

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 175  
3124517

BETWEEN            A LABOUR INSPECTOR  
Applicant

AND                    VICTORIA JEON (aka JONG AI PARK),  
JOSEPH JEON AND MISUN LEEM, as  
trustees of JESUS AROMA CHURCH  
TRUST  
Respondents

Member of Authority:            Philip Cheyne

Representatives:                 Greg La Hood, counsel for the Applicant  
Seungmin Kang, counsel for the Respondent

Investigation Meeting:            28 & 29 June and 1 & 2 July 2021 at Christchurch

Information and Submissions Received:            23 August, 29 October & 22 November 2021, 23 May 2022  
and 30 March 2023 from the Applicant  
15 November 2021 and 23 February 2023 from the  
Respondent

Date of Determination:            13 April 2023

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]     The applicant (who I will refer to as the LI) is a warranted Labour Inspector under s 223 of the Employment Relations Act 2000 (ERA). The LI received a complaint from Song Choi and a second complaint on behalf of Cheongun (Andrew) Jeon. Following an

investigation, the LI commenced these proceedings against Jesus Aroma Church Trust (JACT) as the first respondent and Victoria Jeon as a second respondent. As lodged, the claim against JACT was as the employer and the claim against Mrs Jeon was as a person involved in the employer's alleged breaches of employment standards.

[2] A private, express trust was created by deed in June 2015, for the purpose of promoting and advancing Christian faith in New Zealand.<sup>1</sup> Jong Ai Park is shown as the settlor and Jong Ai Park and Mi Sun Leem are shown as the trustees. The trust's name was changed to Jesus Aroma Church Trust in November 2015. I will use JACT to refer to the trust.

[3] JACT was registered as a charity under the Charities Act 2005, between October 2015 and September 2022. The register listed Victoria Jeon as chairperson, Mi Sun Leem as executive officer and Joseph Jeon as trustee. Registration under that Act does not give corporate status. JACT is not otherwise an incorporated entity, such as under The Charitable Trusts Act 1975.

[4] Proceedings against an unincorporated trust should name the trustees. With confirmation from counsel for the respondents, the name of the first respondent was amended as now shown in the intituling. A separate claim against Victoria Jeon as the person involved in alleged breaches as second respondent, then appeared unnecessary. I return to the point later.

[5] The following matters are set out in the statement of problem.

#### *Claims – Song Choi*

[6] The LI says that JACT employed Song Choi in its Dunedin Taekwondo Academy, as a Taekwondo instructor from 17 June 2019 to 12 July 2019 and again from 12 to 23 August 2019. The LI says that JACT did not comply with the Minimum Wage Act 1983 (MWA) during the employment and so she claims arrears of \$1,909.50. There is also a claim for holiday pay of \$191.16, calculated at 8% of gross earnings under s 23 of the Holidays Act 2003 (HA). The LI also says that JACT sought and received a premium amounting to

---

<sup>1</sup> The trust's name was originally the Dunedin Woori Methodist Church Trust.

\$64,172.13, in breach of s 12A of the Wages Protection Act 1983 (WPA). The LI claims to recover that sum. Interest is sought.

*Claims - Cheongun Jeon*

[7] The LI also says that JACT employed Cheongun (Andrew) Jeon<sup>2</sup> as a Taekwondo instructor in its Dunedin Taekwondo Academy. Regarding that employment, the LI in her statement of problem says that JACT did not comply with the MWA from 2018, but included details of arrears between 14 January 2019 and 9 November 2019 only. There is a claim for arrears of \$9,391.51 under the MWA. There are also holiday pay claims under the Holidays Act 2003: s 50 (work on a public holiday - \$35.40); s 60 (alternative holiday - \$70.80); s 49 (public holiday not worked - \$477.33); and s 23 (8% holiday pay - \$1,407.34). The LI also says that JACT sought and received a premium amounting to \$46,087.60, in breach of s 12A of the Wages Protection Act 1983 (WPA). The LI claims to recover that sum. Interest is sought.

*Claims - penalties*

[8] Penalties are claimed against the trustees. The LI seeks penalties under s 10 of the MWA for the alleged breach of s 6 with respect to “at least” two employees. The LI seeks penalties under s 13 of the WPA for the alleged breaches of s 12A. The LI seeks penalties under s 75 of the HA for the alleged failure under s 23 to pay final holiday pay. The LI seeks penalties under s 75 of the HA for the alleged failure to pay at least time and a half and an alternative holiday for work on a public holiday, in breach of ss 50 and 56. The LI seeks penalties under s 75 of the HA for the alleged failure to pay alternative holiday pay entitlements at termination in breach of s 60. The LI seeks penalties under s 75 of the HA for the alleged failure to pay for an unworked public holiday, in breach of s 49. The LI seeks penalties under s 75 of the HA for the alleged failure to keep holidays and leave records for at least two employees, in breach of s 81. The LI seeks penalties under s 65 of the ERA for the alleged failure to provide an employment agreement to Song Choi containing mandatory terms and conditions, in breach of s 65(2) and s 69OJ of the ERA and s 50 of the HA. The LI

---

<sup>2</sup> I will refer to Cheongun Jeon as Andrew Jeon, to avoid confusion with his brother (Paul Jeon).

seeks penalties for the alleged failure to keep time and wages records in accordance with s 130(4) of the ERA.

[9] Penalties are also claimed against Mrs Jeon as a person involved, under s 142X of the Employment Relations Act 2000.

*Statement in reply*

[10] The respondents lodged a statement in reply and defend these claims. Mrs Jeon was the only trustee who appeared and gave evidence. The other trustees are her adult children. I accept Mrs Jeon's evidence that she has personal knowledge of matters in issue and that her evidence is given on behalf of all the trustees. Generally, I will refer to the respondents jointly as JACT.

[11] JACT says that Song Choi never worked as an employee so the arrears and penalty claims, based on his alleged employment, must fail.

[12] JACT received three donations from two Korean churches to support its mission, the donations were not a premium in respect of employment of Song Choi and the funds were expended on costs incurred by Song Choi. JACT also received three payments from Haesol Yuk. Haesol Yuk is married to Song Choi. JACT says the funds were intended as a deposit for JACT to purchase a residential property on trust for Haesol Yuk. JACT accepts the funds from Haesol Yuk should be returned, but says that the funds were not a premium in respect of employment of Song Choi so the matter is outside the Authority's jurisdiction.

[13] Andrew Jeon is the brother of Mrs Jeon's husband (Paul Jeon). JACT agrees that it employed Andrew Jeon as a Taekwondo instructor, at its Dunedin Taekwondo Academy. JACT says that it paid Andrew Jeon more than the amount being claimed, so the arrears claims must fail. JACT says that Andrew Jeon transferred his wages to his sister-in-law's (Victoria Jeon) bank account or to his brother's bank account for them to pay his and his children's living costs. Victoria Jeon and Paul Jeon paid more in such costs than was transferred to their accounts. The amounts transferred were not a premium in respect of Andrew Jeon's employment by JACT. JACT says it kept documents from which it compiled

holidays and leave records and time and wage records. At the time of the statement in reply, it anticipated providing the records shortly.

#### *Associated proceedings*

[14] The LI lodged separate proceedings against Elev 8 Global Limited and Victoria Jeon (file number 3116932). Mrs Jeon is the sole director and shareholder of that company. Counsel for the LI sought to have the proceedings consolidated. However, the claims are in respect of different enterprises, despite Mrs Jeon's common involvement. They are in respect of different employees. I declined to consolidate the proceedings.

[15] Although not consolidated, the two matters were set for investigation consecutively in the same week.<sup>3</sup> Despite the proceedings not being consolidated, the statements of evidence lodged by the LI for the investigation meeting for file number 3124517 covered evidence in respect of both claims.

#### *Issues*

[16] I will endeavour only to refer to evidence and issues relevant to the resolution of the claims in file number 3124517 in this determination. However, consideration of this present determination has overlapped consideration of the determination in file number 3116932. My intention had been to release the two determinations together, but since the findings in this determination mean that the LI has to recalculate arrears, and to avoid further delay, this determination is released first.

[17] The investigation meeting for file number 3124517 continued on 1 July 2021. Counsel for the LI produced revised calculations regarding the arrears claim for Andrew Jeon. We continued on 2 July to outline what would be helpful by way of submissions. Counsel for the respondents opposed the application to amend the LI's claims to reflect the revised calculations. There was discussion about disclosure of recordings. Later, based on counsel for the LI's summary, it was not necessary to do more regarding the recordings.

---

<sup>3</sup> As it eventuated, the investigation meeting for file number 3116932 was adjourned to allow us to complete the evidence in file number 3124517. The investigation meeting for 3116932 could not be rescheduled until March 2022.

[18] The revised calculations were said to be based on new time and wage information provided. The revised calculations cover the period from the week ending 29 July 2018 to the week ending 17 November 2019.

[19] Following consideration of the documents and evidence, it has become apparent that JACT's breach of minimum entitlements regarding Andrew Jeon was more substantial than detailed in the statement of problem and in the revised calculations.

[20] The Authority's role is to resolve employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities. An employer must keep records in sufficient detail to demonstrate compliance with minimum entitlement provisions. JACT had a full opportunity in its response to the LI and in evidence before the Authority to demonstrate its compliance with minimum entitlements, but could not do so. At the end of the investigation meeting, I had indicated that I would not accept the LI's revised calculations. On reflection however, JACT's defaults mean that the substantial merits of the case support a determination of the proven arrears, even though the sum is greater than that claimed (originally or as amended) for Andrew Jeon.

[21] The following issues arise:

- (a) Did JACT employ Song Choi to do any work for hire or reward under a contract of service?
- (b) If yes, what if any default in payment to him of wages under the Minimum Wage Act 1983 and holiday pay under the Holidays Act 2003 has been established?
- (c) Did JACT or a person on its behalf seek or receive any premium in respect of the employment of Song Choi?
- (d) Has there been a default in payment to Andrew Jeon of wages under the Minimum Wage Act 1983?

- (e) Has there been a default in payment to Andrew Jeon in respect of entitlements under the Holidays Act 2003?
- (f) Did JACT or a person on its behalf seek or receive any premium in respect of the employment of Andrew Jeon?
- (g) Are breaches of the Employment Relations Act 2000, the Minimum Wage Act 1983, the Holidays Act 2003 and the Wages Protection Act 1984 established and who is liable?
- (h) If breaches are established, what amount in penalties should be recovered?

**Did JACT employ Song Choi to do any work for hire or reward under a contract of service?**

[22] Song Choi was an assistant pastor at a church in Korea. The pastor there introduced him to Andrew Jeon. Andrew Jeon operated a Taekwondo gym in Korea. He was looking to sell the gym to facilitate moving to New Zealand, where his brother (Paul Jeon) and sister-in-law (Victoria Jeon) lived. Song Choi and Haesol Yuk decided to buy the gym. This interaction resulted in Song Choi and Victoria Jeon meeting in Korea in 2017.

[23] There are messages in January and February 2019 between Song Choi, Haesol Yuk and Victoria Jeon about Song Choi and Haesol Yuk moving to Dunedin, with Song Choi to be a pastor for JACT. There is a message on 15 January 2019 between Song Choi and Sang-Jin Lee. Sang-Jin Lee is a New Zealand based lawyer. The 15 January message refers to a discussion between Song Choi, Sang-Jin Lee and Victoria Jeon. On 20 January 2019, Mrs Jeon in a message to Song Choi said that “The Lawyer set your salary at \$46,000 to be safe”. The message included a screen shot of an advertisement seeking a fulltime pastor at the “Jesus Aroma Church” in Dunedin for the duration of “contract”, with “pay and benefits \$46,000”.

[24] The interactions resulted in a detailed written agreement drafted by the lawyer dated 3 May 2019. JACT says the lawyer acted for Song Choi, while Song Choi says the lawyer acted for JACT or Mrs Jeon.

[25] Song Choi and his family had arrived in New Zealand in April 2019. The written agreement was part of a religious worker visa application for Song Choi. The written agreement was signed by Mrs Jeon for JACT and by Song Choi. The written agreement unquestionably evidences engagement of an employee employed by an employer to do work for hire or reward under a contract of service. It is inconsistent with any other relationship. Nothing is gained by setting out the details here, as they all indicate a contract of service with work to start on 1 July 2019.

[26] As to this agreement, the submission for the respondents is that compared to the contract interpretation approach in *TNT Worldwide Express (NZ) Ltd v Cunningham*,<sup>4</sup> the law now requires the Authority to determine the real nature of the relationship between the parties.<sup>5</sup> JACT says that the parties' mutual intention was for Song Choi to do God's work in New Zealand, being supported by JACT as to his living costs but not receiving any wages. It is submitted that the only reason for the written employment agreement was advice from the immigration lawyer that caused Song Choi to insist on the form of agreement to benefit his children's study access.

[27] I am also referred to *Mabon v Methodist Church of New Zealand*.<sup>6</sup> There, the Court of Appeal dismissed an appeal against the Employment Court's earlier finding that the appellant had not accepted an offer of employment but had been appointed to a ministry. In doing so, the Court of Appeal noted that the parties' mutual intentions were appropriately derived from a letter of appointment and church laws and regulations, in the absence of other direct objective evidence. The Court also stated:<sup>7</sup>

...Courts must be reluctant to determine what are at heart ecclesiastical disputes where matters of faith or doctrine are at issue. But Courts will intervene where civil or property rights are involved and can be expected to analyse carefully any argument that conventional incidents of a recognised relationship such as work do not give to contractual rights ...

[28] The present case is unlike *Mabon*, given the signed employment agreement here that unequivocally evidences that the parties' objectively intended a contract of service. I do not

---

<sup>4</sup> *TNT Worldwide Express (NZ) Ltd v Cunningham* [1993] 3 NZLR 681.

<sup>5</sup> Employment Relations Act 2000 s 6(2).

<sup>6</sup> *Mabon v Methodist Church of New Zealand* [1998] 2 ERNZ 440 (CA).

<sup>7</sup> *Ibid* at 452.

accept that the parties' mutual intention was anything other than employment. Mrs Jeon is experienced in business. It is not likely that Mrs Jeon would sign a document creating legal rights and obligations for JACT, unless the document accurately expressed what was intended by JACT. It is not necessary to resolve the disputed evidence about the engagement of the lawyer.

[29] As it eventuated, Song Choi did not start work under this signed employment agreement. It is not necessary to canvass the dispute in the evidence about why that did not happen. However, it is accepted that from June 2019, Song Choi assisted with JACT's Dunedin Taekwondo Academy. I need to determine the basis of that arrangement.

[30] Mrs Jeon's evidence is that Andrew Jeon suggested he have Song Choi as an assistant instructor. Andrew Jeon held an essential skills work visa dated 14 November 2017 to work as a Taekwondo instructor in Dunedin for "Jesus Aroma Church".<sup>8</sup> There is a signed written employment agreement<sup>9</sup> dated 10 November 2017 between the "Jesus Aroma Church" and Andrew Jeon to work from January 2018 as "Job Position: Taekwondo Instructor". Facebook promotional information<sup>10</sup> showing session prices stated that the "Dunedin Taekwondo club" was brought to students by "JeonBrothers Taekwondo in association with the owners of Elev8 Korean Beauty & Health Clinic". The promotional material identifies the "JeonBrothers" as Paul Jeon (Mrs Jeon's husband) and Andrew Jeon. Mrs Jeon is the principal of Elev8 Global Limited, the operator of the beauty and health clinic. Given Andrew Jeon's work visa and employment agreement, I am satisfied that JACT operated Dunedin Taekwondo Academy in trade as a commercial activity. Song Choi assisted in that activity for JACT with Mrs Jeon's knowledge and agreement.

[31] Song Choi assisted at JACT's Dunedin Taekwondo Academy from about Monday 17 June to Friday 12 July 2019, then again from Monday 12 August to Friday 23 August 2019. His evidence is that he helped Andrew Jeon with cleaning, with the warm-up and while Andrew Jeon taught the students. Song Choi says he became involved in this work at the direction of Mrs Jeon. Andrew Jeon told me in evidence that he did not need an assistant but

---

<sup>8</sup> Bundle of documents tab 54.

<sup>9</sup> Bundle of documents tab 34. The drafting is very similar to the 3 May 2019 employment agreement between JACT and Song Choi. The text does not indicate it was drafted on an employee's instructions.

<sup>10</sup> Bundle of documents tab 26.

was told by Mrs Jeon to use Song Choi for this work. However, Mrs Jeon's evidence is that Andrew Jeon suggested Song Choi's involvement as there was no church work and Song Choi wanted to use his Taekwondo qualifications, experience and skills.

[32] There are messages in evidence<sup>11</sup> dated 10 May, 20 June 5 July, 14 July and 13 August 2019. The messages lend support to Song Choi's evidence that he performed the Taekwondo work at Mrs Jeon's direction. Parts of the messages indicate that Mrs Jeon was in control of matters. For example, on 14 July, Mrs Jeon messaged "...thanks for helping out with the taekwondo centre work. The decision I made was to avoid any issues in relation to your visa so please understand." Additionally, Mrs Jeon impresses as a person likely to be in control of the commercial activities of entities for which she is responsible. For these reasons, I prefer the evidence of Song Choi and Andrew Jeon that Song Choi assisted in the Taekwondo business at Mrs Jeon's direction.

[33] JACT accepts that Song Choi performed some tasks for the Dunedin Taekwondo Academy. However, JACT says this was all as a volunteer. I am referred to a two-page Korean language document naming JACT and Song Choi, signed by Mrs Jeon.<sup>12</sup> JACT submits that the document confirms that Song Choi's living costs would be supported by JACT but he would not receive any wages in relation to the Taekwondo. The Korean language document is dated 9 August 2019. I accept Song Choi's evidence that he first saw it then. A different one-page Korean language document had been presented to him by Mrs Jeon some days earlier, but it was torn up. Mrs Jeon in a message told Song Choi that the torn-up document could be changed and that she would amend it. The two-page document was the amended document. Song Choi refused to sign the two-page document. Neither document is evidence of an agreement between JACT and Song Choi, so they are of little assistance to resolve the present issue about whether Song Choi was a volunteer.

---

<sup>11</sup> Bundle of documents tab 31.

<sup>12</sup> Bundle of documents tab 32.

[34] A volunteer is excluded from the definition of “employee” in the Employment Relations Act 2000. A volunteer is a person who works but does not expect to be rewarded and who receives no reward for the work performed.<sup>13</sup>

[35] There is evidence, which I accept, that Mrs Jeon told Song Choi that one of them (meaning either he or his wife) had to start working. Song Choi and his family had relocated from Korea to New Zealand so Song Choi could commence employment by JACT as a Pastor, but that employment did not start. Given that context, I conclude that Song Choi expected to be rewarded for his involvement in the Taekwondo business. I also accept Song Choi’s evidence that he received several payments of \$200.00 in cash from Andrew Jeon for his work. Song Choi may have had his children present at the Academy, but that did not make him a volunteer. As Song Choi expected to be rewarded and was rewarded for the Taekwondo work that he performed for JACT, I find that he was not a volunteer.

[36] Song Choi was not a volunteer, but I have not yet determined whether he was employed under a contract of service to work at the Dunedin Taekwondo Academy.

[37] I agree with the submission that counsel for JACT misapplies the control test. Mrs Jeon is not qualified as a Taekwondo instructor, so she could not exercise any supervision or control over what Song Choi did to assist Andrew Jeon in the Taekwondo business. JACT’s supervision and control over Song Choi’s day to day work was principally through its employee Andrew Jeon, as the instructor. I accept Andrew Jeon’s evidence to that effect. JACT through Mrs Jeon controlled the commercial elements of the Taekwondo activities, such as student charges and the costs of the operation.

[38] Counsel submits that Song Choi was not an integral part of the Taekwondo business. The integration test considers whether the work performed is an integral part of the business or only accessory to it. The former indicates employment, whereas the latter indicates a contract for services. I am referred to *McGreal v Television New Zealand Ltd*.<sup>14</sup> It is not necessary to set out any of its details, as the present situation is not analogous. Most of the Taekwondo work for JACT was done by its employee, Andrew Jeon. Song Choi assisted

---

<sup>13</sup> *Kidd v Beaumont* [2016] NZEmpC 158 at [39]. See also *Courage & oths v The Attorney-General & oths* [2022] NZEmpC 77 at [185].

<sup>14</sup> *McGreal v Television New Zealand Ltd* (2007) 4 NZRLR 345 (EmpC).

with the Taekwondo work and some ancillary tasks, as directed. Song Choi was engaged for a limited time but on work that was an integral part of the business.

[39] Song Choi held a visitor's visa until 29 July 2019. He then held a Religious Worker visa that only allowed him to work as a Pastor in Dunedin for Jesus Aroma Church. Song Choi never held a visa that permitted him to work as a Taekwondo instructor. Counsel's submission is that a person is unlikely to work under a contract of service for minimum wages, when doing so would be a serious offence under the Immigration Act 2009. However, the main factor for Song Choi here was compliance with Mrs Jeon's requirements, rather than concern about the potential consequences (assuming knowledge) under the Immigration Act 2009. Counsel's submission adds nothing to determining whether Song Choi performed work as an employee.

[40] Counsel for JACT submits that there is no evidence of constraints being placed on Song Choi, no evidence that he was required to do any specific things or be in the Taekwondo studio at any specific time and that there was no benefit to JACT. The submission is based on *Idea Services Ltd v Dickson*.<sup>15</sup> It is in response to counsel for the LI's submission that what Song Choi did at the Taekwondo studio amounted to work. The evidence establishes that Song Choi started working at the Dunedin Taekwondo Academy at Mrs Jeon's direction, at the times and attending to tasks as arranged with Andrew Jeon. JACT derived benefit from this, as the work was part of what JACT provided to clients of its Taekwondo business for a fee.

[41] I find that Song Choi was employed by JACT to do work for hire and reward under a contract of service.

**What default in payment to Song Choi of wages under the Minimum Wage Act 1983 and holiday pay under the Holidays Act 2003 has been established?**

[42] I agree with the LI's conclusion that Song Choi worked for JACT from Monday 17 June 2019 to Friday 12 July 2019 and again from Monday 12 August to Friday 23 August 2019. JACT did not keep time and wage records for Song Choi. There is no reason to doubt

---

<sup>15</sup> *Idea Services Ltd v Dickson* [2011] NZCA 14.

the evidence, and the information relied on by the LI, that Song Choi worked Monday to Friday between 3pm and 7.30pm approximately over this period.

[43] The LI has treated Song Choi as entitled to minimum rates as an adult worker paid by the hour. I agree.

[44] At 4.5 hours per day for 30 days over this time, JACT should have paid Song Choi \$2,389.50 under the Minimum Wage Act 1983. JACT should have paid Song Choi an additional \$191.16 holiday pay under s 23 of the Holidays Act 2003.

[45] Song Choi received \$400.00 in two payments from Andrew Jeon, each of \$200.00 in cash. Song Choi's evidence is that when he was not paid at other times, Mrs Jeon said it was because she had allocated that to the rent she paid on his behalf. JACT did not employ Song Choi on the basis that it would provide him with board and lodging. Any rent payments cannot be brought to account now. I find that Song Choi received only \$400.00 cash for his work at the Taekwondo Academy for JACT.

[46] I accept the LI's calculation that this can be treated as a gross payment of \$480.00. JACT will need to account to IRD for the \$80.00 the LI treats as having been deducted for PAYE. The balance due under the Minimum Wage Act 1986 would then be \$1,909.50 (gross). There will also be an order for holiday pay of \$191.16 (gross).

**Did JACT or a person on its behalf seek or receive any premium in respect of the employment of Song Choi?**

[47] JACT accepts it received payments into its New Zealand bank account as follows: \$641.72 on 31 December 2018; \$12,952.33 on 21 January 2019; \$7,075.00 on 25 January 2019; \$20,197.80 on 8 March 2019; \$1,700.00 on 11 March 2019; and \$21,605.00 on 19 March 2019.

[48] The LI says these payments were sought and received by JACT in breach of s 12A(1) of the Wages Protection Act 1983. Recovery is sought under s 12A(2) of the Act.

[49] JACT raises various matters. It is convenient to work through them in order. I first note that the respondents do not make a submission based on *Mehta v Elliot*.<sup>16</sup> I accept that circumstances in the present case are materially different.

[50] First, it is submitted that the Authority has no jurisdiction to investigate and determine the claim. JACT relies on the argument that Song Choi was not an employee, either as a Pastor or as a Taekwondo instructor.

[51] The Wages Protection Act 1983 prohibits an employer or a person engaged on behalf of the employer from seeking or receiving any premium in respect of the employment of any person. I accept that employment requires both an employer and a worker. Employer for the purposes of the WPA has the same meaning as in the Employment Relations Act 2000. Worker in the 1983 Act is given the same meaning as employee in the 2000 Act. Employment is not expressly defined in either statute. However, employment for the purposes of s 12A of the WPA includes prospective employment, as is clear from the reference to the person “proposed to be employed” in the section and the reference to a person intending to work in the definition of worker. Payments in respect of Song Choi’s prospective employment under the May 2019 employment agreement attract the protection of the Wages Protection Act 1983, even though he did not start that job.

[52] It is submitted that the payments were not premiums. JACT says that it is a common practice amongst churches to sponsor each other especially from the one that is dispatching the Pastor, including by donations to support missionary work. The submission is that the payments did not have the characteristics of being premiums in respect of the employment of Song Choi.

[53] In *Labour Inspector v Tech 5 Recruitment Ltd*,<sup>17</sup> the Employment Court sitting as a full court held that:

[53] ... [Dictionary] definitions suggest that “premium” is an elastic word capable of referring to consideration provided for a contract (such as for insurance) while being broad enough to cover a reward and an enhanced payment reflective of higher quality or value. That elasticity is consistent with “premium” in s 12A being used as a

---

<sup>16</sup> *Mehta v Elliot* [2003] 1 ERNZ 451.

<sup>17</sup> *Labour Inspector v Tech 5 Recruitment Ltd* [2016] NZEmpC 167.

compendium to apply to straightforward cases of payment being sought or received to purchase a job, or to more subtle or ingenious arrangements.

[54] Used in the context of s 12A we consider “premium” naturally captures paying to acquire a job (that is, consideration over and above the wage paid for the work performed in the wage/work bargain) as described in *Sears* and illustrated in *Tan*; specifically where a price is paid either by an employee, or potential employee, or is paid on that person’s behalf to secure employment. However, we consider “premium” extends beyond those situations to apply to an employer recouping, or attempting to recoup, recruitment-related costs or other expenses that would ordinarily be borne by an employer. Given the ingenuity with which agreements can be drafted each case will be fact-specific...

[54] To be a premium, a payment must be a condition for obtaining employment and not otherwise benefit the employee.<sup>18</sup> It is clear that the focus needs to be the characteristics of any payments to assess whether they are premiums. The starting point is evidence about what was said at the time of the payments.

[55] On 15 January 2019 in a message to Haesol Yuk about the purchase of a house on behalf of Haesol Yuk and Song Choi, Mrs Jeon said:<sup>19</sup>

I’m going to apply [your] visa in early February so let’s settle the missionary donation matter by the end of this month.

[56] Also on 15 January there were the following messages:<sup>20</sup>

Victoria: Hello Pastor. Thank you for your response once again. From this afternoon I can get back to work. I decided that your visa application process needs to be pushed forward. If you let me know when you are available today, I can translate these documents and explain to you so we can sort them out together.

Also, we should proceed as we planned before that the missionary funding that Paul Church and Yedam Church were working on. And let’s make a plan to do it as the way Saebit church used to do – pay the whole year’s budget at once.

It’s hard to predict how the rent would be like so let’s give it a go to my suggestion and plan which is to make it as minimal as possible.

Anyway, I think it should be the top priority that to push forward your visa application.

Victoria: If the house matter cannot be resolved quickly then at least sort out the missionary funds transfer first then proceed with the visa. As proceeding with the visa, [we] sort out the missionary funds for one years budget first then sort the house slowly by looking at other houses.

---

<sup>18</sup> *Holman v CTC Aviation Training (NZ) Limited* [2017] NZEmpC 60 at [20].

<sup>19</sup> Bundle of documents p 542. All the messages are in Korean, but the English translation is not in dispute.

<sup>20</sup> Bundle of documents p 558.

Haesol: Ok.

[57] On 18 January 2019, Mrs Jeon mentioned in a message to Haesol Yuk that they were advertising for a Pastor and provided the link to the listing. On 20 January 2019, Mrs Jeon included in a message about the visas and the plans for Haesol Yuk and Song Choi to move to New Zealand:<sup>21</sup>

Victoria: ... As soon as the donation matter is settled, I'll report the annual tax return next week...

Choi: Ok thank you.

[58] On 27 February there was the following message exchange:<sup>22</sup>

Victoria: How much did I say the total amount the Pastor [\*Song] sent to the church? I told you, didn't I? Pastor sent 2million KRW in December for the lawyer's fee, but I haven't sent it to the lawyer yet. He messaged me yesterday to send the money through so I told him ok but I sent the money to him yet. I think I sent you the breakdown last month?

Haesol: I think it's 15million KRW. That's the missionary funds only, not include the lawyer's fee.

Victoria: Isn't it 18 million?

Haesol: Yes correct, it's total of 18 million.

[59] Six alleged premiums were paid between December 2018 and March 2019. On 31 December 2018 the Yerang Church paid \$642.00<sup>23</sup> to JACT. On 23 January 2019 Paul Church paid \$12,952.33 to JACT as "MISSION SUPPORT". On 26 January 2019<sup>24</sup> Yerang Evangelical Church paid \$7,075.00 to JACT. On 8 March 2019 Haesol Yuk paid \$20,197.80 to JACT. On 11 March 2019 Haesol Yuk paid \$1,700.00 to JACT. On 19 March 2019 Haesol Yuk paid \$21,605.00 to JACT. The payments were by way of international funds transfers from the ordering customers' accounts in Korea, received as New Zealand dollar amounts in JACT's New Zealand bank account.

[60] Song Choi's evidence is that Mrs Jeon told him that he needed to transfer money into JACT's account as part of Immigration New Zealand's (INZ) financial requirements, to show

---

<sup>21</sup> Bundle of documents p 540 and p 559.

<sup>22</sup> Bundle of documents p 556.

<sup>23</sup> The payment is shown as \$642.00, not \$641.72 as given in evidence – see Bundle of documents p 225.

<sup>24</sup> Bundle of documents p 228. The date is given as 25 January 2019 in evidence and submissions, but the document shows the payment to JACT on 26 January 2019.

a history of Korean churches sponsoring JACT. Mrs Jeon said that INZ needed to recognise JACT as genuine to approve a visa. Song Choi says that Mrs Jeon referred to the payments as “missionary funds” or “missionary sponsorship”. His evidence is that Mrs Jeon asked him to pay KRW50 million and that the funds had to come from Korean churches as supporting missionary funds, not directly from him. It had to come in instalments.

[61] Song Choi’s evidence is that he transferred approximately KRW16 million to pastors he knew in Korea for them to transfer the money to JACT. On 31 December 2018 he transferred KRW500,000 to a pastor at Yerang church, for the 31 December 2018 payment to JACT. On 21 January 2019 he transferred KRW 10 million to a pastor at Paul Church for the 23 January 2019 payment to JACT. On 25 January 2019 he transferred KRW 5.5 million to a pastor at Yerang Church, for the 26 January 2019 payment to JACT.

[62] The remaining KRW34 million was paid to JACT by Haesol Yuk on 8, 11 and 19 March 2019.

[63] Haesol Yuk’s evidence is that Mrs Jeon requested Song Choi and her to organise the KRW50 million to be transferred from various Korean churches to JACT in instalments to satisfy INZ’s financial requirements. Haesol Yuk says that Mrs Jeon said this was to show that Song Choi’s intentions were genuine and that he was supported by Korean churches. Mrs Jeon made it clear that the funds could not be transferred from Song Choi’s account and needed to be broken down into instalments. Mrs Jeon referred to the money as missionary funds. Mrs Jeon said that some of the instalments could come from Haesol Yuk’s account. Mrs Jeon assured them the money would be returned after Song Choi’s visa approval.

[64] Mrs Jeon’s evidence regarding the three church payments and the three payments from Haesol Yuk is that JACT sponsored Song Choi’s visa and living costs, while he did God’s work. Mrs Jeon signed a “standard employment agreement”, but to facilitate visas for Song Choi’s children and Haesol Yuk, not to define JACT’s relationship with Song Choi as one of employer-employee. Mrs Jeon says it is common sense that people’s donations are the source of churches’ income and common practice between churches to sponsor each other. Mrs Jeon says that Song Choi approached her, asked her to sponsor his missionary work in New Zealand and suggested he would get some churches in Korea to make donations. Mrs Jeon’s

evidence is that Song Choi drafted a Korean language “employment agreement” and forced her to sign it.

[65] Mrs Jeon says that the payments Haesol Yuk made to JACT was money as a deposit for JACT to buy a house for Song Choi and Haesol Yul to live in. Mrs Jeon says this had nothing to do with the “employment” of Song Choi. Mrs Jeon says she has returned this money and it was partly spent on moving, living and other costs, legal fees, rent for them staying at her business premises, rent for a tenanted property between June and September 2019, and payment to the landlord because Song Choi and his family vacated the property during a fixed term tenancy. Mrs Jeon says these matters all fall outside the jurisdiction of the Employment Relations Authority as not being employment matters.

[66] For the reasons explained above, Mrs Jeon’s view that the May 2019 employment agreement did not establish an employer/employee relationship is wrong. I do not accept Mrs Jeon’s evidence that Song Choi approached her, asked her to sponsor his missionary work in New Zealand and suggested he would get some churches in Korea to make donations. The messaging indicates that Mrs Jeon proposed these steps. I also prefer Song Choi’s and Haesol Yuk’s evidence about their interactions with Mrs Jeon that resulted in the May 2019 employment agreement. It is consistent with the messaging and it is more likely that a person in Mrs Jeon’s position would initiate the arrangements to further JACT’s activities.

[67] I do not accept Mrs Jeon’s evidence that Song Choi “forced” her to sign the Korean language agreement. Song Choi’s evidence about the Korean language agreement is consistent with the message Mrs Jeon sent to him after the first version, telling him not to worry and that she would amend parts he did not like. If Song Choi had “forced” Ms Jeon to sign it, one would have expected him to also sign it, but he did not. In any event, the document was drafted and printed by or for Mrs Jeon, not by Song Choi.

[68] As drafted by Mrs Jeon, the Korean agreement states:<sup>25</sup>

The employee is to understand the annual salary provided to the immigrations for the employee’s visa application is well beyond the actual capacity of the charity can provide. It is agreed that the money in Korean currency 50,000,000won is deposited

---

<sup>25</sup> Bundle of documents p 514. Another translation conveys a substantively similar meaning.

to the charity account as a form of a donation and will cover the expenses to maintain employee's visa

The ownership of 50,000,000won is under the employee. Therefore, once the employee's visa is to expire or become invalid, employee can apply for refund for the rest of the remaining amount under one condition. Conditions being: the employee to give 3 month notice in advance considering the characteristics of a charity bank account.

Therefore, both parties as the employer and employee has the rights to maintain and destruction of the visa.

[69] In summary, messages from December 2018 to March 2019 show Mrs Jeon sought payment of KRW50,000,000 from Song Choi. JACT received the money in six payments into its New Zealand bank account. Funds for the payments came from Song Choi, but others directly forwarded payments to JACT. These others were Yerang Church (two payments), Paul Church (one payment) and Haesol Yuk (3 payments). This arrangement was on Mrs Jeon's instructions.

[70] Receipt of payment directly from persons other than Song Choi does not avoid the application of s 12A of the Wages Protections Act 1983. Section 12A(1) expressly prohibits seeking or receiving a premium "whether the premium is sought or received from the person ... proposed to be employed ... or from any other person."

[71] Counsel for JACT refers to s 12A(2) of the WPA entitling "the person by whom the money was paid" to recover the money, by way of civil proceedings "by the person" or by the Labour Inspector "on behalf of the person". The submission is that the payments are only recoverable (if received in breach of the WPA) by Yerang Church, Paul Church and Haesol Yuk as "the person" who paid the money in each instance.

[72] The meaning of legislation is ascertained from its text in light of its purpose and context. The purpose of the Wages Protection Act 1983 includes protecting vulnerable employees from demands for premiums for employment.<sup>26</sup> The Act is designed to provide broad protection to employees.<sup>27</sup> Prohibiting demands for and receipt of premiums, and facilitating civil action to recover premiums achieve that purpose. Yerrang Church and Paul Church would have no reason to initiate civil action against JACT to recover the payments.

---

<sup>26</sup> *Mehta v Labour Inspector* [2003] 1 ERNZ 451 at [52].

<sup>27</sup> *Labour Inspector v Tech 5 Recruitment Ltd* [2016] NZEmpC 167 at [50].

Allowing JACT to avoid recovery under the WPA, by having received payments from Song Choi but through intermediaries, could substantially undermine the effect of the Act. I do not accept that s 12A(2) should be read so as to exclude Song Choi from recovering directly from JACT, the premium it required him to pay to Yerang Church, Paul Church and Haesol Yuk, to then pay on to JACT.

[73] Song Choi's evidence, which I accept, is that he paid funds to the church Pastors as instructed by JACT. JACT received payments from accounts in the name of each church. The payments on JACT's instructions, as a condition of Song Choi's employment and not otherwise of benefit to him, do not lose the characteristic of being premiums through this payment process.

[74] Counsel for JACT submits that even if the payments by Haesol Yuk were a premium, JACT has repaid that amount, some directly and some indirectly by way of covering living costs, lawyer's costs and rent for staying at business premises. However, these indirect costs, even if they were proven, should not be brought to account now. It would be inconsistent with equity and good conscience now to allow JACT to limit its liability under s 12A of the WPA by allowing such a set off. In addition, I accept the evidence and submissions that other payments of \$31,840.00 have been settled between the parties. The claimed premiums are not included in that arrangement.

[75] I find that premium payments totalling \$64,172.13 have been proven. Payment to the LI for the use of Song Choi will be ordered.

**Has there been a default in payment to Andrew Jeon of wages under the Minimum Wage Act 1983?**

[76] It is common ground that JACT employed Andrew Jeon. There is a signed employment agreement dated November 2017 for employment commencing on 15 January 2018, 40 hours per week Tuesday to Saturday 9.00am to 5pm for \$42,000.00 annual salary.<sup>28</sup> The agreement provides that the salary covers all time worked and will be paid monthly into Andrew Jeon's New Zealand bank account.

---

[77] Andrew Jeon's evidence is that he did not know what this document was but signed it as instructed by Mrs Jeon for his visa application. The agreement is in English only. It is not likely that Andrew Jeon was able to read and understand the agreement presented in that form. There is no reason to doubt his evidence about being instructed to sign it. However, it is common ground that Andrew Jeon did not start working fulltime for JACT at the Taekwondo Academy in January 2018.

[78] This claim is not to recover arrears under the employment agreement, given the limits to a LI's powers. By her statement of problem, the LI claimed non-compliance with the Minimum Wage Act 1983 between June 2018 and November 2019, but provided calculations for the period January to November 2019 because of the lack of records. Revised calculations were later provided. As will be explained, arrears are greater than the sums calculated by the LI.

*When did the employment start and end?*

[79] The LI in her investigation report noted that Andrew Jeon claimed to have worked for JACT Monday to Friday (except public holidays) from 1pm to 8pm from June 2018 until November 2019. However, Mrs Jeon provided the LI with a list of employees showing Andrew Jeon as a fulltime employee between 24 July 2018 and 31 October 2019. Now JACT has produced a copy of a work diary to show Andrew Jeon worked between 24 July 2018 and 15 November 2019. Andrew Jeon's evidence is that most of the writing in the diary is his. The diary shows work was usually on Monday – Friday, not Saturday and Sunday.

[80] There is an IRD income statement for Andrew Jeon reporting gross salary/wages paid by JACT as \$24,500.00 in the period 1 April 2018 to 28 February 2019, \$10,500.00 in the period 1 March 2019 to 31 July 2019 and \$7,000.00 in the period 1 August 2019 to 31 October 2019. Andrew Jeon provided the IRD statement to the LI in February 2020.<sup>29</sup> The statement is based on information reported to IRD by JACT. However, the IRD statement does not show when in the period 1 April 2018 to 28 February 2019 Andrew Jeon actually started work.

---

<sup>29</sup> Bundle of documents page 0290.

[81] There are bank statements in the name of Andrew Jeon in evidence, starting from 13 October 2017.<sup>30</sup> The first deposit identified as “JESUS AROMAC wage” is dated 19 January 2018, then on 16 May 2018 followed by 3 October 2018. A number of payments were made from then until August 2019. However, there is no discernible pattern to the amount or the frequency. The bank statements also show many deposits starting in January 2018 from “JESUS AROMA BILL PAYMENT”. The bank statements do little on their own to establish when Andrew Jeon started work.

[82] During the LI’s investigation, JACT provided receipts of deposits to Andrew Jeon’s bank account, to evidence wages paid to him.<sup>31</sup> The first receipt is dated 28 June 2018, followed by 2 August 2018. The last receipt is dated 16 October 2019. A few receipts show “Details: Wage”, while most do not record payment details. The receipts that show “Details: Wage”, are not necessarily also identified as “Jesus Aroma C wages” in the deposit description in Andrew Jeon’s bank statement. The receipts show deposits on an irregular basis and for different amounts. If JACT paid Andrew Jeon \$120.00 in wages on 28 June 2018, that indicates he started work on or shortly before that date.

[83] Responding to the LI’s January 2020 requirement to produce wages and time records and her specific reference in March 2020 to Andrew Jeon’s employment, JACT sent the LI an email on 26 March 2020 that included attachments entitled “Employee Details List Jesus Aroma Church Trust.pdf” and “Instructors timetable.xlsx”.<sup>32</sup> The list had “24/07/2018 – 31/10/2019” for Andrews Jeon’s “Dates employed”. The second attachment included a “2018 Timetable” and a “Timetable Jeon 14/01 to 09/11/2019”, laid out by month. Assuming the “2018 Timetable” was for Andrew Jeon, it shows he worked from Monday 23 July 2018. The “Timetable Jeon ...” reports employment ended on Friday 8 November 2019. The printed timetables appear to have been created after the LI’s January 2020 request and do not match the hours shown in the work diary. The timetables are not a wages and time record kept in compliance with s 130 of the ERA.

---

<sup>30</sup> Bundle of documents tab 43.

<sup>31</sup> Bundle of documents page 0316 ff.

<sup>32</sup> Statement of problem annexure P.

[84] JACT later compiled a “Wages, Time, Holiday & Leave Record” spreadsheet for Andrew Jeon.<sup>33</sup> It appears to be based on the work diary. The spreadsheet shows employment from Tuesday 24 July 2018 until Friday 15 November 2019. This was provided in evidence, but was not produced for the LI’s investigation. The LI had not exercised her power under s 232 of the ERA to require JACT to compile a wages and time record.

[85] I find that JACT failed to produce a wages and time record for Andrew Jeon. The failure prejudiced the LI’s ability to bring an accurate claim on Andrew Jeon’s behalf for arrears. Section 132 of the ERA permits me to accept as proven the claims made by Andrew Jeon regarding wages paid and time worked, unless JACT proves that the claims are incorrect. In assessing that, I am able to have regard to JACT’s spreadsheet produced in evidence, as it is not excluded by s 232(3) of the ERA.

[86] Andrew Jeon obtained a work visa for work as a Taekwondo instructor for Jesus Aroma Church from 14 November 2017, for arrival in New Zealand before 14 February 2018. A condition required him to be paid at least \$19.97 per hour.<sup>34</sup> Andrew Jeon’s evidence is that he “finally arrived to New Zealand to live” in December 2017, having earlier travelled between Korea and New Zealand a number of times. There is no reason to doubt that evidence.

[87] Andrew Jeon’s evidence is that he was engaged to set up the Dunedin Taekwondo Academy, given his experience in Korea. There are June 2018 receipts for equipment purchased for that purpose. Andrew Jeon says that the Academy opened and he started work on Tuesday 5 June 2018 in premises leased by Mrs Jeon and Mr Jeon.

[88] JACT’s claim that Andrew Jeon started work on 24 July 2018 is inconsistent with its claim that it paid \$120.00 in wages to Andrew Jeon on 28 June 2018. I do not accept that JACT’s statements and evidence, the timetables, its work diary and the spreadsheet prove that Andrew Jeon first started work on 24 July 2018.

[89] I accept Andrew Jeon’s evidence that he started work at the Academy on Tuesday 5 June 2018.

---

<sup>33</sup> Bundle of documents p 656 - 657.

<sup>34</sup> The annual salary set in the employment agreement for 40 hours per week is slightly above that rate.

[90] An employee list provided by JACT gives his finish date as "...31/10/2019".<sup>35</sup> The "Timetable Jeon ..." shows the last day of work as Friday 8 November 2019. However, the compiled time and wage spreadsheet shows Andrew Jeon worked until Friday 15 November 2019. This reflects the work diary.<sup>36</sup>

[91] Andrew Jeon says he worked in the Academy until Tuesday 12 November 2019 and that he left Dunedin on 13 November 2019. Based on this evidence, I find that Andrew Jeon's last day of employment with JACT was on Tuesday 12 November 2019.

[92] To summarise, Andrew Jeon worked for JACT at its Dunedin Taekwondo Academy from Tuesday 5 June 2018 until Tuesday 12 November 2019. JACT must establish compliance with minimum entitlements due to Andrew Jeon during this period.

*What days and hours did Andrew Jeon work?*

[93] Andrew Jeon's evidence is that he worked in the Academy from 1pm to 8pm Monday to Friday, with no breaks.

[94] The "2018 Timetable" provided by Mrs Jeon shows roster hours of 2.00pm – 7.00pm (mostly) and 3.00pm – 7.00pm (some weeks). The 2019 timetable shows 2.00pm – 8.00pm, 3.00pm – 7.00pm and 2.00pm – 7pm at different times. These timetables indicate that Andrew Jeon worked Monday - Friday, not weekends.

[95] The work diary has hours of work from 24 July 2018 to 15 November 2019. The total hours are a summary, taken from client names and times recorded in the diary. The diary information for July and August 2019 was not written on the printed diary pages for those months. The work diary hours often do not match the hours shown in timetables, but are generally longer. The "Wages, Time, Holiday & Leave Record" spreadsheet appears to have been compiled from the diary.

[96] I accept that, for the period from 24 July 2018 to 12 November 2019 when the employment ended, JACT has established days and hours of work for Andrew Jeon through the work diary. However, JACT has not disproved Andrew Jeon's assertion that he worked

---

<sup>35</sup> Bundle of documents page 0298.

<sup>36</sup> Bundle of documents page 0789.

Monday to Friday 7 hours per day from 5 June 2018 to 23 July 2018. I find that Andrew Jeon did work 7 hours per day during that period.

[97] Minimum wage calculations for Andrew Jeon should be compiled based on his evidence of working 7 hours per day Monday to Friday from Tuesday 5 June 2018 until Monday 23 July 2018, and from then until 12 November 2019 based on the days and hours recorded in the work diary.<sup>37</sup> If the work diary shows that Andrew Jeon worked, but does not clearly establish the start and finish times, the LI is to treat Andrew Jeon as having worked for 7 hours each such day.

[98] For the reasons explained below, Andrew Jeon was entitled to minimum wages in accordance with the rates set by cl 4 (d)(i) of the Minimum Wage Order 2018 and the Minimum Wage Order 2019. The evidence does not establish that whenever Andrew Jeon worked fewer than 80 hours in a fortnight, he did so by reason of his default. Except as expressly identified elsewhere in this determination, a deduction from the minimum rate of wages payable each fortnight is not available under s 7(2) of the MWA.

#### *Calculating minimum rates*

[99] The Minimum Wage Act 1983 permits the Governor-General by Order in Council to prescribe minimum rates of pay. Here, the Minimum Wage Order 2018 applied until 31 March 2019 and the Minimum Wage Order 2019 applied from 1 April 2019. These Orders prescribed minimum rates for those paid by the hour or by piecework, for those paid by the day, for those paid by the week, and in all other cases. The day, week and fortnightly payments are supplemented by the requirement also to pay an hourly rate for time worked beyond 8 hours, 40 hours or 80 hours respectively.

[100] Here, the LI claimed the rate for an adult paid by the hour, calculated each week. The LI did not accept that any wage payments beyond the calculated minimum each week was available as a credit for those weeks when arrears of minimum wages occurred. The latter

---

<sup>37</sup> Bundle of documents pp 0660 – 0791.

approach is based on the prohibition of averaging across pay periods to test compliance with the MWA.<sup>38</sup>

[101] The LI's calculations based on an adult worker paid by the hour predated the judgment in *E Tu Incorporated v Mount Cook Airline Limited*.<sup>39</sup> I raised the effect of this judgment with counsel, to give an opportunity for further submissions.

[102] Counsel for the respondents referred me to his earlier submission that Andrew Jeon received slightly more in wages, albeit paid irregularly, than would have been payable to him by way of minimum entitlements. Counsel argued that *E Tū Incorporated v Mount Cook Airline Limited* (and other cases) concerned “extra work”, not applicable here. An issue in *E Tū* was whether employees were working and entitled to be paid when they were required to be away from home overnight. I agree that the present case is not that extra time expended by Andrew Jeon to facilitate JACT operations should have been regarded as work. While the “extra work” point does not arise here, the relevant point in the *E Tū Incorporated* case is Andrew Jeon's correct classification to test compliance with the MWA.

[103] In submissions for the LI, counsel stated that Andrew Jeon as a salaried worker is entitled to the minimum rate set at cl 4(d) of each Order. Updated arrears calculations could be provided on that basis, if required.

[104] Every “worker who belongs to a class of workers in respect of whom a minimum rate of wages has been prescribed under the Act” is entitled to receive payment for their work at not less than the minimum prescribed rate.<sup>40</sup> To test compliance with the Minimum Wage Orders, it is necessary to determine whether Andrew Jeon was in the class of workers paid by the hour, by the day, by the week or fell into the “in all other cases” category.

[105] Andrew Jeon's 2017 employment agreement provided for 40 hours work each week “TUESDAY TO SATURDAY” at an annual salary of \$42,000, to be paid monthly. While the evidence indicates that Andrew Jeon generally worked Monday to Friday, there is no evidence that other written terms were agreed. The 2017 agreement assists to establish the

---

<sup>38</sup> *Idea Services Ltd v Dickson* [2011] NZCA 14.

<sup>39</sup> *E Tū Incorporated v Mount Cook Airline Limited* [2022] NZEmpC 48. But see *Mount Cook Airline Limited v E Tū Incorporated* [2022] NZCA 211 where leave to appeal has been granted.

<sup>40</sup> Minimum Wage Act 1983 s 6(1).

“class of workers”<sup>41</sup> that Andrew Jeon belonged to for the purposes of the applicable Minimum Wage Order.

[106] JACT compiled time and wage records for its defence to this claim on the basis that Andrew Jeon was paid by the week. However, there was no agreement between it and Andrew Jeon that he would be paid by the week. Deposits into Andrew Jeon’s bank account identified as “JESUS AROMA C wage” do not indicate he was paid by the hour, the day or the week. Payments were irregular. The picture is no clearer if deposits marked “V,JEON BILL PAYMENT” are included. The deposit receipts provided by JACT similarly do not establish whether Andrew Jeon was paid by the hour, the day or the week.

[107] Having regard to the employment agreement and what happened in practice, I find that the adult minimum rate applicable to Andrew Jeon is the “in all other cases” rates set by cl 4 (d) of the 2018 and 2019 Orders: \$1,320.00 per fortnight and \$1,416.00 per fortnight respectively.

[108] As Andrew Jeon started work on Tuesday 5 June 2018, that day and every second Tuesday must be treated as the first day in each fortnight, for the purpose of assessing compliance with the MWA.

*What wages were paid to Andrew Jeon?*

[109] In November 2020, Andrew Jeon told Police that he did not receive salary throughout his employment.<sup>42</sup> Andrew Jeon also told Police that he had been given \$50 per week as pocket money from money he had transferred to Mrs Jeon, but believed during the employment that his pay was being saved in his bank account. I note that the employment agreement provided for wages to be paid by direct credit into Andrew Jeon’s bank account.

[110] However, through his representative, Andrew Jeon told the LI that he only received approximately \$100 - \$150.00 per week as JACT deducted costs such as accommodation and power. Then in evidence, Andrew Jeon said that he got paid \$100 - \$150 in cash, but sometimes only \$130 per week between May 2018 and May 2019. His evidence is that he

---

<sup>41</sup> Minimum Wage Act 1983 s 6.

<sup>42</sup> Bundle of documents page 0393.

understood this cash he received was deducted from funds he had earlier transferred to accounts associated with Mrs Jeon and to his own bank account.

[111] I accept Andrew Jeon's evidence that he transferred a substantial amount of money into bank accounts associated with Mrs Jeon before he moved to New Zealand. It is not claimed that these transfers were premiums, recoverable under the WPA. I accept Andrew Jeon's evidence that the cash he received during the employment came from these funds. I treat those transfers and the use of such funds, including the cash allowance received by Andrew Jeon during his employment, as family arrangements between Andrew Jeon and his brother and sister-in-law, outside the scope of the Authority's investigation.

[112] It follows that the cash Andrew Jeon received from funds he had transferred cannot be regarded as wages paid to him by JACT for his work.

[113] The object of the Employment Relations Act 2000 includes promoting the effective enforcement of employment standards.<sup>43</sup> Standards include the obligation to keep wages and time records, to meet minimum entitlements and payment for them under the Holidays Act 2003 and to meet entitlements under the Minimum Wage Act 1983. One of the Employment Relations Act's key provisions is that an employer must keep records in sufficient detail to demonstrate that the employer has complied with minimum entitlement provisions.<sup>44</sup> Minimum entitlements include entitlements and payment for them under the Holidays Act 2003 and the minimum entitlements under the Minimum Wage Act 1983.

[114] Despite these statutory requirements, JACT kept no separate record of wages it paid to Andrew Jeon. Instead, I am asked to treat the spreadsheet it recently compiled and its payment receipts, as proof of payment of wages (after tax) to Andrew Jeon. These payments were paid into Andrew Jeon's bank account.

[115] Andrew Jeon's evidence is that Mrs Jeon helped him to set up the ANZ bank account in his name in about 2017. He says that Mrs Jeon had complete access to his account, until 19 November 2019 when ANZ changed the password at his request. Mrs Jeon's evidence is that Andrew Jeon suggested she and her husband manage his expenses "because he did not know

---

<sup>43</sup> Employment Relations Act 2000 s 3(ab).

<sup>44</sup> Employment Relations Act 2000 s 4B

New Zealand well”. Mrs Jeon’s evidence is that the money was all spent on rent, power, phone bills, allowance and living expenses, debt repayment and other expenses.

[116] Andrew Jeon’s bank statements between 5 June 2018 and 9 October 2019<sup>45</sup> include deposits by “JESUS AROMA C”<sup>46</sup> and “JEON,VICTORIA”, with the amount deposited then generally withdrawn and paid to “IP JEON”, “V,JEON” or “Victoria Jeon” as a “BILL PAYMENT”. Sometimes the deposited amount was split into several withdrawals. The withdrawals generally are the same day or within a few days of the deposits. Some withdrawals were paid to sources apparently unrelated to Mrs Jeon. Some deposits from sources apparently unrelated to Mrs Jeon are paid out to Mrs Jeon or related recipients. For example, “TAX REB” deposits from IRD were almost entirely paid out to “I P JEON” and “V,JEON” as bill payments soon after.<sup>47</sup> There was an IRD tax refund on 1 August 2019,<sup>48</sup> but it was paid out the same day (except for 10 cents) by a Bill Payment to “V,JEON”. The pattern of withdrawals supports Andrew Jeon’s evidence about Mrs Jeon’s control of his bank account.

[117] Mrs Jeon’s control over and her operation of Andrew Jeon’s bank account causes me to be cautious about treating deposits into the account as proof of JACT meeting its obligations under the Minimum Wage Act 1983 and the Holidays Act 2003.

[118] However, I accept that deposits shown in Andrew Jeon’s bank statements between 5 June 2018 and 9 October 2019 as “JESUS AROMA C” and as “JEON, VICTORIA” can be treated as payment of net wages paid to Andrew Jeon.

[119] JACT produced deposit receipts that I also find were payment of wages: 12.17pm on 14 October 2019, 3.52pm on 14 October 2019 and 7.21pm on 16 October 2019.

[120] To summarise, the only wages JACT paid to Andrew Jeon were the deposits by JESUS AROMA C” and “JEON, VICTORIA” into his bank account between 5 June 2018 and 9 October 2019, plus the deposit receipts mentioned above.

---

<sup>45</sup> The statement covering the remainder of the employment is not in evidence.

<sup>46</sup> Followed by “BILL PAYMENT” or “wage”.

<sup>47</sup> Bundle of documents p 0328.

<sup>48</sup> Bundle of documents p 0338.

*Summary – default under the Minimum Wage Act 1983?*

[121] The LI is to calculate wages under the MWA starting on Tuesday 5 June 2018 and ending Tuesday 12 November 2019, based on the application of clause 4(d) of Minimum Wage Order in force at relevant times.

[122] The LI is to treat each fortnight as starting on a Tuesday and ending on a Monday. Andrew Jeon only worked on the first day of the final fortnight. He should be treated as having only worked one day (8 hours) and the remainder of the time in the final fortnight should be treated as time lost by his default, for the purposes of s 7(2) of the MWA.

[123] Andrew Jeon normally worked Monday to Friday. The diary shows Andrew Jeon worked sometimes at the weekend. If based on the diary hours, Andrew Jeon worked more than 80 hours in a fortnight, calculations can include extra payment based on the application of clause 4(d)(ii) of the relevant Minimum Wage Order.

[124] In accordance with s 11B of the MWA, the employment agreement fixed daily working hours so that they were worked on five days per week. If the diary shows that Andrew Jeon worked on fewer than five days in a week, the unworked day (8 hours) should be treated as time lost at Andrew Jeon's default, for the purposes of s 7(2) of the MWA.

[125] Based on the diary, Andrew Jeon did not work Monday 24 December – Friday 28 December 2018 and Monday 31 December 2018 – Wednesday 2 January 2019. Four of those days are public holidays, falling on Andrew Jeon's otherwise working days. The other days (at 8 hours each) in the fortnight(s) should be treated as time lost by Andrew Jeon's default, for the purposes of s 7(2) of the MWA.

[126] As compliance with the Orders must be tested on an "all other cases" basis, JACT must show it paid at least the fortnightly payment for each period of work. The contractual obligation was to pay a regular salary on a monthly basis. JACT was entitled to vary the frequency by written notice, but did not. Counsel submits that payments were paid irregularly in advance, but I do not accept that happened. The agreement did not provide for that. The agreement implied payment in arrears, as is standard. I am mindful that the agreement

applied from January 2018, but I am only concerned with minimum standards from June 2018.

[127] JACT did not pay the rate of salary monthly. As explained, there is no discernible pattern to the frequency or amount of the payments. To assist the LI, I will accept that payments during a fortnight can help establish compliance with the statutory minimum requirement arising for the preceding fortnight. If payments during a fortnight exceed the statutory minimum applicable to the preceding fortnight, the excess cannot be used to prove compliance with minimum requirements in respect of any other fortnight. This approach is consistent with *Law v Board of Trustees of Woodford House*.<sup>49</sup> That case involved salaried employees in the “all other categories” classification as it applied then. The Court confirmed that there should be payment made for and identified with each period of work.

[128] I will reserve determination of the arrears under the Minimum Wage Act 1983, for the LI to calculate arrears based on the findings in this determination.

**Has there been a default in payment to Andrew Jeon in respect of entitlements under the Holidays Act 2003?**

[129] Andrew Jeon normally worked Monday to Friday. Public holidays that fell or were observed on those days during the period of employment are to be treated as follows.

[130] The diary shows Andrew Jeon worked on Labour Day (Monday 22 October 2018), Otago Anniversary (Monday 25 March 2019) and ANZAC Day (Thursday 25 April 2019). He is entitled to an alternative holiday and half-time extra for the hours recorded each day.

[131] The diary shows Andrew Jeon did not work on Easter Friday and Easter Monday (Friday 19 and Monday 22 April 2019). Handwriting in the diary indicates that Andrew Jeon did not work on Queen’s Birthday (Monday 3 June 2019) and Labour Day (Monday 28 October 2019). Andrew Jeon was entitled to a day’s holiday on pay for each day.

[132] Andrew Jeon was entitled to holiday pay under both s 24 and s 25 of the Holidays Act 2003.

---

<sup>49</sup> *Law v Board of Trustees of Woodford House* [2014] NZEmpC 25 at 231.

[133] I agree with the LI that she may have regard to the agreed salary rate of \$42,000.00 per annum to calculate some entitlements under the Holidays Act 2003.

[134] I will reserve determination of the arrears under the Holidays Act 2003, for the LI to calculate arrears based on the findings in this determination.

**Did JACT or a person on its behalf seek or receive any premium in respect of the employment of Andrew Jeon?**

[135] Payments to Mrs Jeon, Paul Jeon and Joseph Jeon from Andrew Jeon's bank account between June 2018 and September 2019 total \$46,087.60. Andrew Jeon's evidence is that he did not make these payments. I accept that evidence. Mrs Jeon was responsible for these bank transactions.

[136] The LI claims to recover these payments in reliance on s 12A of the Wages Protection Act 1983. That section prohibits an employer or a person engaged on behalf of the employer from seeking or receiving any premium in respect of the employment of any person. The word "premium" is not defined in the WPA.

[137] In *Labour Inspector v Tech 5 Recruitment Ltd* the Employment Court concluded that "premium" is an elastic word, capable of applying to cases of payment being sought or received to purchase a job, or to more subtle or ingenious arrangements.<sup>50</sup>

[138] Mrs Jeon's manipulation of Andrew Jeon's bank account is an example of the latter type of arrangement. I find that by making the transactions on Andrew Jeon's bank account without his knowledge and consent for each transaction, Mrs Jeon received the amount of money in each transaction. They are the transactions shown in Andrew Jeon's bank statements from 21 June 2018 to 9 October 2019 produced in evidence as: "V,JEON BILL PAYMENT", "I P JEON BILL PAYMENT", "Victoria Jeon BILL PAYMENT" and "JOSEPH JEON BILL PAYMENT". Those transactions are recoverable against JACT under s 12A(2) of the Wages Protection Act 1983.

---

<sup>50</sup> *Labour Inspector v Tech 5 Recruitment Ltd* [2016] NZEmpC 167 at [53].

[139] JACT will be ordered to pay to the LI for the use of Andrew Jeon the sum of \$46,087.60, under the WPA.

**What breaches of the Employment Relations Act 2000, the Minimum Wage Act 1983, the Holidays Act 2003 and the Wages Protection Act 1984 are established and who is liable?**

*Mrs Jeon as a second respondent – separate liability?*

[140] It is convenient to deal with the point here.

[141] Counsel for the LI submits that Mrs Jeon is liable both as a trustee (1<sup>st</sup> respondent) and separately in her personal capacity (2<sup>nd</sup> respondent). The submission is that the latter liability results from the application of s 142W of the Employment Relations Act 2000 as a person involved in a breach. In particular, s 142W(2) provides that if the breach is by an “entity such as a ... partnership, or sole trader”, a person who occupies a position in the “entity” may be treated as a person involved if they are an officer of the entity. The submission is that the list of entities is not exclusive, so a trust is an “entity”, just like a sole trader or a partnership. The argument is that if a sole trader can be liable as a person involved under s 142W, so too could a trustee.

[142] Mrs Jeon was principally and perhaps even wholly responsible for the operation of the trust. However, each penalty is claimed against the trustees jointly, rather than against them separately. It is not necessary to apportion responsibility between the trustees to fix penalties.

[143] Counsel submits that the purpose of s 142W (and related provisions) is to prevent directors and other individuals avoiding liability. The submission is that Mrs Jeon should be liable as an employer and also face secondary liability under s 142W, to prevent her from limiting her personal liability. Otherwise, it is said, Mrs Jeon could limit her personal liability, as she would be indemnified from trust funds. However, it is not for the Authority to involve itself in determining the extent to which Mrs Jeon is entitled to indemnification from trust assets for a determination against her as a trustee.

[144] In *Labour Inspector v Parihar* the Employment Court considered the case of a partnership, not a trust.<sup>51</sup> The Court stated that a partner in a partnership would invariably face a penalty as a perpetrator of the breach itself, rather than being pursued for secondary liability as a person involved in a breach. In principle, the same approach applies here.

[145] It is not necessary to deal with counsel's submission that the LI had signalled the discontinuation of the claim against Mrs Jeon as second respondent by steps taken during the Authority's investigation.

[146] Mrs Jeon is liable as the perpetrator of the breaches. The additional claims against Mrs Jeon as a second respondent under Part 9A of the Employment Relations Act 2000 (including s 142W) will be dismissed.

*Is JACT a "corporation"?*

[147] In the case of an individual, a penalty of up to \$10,000.00 applies for each breach. In the case of a company or other corporation, a penalty of up to \$20,000.00 applies.<sup>52</sup>

[148] In submissions, counsel for the LI sought penalties on the basis that JACT was a corporation. I do not accept that JACT is a "corporation". It is a private express trust. It is trite that a trust is not a legal person distinct from its trustees.<sup>53</sup> Penalty liabilities must be fixed on the basis that the maximum liability is \$10,000.00 for each breach.

[149] I will mention factors relevant to the determination of penalties against the trustees.

*Object stated in the Act*

[150] JACT's actions were inconsistent with good faith and were a demonstration of the inherent inequality of power in the employment relationship. JACT did not comply with employment standards. Penalties must reflect that behaviour.

---

<sup>51</sup> *Labour Inspector v Parihar* [2019] NZEmpC 145 at [19].

<sup>52</sup> Employment Relations Act 2000 s 135(2).

<sup>53</sup> *NZHB Holdings Ltd v Bartells* (2004) 5 NZCPR 506 (HC) at [36].

*Nature and extent of the breaches*

[151] I find that JACT breached s 12A of the Wages Protection Act 1983 with respect to Song Choi and Andrew Jeon. I see no proper basis to globalise the breaches, given the individual effects. Under s 13 of that Act, JACT is liable to penalties not exceeding \$20,000.00 for the breaches.

[152] I find that JACT breached s 6 of the Minimum Wage Act 1983 with respect to both Song Choi and Andrew Jeon. The nature of the breach was different for each affected employee, so there is no reason to globalise the breaches. Under s 10 of that Act, JACT is liable to penalties not exceeding \$20,000.00 for the breaches.

[153] The LI claims penalties for breaches of s 23 of the Holidays Act 2003.

[154] Section 23 of the Holidays Act 2003 required JACT to pay Song Choi 8% of his gross earnings because his employment ended within 12 months. I find that JACT breached s 23 of that Act with respect to Song Choi. Under s 75 of the Holidays Act 2003, JACT is liable for a penalty not exceeding \$10,000.00 for the breach of s 23 of that Act.

[155] The LI also claimed a penalty for breach of s 23 with respect to Andrew Jeon. However, s 23 of the HA did not apply to Andrew Jeon as he was employed for more than 12 months. Although the LI's claim under the Minimum Wage Act 1983 was for a period of less than 12 months, limiting the claim in that way does not mean that Andrew Jeon's entitlements under the Holidays Act 2003 are determined by s 23 of that Act. It was always clear that Andrew Jeon was employed for more than a year. JACT did not pay Andrew Jeon holiday pay at the end of his employment, contrary to the obligations in s 24 and 25 of the Holidays Act 2003. As the penalty claim was not claimed on that basis originally or by amendment, I am not in a position to impose a penalty for JACT not paying final holiday pay to Andrew Jeon.

[156] Section 50 of the Holidays Act 2003 required JACT to pay Andrew Jeon time and a half for working on public holidays during his employment. I find that Andrew Jeon worked on Labour Day (Monday 22 October 2018), Otago Anniversary (Monday 25 March 2019) and ANZAC Day (Thursday 25 April 2019). JACT breached s 50 of that Act with respect to these

days. A single penalty is claimed. Under s 75 of the Holidays Act 2003, JACT is liable to a penalty of up to \$10,000.00 for breach of s 50 of that Act.

[157] Section 56 of the Holidays Act 2003 required JACT to provide Andrew Jeon with alternative holidays for working on the foregoing public holidays, that all fell on days that were otherwise working days for him. A single penalty is claimed.

[158] Section 60 of the Holidays Act 2003 required JACT to pay Andrew Jeon for these alternative holidays in the pay that related to when the holidays were taken or in the pay that related to his final period of employment. Here, the latter obligation applied. A single penalty is claimed.

[159] The breach of s 56 of the Act is largely overtaken by JACT breaching s 60 by not paying for the alternative holidays in Andrew Jeon's final pay. In effect, the breaches are indivisible. I find that JACT breached s 60 of the Holidays Act 2003. Under s 75 of the Holidays Act 2003, JACT is liable to a penalty of up to \$10,000.00 for the breach of s 60 of that Act.

[160] Section 49 of the Holidays Act 2003 required JACT to pay Andrew Jeon a day's pay for public holidays that fell on his otherwise working days, if he did not work on those days. Andrew Jeon did not work on Waitangi Day (6 February 2019), Easter Friday and Easter Monday (Friday 19 & Monday 22 April 2019), Queens Birthday (Monday 3 June 2019) and Labour Day (Monday 28 October 2019). Paragraph 3.5.6 of the statement of problem sets out a penalty claim for a breach of s 49 of the Holidays Act 2003, but it is not included in the table at paragraph 3.6. Despite that informality, a penalty is clearly claimed. Deposits into Andrew Jeon's bank that can be regarded as wages do not demonstrate that he was paid a day's pay for all these public holidays. I find that JACT breached s 49 of that Act with respect to Andrew Jeon, regarding at least some of these days. I treat it as a claim for a single penalty, as claimed. Under s 75 of the Holidays Act 2003, JACT is liable to a penalty of up to \$10,000.00 for breach of s 49 of that Act.

[161] Section 81 of the Holidays Act 2003 required JACT to keep holiday and leave records for Song Choi and Andrew Jeon. Penalties are claimed for breaches with respect to each employee. Section 130(1) of the Employment Relations Act 2000 required JACT to keep a

wages and time record for Song Choi and Andrew Jeon. Penalties are claimed for breaches with respect to each employee.

[162] The separate statutory obligations overlap and can be regarded as a breach of record keeping obligations.<sup>54</sup> Compliant wages and time records would have met much of the holidays and leave record requirement, so I will deal with the record keeping breaches as breaches of s 130 of the Employment Relations Act 2000. The breaches for the two employees can be globalised and treated as a single breach, as there was no material difference in the failure for each employee. Under s 130(4) of the Employment Relations Act 2000, JACT is liable to a penalty of up to \$10,000.00 for breaching s 130 of that Act.

[163] Under s 65(1) of the Employment Relations Act 2000, an individual employment agreement must be in writing. Section 65(2) of that Act required the employment agreement to include certain matters. Employment agreements that do not comply with s 65 render an employer liable to a penalty. Separately, section 69OJ of the Employment Relations Act 2000 required employment agreements to include an employee protection provision, in the event of a restructuring. Section 52 of the Holidays Act 2003 required the employment agreement to include a provision that confirms the employee's right to payment in accordance with the statutory right set out in s 50 of the Holidays Act 2003.

[164] The statement of problem at paragraph 3.5.8 alleges a breach of those requirements with respect to Song Choi. The May 2019 employment agreement for Song Choi covering his employment as a pastor complied with both requirements. However, the Korean language agreement signed by Victoria Jeon dated 9 August 2019 regarding Song Choi's tasks as a Taekwondo assistant did not. I refer to the earlier finding that Song Choi refused to sign the 9 August 2019 document, so there was never an individual employment agreement between the parties other than the May 2019 agreement. The May 2019 employment agreement continued to apply, at least for the purpose of compliance with s 65 of the Employment Relations Act 2000. No breach of s 65 of the Act is established.

---

<sup>54</sup> Adopting *Labour Inspector v Matangi Berry Farm Ltd* [2020] NZEmpC 43.

*Were the breaches intentional, inadvertent or negligent?*

[165] I note that Mrs Jeon is experienced in business in New Zealand.

[166] The breaches of the Wages Protection Act 1983 were intentional. That is apparent from the elaborate scheme to obtain money from Song Choi and the operation of Andrew Jeon's bank account as if it was Mrs Jeon's account.

[167] The breaches of the Minimum Wage Act 1983 for Song Choi were intentional. Song Choi started working at the Dunedin Taekwondo academy at Mrs Jeon's direction. Mrs Jeon purposefully did not pay him. The breaches of the Minimum Wage Act 1983 with respect to Andrew Jeon were at least negligent. Mrs Jeon purposefully paid him in a way that resulted in non-compliance with the Act.

[168] The breach of s 23 of the Holidays Act 2003 regarding Song Choi was intentional. Mrs Jeon purposefully did not pay him.

[169] The breach of s 50 of the Holidays Act 2003 regarding Andrew Jeon was negligent, at least. Mrs Jeon purposefully paid him in a way that resulted in non-compliance with the Act.

[170] The breach of s 60 of the Holidays Act 2003 regarding Andrew Jeon was negligent, at least. Mrs Jeon purposefully paid him in a way that resulted in non-compliance with the Act.

[171] The breach of s 49 of the Holidays Act 2003 regarding Andrew Jeon was negligent, at least. Mrs Jeon purposefully paid him in a way that resulted in non-compliance with the Act.

[172] The breach of s 130 of the Employment Relations Act 2000 was intentional. Mrs Jeon is familiar with statutory obligations for employers. However, JACT treated Song Choi as if he was not an employee with respect to his work for the Taekwondo Academy, even though the circumstances known to Mrs Jeon showed he was an employee. The lack of proper records for Andrew Jeon was intentional, in light of Mrs Jeon's familiarity with employment obligations.

*Nature and extent of loss; nature and extent of gains*

[173] Song Choi and Andrew Jeon suffered substantial losses through JACT's breaches of the Wages Protection Act 1983 and JACT obtained substantial gains.

[174] The breaches of payment obligations under the Minimum Wage Act 1983 and the Holidays Act 2003 were significant. JACT operated its business without meeting these payment obligations, so achieved a financial advantage.

[175] The breach of record keeping obligations means that the LI has not been able to fully discharge her statutory functions, even taking account of the amounts recovered in this claim. Similarly, Song Choi and Andrew Jeon have not had the advantage of JACT's compliance with these obligations. JACT avoided the administrative inconvenience and cost of keeping proper records.

*Circumstances including vulnerability*

[176] The breaches amounted to exploitation of migrant employees.

[177] Song Choi and Andrew Jeon were tied to JACT through visa requirements but JACT breached employment obligations which the visas were based on. Andrew Jeon particularly had little English and both lacked access to support resources.

*Previous findings*

[178] Mrs Jeon was a respondent in proceedings in the Authority determined in 2020.<sup>55</sup> The applicant sought and obtained compliance with a record of settlement. However, I do not take this into account for present purposes. To treat those proceedings as a finding that Mrs Jeon had previously engaged in similar conduct to the present breaches would require me to go behind the record of settlement. I note also that the 2020 findings post-dated the conduct in the present case.

[179] Other current proceedings (file number 3116932) involving Mrs Jeon are referred to in submissions. This claim and the other proceedings overlap in time. Regardless of the order

---

<sup>55</sup> *Choi v Elev 8 Global Limited and Victoria Jeon* [2020] NZERA 194.

in which they are determined, neither set of proceedings would be previous findings for the purpose of s 133A(g) of the Employment Relations Act 2000.

[180] JACT is entitled to an assessment of penalties on the basis of no prior breaches.

*Deterrence – individually and in general*

[181] There is a need to send a strong signal both to JACT and in general to denounce the breaches of the Wage Protection Act 1983 particularly, and to deter breaches of minimum entitlements (wages and holiday pay) and record keeping.

*Degree of culpability*

[182] I refer to the earlier comments that the breaches were intentional or negligent. Overall, there is a high degree of culpability. That is particularly so with respect to the Wage Protection Act 1983 breaches. For Song Choi, Mrs Jeon determined the indirect method of payments. For Andrew Jeon, Mrs Jeon operated his bank account as if it was her own. Large amounts were involved and the effects were significant. I fix 80% of the maximum.

[183] The payment breaches (Minimum Wage Act 1983 and Holidays Act 2003) involved a significant level of culpability. That is recognised by fixing penalties at 60% of the maximum.

[184] The record keeping breach also involved a significant amount of culpability. However, Song Choi's claim was capable of quantification and the breach covered a limited period. The breach with respect to Andrew Jeon covered a longer period and it was difficult to assess his claim, but JACT had retained some source data that allowed some records to be built. The degree of culpability is recognised by fixing a penalty at 50% of the maximum.

*Mitigating factors*

[185] JACT co-operated with the LI, responding to requests for information. JACT has not previously been found to have breached minimum standards. That clean record should be brought to account also as a mitigating factor. These factors are recognised by reducing the level of each penalty by 25%.

### *Consistency*

[186] I am referred to several Authority cases. *Labour Inspector & Ors v Pegasus Energy Limited & Anor*<sup>56</sup> involved two employees, unlawful premiums and minimum payment entitlements. However, the breaches were over a longer period of time and there was a level of deception involved that is absent here. A company was the employer. I accept that the Wages Protection Act 1983 breaches here are similarly serious, but the present breaches regarding wages and holiday pay and record keeping are somewhat less serious. The differences are reflected in the starting points adopted in this case.

[187] *Labour Inspector v Xu t/a Golden Spring Takeaway*<sup>57</sup> involved two employees, minimum wages and holiday pay breaches and record keeping breaches. The wage and holiday breaches in that case were “egregious” and occurred over a longer time period. The Authority there adopted a 70% starting point. The differences in this case are reflected in the 60% starting point.

[188] *Borsboom v Preet*<sup>58</sup> is referred to as an example of a case where penalties totalling \$100,000 were imposed on two employers. For two employees, one of the employers (*Preet*) faced penalties of \$40,000.00 for the breaches of the Minimum Wage Act 1983, \$80,000.00 for the two types of breaches of the Holidays Act 2003 and \$40,000.00 for wage and time record breaches. These were reduced to \$54,000.00 before the Court applied a reduction based on ability to pay.

[189] *Preet* was a company and subject to twice the maximum for each breach as applies here. That needs to be accounted for, to make a comparison to the present case valid. *Preet* did not include a breach of the Wages Protection Act 1983, so I will only compare the payment and record keeping defaults. The “Step 2” penalty in *Preet* in effect would comprise a penalty of \$8,000.00 for the Minimum Wage Act 1983 breaches, \$14,000.00 for the two types of Holidays Act 2003 breaches and \$5,000.00 for the wage and time record breaches. The factors in *Preet* that led to the penalty assessment for these breaches are broadly similar to the present case.

---

<sup>56</sup> In *Labour Inspector & Ors v Pegasus Energy Limited & Anor* [2018] NZERA Wellington 26.

<sup>57</sup> *Labour Inspector v Xu t/a Golden Spring Takeaway* [2019] NZERA 22.

<sup>58</sup> *Borsboom v Preet PVT Limited* [2016] NZEmpC 143.

[190] Overall, there is no reason to reduce the level of penalties here on the basis of consistency.

*Ability to pay*

[191] Counsel for JACT did not raise an issue about the ability to pay. It is not necessary to adjust the level of penalties for this factor.

*Proportionality - totality*

[192] Following the application of aggravating factors and mitigating factors, penalties would be \$12,000.00 for breaches of the Wages Protection Act 1983 and a further \$28,750.00 for the breaches of the wage and holiday pay payment obligations and the record keeping breaches. The total would be \$42,750.00.

[193] For Song Choi arrears are \$1,909.50 and premiums are \$64,172.13. For Andrew Jeon, arrears remain to be calculated. Premiums are \$46,087.60. Even with the unquantified arrears for Andrew Jeon, total penalties at \$42,750.00 are not disproportionate with the sums recovered

[194] This is not a case involving many employees, many breaches and a very large total penalty liability (even after globalisation) that needs to be moderated. It is not necessary to consider whether the total creates a perverse avoidance incentive, given personal liability.

[195] Standing back, the total penalty adequately responds to JACT's unlawful behaviour. No further adjustment is required.

[196] I summarise the application of principles including s 133A of the Employment Relations Act 2000 in the following table:

<b>Breach</b>	<b>Employees</b>	<b>Maximum</b>	<b>Aggravating factors</b>	<b>Mitigating factors</b>
Wages Protection Act s 12A	2	\$20,000	\$16,000.00 (80%)	\$12,000.00 (- 25%)
Minimum Wage Act s 6	2	\$20,000	\$12,000.00 (60%)	\$9,000.00 (- 25%)
Holidays Act s 23	1	\$10,000	\$6,000.00 (60%)	\$4,500.00 (- 25%)
Holidays Act s 50	1	\$10,000	\$6,000.00 (60%)	\$4,500.00 (- 25%)
Holidays Act s 60	1	\$10,000	\$6,000.00 (60%)	\$4,500.00 (- 25%)
Holidays Act s 49	1	\$10,000	\$6,000.00 (60%)	\$4,500.00 (- 25%)
Employment Relations Act s 130	2	\$10,000 (globalised)	\$5,000.00 (50%)	\$3,750.00 (- 25%)
<b>TOTAL</b>				<b>42,750.00</b>

### **Summary and orders - Song Choi**

[197] Song Choi was not a volunteer but was employed by JACT. Song Choi was entitled to be paid a minimum rate of wages calculated in accordance with section 4(a) of the Minimum Wage Order in force at relevant times. He is entitled to recover arrears of minimum wages and holiday pay, through this action by the Labour Inspector.

[198] JACT received premiums from Song Choi. He is entitled to recover the premiums, through this action by the Labour Inspector.

[199] Interest is appropriate to account for the loss of use of the money. For simplicity, I will calculate interest for the arrears and the premiums starting on the day the employment ended (23 August 2019) to the date when payment is required under this determination.

[200] Victoria Jeon (aka Jong AI Park), Joseph Jeon and Misun Leem must pay to the Labour Inspector, within 28 days of this determination, for the use of Song Choi:

- (a) arrears of wages and holiday pay of \$2,100.66 (gross); and
- (b) interest on the arrears of \$177.68; and
- (c) premiums totalling \$64,172.13; and
- (d) interest on the premiums of \$5,427.96.

### **Summary and orders - Andrew Jeon**

[201] Andrew Jeon was entitled to be paid a minimum rate of wages calculated in accordance with clause 4(d) of the Minimum Wage Order in force at relevant times and holiday pay. He is entitled to recover arrears of minimum wages and holiday pay, through this action by the Labour Inspector. The Labour Inspector is to compile calculations based on the factual findings set earlier in this determination. The Labour Inspector should lodge her calculations within 28 days (unless extended) and the respondent may lodge a reply within a further 14 days (unless extended). Leave is reserved to the extent necessary to allow for the calculations of arrears and interest.

[202] JACT received premiums from Andrew Jeon. He is entitled to recover the premiums, through this action by the Labour Inspector.

[203] Interest is appropriate to account for the loss of use of the money. For simplicity, I will calculate interest for the arrears and the premiums starting on the day the employment ended (12 November 2019) to the date when payment is required under this determination.

[204] Victoria Jeon (aka Jong AI Park), Joseph Jeon and Misun Leem must pay to the Labour Inspector within 28 days of the date of this determination, for the use of Andrew Jeon:

- (a) premiums totalling \$46,087.60; and
- (b) interest on the premiums of \$3,546.36.

**Other Orders**

[205] Penalties are appropriate.

[206] I impose the penalties set out in the foregoing table, for breaches of the Wages Protection Act 1983, the Minimum Wage Act 1983, the Holidays Act 2003 and the Employment Relations Act 2000 as follows:

- (a) Victoria Jeon (aka Jong AI Park), Joseph Jeon and Misun Leem must pay to the Labour Inspector, within 28 days of the date of this determination, penalties totalling \$42,750.00.

[207] Claims against Victoria Jeon (aka Jong AI Park) as second respondent are dismissed, but without prejudice to orders made against her as a first respondent.

[208] Costs are reserved, for written submissions following determination of the quantum of arrears owed to Andrew Jeon.

Philip Cheyne  
Member of the Employment Relations Authority