which the internship arrangements were handled in practice negligent, because it fell below the standards expected and required of a business that employed employees in New Zealand.

[105] The circumstances of the breach have already been addressed in this determination. As young overseas students, who were away from their home country, who spoke English as a second language, and who were unfamiliar with New Zealand employment law protections, the seven affected employees were inherently vulnerable.

[106] Their placement with Woop was also part of their French study programmes, so they were likely highly motivated to ensure that their internship worked, particularly when they had already incurred travel and accommodation costs by living in New Zealand while working for Woop.

[107] There was no evidence that the Woop placements had undermined any of the affected employees' ability to complete or fulfil their degree requirements. The involvement of the

French TEP also provided an extra avenue of support for the interns, and at least one of the interns accessed that support.

Mandatory statutory consideration 7 – previous conduct

[108] Woop has not previously had penalties imposed on it.

Preet additional mandatory consideration 1 – deterrence

[109] The internship arrangement in this case was unique and unlikely to be replicated in any other New Zealand employment situations. Woop was also unlikely to engage in breaches of its employment law obligations in future.

[110] However setting penalties also provided a necessary deterrent to others. The level of penalty therefore had to send a strong signal to all employers throughout New Zealand that their business practices must uphold minimum code employment law obligations, the most important of which is paying employees their correct minimum entitlements.

Preet additional mandatory consideration 2 – degree of culpability

[111] This factor required the Authority to consider the severity of the breach to establish a provisional starting point for assessing penalties. This included making adjustments for any aggravating and mitigating factors relating to the breaches.

[112] Factors considered by the Authority under this heading included:

(a) The number of affected employees;

(b) The total wage arrears that was owed and the fact that it had been fully reimbursed with interest;

(c) Woop's full cooperation with the Labour Inspectorate;

(d) The immediate termination of the internship programme in December 2018;

(e) That the affected employees received less than half of the minimum entitlements that they should have received during the period they worked for Woop;

(f) That the affected employees were based in France so were only working in New Zealand for a short period of time as per their French TEP requirements;

(g) Woop's acknowledgement of the breaches;

(h) Mr Dietz's remorse and contrition;

(i) The adverse publicity about Woop involves an element of public punishment over and above the imposition of penalties;

(j) The reputational damage Woop will likely suffer as a result of the Authority's public condemnation of its breaches of its employment law obligations;

(k) The breaches all stem from the same error, namely that Woop believed the affected employees were only working for 20 hours per week because their extra hours at work involved 'on the job' learning and practical workplace experience only.

[113] The Authority adopted a provisional starting point for assessing penalties of 50 percent of the maximum for each breach (i.e. $260,000) and then imposed a further discount of 40 percent to reflect the remedial actions Woop has taken since the Labour Inspector's intervention, leaving a potential penalty assessment of $156,000.

Preet additional mandatory consideration 3 – consistency

[114] There were no other cases that were directly comparable, particularly given the unique circumstances of the internship arrangements. Both parties have drawn the Authority's attention to other penalty cases, and these have all been considered.

[115] In *Shar Enterprise NZ Limited v Labour Inspector* the $32,000 penalty that had been imposed on the employer (and the $9,600 imposed on the company director) by the Authority was upheld by the Employment Court.[11] The Court concluded that the breaches involved *"deliberate business decisions"* notwithstanding that they "*may, in part, have resulted from a misunderstanding of Shar Enterprise's obligations*".

[116] These penalties were imposed for breaches associated with a single employee who had worked 76.5 hours per week, but had been paid for only 20 hours per week. The penalties were for record keeping breaches, a breach of s 6 of the MWA, and of ss 23 and 27 of the HA03.

[117] In *A Labour Inspector v RBM Communication Limited* the Authority imposed total penalties of $54,000 on the first respondent for 24 breaches of minimum employment standards

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11 [2022] NZEmpC 177.

affecting three employees.[12] These breaches were intentional and had spanned a period of four years, with total arrears owing to the employees of $31,876.96.

[118] In *A Labour Inspector v Olive & Jenn Co Ltd* the Authority imposed a $40,000 penalty on the first respondent for 22 breaches of minimum employment standards that involved six employees.[13] The total arrears in that case were $1,496.46. The respondents having previously had involvement with the Labour Inspectorate were aware of the need to meet minimum standards, so the breaches were viewed as intentional.

[119] In *A Labour Inspector v Sail City Venture Ltd* the Authority imposed total penalties of $66,150 on the first respondent for 42 breaches of minimum employment standards affecting ten employees that involved total wage arrears of $55,469.86.[14]

[120] The breaches arose from the second respondent's lack of knowledge about New Zealand employment law, however the Authority noted in *Sail City Venture* that the respondents should have obtained the advice needed to ensure that its employment obligations to employees were complied with.

[121] In *A Labour Inspector v Malcolm Bennett and Claire Bennett* the Authority ordered the respondents to pay a penalty of $30,371.09 in respect of holiday pay arrears originally totalling $21,685.23.[15] The respondents had treated their employees as casual and had not intended to breach their obligations. However, the breaches were only corrected after the Labour Inspectorate's involvement.

[122] The Authority considered that consistency could be achieved in this case by imposing a total penalty of $39,000 on Woop.

Preet step 3 – ability to pay

[123] Woop has not raised ability to pay an issue.

Preet additional mandatory consideration 4 – proportionality

[124] When fixing penalties in this matter the Authority needed to ensure that the outcome of its penalty assessment was proportional to the severity of all of the breaches taken together.

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12 [2022] ERNZ 229.
13 [2022] NZERA 54.
14 [2020] NZERA 268.
15 [2019] NZERA 7.

This included a consideration of all factors discussed in this determination, including the amount of money involved, the number of employees affected, and the need for consistency with other cases.

[125] The Labour Inspector submitted that a further reduction of 65 to 75 percent should occur to ensure that final penalties of between $50,000 to $70,000 were imposed for all breaches. Woop submitted that the reduction for proportionality needed to be 80 percent to appropriately reflect mitigating factors.

[126] The Authority concluded that a 75 percent deduction for proportionality was appropriate, giving a total penalty of $39,000 for all breaches.

Should penalties be paid to the affected employees instead of, or as well as, the Crown?

[127] Penalties imposed by the Authority are required to be paid to the Crown bank account. However, s 136(2) of the Act permits the Authority to order that some or any part of any penalty imposed may be paid to *"any person"*.

[128] The Labour Inspectorate sought that a portion of the penalties imposed be paid to the affected employees.

[129] Woop noted that no request for an apportionment of penalties had been identified in the Statement of Problem or Amended Statement of Problem, so it said the Authority should decline to order any apportionment. That submission was not accepted.

[130] The Authority recognised that the affected employees were personally affected to their detriment by the breaches that occurred.

[131] Although six of the affected employees received their wage arrears and interest to address the financial harm they suffered, there was other mental and emotional consequences that the breaches had on all seven of the affected employees them which has not been able to be compensated.

[132] It was therefore appropriate that some of the penalties imposed be paid to each affected employee to recognise the non-pecuniary effects of the breaches on them.

[133] Accordingly, $13,000 of the total $39,000 penalty imposed should be paid to the Labour Inspectorate to disperse to the affected employees, as per the specified amounts recorded in the Appendix 1.

[134] Under s 136(2) of the Act, six of the affected employee are to each personally receive $2,000 of the total penalty imposed. The seventh affected employee (Ms Smague) is to personally receive $1,000, because she did not have penalty claims for wage arrears pursued on her behalf, while the other six affected employees did. She also did not file a witness statement and the other affected employees did.

[135] The remaining $26,000 of the total penalty imposed is to be paid directly to the Crown bank account.

What costs and disbursements should the Labour Inspector be awarded?

[136] The Labour Inspector as the successful party is entitled to a contribution towards her actual legal costs.

[137] The Authority has adopted its usual notional daily tariff based approach to costs. This matter involved a two-day investigation meeting, so the notional starting point for assessing costs was $8,000 (being $4,500 for the first day and $3,500 for each subsequent investigation meeting day).

[138] That notional starting tariff then had to be adjusted to reflect the particular circumstances of this matter.

[139] The Labour Inspector sought an award of costs of $8,000 representing the notional daily tariff for the two-day investigation meeting. Woop submitted that the notional starting tariff of $8,000 should be halved, to reflect that the Labour Inspectorate's conduct had unnecessarily increased its costs. Woop submitted that an award of costs of $4,000 would be appropriate.

[140] The Authority agreed with Woop's submission. The Labour Inspectorate's decisions about how to pursue these penalty proceedings unnecessarily increased the parties' actual legal costs. In particular:

(a) The Labour Inspectorate filed six intern witness statements which the Authority ruled as inadmissible, on the basis it could fairly and properly determine

penalties without needing to conduct a seven-day investigation meeting which is what would have been required had the interns given evidence;

(b) The Authority did not consider that it was necessary, appropriate or proportional to the overall outcome of the penalty investigation for six of the affected employees to be called to personally give evidence when the two Labour Inspectors could have given that same evidence to the Authority;

(c) A very lengthy telephone conference was required to address admissibility issues, and the Authority was required to determine that issue because the Labour Inspector was not prepared to agree with the Authority's proposed approach regarding how the affected employees' disputed evidence should be addressed;

(d) Woop had to address the interns' evidence in its witness statements, and therefore did so before it was ruled inadmissible;

(e) Woop also filed substantial witness statements and documents and undertook cross examination of Ms Liu to defend what it believed was the Labour Inspectorate's position that the breaches were intentional. However, during her oral evidence Ms Woodd stated that her view was that the breaches were not intentional but were negligent;

(f) There was also extensive cross examination undertaken on Woop's behalf regarding migrant exploitation issues, which the Labour Inspectorate made clear during the course of the Authority's investigation meeting was not a category that it had viewed this matter as being under. Had that been clearly stated from the outset it would have saved both parties' time and legal costs.

[141] These matters unnecessarily and unreasonably increased the length of the Authority's investigation meeting. It was therefore appropriate to reflect that by reducing the costs that the Labour Inspector would otherwise have been awarded by 50 percent.

[142] Accordingly, Woop is ordered to pay the Labour Inspectorate $4,000 towards its legal costs plus $71.56 to reimburse it for the filing fee.

Outcome

[143] Within 28 days of the date of this determination, Woop is ordered to pay:

(a) A total penalty of $39,000 for the 26 globalised admitted breaches that occurred;

(b) The Labour Inspectorate $13,000 of the total penalty imposed for it to distribute to each affected employee, as per the attached Schedule in Appendix 1;

(c) The Crown bank account $26,000 balance of the remaining penalty to the;

(d) Labour Inspector $4,071.56 towards her legal costs and to reimburse the filing fee.

Rachel Larmer
Member of the Employment Relations Authority

APPENDIX 1

SCHEDULE OF PENALTY ASSESSMENT

Name of Respondent: Woop Ltd		
Step 1: Nature and number of breaches – potential maximum penalties (before globalisation)		
Failure to pay minimum wage, s 6 MWA (Laurenty)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Marechal)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Zohair)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Moussa)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Martyniuck)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Mouscadet)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Laurenty)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Marechal)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Zohair)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Moussa)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Martyniuck)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Mouscadet)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Smague)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Laurenty)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Marechal)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Zohair)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Moussa)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Martyniuck)	1 x $20,000	$20,000
Failure to provide complaint IEA, s 65 ERA (Mouscadet)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Smague)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Laurenty)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Marechal)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Zohair)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Moussa)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Martyniuck)	1 x $20,000	$20,000
Failure to keep compliant wages and time records, s 130 ERA (Mouscadet)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Smague)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Laurenty)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Marechal)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Zohair)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Moussa)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Martyniuck)	1 x $20,000	$20,000
Failure to keep compliant holiday and leave records, s 81 HA (Mouscadet)	1 x $20,000	$20,000
	Subtotal	**$660,000**
Step 1b: Nature and number of breaches – potential maximum penalties (after globalisation)		
Failure to pay minimum wage, s 6 MWA (Laurenty)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Marechal)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Zohair)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Moussa)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Martyniuck)	1 x $20,000	$20,000
Failure to pay minimum wage, s 6 MWA (Mouscadet)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Laurenty)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Marechal)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Zohair)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Moussa)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Martyniuck)	1 x $20,000	$20,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Mouscadet)	1 x $20,000	$20,000
Failure to provide compliant IEA, s 65 ERA (Smague)	1 x $20,000	$20,000
Failure to provide compliant IEA, s 65 ERA (Laurenty)	1 x $20,000	$20,000

Failure to provide compliant IEA, s 65 ERA (Marechal)	1 x $20,000	$20,000
Failure to provide compliant IEA, s 65 ERA (Zohair)	1 x $20,000	$20,000
Failure to provide compliant IEA, s 65 ERA (Moussa)	1 x $20,000	$20,000
Failure to provide compliant IEA, s 65 ERA (Martyniuck)	1 x $20,000	$20,000
Failure to provide compliant IEA, s 65 ERA (Mouscadet)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Smague)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Laurenty)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Marechal)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Zohair)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Moussa)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Martyniuck)	1 x $20,000	$20,000
Record-keeping breaches, s 130 ERA and s 81 HA (Mouscadet)	1 x $20,000	$20,000
	Subtotal	**$520,000**
Step 2(a): Aggravating factors as a proportion of maxima in Step 1		
Failure to pay minimum wage, s 6 MWA (Laurenty)	Less 50%	$10,000
Failure to pay minimum wage, s 6 MWA (Marechal)	Less 50%	$10,000
Failure to pay minimum wage, s 6 MWA (Zohair)	Less 50%	$10,000
Failure to pay minimum wage, s 6 MWA (Moussa)	Less 50%	$10,000
Failure to pay minimum wage, s 6 MWA (Martyniuck)	Less 50%	$10,000
Failure to pay minimum wage, s 6 MWA (Mouscadet)	Less 50%	$10,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Laurenty)	Less 50%	$10,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Marechal)	Less 50%	$10,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Zohair)	Less 50%	$10,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Moussa)	Less 50%	$10,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Martyniuck)	Less 50%	$10,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Mouscadet)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Smague)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Laurenty)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Marechal)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Zohair)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Moussa)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Martyniuck)	Less 50%	$10,000
Failure to provide compliant IEA, s 65 ERA (Mouscadet)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Smague)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Laurenty)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Marechal)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Zohair)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Moussa)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Martyniuck)	Less 50%	$10,000
Record-keeping breaches, s 130 ERA and s 81 HA (Mouscadet)	Less 50%	$10,000
	Subtotal	**$260,000**
Step 2(b): Ameliorating factors (reducing aggravating factors subtotal)		
Failure to pay minimum wage, s 6 MWA (Laurenty)	Less 40%	$6,000
Failure to pay minimum wage, s 6 MWA (Marechal)	Less 40%	$6,000
Failure to pay minimum wage, s 6 MWA (Zohair)	Less 40%	$6,000
Failure to pay minimum wage, s 6 MWA (Moussa)	Less 40%	$6,000
Failure to pay minimum wage, s 6 MWA (Martyniuck)	Less 40%	$6,000
Failure to pay minimum wage, s 6 MWA (Mouscadet)	Less 40%	$6,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Laurenty)	Less 40%	$6,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Marechal)	Less 40%	$6,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Zohair)	Less 40%	$6,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Moussa)	Less 40%	$6,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Martyniuck)	Less 40%	$6,000
Failure to pay holiday pay on termination, s 23 and 27 HA (Mouscadet)	Less 40%	$6,000
Failure to provide compliant IEA, s 65 ERA (Smague)	Less 40%	$6,000

Failure to provide compliant IEA, s 65 ERA (Laurenty)	Less 40%	$6,000
Failure to provide compliant IEA, s 65 ERA (Marechal)	Less 40%	$6,000
Failure to provide compliant IEA, s 65 ERA (Zohair)	Less 40%	$6,000
Failure to provide compliant IEA, s 65 ERA (Moussa)	Less 40%	$6,000
Failure to provide compliant IEA, s 65 ERA (Martyniuck)	Less 40%	$6,000
Failure to provide compliant IEA, s 65 ERA (Mouscadet)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Smague)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Laurenty)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Marechal)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Zohair)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Moussa)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Martyniuck)	Less 40%	$6,000
Record-keeping breaches, s 130 ERA and s 81 HA (Mouscadet)	Less 40%	$6,000
	Subtotal	**$156,000**
Step 3: Respondent's financial circumstances		
No information received – no adjustment proposed		
	Subtotal	**$156,000**
Step 4: Proportionality (subject to any reduction at Step 3)		
Reduction from subtotal to ensure consistency with like cases, reflect overall culpability and achieve purpose of penalties (per *Preet*)	Less 75%	
	TOTAL	**$39,000**
Step 5: Apportionment of penalties		
Amount of penalties to be paid to Crown:		**$26,000**
Part of penalty to be allocated to the affected employees:		**$13,000**
Details of apportionment of penalty allocated to affected employees:		
Alix Marechal		$2,000
Kensa Zohair		$2,000
Racim Moussa		$2,000
Simon Martyniuck		$2,000
Julien Mouscadet		$2,000
Flavie Laurenty		$2,000
Cecile Smague		$1,000