

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 510
3212539

BETWEEN	JAI KISHAN CHAURASIA Applicant
AND	VIGIL SECURITY LIMITED First Respondent
AND	NATHAN LAAU TANIELU Second Respondent
AND	TREY TANIELU Third Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Applicant in person
Investigation:	On papers
Further information:	From applicant, 29 August 2023
Determination:	8 September 2023

SECOND DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 27 July 2023 under 3212539, the Authority issued a determination (the first determination) disposing of a claim by Jai Kishan Chaurasia to recover annual holiday pay owing to him upon termination of his employment with Vigil Security Ltd (Vigil)¹.

¹ *Jai Kishan Chaurasia & Vigil Security Ltd* [2023] NZERA 397

[2] Vigil was ordered to pay Mr Chaurasia annual holiday pay of \$7,784.60 and interest on that amount, to be calculated from 1 February 2022. The Authority application fee of \$71.56 was also to be paid to him.

[3] The first determination was served on Vigil at its registered office on 27 July 2023.

Compliance order

[4] The Authority in its first determination advised that it would consider making a compliance order if the arrears remained unpaid by Vigil.

[5] Mr Chaurasia has confirmed that he has not received any payment. Vigil, or its directors and managers Trey Tanielu and Nathan Tanielu, have not responded to his calls and messages.

[6] Vigil Security Ltd is ordered to comply with the Authority's first determination of 27 July 2023 by paying to Jai Kishan Chaurasia annual holiday pay of \$7,784.60 plus interest calculated from 1 February 2022 using the Civil Debt Interest Calculator available at www.justice.govt.nz/fines/civil-debt-interest-calculator. Mr Chaurasia is also to be paid \$71.56 in reimbursement of the Authority filing fee.

[7] This order is made by the Authority of its own motion under s 137 of the Employment Relations Act 2000.

[8] **This order must be complied with by Vigil Security Limited no later than 4pm, Friday 8 September 2023.**

Enforcement in the Employment Court

[9] A person affected by a failure to comply with a compliance order may apply to the Employment Court for the exercise of its powers under s 140(6) of the Employment Relations Act 2000. The Court's powers include a fine of up to \$40,000 and sequestration of the property of a person in default of the compliance order.

Joinder of second and third respondents

[10] The Authority is satisfied that Nathan Tanielu and Trey Tanielu, who are registered as directors and joint owners of Vigil Security Ltd, are officers of that

company and are persons who were involved in a non-compliance with the Holidays Act 2003, within the meaning of s 142W of the Employment Relations Act 2000.

[11] Prior leave has been given to Mr Chaurasia under s 77A (2) of the Holidays Act 2003 to recover his holiday pay from the second and third respondents personally, to the extent Vigil is unable to pay the amount it has been ordered by the Authority to pay.

[12] Of its own motion under s 221 of the Employment Relations Act 2000, the Authority joins Nathan Tanielu and Trey Tanielu to these proceedings.

[13] They were put on notice on 27 July 2023 that the Authority might join them if the arrears of holiday pay remained unpaid to Mr Chaurasia. Although given the opportunity, they have not advised the Authority of any reason why they should not be joined.

[14] If the arrears remain unpaid after 8 September 2023, the Authority will consider ordering one or both directors to pay personally.

Alastair Dumbleton
Member of the Employment Relations Authority