

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 706  
3169622

BETWEEN                      A LABOUR INSPECTOR  
Applicant

AND                              LAXMI NARAYAN  
RESTAURANT LIMITED  
First Respondent

AND                              VIJAY SINGH  
Second Respondent

Member of Authority:        Helen Doyle

Representatives:             Rochelle Hill, counsel for the Applicant  
Bernie Chow, advocate for the First and Second  
Respondents

Investigation meeting:      On the papers:  
Memorandum from the Applicant dated 20 November  
2023.  
Email from the Respondent dated 23 November 2023.

Determination:                27 November 2023

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**SECOND DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     In a determination dated 8 November 2023 the Authority found in favour of the Labour Inspector and ordered payments of minimum wage arrears, unlawful deductions, holiday and leave pay, interest and penalties.<sup>1</sup>

[2]     Following the determination Ms Hill raised concerns with the Authority that the orders made in the determination were to pay the former employee directly rather than

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<sup>1</sup> *A Labour Inspector v Laxmi Narayan Restaurant Limited & Vijay Singh* [2023] NZERA 660.

through the Labour Inspector for payment to the employee. Ms Hill referred to enforcement issues that could arise as a result.

[3] On 14 November 2023 the Authority advised Ms Hill and Mr Chow that it may reopen the investigation on its own volition under clause 4 of schedule 2 of the Employment Relations Act 2000 to deal with this issue.

[4] The Authority asked for a memorandum confirming what changes the Labour Inspector was seeking. Ms Hill provided a memorandum in relation to reopening of the investigation on 20 November 2023.

[5] Mr Chow confirmed in an email dated 23 November 2023 that his firm had been instructed their clients had no objection to the Authority reopening the investigation and changing the orders to the limited extent set out in Ms Hill's memorandum.

### **Reopening**

[6] In the circumstances I am satisfied that I should reopen the investigation for the limited purposes of making the payments ordered in paragraphs 108, 109 and 112 of the determination payable to the Labour Inspector for the use of the former employee. I accept that failure to reopen and make these changes could cause issues with the enforcement of the determination.

### **Change to orders**

#### *Paragraph 108*

[7] Paragraph 108 of the determination sets out the orders made for payment of arrears. This paragraph is changed from Laxmi must pay the arrears to Mr Meena to Laxmi must pay the arrears to the Labour Inspector for the use of Mr Meena. The amounts ordered payable for arrears in paragraph 108(a), (b) and (c) of the determination remains unchanged.

#### *Paragraph 109*

[8] Paragraph 109 of the determination awards interest on the arrears in paragraph 108(a), (b) and (c). This paragraph is changed to state that the interest amount is ordered to be paid to the Labour Inspector for the use of Mr Meena. The interest amount remains unchanged.

*Paragraph 112*

[9] Paragraph 112 of the determination provides that Laxmi must pay penalties of \$17,000 and Mr Singh \$5,500 and half of this must be paid to Mr Meena with the other half to the Crown account. This paragraph is changed to Laxmi must pay penalties of \$17,000 and Mr Singh \$5,500 to the Labour Inspector and the Labour Inspector is to pay half of the penalties to Mr Meena and the other half to the Crown.

[10] Aside from the changes set out above in all other respects the determination including the findings remain the same.

**Costs**

[11] A costs award in respect of the reopening is not sought and no order is therefore made.

Helen Doyle  
Member of the Employment Relations Authority