

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 445
3175923

BETWEEN	GRAHAM MAHENO Applicant
AND	CARRINGTON RESORT JADE LP Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Kirsten Westwood, advocate for the Applicant William Tan, advocate for the Respondent
Investigation Meeting:	20 April 2023 at Kerikeri
Submissions received:	27 April and 1 May 2023
Further directions:	29 May 2023
Determination:	15 August 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] After resigning from his employment, the applicant Graham Maheno expected to receive a final payment for wages earned and annual holiday pay accruing to him from service. When he did not receive anything he asked his employer, the respondent Carrington Resort Jade LP (Carrington), why that was.

[2] Mr Maheno was told that deductions had been made from his pay and that the amounts in total were more than owing to him in wages and holiday pay.

[3] The deductions were \$994.95 for the purchase of work clothes and \$2,760.00 for costs incurred from the hire of a cherry-picker. The supplier of the goods and services in each case had been paid directly from Carrington's account.

[4] Although Mr Maheno's individual employment agreement (the IEA) contained a general deductions provision, he contends it was not complied with and consequently the deductions were made in breach of the IEA. He also contends Carrington did not consult him before making the deductions and consequently its actions were in breach of the Wages Protection Act 1983 (the WPA).

[5] The Authority has investigated Mr Maheno's claim to recover the amounts owed to him in wages and holiday pay upon termination, and a claim by him to recover a penalty from Carrington for breach of s 5(1A) of the WPA. That provision requires an employee to be consulted before an employer makes any deduction under a general deductions clause.

[6] A further claim of Mr Maheno arises from his efforts to obtain records from Carrington to show what had happened to his final pay. He claims his representative, Alex Kersjes, requested a full copy of his wage and time record but was not given one by Carrington. He contends the failure to meet that request was a breach of s 130 of the Employment Relations Act 2000 (the ER Act) and for that breach he claims a penalty from Carrington.

[7] Mr Maheno claims that on his behalf Mr Kersjes raised a personal grievance with Carrington, complaining that the deductions from his pay had disadvantaged him in his employment or conditions of employment, and that Carrington had acted without justification in making them. Mr Maheno claims the personal grievance was raised via an email letter sent to William Tan, who is the CEO and General Manager of Carrington and its associated hospitality and leisure enterprises.

[8] In the letter Mr Maheno claimed compensation of up to \$25,000 for humiliation, loss of dignity and injury to feelings, caused through having his final pay reduced in circumstances where the deductions had not been discussed with him before they were

made, and where he was not even informed of them but was left to find out for himself afterwards.

Mediation not attended by Carrington

[9] Mr Maheno's employment relationship problem was the sort of dispute which is amenable to mediation and which, under the ER Act, is required to have mediation. There were no features of this case making mediation unsuitable.

[10] In written directions given on 6 September 2022, the Authority ordered the parties to attend mediation within 30 days. In a case management conference held on 28 September 2022 with the parties' representatives Mr Kersjes and Mr Tan, the Authority was advised that mediation had been arranged to take place on 3 October 2022. On 7 November 2022, the Authority was advised that the applicant had attended mediation on 3 October but the respondent had not. Directions given on 7 November 2022, record that no explanation was offered to the Authority for that apparent failure of Carrington to try in good faith to resolve this matter on the parties' own terms.

Statement in reply out of time

[11] Carrington also failed to lodge a statement in reply within the 14 day period required by the Employment Relations Regulations 2000. That period expired on 20 July 2022. Despite the Authority repeatedly raising this failure in its several directions issued to the parties, a statement in reply was not tendered to the Authority until nearly 8 months after service of the statement of problem, on 16 March 2023.

[12] At the same time Carrington applied to strike out all of Mr Maheno's claims. This was plainly a vexatious application, as Mr Maheno's claims were clearly arguable, including the issue as to whether the personal grievance among those claims had been raised in time.

Investigation meeting

[13] The Authority's investigation meeting was attended by Mr Maheno and Maureen his wife. Ms Westwood had taken over as advocate from her associate Mr

Kersjes. Mr Tan also attended and gave affirmed evidence. He extensively questioned Mr Maheno.

Obstruction or delay of Authority's investigation

[14] After the investigation meeting the Authority gave notice to Carrington and Mr Tan that it would consider whether either or both had obstructed or delayed the Authority's investigation, to make them liable to a penalty under s 134A of the ER Act. Although they were given an opportunity to make submissions, nothing was received from either of them.

[15] Despite the failure of Carrington to lodge a statement in reply within the time limit required, everything Mr Tan said in evidence or submissions he made on behalf of Carrington or himself, has been fully considered in giving this determination. The statement in reply and information provided with it have also been considered.

[16] This determination is given in accordance with s 174E of the ER Act and does not therefore fully record all the evidence or information considered by the Authority, or submissions received.

Mr Maheno raised a personal grievance within 90 days

[17] Carrington claimed the unjustified disadvantage grievance was not raised within 90 days of the employer deducting money from Mr Maheno's wages, the action Mr Maheno complained of in his grievance.

[18] Recovery of wages and penalty claims are able to be raised independently of a personal grievance. The ER Act and WPA both allow for recovery within 6 years of an underpayment of wages or unlawful deduction being made. Penalties under those statutes are to be sought within 12 months of the actions complained of. The time limits have been easily satisfied in this case. The Authority is not prevented by a description of the claims as a 'personal grievance', from finding that they may be resolved with reference to other types of action within its jurisdiction. Section 160(3) of the ER Act applies in this regard.

[19] The claim made for the remedy of compensation under s 123(1)(c)(i) of the ER Act, is however expressly confined to a personal grievance and cannot proceed to determination unless the grievance was raised within 90 days. Leave has not been sought by Mr Maheno to raise it outside 90 days.

[20] The 90 day period began to run at the earliest from the date Mr Maheno was due to be paid his next pay, having advised Carrington he was resigning. His evidence was that he resigned on Monday 15 November 2021 and was due his next pay on Wednesday 17 November, for the pay period ending on 14 November. At the latest, the 90 day period began to run from when Mr Maheno became aware of the reason why he had received no pay. It was not until December 2021 that Carrington told him about the deductions.

[21] From the earlier date, 17 November 2021, the 90-day period would have expired on 15 February 2022, and from the later date in December 2021, the period would have expired in March 2022.

[22] Attached to the statement of problem lodged in the Authority on 21 June 2022, was a letter from SackedKiwi addressed to Mr Tan at Carrington's email address. The letter, dated 18 January 2022 and written by Mr Kersjes, clearly raised a grievance of unjustified disadvantage caused by the deductions made to Mr Maheno's pay. The date of the letter was inside the 90-day period by four weeks or more, based on the period start date of 17 November 2021.

[23] Mr Tan has disputed the letter was received by Carrington. He claims he first saw it when the statement of problem was served on 5 July 2022, a date well outside the 90-day period.

[24] He showed the Authority emails from early 2022 stored on his laptop. He did not have one from Mr Kersjes or SackedKiwi dated 18 January 2022.

[25] Ms Westwood provided additional proof that the letter had been sent by email to Carrington on 18 January 2022. This was the header of the email showing that the letter from SackedKiwi was sent by an associate of that firm to resort@carrington.co.nz, as an attachment, on 18 January 2022 at 10:55 am. It was addressed to the urgent attention of William Tan. He confirmed that was his and Carrington's email address.

[26] The evidence before the Authority shows it is likely the grievance letter was sent and received on 18 January 2022. It is unlikely the header was fabricated, as Mr Tan suggested.

[27] There was also separate evidence in the form of an email which Mr Tan produced to the Authority in support of the application to strike out the claims. The email is from Mr Tan to Carrington administration staff. In it, Mr Tan requests Mr Maheno's final pay statement. It is dated seven or eight weeks after Mr Maheno had left. It might be wondered why Mr Tan would still be interested in Mr Maheno's final pay when several weeks earlier the employment had ended. The answer may lie in the date and time of Mr Tan's email, shown as 18 January 2022 at 11:19am.

[28] The Authority does not consider it likely to have been mere coincidence that Mr Tan suddenly became interested again in Mr Maheno on 18 January 2022, just 24 minutes after SackedKiwi says it sent Mr Tan a grievance claim about that.

[29] It also seems unlikely to be just coincidence that the grievance letter had asked for a copy of the same pay information Mr Tan asked for from Carrington's administration, just 24 minutes after the letter was sent. It is much more likely, the Authority finds, that Mr Tan's email to administration staff was triggered by receipt of the grievance letter of 18 January 2022, a short time before.

[30] The Authority finds on a balance of probabilities that a personal grievance was raised inside 90 days of the action taken by Carrington and complained of by Mr Maheno. His claim for compensation can be considered on its merits.

Deductions from wages – the Wages Protection Act 1983

[31] The WPA limits the ability of an employer to deduct money from wages including holiday pay. The Act has the status of an employment standard as defined by s 5 of the ER Act.

[32] Under s 4 of the WPA, generally the entire amount of wages payable to a worker is to be paid without deduction.

[33] Section 5 of the WPA permits an employer to make deductions when a worker has given written consent. This includes consent via a general deductions clause, where one has been included in a worker's employment agreement.

[34] Mr Maheno's IEA contained such a clause but, under s 5(1A) of the WPA, to invoke it Carrington had first to consult Mr Maheno.

[35] Carrington's statement in reply says that the deduction was 'notified and agreed', and that Mr Maheno 'did not contest or dispute his final pay being deducted', and that he had been 'told' a deduction would be made.

[36] Mr Maheno's clear and direct evidence was that the deductions from his pay were not discussed with him at any time by Mr Tan, his manager Ms Tracey Waters, or anyone else. He was not even told of them until a few weeks after his 17 November 2021 pay was due, when he started asking where his final pay was.

[37] Mr Tan was the only witness for Carrington. He did not claim to have personally consulted Mr Maheno about the deductions but said that was done by Ms Waters. This was hearsay from Mr Tan, by contrast to the direct evidence Mr Maheno gave the Authority.

[38] The importance of having Ms Waters attend the investigation meeting as a witness had been explained to Carrington by the Authority in its written directions of 28 September 2022. They record that Mr Tan had advised the Authority that Ms Waters was the person who had made the decisions about Mr Maheno's pay and that he, Mr Tan, had not had any personal involvement himself.

[39] In response to that advice Mr Tan was directed by the Authority to secure the attendance of Ms Waters at the investigation meeting, by having her served with a witness summons if she would not attend voluntarily. Despite not lodging a statement in reply when required, Carrington was given every opportunity to present evidence from Ms Waters or anyone else in support of its position, but chose to rely only on Mr Tan's second-hand evidence.

[40] The Authority accepts the uncontradicted evidence of Mr Maheno that he was not consulted about any deductions to be made from his pay due on 17 November 2021.

The deductions were not therefore authorised by the WPA. The Authority finds that Carrington made them in breach of s 5(1A) of that Act.

[41] Given the absence of consultation, it is not necessary to consider the reasonableness of those deductions, but the Authority does so for completeness.

[42] Under s 5A of the WPA, a deduction may not be made under s 5 if the deduction is unreasonable. The deductions made were for wet weather clothing and safety boots, paid for by Carrington to be used on the job by Mr Maheno, and for charges incurred by the late return of a cherry picker hired by Carrington for Mr Maheno to use for some painting work. Carrington claimed he had not returned it straight away after finishing the job, leading to the extra charges.

[43] If there had been consultation, the clothing charges could reasonably have been deducted if it was clear that Mr Maheno would be keeping the items when he finished at Carrington. He did in fact keep them. Carrington did not ask for them back.

[44] The lack of consultation before the deduction was made cannot be undone now, turning an unlawful deduction into a lawful one, but in final submissions Mr Maheno accepted that any wages awarded to him by the Authority could be reduced by \$994.95, to recognise that he now has the items and can use them.

[45] The deduction for the additional cherry picker hire costs seems tantamount to disciplinary action for performance or conduct reasons. The deduction was not for 'money you owe us' in terms of the general deductions clause of the IEA. It cannot be justified under that provision.

[46] Unless there is an agreement to do so, it will be unreasonable for an employer to deduct money from wages as a disciplinary measure. Disciplinary action might have been taken if Mr Maheno's conduct regarding the return of the cherry picker had caused harm or loss to Carrington and he had acted deliberately or carelessly in breach of his duty. Carrington confirmed it had chosen to take no disciplinary action.

[47] The Authority accepts the evidence of Mr Maheno that he was not asked by Mr Tan or anyone else to explain why the cherry picker had not been returned immediately to the hire firm, once it was no longer needed for the painting work. His explanation is also accepted by the Authority, that by arrangement with the hire firm it was not to

be returned while a Covid lockdown was in place. This explanation could have been checked by Carrington with the firm, if it had been sought and obtained from Mr Maheno first.

Notice of resignation given by Mr Maheno

[48] From the evidence given to the Authority, it appeared that when Mr Maheno resigned he did not give the required contractual period of 1 months' notice but gave only 2 weeks. Under the IEA at clause 16.4, Carrington had 'reserved' a right to deduct a day's salary for each day not worked during the notice period.

[49] In its statement in reply Carrington did not make a claim or counterclaim to recover or set-off any pay in lieu of notice. It confirmed it had not done so because the deductions made by it had left Mr Maheno's final pay with a negative balance. This was a situation Carrington brought on itself by making those deductions unlawfully. Although Mr Maheno breached the notice requirement of the IEA, Carrington exercised its option not to deduct pay for that. It is now too late to reverse that decision.

[50] After readjustment of the claim downwards for wages that were received by Mr Maheno up to the end of employment and the wet weather gear he retained, the amounts the Authority determines as due to him are \$505.41 wages earned and \$2,840 annual holiday pay accrued. Carrington must pay those amounts to Mr Maheno.

[51] He is entitled to interest on that money, which is to be calculated from the date of the deductions, 17 November 2021, until paid in full. The amount is to be calculated using the Civil Debt Interest Calculator available at www.justice.govt.nz/fines/civil-debt-interest-calculator.

Compensation for personal grievance

[52] The Authority finds that the deducting of money from Mr Maheno's pay was an unjustified action to his disadvantage in his employment or terms of employment. He was entitled to be paid for his work unless Carrington was able to lawfully make any deduction.

[53] The actions of Carrington were not those a fair and reasonable employer could have carried out, and therefore the test of justification at s 103A of the ER Act has not been satisfied by Carrington.

[54] The remedy sought for the grievance is compensation under s 123(1)(c)(i) of the ER Act.

[55] Taking away the final pay of Mr Maheno without attempting discussion or even giving notice was upsetting to him. He had bills to pay. He was also unjustly accused of 'sabotage'.

[56] This was not an unjustified dismissal grievance and for that reason the level of compensation sought is too high. The Authority considers \$4,000 is appropriate.

[57] There was no fault or contribution on the part of Mr Maheno and a reduction is not required for that reason. Carrington failed to consult him about deducting money for the wet weather gear and Mr Maheno did not contribute to that failure. All Carrington had needed to do was confirm that he was going to keep the gear when he left and propose to him that a deduction would be made for the cost. His *agreement* to a deduction was not required under a general deduction clause, but he needed to be consulted.

[58] The Authority accepts Mr Maheno's evidence that he arranged with the hire centre to leave the cherry picker at the resort instead of returning it during a Covid lockdown. Mr Tan's evidence is rejected that Mr Maheno had deliberately failed to return the equipment so that Carrington would incur unnecessary additional expense. Mr Tan accused Mr Maheno of doing this to 'sabotage' Carrington in retaliation for its dismissal of Mr Maheno's daughter in August 2020.

[59] All Carrington had also needed to do was ask Mr Maheno to explain why the cherry picker had not been returned to the hire firm. Carrington could then have checked with the firm whether an arrangement had been reached as Mr Maheno explained. A deduction for any failure in his performance would not have fallen within the scope of the deductions clause in any event. Mr Maheno did not contribute to Carrington's decision not to ask him for an explanation before he finished employment.

[60] Carrington is ordered to pay Mr Maheno compensation of \$4,000 to settle his disadvantage personal grievance.

Penalties for breaches of ER Act and WPA

[61] Mr Maheno has claimed penalties for the deduction made by Carrington unlawfully from his final pay and for Carrington's failure to produce a wages and time records when requested.

[62] A worker may recover a penalty under ss 13(1)(b) and 13(2) of the WPA.

[63] Orders are sought for part of any penalties awarded against Carrington to be paid to Mr Maheno.

[64] The Authority finds that Carrington breached the WPA by making deductions without consent or consultation.

[65] The Authority finds that Carrington failed to produce wage and time records when requested. Accordingly, it breached s 130 of the ER Act. A penalty is recoverable under s 130(4).

[66] Under s 135(5) of the ER Act, claims for penalties must be brought within 12 months of the cause of action arising. Mr Maheno's application was lodged in the Authority well inside that period, in June 2022.

Obstruction or delay

[67] Carrington and Mr Tan are also liable to have penalties awarded against them under s 134A of the ER Act, if the Authority determines that they obstructed or delayed the Authority's investigation.

[68] The Authority of its own motion on 29 May 2023 raised this issue. It gave Carrington and Mr Tan an opportunity to respond with submissions if they wished. No submissions were received before or after 8 June 2023, the date notified for making a response.

[69] Carrington and Mr Tan were notified that the Authority would consider whether they had failed to comply with directions given on 6 and 28 September and 7 November 2022.

[70] They were notified their actions being inquired into were whether they had failed to provide wages and time records, and other specified documents Carrington had been directed to produce to the Authority and Mr Maheno.

[71] When it appeared to the Authority that the directions of September and November 2022 had not been complied with, it ordered compliance on 23 February 2023.

[72] Some documentation was provided by the date given in the Compliance Order, including a statement in reply, an application to strike out Mr Maheno's claims, and MYOB payroll records.

[73] The payroll records do not meet the requirements of s 130 of the ER Act for wages and time records, as they do not record the hours Mr Maheno worked or the period for which he was paid.

[74] Carrington has still not provided a copy of Mr Maheno's written resignation, which it was directed to provide. This has some importance for accurately establishing the date on which he gave his resignation.

[75] Other documentation it was asked to provide, relating to any investigation Carrington had carried out into the cherry picker matter, Mr Maheno's painting work, or his timekeeping, has not been provided. Presumably that is because it does not exist. There was no investigation before Carrington made the deductions.

[76] Carrington has still not fully complied with the directions given in September and November 2022 or the Compliance Order made in February 2023.

[77] The Authority concludes it has been obstructed or delayed in its investigation of Mr Maheno's claims. Carrington and its manager Mr Tan both have responsibility, the latter because of the close control he exercises in management of the former.

[78] They have offered no explanation or excuse for their actions.

Change of Authority member

[79] It is not accepted by the Authority that because there was a change of member before the investigation meeting, this had an automatic effect of nullifying directions the original member had given, leaving a vacuum until any new directions from the next member could replace earlier ones. There was no basis from which that could reasonably be concluded as being a consequence of the change. The original directions prevailed until any further directions changed any of the requirements earlier made of Carrington by the Authority. The directions were not superseded. Additional directions were given by the next member.

Determination of penalties

[80] Matters the Authority is to have regard to in determining an appropriate penalty for any breach, are set out at s 133A of the ER Act. The list is not an exhaustive one and the Authority may consider any other relevant matters.

[81] The first matter, at s 133A(a), is the object of the ER Act as stated in s 3 of the Act.

[82] The object includes building productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship, and acknowledging and addressing the inherent inequality of power in employment relationships.

[83] The special character of employment standards is also recognised. The enforcement of those standards is to be promoted by the Authority in exercising its powers under the ER Act.

[84] The breaches by Carrington of the WPA and s 130 of the ER Act, were breaches of employment standards.

[85] A further matter for consideration is the nature and extent of any breach. The breach of the WPA in particular was serious, both in the amount of the deduction and the effect of it. Some \$2,500 was deducted. This deprived Mr Maheno of pay due for his work and annual holidays.

[86] Furthermore, the objective of the deduction for the increased cherry picker hire charges was to punish or discipline Mr Maheno.

[87] In this regard Carrington included the following in its statement in reply;

[Mr Maheno] had been on a mission to sabotage Carrington's operation since the dismissal of his daughter, Toni Maheno who also worked at Carrington.

[88] From this it can be inferred that retribution had partly motivated the deduction made by Carrington.

[89] The breaches were an abuse of an employer's power using its payroll, to control the amount of pay any employee received. It also had possession of the wage and time record it was required to keep.

[90] The next matter under s 133A(a) of the ER Act is the deliberateness of the breaches. Mr Maheno was not consulted about the deduction or asked why the cherry picker had not been returned to the hire firm straight away. No reason has been given for the failure to provide wage and time records. It is to be inferred the failure was deliberate.

[91] As to the matter of the nature and extent of any loss or gain from the breaches, Mr Maheno lost his final pay and Carrington kept the money for its own use. Mr Maheno was prevented from seeing how his final pay had been assessed.

[92] A fifth matter is whether Carrington has made amends in any way for its breaches. It has not. Instead, it has opposed the claims and delayed or obstructed their investigation and determination.

[93] The circumstances of the breaches as an additional matter have been covered earlier in this determination.

Previous conduct

[94] The final matter listed at s 134A(a) of the ER Act is previous conduct.

[95] Carrington or its closely associated entities have been investigated by the Authority several times in the last two years. Some of the cases have now reached the Employment Court under challenge by Carrington.

[96] Mr Tan personally has recently been investigated by the Authority in an application brought against him by Iva Grant, a former employee of Carrington. As the determination of that matter has not yet been issued to the parties, no account will be taken of his involvement in that investigation.

[97] In *Roy & Carrington resort Jade LP*¹ Carrington was found to have breached s 130(1) by failing to keep sufficient time records, and also s 130(2) by failing to provide records to an employee on request.

[98] Carrington was also found to have breached s 81 and s 82 of the Holidays Act 2003 by failing to keep and produce holiday and leave records.

[99] Carrington also breached its duty of good faith under s 4 of the ER Act, and it breached s 4 of the WPA by deducting \$4,757 from an employee's pay without consent.

[100] Penalties were not claimed for any of those breaches and consequently none was ordered, but the conduct that made Carrington liable for penalties was established.

Additional considerations

[101] The Court has identified additional considerations to those expressed in s 133A of the ER Act². They include deterrence and the degree of culpability.

[102] Deterrence for Carrington as a particular employer is an important consideration because of its history in the Authority, which is still unfolding.

[103] Carrington appears to be a well-resourced tourism and leisure enterprise in the Far North, where it is one of the larger employers in an area with less employment opportunity.

¹ [2023] NZERA 4

² *Labour Inspector v Preet PVT Ltd* [2016] ERNZ 514 at [68] and [80].

[104] Its manager Mr Tan holds himself out as qualified in law. From written material presented by him he seems to have familiarity with employment law and to have the means and ability of researching the law that applies to Carrington as an employer. These factors raise the level of culpability. Carrington should have known better than to treat Mr Maheno the way it did.

[105] Ability to pay any penalties is also a consideration. There is no sign that Carrington has any real funding constraints.

[106] Finally, the Authority must look at consistency with penalty awards in other cases and, in the outcome of the investigation, seek to achieve a balance between the breaches and any consequences of them.

[107] The Authority considers that the right balance will be struck if it regards the breach of the WPA as the most serious breach. The wage and time record breach of the ER Act is serious too, but less so.

[108] Although the Authority was held up in its work by Carrington and Mr Tan through their failures to comply with directions, which have still not been fully complied with, the investigation has been completed eventually. The investigation meeting itself was not prolonged by the failures.

[109] The maximum penalty is \$20,000 for each breach. The starting point should be less than 50%.

[110] Taking all the considerations into account the penalty for breach of the WPA will be \$4,000. For the breach of s 150 of the ER Act the penalty will be \$2,500.

[111] For obstruction or delay the penalty will be \$1,500.

Payment of part of penalty to Mr Maheno

[112] The Authority does not consider that payment to Mr Maheno of some of the penalties, as sought by him, will be doubling up on compensation he has been awarded. A penalty is punishment for a breach, which was a wrong against Mr Maheno as well as the public who have an interest in seeing that laws are obeyed. It was Mr Maheno who suffered the unlawful action of the employer. He claimed the penalty. It is just

and equitable that his personal rights or interests in seeing the law enforced are recognised in a tangible or monetarised way.

[113] There are few more serious breaches than for an employer to take advantage of its control of payroll, to take away money earned by an employee and do so without notice, consultation, discussion, or as a form of disciplinary action. It may offer some small satisfaction to Mr Maheno if he now shares in ownership of the enforcement process by receiving some of the penalty. Carrington's atonement ought to be directed to the victim as well as the state.

[114] Half the penalty of \$4,000 for breach of the WPA, \$2,000, is to be paid to Mr Maheno. He is also to be paid \$1,000 of the penalty for breach of s 130 of the ERA Act. Section 136(6) of the ER Act permits payment in this way to any person.

Conclusion

[115] Carrington is ordered to pay Mr Maheno;

(i)	Final wages	\$505.41
(ii)	Holiday pay	\$2,840
(iii)	Interest on above sums	
(iv)	Compensation	\$4,000
(v)	Penalties	\$3,000

[116] Carrington is ordered to pay to the Authority for payment into a Crown Bank Account;

	\$5,000
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[117] Payment of all amounts is to be made within 14 days of service of this determination on Carrington.

Costs

[118] Costs are sought by Mr Maheno who engaged SackedKiwi to represent him. He has produced an invoice showing the costs incurred.

[119] He is entitled to reimbursement based on the Authority's daily tariff but with an increase to reflect additional expense Mr Maheno's representatives were put to, through Carrington's failure to properly engage in the investigation and provide wage and time records when requested. All of this added to the amount of work that needed to be done for Mr Maheno.

[120] For a half day investigation meeting the tariff costs are \$2,250. This will be raised to \$3,750, which Carrington is ordered to pay Mr Maheno under clause 15 of Schedule 2 of the ER Act.

[121] Carrington must also reimburse to Mr Maheno the fee for lodging his claim in the Authority of \$71.56.

[122] These amounts are also to be paid to Carrington within 14 days of the date of service of this determination.

Alastair Dumbleton

Member of the Employment Relations Authority