

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 153
3068072

	BETWEEN	A LABOUR INSPECTOR Applicant
	AND	SUNSHINE VALLEY FARMS LIMITED First Respondent
	AND	RAVI RAGU WALLABH Second Respondent
	AND	RAGUVER NARAN WALLABH Third Respondent
	AND	MINAXI RAGUVIR WALLABH Fourth Respondent
Member of Authority:		Rachel Larmer
Representatives:		Tim Gray and Joshua Barlow, counsel for the Applicant David Hayes, counsel for the Respondents
Investigation Meeting:		27 October 2022 at Auckland
Submissions Received:		24 November 2022 from the Applicant 5 December 2022 from the Respondent 12 January 2023 from the Applicant
Date of Determination:		28 March 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The First Respondent, Sunshine Valley Farms Limited, is a family owned vegetable grower business and farm in Bombay, Auckland (“*the Farm*”) that each of the other respondents have had a hand in running.

[2] The Labour Inspector asked that penalties be imposed on each of the four respondents, for the breaches that were the subject of the Authority's substantive determination dated 15 August 2022 in *A Labour Inspector v Sunshine Valley Farms & Ors* (referred to as "*the liability determination*").¹

[3] The penalties to be imposed are associated with the employment by the First Respondent, between 18 May 2015 and 11 October 2018, of eight employees (Elisapeta Enoka, Rowena Fauatea, Patisepa Ah Fua, Sin Perulale, Sumalie Mapusaga, Tomasi Lapa, Faasoa Toafia and Laumata Tuifao, together referred to in this determination as "*the identified employees*").

[4] The Labour Inspector submitted that total penalties of between:

- (a) \$107,100 - \$133,875 should be imposed on the First Respondent;
- (b) \$33,150 - \$41,437.50 should be imposed on the Second Respondent, Ravi Wallabh;
- (c) \$33,150 - \$41,437.50 on the Third Respondent, Raguvir ("*Ragu*") Wallabh; and
- (d) \$33,150 - \$41,437.50 on the Fourth Respondent Minaxi ("*Rama*") Wallabh.

[5] Mr Hayes on behalf of the four Respondents submitted that a penalty of around \$100,000 in total would be appropriate, and he said that should be apportioned between the respondents as follows:

- (a) \$75,000 penalty to imposed on the First Respondent;
- (b) \$25,000 total penalty to be imposed on all of the other respondents, to be apportioned as follows;
 - (i) \$15,000 penalty to be imposed on the Second Respondent;
 - (ii) No penalty to be imposed on the Third Respondent; and
 - (iii) \$10,000 penalty to be imposed on the Fourth Respondent.

Authority's liability determination

[6] The liability determination was based on a Statement of Agreed Facts the parties entered into on 26 July 2022.

¹ [2022] NZERA 391.

[7] The First Respondent admitted multiple breaches of minimum employment standards and that it owed a total of \$86,341.45 wage arrears to two former employees. The Second, Third and Fourth Respondents admitted to being ‘persons involved in breaches of employment standards’, as per s 142W of the Employment Relations Act 2000 (“*the Act*”).

[8] The Labour Inspector was granted leave under s 142Y(2)(a) and (b) of the Act to recover from the Second and/or Third and/or Fourth Respondents any money the First Respondent had been ordered, but was unable, to pay.

[9] The First Respondent admitted that Ms Enoka and Ms Fauatea were not paid their minimum entitlements in breach of the Minimum Wage Act 1983 (“*the MWA*”) and the Holidays Act 2003 (“*the HA03*”), and that deductions of \$50 per week that had been made from Ms Enoka’s wages to cover accommodation costs, without her written consent, breached the Wages Protection Act 1983 (“*the WPA*”).

[10] The First Respondent admitted, that for the eight identified employees, it had failed to keep:

- (a) Records of their days and hours of work, in breach of the wage and time record keeping requirements set out in s 130 of the Act;
- (b) Holiday and leave records, in breach of s 81 of the HA03;
- (c) Written employment agreements, in breach of s 65 of the Act.

[11] The Authority’s liability determination recorded that the First Respondent had:²

- (a) Breached:
 - (i) s 6 of the MWA, for Ms Enoka and Ms Fuatea;
 - (ii) ss 16, 24, 25, 49, 56, 60, 63, 71 and 72 of the HA03 for Ms Enoka and Ms Fuatea;
 - (iii) ss 4 and 5 of the WPA for Ms Enoka; and
- (b) Breached the record keeping provisions in s 130 of the Act and s 81 of the HA03 for the eight identified employees;

² Above n1, at [11] and [13].

- (c) Breached s 65 of the Act by failing to provide and retain written employment agreements for the eight identified employees;
- (d) Been ordered to pay:
 - (i) Ms Enoka \$83,887.42 wage arrears plus interest for its breaches of the MWA and the HA03; and
 - (ii) Ms Fauatea \$2,454.03 wage arrears plus interest for its breaches of the MWA and the HA03.

Authority's penalty investigation

[12] The Authority held an in-person investigation meeting in Auckland on 27 October 2022. It heard oral evidence from Ms Ah Fua, Ms Katriona Ikenasio (the Labour Inspector) and Mr Ragu Wallabh (the Third Respondent), who was authorised to speak on behalf of all of the respondents.

[13] The Authority was provided with a joint bundle of documents and an Agreed Chronology.

[14] The Labour Inspector provided the Authority with:

- (a) A written witness statement from Ms Enoka, which was confirmed on 14 April 2022;
- (b) A statement from Ms Ah Fua dated 26 April 2022;
- (c) A statement from Ms Ikenasio dated 20 April 2022;
- (d) An affidavit from Ms Ikenasio that was affirmed on 21 October 2022;
- (e) A statement of Damon Treadway dated 27 April 2022;
- (f) A statement of Katherine Feeney dated 20 April 2022;
- (g) A statement of George Shorrock dated 20 April 2022; and
- (h) A statement of Kerri Ahomiro dated 19 April 2022.

[15] Only Ms Enoka, Ms Ah Fua and Ms Ikenasio were required by the respondents for cross-examination.

[16] The respondents also filed witness statements dated 24 May 2022 from:

- (a) The Second Respondent, Ravi Ragu Wallabh;

(b) The Third Respondent, Raguver Narayan Wallabh; and

(c) The Fourth Respondent, Minaxi Raguvir Wallabh.

[17] The Second and Fourth Respondents elected not to attend the Authority's investigation to give evidence.

[18] The Fourth Respondent (Minaxi "Rama" Wallabh) provided the Authority with evidence of her health issues. The Third Respondent, Mr Ragu Wallabh, told the Authority that the Second Respondent, Ravi Wallabh, was unable to attend due to health issues, but that advice was not accompanied by a medical certificate.

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

Ms Enoka's evidence

[20] Regrettably Ms Enoka did not attend the investigation meeting because she passed away on 17 August 2022. However, some of her family members were present to observe the Authority's investigation meeting.

[21] The Labour Inspector provided very detailed information about the circumstances surrounding the preparation, interpretation into Samoan, and confirmation of Ms Enoka's witness statement. The Labour Inspector also pointed out its consistency with other contemporaneous records, other witnesses' evidence and the Statement of Agreed Facts the parties signed on 26 July 2022.

[22] The Authority was satisfied that it could place substantial reliance on Ms Enoka's evidence, notwithstanding that she was not available for cross-examination. That decision was based on the unique situation and the overall circumstances associated with the obtaining, interpretation and confirmation of Ms Enoka's evidence.

Conflicts in the evidence

[23] The Authority accepted the Labour Inspector's submission that limited weight should be placed on the witness statements filed by the Second and Fourth Respondents. In many respects these statements contradicted what they had already admitted in the Agreed Statement of Facts and these two respondents elected not to attend the Authority's investigation meeting, so they could not be questioned by the Authority or cross examined about their evidence.

[24] In terms of material conflicts in the evidence, or contested matters, the Authority has preferred the evidence of the Labour Inspector and her witnesses over the evidence provided by the respondents, on the basis it was more likely to be correct than the respondents' version of events.

The issues

[25] The following issues are to be determined:

- (a) What penalties should be imposed on each respondent for their admitted breaches of employment standards?
- (b) Should some or all of the penalties imposed be apportioned to the identified employees instead of, or as well as, the Crown?
- (c) What costs and disbursements should the Labour Inspector be awarded?

The law

[26] When assessing penalties the Authority must consider the factors identified in s 133A of the Act.

[27] The Authority was also guided by the Employment Court decisions in *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited*³ as summarised by the Court in *Nicholson v Ford*⁴ and *A Labour Inspector v Daleson Investment Limited*.⁵

[28] The Employment Court in those cases confirmed that the relevant considerations, including those specified by s 133A of the Act, when assessing penalties could be conveniently summarised as follows:

- (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;

³ [2016] NZEmpC 143.

⁴ [2018] ERNZ 393.

⁵ [2019] NZEmpC 12.

- 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
- (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

[29] The Authority therefore assessed penalties in this matter in accordance with the above considerations.

Statutory consideration 1 – the object of the Act

[30] Section 3 of the Act states that the object of the Act includes:

- (a) To recognise the implied mutual obligations of trust and confidence in the employment relationship and to require good faith behaviour within that relationship;
- (b) To promote the effective enforcement of employment standards, in particular by Labour Inspectors; and

- (c) To acknowledge and address the inherent inequality of power in employment relationships.

[31] The respondents took advantage of the inherent inequality of power in the employment relationship with the identified employees by intentionally failing to provide them with employment agreements, or (for Ms Enoka and Ms Fauatea) their minimum entitlements, thereby gaining an unfair financial advantage for themselves.

[32] The First Respondent failed to supply records to the Labour Inspector when required to do so, and the Third Respondent said that no employment records were kept. However, at the time of the unannounced visit the Labour Inspector made to the Farm on 11 October 2018, the workers who were interviewed said their hours were recorded by the Second Respondent (Ravi Wallabh), so they could be paid by the First Respondent. These records have never been produced.

[33] The First Respondent's failure to keep employment records, as required by s 130 of the Act and s 81 of the HA03, put the identified employees at a significant disadvantage because record keeping about their days or hours of work was left up to employees to do.

[34] The First Respondent's actions in breaching its employment obligations, and the Second, Third and Fourth Respondents' actions in aiding, abetting, inciting and instigating those breaches fundamentally undermined the trust and confidence in the employment relationships that the First Respondent had with the identified employees.

[35] The importance of an employer keeping legally compliant and accurate wage and time records and holiday and leave records relating to minimum entitlement provisions in the Act and the HA03 is reflected in s 4B of the Act, being one of the three "*key provisions*" accompanying the Act's objects.

[36] Section 4B of the Act requires employers to keep employment records in sufficient detail to demonstrate compliance with minimum entitlement provisions. Section 4B(2) makes it clear that this obligation is in addition to the requirements of any other provisions (such as ss 65 and 130 of the Act and/or s 81 of the HA03) relating to record keeping by employers.

Statutory consideration 2 – nature and extent of the breaches

Nature and extent of the breaches

[37] The agreed breaches of minimum entitlement provisions and other employment standards were set out at paragraph 11 of the Authority’s liability determination.⁶

[38] The First Respondent engaged in 32 discrete breaches, 24 of which involved the Second, Third and Fourth Respondents ‘as persons involved in the breaches of employment standards’, as defined by s 142W of the Act.

[39] The breaches can be broadly categorised into seven types of breaches committed by the respondents:

- (a) Breaches of s 6 of the MWA, being a failure to pay Ms Enoka and Ms Fauatea at least the minimum wage rate for all hours they worked (*“failure to pay minimum wage”*);
- (b) Breaches of the HA03 relating to the payment of annual holidays, being the failure to pay Ms Enoka her annual leave entitlement in accordance with s 16, 24 and 25 of the HA03 (*“failure to pay annual holiday pay”*);
- (c) HA03 breaches relating to public holiday entitlements, resulting in a failure to pay Ms Enoka her public holiday entitlements in breach of ss 49, 56 and 60 of the HA03 (*“failure to pay public holiday pay”*);
- (d) Breaches of the HA03 relating to annual sick leave, resulting in a failure to pay Ms Enoka for workdays taken as sick leave in breach of ss 63, 71 and 72 of the HA03 (*“failure to pay sick leave”*);
- (e) Breaches of ss 4 and 5 of the WPA relating to the unlawful deductions made from Ms Enoka’s wages without her written consent;
- (f) Breaches of s 65(4) of the Act which related to a failure to supply individual employment agreements for the eight identified employees (*“failure to supply employment agreements”*);⁷

⁶ Above n1.

⁷ No penalty was sought against the Second, Third or Fourth Respondents in connection with this breach because it was not a breach of *“employment standards”* as defined by s 5 of the Act and s 142W of the Act only provides for involvement in breaches of employment standards.

- (g) Record keeping breaches, involving breach of s 130 of the Act, being the failure to keep legally compliant wage and time records and of s 81 of the HA03, being the failure to keep legally compliant holiday and leave records for the eight identified employees (“*the record keeping breaches*”).

[40] These are serious breaches of minimum code legislation.

[41] Ms Enoka’s immigration status was precarious, which was something she was very concerned about, so she was particularly vulnerable. The First Respondent’s failure to pay Ms Enoka the minimum wage or her holiday pay entitlements heightened her inherent vulnerability.

[42] The First Respondent paid Ms Enoka between \$7 and \$7.50 per hour during her employment and Ms Fauatea \$7 per hour during her employment. These are grievous and blatant breaches of minimum wage entitlements and were indicative of deliberate migrant exploitation.

[43] The First Respondent owed Ms Enoka \$59,711.37 in minimum wage arrears for the hours she worked between 2015 and 2018. It owed her \$16,669.92 annual leave, \$1,083.40 sick leave and \$6,442.73 public and alternative holiday entitlements.⁸

[44] The nature and extent of each of the Second, Third and Fourth Respondents’ involvement in the First Respondent’s business established that as “*a person involved in the breach*” each of the respondents were each individually and jointly complicit in these serious breaches. As close family members who all worked at the Farm they knew, or ought to have known, the admitted breaches were occurring.⁹

[45] The Second and Fourth Respondents had more day-to-day involvement in the financial and operational aspects of the First Respondent’s business, and in particular in the dealings with the eight identified employees, than the Third Respondent, who had stepped back from the active management of the First Respondent’s business. The level of penalties imposed will reflect that difference.

⁸ A lack of records meant Ms Enoka was unable to recover wage arrears prior to 2015.

⁹ The Third and Fourth Respondents are married and the Second Respondent is their son.

Maximum penalty available in respect of the breaches

[46] Each of the relevant statutes allows for penalties to be imposed, with the maximum potential penalty for a single breach by a company being \$20,000 and a maximum potential penalty for an individual being \$10,000 per breach.

[47] Based on 32 discrete admitted breaches by the First Respondent, and 24 discrete admitted breaches by each of the ‘persons involved in these breaches’ (being the Second, Third and Fourth Respondents), the potential maximum penalty liability was:

- (a) \$640,000 for the First Respondent; and
- (b) \$720,000 in total for the three other respondents, being \$240,000 each for the Second, Third and Fourth Respondents;
- (c) \$1,360,000 combined for all respondents.

[48] No penalties will be imposed on the Second, Third and Fourth Respondents for the breaches of s 65 of the Act that occurred, because they are not liable under s 142W of the Act, although a penalty will be imposed on the First Respondent for that.

Is globalisation of penalties appropriate?

[49] Globalisation involved categorising like breaches, or breaches that had arisen from one course of conduct, together to reduce the total number of breaches that would be penalised. This aimed to bring the starting point for assessing penalties down to a more realistic level.

[50] The breaches for each respondent were globalised as follows:

- (a) One breach of s 6 of the MWA;
- (b) Eight breaches of s 65 of the Act;
- (c) Eight (not 16) record keeping breaches;
- (d) Three (not six) breaches of the HA03;
- (e) One breach of the WPA.

[51] Globalisation resulted in the maximum potential penalty being reduced as follows:

- (a) The 32 breaches by the First Respondent were reduced to 21 breaches that will be penalised, so the potential maximum penalty decreased from \$640,000 to \$420,000; and

- (b) The 24 breaches by each of the other respondents were reduced to 13 breaches each by the Second, Third and Fourth Respondents that would attract penalties, reducing the potential maximum penalties from \$240,000 to \$130,000 for each of those respondents, and from \$720,000 to \$390,000 combined penalties; and
- (c) The maximum potential combined penalty for all respondents reduced from \$1,360,000 to \$810,000.

Statutory consideration 3 – whether the breaches were intentional, inadvertent or negligent

[52] The respondents had initially claimed the identified employees were volunteers. The Farm had been investigated by the Labour Inspectorate during 2016, for similar allegations to the ones that resulted in these admitted breaches, and that had not resulted in enforcement action being taken or an Improvement Notice being issued.

[53] The respondents claimed that lack of action led them to believe that there was nothing wrong with the way that the Farm was operated. That was an unsafe conclusion to draw.

[54] The lack of formal action by the Labour Inspector in 2016 was due to issues regarding the legal identity of the employer and evidential problems. It was not uncommon for vulnerable workers who are concerned about their visa status, to not want to engage with the authorities or if they do to then subsequently disappear before enforcement action can be taken.

[55] The Labour Inspectorate had also faced problems with its 2016 investigation regarding proof of the legal identity of the employer. Although the Labour Inspectorate was not satisfied with the way in which the workers who had been interviewed during its 2016 investigation had been treated, due to various evidential problems the matter could not be progressed at that time.

[56] The respondents' previous engagements with the Labour Inspectorate were an aggravating factor, because it should have alerted the respondents to the need to ensure that they were operating the Farm in a way that was legally compliant with employment law obligations, and in particular with minimum employment standards. However, that did not occur.

[57] The Authority accepted the Labour Inspector's submission that the respondents' breaches were intentional, deliberate and intended to disregard the identified employees' minimum employment rights and entitlements.

[58] That conclusion was partly based on evidence that Ravi Wallabh (the Second Respondent) claimed that Ms Enoka (who denied it) had apologised to him for the statement she made to the Labour Inspectorate and had written a statement (which Ravi claimed to have) that said she had been forced by her cousin (Ms Ah Fua) to make a statement to the Labour Inspector that had exaggerated what had been occurring.

[59] Ragu Wallabh (the Third Respondent) also wrote to the Labour Inspector claiming that Ms Enoka was in Hastings and had been forced to make a complaint, but that she would correct “*wrong information*” that had been provided to the Labour Inspectorate. That was a blatant lie.

[60] These actions were indicative of a cover up and an attempt to interfere with, and undermine, the Labour Inspector’s investigation by discrediting Ms Enoka’s and Ms Ah Fua’s complaints in the eyes of the Labour Inspector.

[61] Ms Enoka denied these claims and the Authority accepted her evidence. Ms Enoka had gone to considerable lengths to assist the Labour Inspector, despite the personal inconvenience and difficulty that had caused her.

[62] The Authority also accepted the evidence from Ms Enoka and Ms Ah Fua that Ravi and Rama Wallabh (the Second and Fourth Respondents) were both personally aware of the true days and hours worked by the First Respondent’s employees, because they paid the employees’ wages each week and they had personally handed the employees envelopes of cash that reflected the hours that they had worked.

[63] The respondents’ decision to pay the employees only \$7 or \$7.50 (depending on the date and employee) per hour demonstrated a deliberate, intentional and systematic breach of minimum wage requirements. The respondents’ failure to provide the identified employees with written employment agreements, coupled with the employees’ vulnerability (particularly regarding language and visa status) created a situation in which the identified employees could be easily exploited.

[64] The First Respondent used these vulnerable employees for cheap labour, and that occurred with the knowledge of, or at the instigation, the Second, Third and Fourth Respondents. All of the individually named respondents were (or should have been) aware, at the very least, of the facts that gave rise to the admitted breaches of employment obligations by the First Respondent.

[65] The respondents were not inexperienced in business. The Farm had been operating for a number of years. Ragu Wallabh (the Third Respondent) supported by his wife Rama (the Fourth Respondent), ran the Farm until his son Ravi (the Second Respondent) took over its daily management. Ragu Wallabh (the Third Respondent) had a range of commercial experience.

[66] Ragu Wallabh (the Third Respondent) told the Labour Inspector that he understood that employees would get public holidays, annual holidays, sick leave and payment for annual holidays paid out at the end of their employment. The failure to ensure that occurred amounted to a deliberate and blatant breach of employment law obligations and it deprived vulnerable employees of money they were entitled to, at a time when they really needed it.

[67] Other evidence that indicated that the respondents' admitted breaches were deliberate included:

- (a) The Second and Fourth Respondents refusing to take Ms Enoka's and Ms Ah Fua's IRD details when they first began working for the First Respondent;
- (b) Ms Enoka's evidence that the Wallabh family would threaten to call Immigration authorities on the workers (and her) if they complained, thereby creating a fear of deportation amongst its workforce;
- (c) When Ms Enoka injured herself, the Fourth Respondent told Ms Enoka's cousin, Ms Ah Fua, that the First Respondent did not pay sick leave to overstayers;
- (d) Ms Ah Fua gave evidence about seeing Ms Enoka's injuries and attempting to obtain assistance for her from the respondents, without success. Instead of being given time off work to recover, Ms Enoka was dismissed and ordered to vacate her accommodation;
- (e) The Labour Inspector's evidence that the Third and Fourth Respondents had run businesses as directors, and had been associated with other legal entities as major shareholders, so were not new to business.

Severity of the globalised breaches

[68] The respondents submitted that this case should be assessed at 60 or 70 percent of the maximum and not the 75 percent that the Labour Inspector proposed.

Statutory consideration 4 – the nature and extent of any loss or damage or gains made or losses avoided by the person because of the breach or involvement in the breach

[69] Ms Enoka arrived in New Zealand from Samoa on a visitor visa in October 2002. She briefly obtained a work visa for 2005-2006, but then remained in New Zealand unlawfully, until she was issued with a limited visa granted for the purposes of assisting the Labour Inspectorate with its investigation in 2018.

[70] Ms Enoka was a vulnerable individual, who had limited English. She was significantly underpaid and treated badly by all of the respondents. She was threatened with deportation when she questioned them about her rights and lies were told about her to discredit her.

[71] Ms Enoka began working at the Farm in mid-2013. She was paid \$300 to \$370 cash weekly, passed to her in an envelope for six days' work that was done from Monday to Saturday. Ms Enoka never received any paid sick leave or annual holidays.

[72] In June or July 2018 Ms Enoka suffered a back injury while working at the Farm. When Ms Enoka asked to take time off work to recover, Rama Wallabh (the Fourth Respondent) said that "*overstayers were not paid sick leave entitlements*". Ms Enoka was told to collect her belongings and leave immediately, simply because she had asked not to work while she recovered from her injury. The respondents left her injured, without money or accommodation.

[73] The respondents' lack of record keeping meant Ms Enoka was unable to have her wage arrears fully quantified for the duration of her employment. Her wage arrears claim was limited to the period for which she had kept notes, so it only covered 2015 onwards.

[74] Ms Enoka was required to live in substandard unsanitary accommodation in order to complete long workdays that would often continue late into the night and then resume early in the morning. The Wallabh family home is located on the same property so they must have seen, and therefore ought reasonably to have known, that the accommodation was unfit for workers. Ms Enoka was instructed by Rama Wallabh (the Fourth Respondent) not to use a heater to keep herself warm.

[75] The respondents benefited by having Ms Enoka and other workers living on the Farm. It meant she could be required to work extremely long hours while the First Respondent also took back a significant portion of her meagre weekly income to cover her substandard accommodation costs.

[76] When the Labour Inspectorate and Immigration New Zealand Compliance conducted a site visit at the Farm on 11 October 2019, six Samoan individuals were located picking crops on the Farm. Three of the workers were unlawfully in New Zealand, and they were issued with deportation orders. Other workers on the Farm were uncooperative with the authorities.

[77] The First Respondent's failures to pay minimum wage entitlements, annual holiday pay, public holiday statutory entitlements and the refusal to grant the identified employees paid sick leave gave it an unfair competitive advantage in the marketplace.

[78] The First Respondent could undercut its competitors because its wage bill was significantly less than what it would have been, had it been complying with its legal obligations. Its workers also bore the financial consequences of the four respondents enriching themselves at the expense of the Farm workers.

[79] Ms Enoka's financial struggles because she was not paid the minimum wage, the long hours she worked and fact she did not get time off work adversely impacted her health. Ms Enoka suffered because she lost the use of money she was legally entitled to be paid at the time it became due, for the hours that she had worked.

[80] The respondents acknowledged that Ms Enoka was still owed \$83,887.42, because only \$15,000 of the wage arrears she has been awarded had been paid to her.

Statutory consideration 5 – steps to mitigate effects of the breach

[81] There was limited evidence of mitigation. The respondents had paid only \$15,000 of the total wages arrears that they owed.

Statutory consideration 6 – circumstances of the breach and the vulnerability of the workers

[82] The Wallabh family has been in business for over 30 years. It was their responsibility to know what was required of an employer and how to apply minimum employment standards. The admitted breaches were intentional, occurred over a prolonged period of time, and involved multiple workers.

[83] The identified employees were mainly migrants and inherently vulnerable. Of the eight identified workers, five were unlawfully in New Zealand. The respondents used that knowledge to wield improper power over the workers, who feared being deported.

[84] The respondents used their power over the workers, by controlling access to the workers' accommodation and the amount of work they had to do and therefore the amount of income they would receive.

Statutory consideration 7 – previous conduct

[85] The respondents have not had penalties imposed on them previously.

Additional consideration 1 – deterrence

[86] The breaches in this matter were sustained, systematic and blatant breaches of minimum employment standards. There was a need to emphasise to these respondents in particular, and to other employers more generally, that the requirement to meet minimum employment standards must be taken seriously.

Additional consideration 2 – culpability

[87] Factors that increased the respondents' culpability included:

- (a) The considerable amount of wage arrears still owed to Ms Enoka;
- (b) The significant period of time over which the breaches occurred and continued;
- (c) That most of the identified employees were migrant workers who were unlawfully in New Zealand, or who were otherwise not entitled to work in New Zealand; and
- (d) The respondents consistently denied the Labour Inspector's claims, until the Agreed Statement of Facts signed by the parties, and then after that continued to minimise their responsibility for breaches they had admitted.

[88] A reduction of 15 percent is appropriate to reflect any ameliorating factors.

Additional consideration 3 – consistency

[89] It is important that penalties imposed by the Authority are broadly consistent with other cases. Although there are no cases that are directly comparable, the Authority benchmarked this matter against the following cases.

[90] In *Preet* the Employment Court awarded penalties of \$100,000 for the defendants' breaches against five former employees who had been paid \$8 or \$8.50 per hour.¹⁰ In *Preet* the defendants kept no (or at least very inadequate) wage and time records.

[91] In *Labour Inspector v Binde Enterprises Limited* the Authority awarded total penalties of \$220,000 for multiple breaches involving migrant exploitation.¹¹ Seventy-five employees were owed total wage arrears of \$208,184.16. The employer failed to demonstrate remorse and made no attempt to ameliorate the effect of the breaches.

[92] In *Labour Inspector v Samuel & Ors* the Authority imposed total penalties of \$158,000 in respect of 19 intentional breaches of minimum employment standards that had involved three employees.¹² Because the employer was an individual, not a company, the maximum penalty was \$10,000 per breach. The respondents in *Samuel* had attempted to conceal their breaches and had threatened the workers.

[93] In *Labour Inspector v Pegasus & Ors* the Authority imposed total penalties of \$120,000 on the employer for three breaches of minimum employment standards. The second respondent (who was the sole director of the first respondent and one of its shareholders) was ordered to pay total penalties of \$24,000 for intentional breaches that had also involved threats to the workers' visas.¹³

[94] In *Labour Inspector v Shalini Limited* the Authority ordered the employer to pay \$100,000 in penalties for seven breaches of the MWA and seven breaches of the HA03.¹⁴ The seven affected employees were migrant workers who were owed a total of \$96,542.32 wage arrears. The breaches were deliberate and two of the workers rented accommodation from the employer's director, which heightened their vulnerability. A challenge to the Employment Court was unsuccessful.¹⁵

[95] In *Labour Inspector v SS & PK Jador Limited and Satnam Singh Jador* the Authority imposed penalties (after a 20% deduction for ability to pay) of \$50,000 on the employer and \$20,000 on the second respondent (director) for intentional breaches of minimum employment

¹⁰ Above n3.

¹¹ [2016] NZERA 399.

¹² [2021] NZERA 479.

¹³ [2018] NZERA 26.

¹⁴ [2019] NZERA 334.

¹⁵ *Shalini Limited v Labour Inspector* [2020] ERNZ 238.

standards.¹⁶ The breaches involved four vulnerable employees, whose visas were tied to their employment, and who were owed \$97,361.66 wage arrears.

[96] In *Labour Inspector v Nekita Enterprises Limited* the Authority imposed total penalties of \$90,000 on the employer for breaches involving minimum wage and holiday pay arrears and failures to keep employment records.¹⁷ The breaches were intentional and involved vulnerable employees, who had little knowledge of their employment rights. A penalty of \$35,000 was also imposed on the second respondent, who was ‘a person involved with the breaches’.

[97] In *Labour Inspector v Raj Kiwi Limited and Rajasekar Chellappa* the Authority imposed total penalties amounting to \$160,000 for 42 breaches by the employer and \$70,000 for 39 breaches by the second respondent (a person involved in the breaches) for failures to keep employment records, non-compliant employment agreements, total wage arrears of \$23,711.06 owed to three employees (consisting of breaches of MWA and HA03 entitlements) and for unlawful deductions that were made from the wages of one employee.¹⁸

Additional consideration 4 – ability to pay

[98] It was up to the respondents to provide the Authority with up to date and accurate financial information if they wanted the penalties that would otherwise have been imposed to be reduced on the grounds of their inability to pay. That did not occur.

[99] Although the respondents failed to file evidence regarding their ability to pay penalties, Mr Hayes’s submissions said that Ravi and Minaxi (Rama) Wallabh (the Third and Fourth Respondents) were receiving benefits, Ragu Wallabh (the Third Respondent) was being treated for cancer, Ravi Wallabh (the Second Respondent) had medical issues and Rama Wallabh (the Fourth Respondent) was not employed.

[100] That limited information suggested the respondents would likely face difficulties paying penalties. That was evident from the fact that Ms Enoka is still owed significant wage arrears. The Authority therefore applied a 20% reduction under “*Step 3*” of the *Preet* considerations to reflect the respondents’ ability to pay penalties.¹⁹

¹⁶ [2021] NZERA 278.

¹⁷ [2020] NZERA 509.

¹⁸ [2020] NZERA 493.

¹⁹ Above n1.

Additional consideration 5 – proportionality of outcome

[101] It was important for the Authority to ensure that the total penalty imposed on each of the respondents was proportional to the severity of the breaches that each separate respondent had engaged in. This included having regard to all of the factors set out in this determination, as well as the need to achieve broad consistency with other comparable cases.

[102] The Employment Court in *Labour Inspector v Prabah Limited & Ors* noted that deterrence was the primary consideration when assessing the proportionality or totality factors.²⁰ Deterrence would involve a financial penalty at least the amount of the pecuniary gain made to avoid incentivising breaches of minimum employment standards.

[103] The Authority made an adjustment to reflect that the First Respondent is a family business and that the other respondents were close family members who ran the business together, so the overall impact of imposing penalties was likely to be greater on a family group than on unconnected parties.

What penalties should be imposed on each respondent for their admitted breaches of employment standards?

[104] A combined penalty of \$151,980 was imposed on the four respondents, against globalised maximum potential combined penalties for all respondents of \$810,000.

[105] The First Respondent, Sunshine Valley Farms Limited, is ordered to pay a total penalty of \$85,680 for all of its admitted breaches, against a globalised potential maximum penalty of \$420,000. Appendix 1 sets out the calculation of penalties under each of the *Preet* steps.

[106] The Second Respondent, Ravi Wallabh, is ordered to pay a total penalty of \$26,520 for all of his admitted breaches, against a globalised maximum potential penalty of \$130,000. Appendix 2 sets out the calculation of penalties under each of the *Preet* steps.

[107] The Third Respondent, Raguver “*Ragu*” Wallabh is ordered to pay a total penalty of \$13,260 for all of his admitted breaches, against a globalised potential maximum penalty of \$130,000. Appendix 3 sets out the calculation of penalties under each of the *Preet* steps.

²⁰ [2018] NZEmpC 110, at [66].

[108] The Fourth Respondent, Minaxi “*Rama*” Wallabh, is ordered to pay a total penalty of \$26,520 for all of her admitted breaches, against a globalised maximum potential penalty of \$130,000. Appendix 4 sets out the calculation of penalties under each of the *Preet* steps.

Should penalties be apportioned to the identified employees instead of, or as well as, the Crown?

[109] The Labour Inspector asked that a proportion of the penalties be paid to the identified employees pursuant to s 136(2) of the Act.

[110] Penalties are usually required to be paid to the Crown bank account. However, s 136(2) of the Act enabled the Authority to order that some or all of any penalty is to be paid to “*any person*”.

[111] The Respondents’ submission that Ms Enoka should not have any penalties paid to her estate because she “*sat on her rights*” was not accepted. She was a vulnerable employee, with limited access to resources. She was also in a very precarious situation, so it was understandable that she did not aggressively pursue her rights in such circumstances.

[112] The Authority considered that a higher proportion of the penalty imposed should be paid to Ms Enoka and M Fauatea (the two employees who were owed wage arrears) than to the other identified employees, as Ms Enoka and Ma Fauatea have been the more badly affected by the breaches. The conduct towards Ms Enoka has been particularly grievous, and she has sadly passed on without having her rights restored.

[113] The total penalty of \$151,980 is to be apportioned as follows:

- (a) Ms Enoka is to receive \$29,000, being:
 - (i) \$20,000 of the total penalty imposed on Sunshine Valley Farms Limited;
 - (ii) \$3,000 of the total penalty imposed on Ravi Wallabh;
 - (iii) \$2,000 of the total penalty imposed on Raguver Wallabh; and
 - (iv) \$4,000 of the total penalty imposed on Minaxi (Rama) Wallabh.
- (b) Ms Fauatea is to receive \$3,830, being:
 - (i) \$1,390 of the total penalty imposed on Sunshine Valley Farms Limited;
 - (ii) \$920 of the total penalty imposed on Ravi Wallabh;

- (iii) \$600 of the total penalty imposed on Raguver Wallabh; and
 - (iv) \$920 of the total penalty imposed on Minaxi Wallabh.
- (c) The other six identified employees are to receive a combined total of \$6,000 of the penalty imposed, in the amount of \$1,000 each, to be paid as follows:²¹
- (i) \$500 each (\$3,000 in total) from Sunshine Valley Farms Limited;
 - (ii) \$200 each (\$1,200 in total) from Ravi Wallabh;
 - (iii) \$100 each (\$600 in total) from Raguver Wallabh; and
 - (iv) \$200 each (\$1,200 in total) from Minaxi Wallabh.

[114] The remaining \$113,150 of the total combined penalty imposed on the four respondents is to be paid to the Crown bank account, as follows:

- (a) \$61,290 by Sunshine Valley Farms Limited;
- (b) \$21,400 by Ravi Wallabh;
- (c) \$10,060 by Raguver Wallabh; and
- (d) \$20,400 by Minaxi Wallabh.

[115] The apportionment of penalties is as follows:

- (a) \$24,390 of the \$85,680 penalty imposed on Sunshine Valley Farms Limited has been apportioned to identified employees, with \$61,290 to be paid to the Crown;
- (b) \$5,120 of the \$26,520 penalty imposed on Ravi Wallabh has been apportioned to the identified employees, with \$21,400 to be paid to the Crown;
- (c) \$3,200 of the \$13,260 penalty imposed on Raguver Wallabh has been apportioned to the identified employees, with \$10,060 to be paid to the Crown;
- (d) \$6,120 of the \$26,520 penalty imposed on Minaxi Wallabh has been apportioned to the identified employees, with \$20,400 to be paid to the Crown.

Money to be paid to Ms Enoka

[116] Ms Enoka died intestate with no arrangements having been made for the distribution of her estate.

²¹ Patisepa Ah Fua, Sin Perulale, Sumalie Mapusaga, Tomasi Lapa, Faasoa Toafia and Laumata Tuifao,

[117] The Labour Inspector alerted the Authority to the fact there will be some complexity associated with identifying who is ultimately legally entitled to the money Ms Enoka has been awarded by the Authority in its liability and penalty determinations.²²

[118] Given that Ms Enoka is deceased, the wage arrears, interest and penalty apportionment she has been awarded are all to be paid to the Labour Inspectorate, so the Labour Inspector can distribute this money to Ms Enoka's estate for the benefit of her lawful heir(s) and successor(s), should those persons make themselves known to the Labour Inspectorate.²³

[119] The Labour Inspectorate will receive the money awarded to Ms Enoka for the purposes of distributing it to her estate should an executor or trustee make themselves known to the Labour Inspector, having provided sufficient proof of their role.

[120] The Labour Inspector is to make reasonable endeavours to draw the Authority's determinations to the attention of Ms Enoka's known family members, and/or those who are in a position to take appropriate legal steps with regard to the administration of Ms Enoka's estate.

[121] In the event that no such person(s) established that they had the legal authority to administer Ms Enoka's estate within six years of the date of this determination, then the entire amount she has been awarded will revert to the Crown, and as such shall be paid by the Labour Inspector directly to the Crown bank account.

What costs and disbursements should the Labour Inspector be awarded?

Costs

[122] The parties agreed that the respondents should contribute a total of \$4,500 towards the Labour Inspector's actual legal costs. The Authority apportioned costs as follows:

- (a) \$3,000 costs contribution to be paid to the Labour Inspector by the First Respondent, Sunshine Valley Farms Limited;
- (b) \$500 costs each to be paid to the Labour Inspector by:
 - (i) The Second Respondent, Ravi Wallabh;
 - (ii) The Third Respondent, Raguver Wallabh; and

²² These complexities are outlined in Mr Gary's memo dated 24 March 2023.

²³ Or to whoever is legally responsible for receiving Ms Enoka's assets.

- (iii) The Fourth Respondent, Minaxi Wallabh.

Disbursements

[123] The respondents are jointly and severally liable to reimburse the Labour Inspector total disbursements of \$608.45, consisting of:

- (a) \$536.89, including GST, for the Samoan interpreter's invoice; and
- (b) \$71.56 to reimburse the Authority's filing fee.

[124] The Labour Inspector engaged and paid for a MBIE-approved interpreter after the Authority was unable to secure one for the investigation meeting held on 27 October 2022, so it should be reimbursed for that.

Summary of outcome

[125] The final combined total penalty, imposed on all four respondents for all breaches that occurred, was \$151,670.

[126] The Labour Inspector has also been awarded total costs and disbursements of \$5,108.45.

[127] Within 28 days of the date of this determination:

- (a) The First Respondent, Sunshine Valley Farms Limited, is ordered to pay the Labour Inspector \$88,680 including costs and disbursements, consisting of:
 - (i) \$61,290 penalty to be paid to the Crown bank account;
 - (ii) \$20,000 to disburse to Ms Enoka;
 - (iii) \$1,390 to disburse to Ms Fauatea; and
 - (iv) \$3,000 to disburse the other six identified employees; and
 - (v) \$3,000 contribution towards the Labour Inspector's legal costs.
- (b) The Second Respondent, Ravi Wallabh, is ordered to pay the Labour Inspector \$27,020 including costs, consisting of:
 - (i) \$21,400 penalty to the Crown bank account;
 - (ii) \$3,000 penalty to be disbursed to Ms Enoka;
 - (iii) \$920 to be disbursed to Ms Fauatea; and
 - (iv) \$1,200 to be disbursed the other six identified employees;

- (v) \$500 costs.
- (c) The Third Respondent, Raguver Wallabh, is ordered to pay the Labour Inspector \$13,760 including costs and disbursements, consisting of:
 - (i) \$10,060 to the Crown bank account;
 - (ii) \$2,000 to be disbursed to Ms Enoka;
 - (iii) \$575 to be disbursed to Ms Fauatea;
 - (iv) \$600 to be disbursed to the other six identified employees;
 - (v) \$500 costs.
- (d) The Fourth Respondent, Minaxi Wallabh, is ordered to pay the Labour Inspector \$27,020 including costs, consisting of:
 - (i) \$20,400 penalty to the Crown bank account;
 - (ii) \$4,000 penalty to be disbursed to Ms Enoka;
 - (iii) \$920 penalty to be disbursed Ms Fauatea; and
 - (iv) \$1,200 to be disbursed to the other six identified employees;
 - (v) \$500 costs.
- (e) All four respondents are jointly and severally liable to reimburse the Labour Inspector \$608.45 for disbursements.

Rachel Larmer
Member of the Employment Relations Authority

APPENDIX 1

PENALTY ASSESSMENT FOR FIRST RESPONDENT

Name of Respondent: Sunshine Valley Farms Limited		
<i>Step 1(a): Nature and number of breaches - potential maximum penalties (before globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$20,000	\$20,000
Failure to provide IEA, s 65 ERA	8 x \$20,000	\$160,000
Failure to keep wages and time records, s 130 ERA	8 x \$20,000	\$160,000
Failure to keep holiday and leave records, s 81 HA	8 x \$20,000	\$160,000
Failure to pay annual holiday pay on termination, ss 16 and 24 HA (where entitlement has crystallised)	1 x \$20,000	\$20,000
Failure to pay annual holiday pay on termination, ss 16 and 25 HA (8% for uncrystallised portion)	1 x \$20,000	\$20,000
Failure to pay unworked public holidays that were otherwise working days, s 49 HA	1 x \$20,000	\$20,000
Failure to pay time and a half for worked public holidays, s 50 HA	1 x \$20,000	\$20,000
Failure to provide/pay out alternative holiday where public holiday worked, s 56, 60 HA	1 x \$20,000	\$20,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$20,000	\$20,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$20,000	\$20,000
	Subtotal	\$640,000
<i>Step 1(b): Nature and number of breaches - potential maximum penalties (after globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$20,000	\$20,000
Failure to provide IEA, s 65 ERA	8 x \$20,000	\$160,000
Record-keeping breaches, s 130 ERA and s 81 HA	8 x \$20,000	\$160,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	1 x \$20,000	\$20,000
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	1 x \$20,000	\$20,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$20,000	\$20,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$20,000	\$20,000
	Subtotal	\$420,000
<i>Step 2(a): Aggravating factors as a proportion of maxima in Step 1</i>		
Failure to pay minimum wage, s 6 MWA	Less 25%	\$15,000
Failure to provide IEA, s 65 ERA	Less 25%	\$120,000
Record-keeping breaches, s 130 ERA and s 81 HA	Less 25%	\$120,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 25%	\$15,000

Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 25%	\$15,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 25%	\$15,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 25%	\$15,000
	Subtotal	\$315,000
<i>Step 2(b): Ameliorating factors (reducing aggravating factors subtotal)</i>		
Failure to pay minimum wage, s 6 MWA	Less 15%	\$12,750
Failure to provide IEA, s 65 ERA	Less 15%	\$102,000
Record-keeping breaches, s 130 ERA and s 81 HA	Less 15%	\$102,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 15%	\$12,750
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 15%	\$12,750
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 15%	\$12,750
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 15%	\$12,750
	Subtotal	\$267,750
<i>Step 3: Respondent's financial circumstances</i>		
Reduction based on inability to pay penalty	Less 20%	\$53,550
	Subtotal	\$214,200
<i>Step 4: Proportionality (subject to any reduction at Step 3)</i>		
Reduction from subtotal to ensure consistency with like cases, reflect overall culpability and achieve purpose of penalties (per Preet)	Less 60%	\$128,520
	TOTAL	\$85,680
<i>Step 5: Apportionment of penalties</i>		
<i>Amount of penalty to be paid to the Crown:</i>		\$61,290
<i>Part of penalty to be paid to identified employees:</i>		\$24,390
<i>Details of apportionment of penalty to employees:</i>		
- Elisapeta Enoka		\$20,000
- Rowena Fauatea		\$1,390
Part of penalty to be paid to the other six identified employees:		\$3,000
- Patisepa Ah Fua	\$500	
- Sin Perulale	\$500	
- Sumalie Mapusaga	\$500	
- Tomasi Lapa	\$500	
- Faasoa Toafia	\$500	
- Laumata Tuifao	\$500	

APPENDIX 2
PENALTY ASSESSMENT FOR SECOND RESPONDENT

Name of Second Respondent: Ravi Wallabh		
<i>Step 1(a): Nature and number of breaches - potential maximum penalties (following globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$10,000	\$10,000
Failure to keep wages and time records, s 130 ERA	8 x \$10,000	\$80,000
Failure to keep holiday and leave records, s 81 HA	8 x \$10,000	\$80,000
Failure to pay annual holiday pay on termination, ss 16 and 24 HA (where entitlement has crystallised)	1 x \$10,000	\$10,000
Failure to pay annual holiday pay on termination, ss 16 and 25 HA (8% for uncrystallised portion)	1 x \$10,000	\$10,000
Failure to pay unworked public holidays that were otherwise working days, s 49 HA	1 x \$10,000	\$10,000
Failure to pay time and a half for worked public holidays, s 50 HA	1 x \$10,000	\$10,000
Failure to provide/pay out alternative holiday where public holiday worked, s 56, 60 HA	1 x \$10,000	\$10,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$10,000	\$10,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$10,000	\$10,000
	Subtotal	\$240,000
<i>Step 1(b): Nature and number of breaches - potential maximum penalties (after globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$10,000	\$10,000
Record-keeping breaches, s 130 ERA and s 81 HA	8 x \$10,000	\$80,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	1 x \$10,000	\$10,000
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	1 x \$10,000	\$10,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$10,000	\$10,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$10,000	\$10,000
	Subtotal	\$130,000
<i>Step 2(a): Aggravating factors as a proportion of maxima in Step 1</i>		
Failure to pay minimum wage, s 6 MWA	Less 25%	\$7,500
Record-keeping breaches, s 130 ERA and s 81 HA	Less 25%	\$60,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 25%	\$7,500
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 25%	\$7,500
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 25%	\$7,500

Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 25%	\$7,500
	Subtotal	\$97,500
<i>Step 2(b): Ameliorating factors (reducing aggravating factors subtotal)</i>		
Failure to pay minimum wage, s 6 MWA	Less 15%	\$6,375
Record-keeping breaches, s 130 ERA and s 81 HA	Less 15%	\$51,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 15%	\$6,375
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 15%	\$6,375
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 15%	\$6,375
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 15%	\$6,375
	Subtotal	\$82,875
<i>Step 3: Respondent's financial circumstances</i>		
Reduction based on inability to pay penalty	Less 20%	\$16,575
	Subtotal	\$66,300
<i>Step 4: Proportionality (subject to any reduction at Step 3)</i>		
Reduction from subtotal to ensure consistency with like cases, reflect overall culpability and achieve purpose of penalties (per Preet)	Less 60%	\$39,780
	TOTAL	\$26,520
<i>Step 5: Apportionment of penalties</i>		
<i>Amount of penalty to be paid to the Crown:</i>		\$21,400
<i>Part of penalty to be apportioned to identified employees:</i>		\$5,120
<i>Details of apportionment of penalty to identified employees:</i>		
- Elisapeta Enoka		\$3,000.00
- Rowena Fauatea		\$920
<i>Part of penalty to be paid to the other six identified employees:</i>		
- Patisepa Ah Fua	\$200	
- Sin Perulale	\$200	
- Sumalie Mapusaga	\$200	
- Tomasi Lapa	\$200	
- Faasoa Toafia	\$200	
- Laumata Tuifao	\$200	

APPENDIX 3
PENALTY ASSESSMENT FOR THIRD RESPONDENT

Name of Third Respondent: Raguver (“Ragu”) Wallabh		
<i>Step 1(a): Nature and number of breaches - potential maximum penalties (following globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$10,000	\$10,000
Failure to keep wages and time records, s 130 ERA	8 x \$10,000	\$80,000
Failure to keep holiday and leave records, s 81 HA	8 x \$10,000	\$80,000
Failure to pay annual holiday pay on termination, ss 16 and 24 HA (where entitlement has crystallised)	1 x \$10,000	\$10,000
Failure to pay annual holiday pay on termination, ss 16 and 25 HA (8% for uncrystallised portion)	1 x \$10,000	\$10,000
Failure to pay unworked public holidays that were otherwise working days, s 49 HA	1 x \$10,000	\$10,000
Failure to pay time and a half for worked public holidays, s 50 HA	1 x \$10,000	\$10,000
Failure to provide/pay out alternative holiday where public holiday worked, s 56, 60 HA	1 x \$10,000	\$10,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$10,000	\$10,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$10,000	\$10,000
	Subtotal	\$240,000
<i>Step 1(b): Nature and number of breaches - potential maximum penalties (after globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$10,000	\$10,000
Record-keeping breaches, s 130 ERA and s 81 HA	8 x \$10,000	\$80,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	1 x \$10,000	\$10,000
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	1 x \$10,000	\$10,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$10,000	\$10,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$10,000	\$10,000
	Subtotal	\$130,000
<i>Step 2(a): Aggravating factors as a proportion of maxima in Step 1</i>		
Failure to pay minimum wage, s 6 MWA	Less 25%	\$7,500
Record-keeping breaches, s 130 ERA and s 81 HA	Less 25%	\$60,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 25%	\$7,500
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 25%	\$7,500
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 25%	\$7,500

Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 25%	\$7,500
	Subtotal	\$97,500
<i>Step 2(b): Ameliorating factors (reducing aggravating factors subtotal)</i>		
Failure to pay minimum wage, s 6 MWA	Less 15%	\$6,375
Record-keeping breaches, s 130 ERA and s 81 HA	Less 15%	\$51,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 15%	\$6,375
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 15%	\$6,375
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 15%	\$6,375
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 15%	\$6,375
	Subtotal	\$82,875
<i>Step 3: Respondent's financial circumstances</i>		
Reduction based on inability to pay penalty	Less 20%	\$16,575
	Subtotal	\$66,300
<i>Step 4: Proportionality (subject to any reduction at Step 3)</i>		
Reduction from subtotal to ensure consistency with like cases, reflect overall culpability and achieve purpose of penalties (per <i>Preet</i>)	Less 80%	\$53,040
	TOTAL	\$13,260
<i>Step 5: Apportionment of penalties</i>		
<i>Amount of penalty to be paid to the Crown:</i>		\$10,060
<i>Part of penalty to be apportioned to identified employees:</i>		\$3,200
<i>Details of apportionment of penalty to employees:</i>		
- Elisapeta Enoka		\$2,000
- Rowena Fauatea		\$600
<i>Part of penalty to be paid to other six identified employees:</i>		
- Patisepa Ah Fua	\$100	
- Sin Perulale	\$100	
- Sumalie Mapusaga	\$100	
- Tomasi Lapa	\$100	
- Faasoa Toafia	\$100	
- Laumata Tuifao	\$100	

APPENDIX 4
PENALTY ASSESSMENT FOR FOURTH RESPONDENT

Name of Fourth Respondent: Minaxi (“Rama”) Wallabh		
<i>Step 1(a): Nature and number of breaches - potential maximum penalties (following globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$10,000	\$10,000
Failure to keep wages and time records, s 130 ERA	8 x \$10,000	\$80,000
Failure to keep holiday and leave records, s 81 HA	8 x \$10,000	\$80,000
Failure to pay annual holiday pay on termination, ss 16 and 24 HA (where entitlement has crystallised)	1 x \$10,000	\$10,000
Failure to pay annual holiday pay on termination, ss 16 and 25 HA (8% for uncrystallised portion)	1 x \$10,000	\$10,000
Failure to pay unworked public holidays that were otherwise working days, s 49 HA	1 x \$10,000	\$10,000
Failure to pay time and a half for worked public holidays, s 50 HA	1 x \$10,000	\$10,000
Failure to provide/pay out alternative holiday where public holiday worked, s 56, 60 HA	1 x \$10,000	\$10,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$10,000	\$10,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$10,000	\$10,000
	Subtotal	\$240,000
<i>Step 1(b): Nature and number of breaches - potential maximum penalties (after globalisation)</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$10,000	\$10,000
Record-keeping breaches, s 130 ERA and s 81 HA	8 x \$10,000	\$80,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	1 x \$10,000	\$10,000
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	1 x \$10,000	\$10,000
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	1 x \$10,000	\$10,000
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	1 x \$10,000	\$10,000
	Subtotal	\$130,000
<i>Step 2(a): Aggravating factors as a proportion of maxima in Step 1</i>		
Failure to pay minimum wage, s 6 MWA	Less 25%	\$7,500
Record-keeping breaches, s 130 ERA and s 81 HA	Less 25%	\$60,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 25%	\$7,500
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 25%	\$7,500
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 25%	\$7,500

Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 25%	\$7,500
	Subtotal	\$97,500
<i>Step 2(b): Ameliorating factors (reducing aggravating factors subtotal)</i>		
Failure to pay minimum wage, s 6 MWA	Less 15%	\$6,375
Record-keeping breaches, s 130 ERA and s 81 HA	Less 15%	\$51,000
Failure to pay annual holiday pay, ss 16, 24, 25 HA	Less 15%	\$6,375
Failure to pay public holiday pay, ss 49, 50, 56, 60 HA	Less 15%	\$6,375
Failure to provide/pay sick leave entitlement, ss 63, 71, 72 HA	Less 15%	\$6,375
Unlawfully deducting monies from wages without written consent, ss 4, 5 WPA	Less 15%	\$6,375
	Subtotal	\$82,875
<i>Step 3: Respondent's financial circumstances</i>		
Reduction based on inability to pay penalty	Less 20%	\$16,575
	Subtotal	\$66,300
<i>Step 4: Proportionality (subject to any reduction at Step 3)</i>		
Reduction from subtotal to ensure consistency with like cases, reflect overall culpability and achieve purpose of penalties (per <i>Preet</i>)	Less 60%	\$39,780
	TOTAL	\$26,520
<i>Step 5: Apportionment of penalties</i>		
<i>Amount of penalty to be paid to the Crown:</i>		\$20,400
<i>Part of penalty to be apportioned to identified employees:</i>		\$6,120
<i>Details of apportionment of penalty to employees:</i>		
- Elisapeta Enoka		\$4,000.00
- Rowena Fauatea		\$920
Part of penalty to be paid to other six identified employees:		
- Patisepa Ah Fua	\$200	
- Sin Perulale	\$200	
- Sumalie Mapusaga	\$200	
- Tomasi Lapa	\$200	
- Faasoa Toafia	\$200	
- Laumata Tuifao	\$200	