

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 225
3251119

BETWEEN A LABOUR INSPECTOR
Applicant

AND NODLH LIMITED (T/A
NOODLE CANTEEN LOWER
HUTT)
Respondent

3251839

BETWEEN A LABOUR INSPECTOR
Applicant

AND JTJ INTERNATIONAL LIMITED
(T/A WHERE'S CHARLIE
THORNDON QUAY)
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Patrina Siania, counsel for the Applicant
No appearance for the Respondents

Investigation Meeting: On the papers

Submissions Received: 31 January 2024 from the Applicant

Determination: 19 April 2024

DETERMINATION OF THE AUTHORITY

[1] A Labour Inspector, Jennifer Connor seeks compliance with Improvement Notices issued to JTJ International Limited (JTJIL) and NODLH Limited (NODLHL). The sole director and shareholder of both companies is Ming Jie Yang.

[2] After investigation the Labour Inspector concluded both JTLIL and NODLHL had breached minimum employment standards in more than one way. Improvement

notices were issued requiring NODLHL to remedy the breaches identified by 31 January 2023 and JTJIL by 14 February 2023.

[3] While some further information was provided to the Labour Inspector this was insufficient to remedy the issues set out in the improvement notices. The Labour Inspector's position is that despite multiple extensions to ensure both companies had a full opportunity to remedy the breaches set out in the improvement notices and they have not done so.

The Authority's investigation

[4] The information considered by the Authority comprised of the Labour Inspector's investigation reports into both JTJIL and NODLHL and affidavits from the Labour Inspector in respect of each company together with written submissions filed on behalf of the Labour Inspector.

[5] Neither JTJIL or NODLHL attended the case management teleconference on 15 November 2023 and no evidence, submissions or any communications have been received from either company or the director Mr Yang. The matters were joined under s 221 of the Employment Relations Act (the Act) and it was agreed, subject to any objection from the respondents, these applications would be heard on the papers.

[6] I am satisfied the correct documents have been served on both JTJIL and NODLHL at the business addresses listed on the Companies Office register and that they have been given a fair and reasonable opportunity to respond to the compliance order applications lodged by the Labour Inspector. The Authority has the power to proceed to determine a matter if any party, without good cause, fails to attend or be represented.¹

The issue

[7] The issue for determination is whether JTJIL and NODLHL have complied with the improvement notices issued and, if not, should compliance orders be made?

The Labour Inspector's investigations

[8] The Labour Inspector reviewed both JTJIL and NODLHL's compliance with New Zealand's minimum employment standards set out in legislation and found both

¹ Employment Relations Act 2000, schedule 2 clause 12.

companies to be non-compliant in certain respects. On more than one occasion NODLHL has not kept copies of all individual employment agreements, wage and time records did not show daily hours, annual holiday pay was paid in employee's wages when it should not have been, entitlement to annual holiday leave was not recorded and the holiday and leave records did not contain all the information required.

[9] JTJIL had failed to provide job descriptions with details of duties in employment agreements, complete sets of employment agreements were not provided, annual holiday pay was paid in employee's wages when it should not have been, entitlement to annual holiday leave was not recorded and again holiday and leave records were not complete.

[10] The Labour Inspector issued improvement notices under s 223D of the Act setting out the legislative provisions that JTJIL and NODLHL were breaching. The notices also provided reasons for the belief the JTJIL and NODLHL had failed to comply with those legislative provisions, set out the nature and extent of the failures, recorded the steps JTJIL and NODLHL could take to comply and the date by which they had to comply.

[11] The improvement notices under s 223D of the Act were issued that were for the most part identical requiring to JTJL and NODLHL to:

- (a) Keep daily time and wage records for all employees;
- (b) Provide updated employment agreements to employees who had non-compliant agreements or no agreement;
- (c) Audit how holiday pay was calculated and fix the problems identified;
- (d) Ensure all employees who had been paid holiday pay incorrectly were allocated their entitlement to annual holidays and paid correctly;
- (e) Keep holiday and leave records for all employees that comply with all the requirements in s 81 of the Holidays Act 2003.

[12] JTJIL was required to remedy the breaches and demonstrate compliance by providing the specified information to the Labour Inspector by 31 January 2022 and NODLHL by 14 February 2022. Infringement notices and demand notices were issued earlier in the Labour Inspector's investigation.

[13] Despite extensions to allow time neither company has complied with the improvement notices. Some information was provided by Mr Yang and an accountant in 2023. This information was considered by the Labour Inspector on each occasion but while it was further information and represented an attempt to address the requests from the Labour Inspector, it did not demonstrate compliance with the improvement notices. The Labour Inspector did not receive any further communications from Mr Yang after 17 February 2023 or from the accountant after 7 March 2023.

[14] No objections have been lodged to the improvement notices.²

Have JTJIL or NODLHL complied with the improvement notices?

[15] There is no evidence JTJIL or NODLHL have taken the necessary steps to comply with the improvement notices or engaged any further with the Labour Inspector in order to demonstrate compliance.

[16] The Authority may make a compliance order when any provision of an improvement notice has not complied with.³ The evidence provided by the Labour Inspector establishes both NODLHL and JTJIL have not complied with the improvement notices issued in respect of their breaches of New Zealand employment law.

Compliance orders granted

[17] JTJIL is ordered to provide the information specified in paragraph 6.2 of the improvement notice to the Labour Inspector and to:

- (a) Ensure daily time and wage records are kept for all employees and that these records are kept going forward.
- (b) Identify employees who do not have a copy of a compliant employment agreement and provide those employees with an updated employment agreement that includes all mandatory information as per s 65(2) of the Employment Relations Act 2000. This includes all employment agreements to have a detailed job description (duties) attached.

² Employment Relations Act 2000, s 223E.

³ Employment Relations Act 2000, s 223D(06 and s 137(1)(iib)).

- (c) Carry out an audit and identify all employees who were paid annual holidays with their pay correctly or who did not meet the criteria to receive annual holiday with their pay.
- (d) Ensure employees who have been paid their annual holidays incorrectly with their pay under s 28 of the Holidays Act 2003 receive entitlement to four weeks annual holidays for each 12-month period of continuous employment. Despite payments that have already been made to staff under s 28 of the Holidays Act 2003, they become entitled to annual holidays as per s 16 of the Holidays Act 2003.
- (e) Holiday and leave records need to be kept at all times by the employer for each employee showing all elements as per s 81 of the Holidays Act 2003. Ensure holiday and leave records are kept for all employees going forward.

[18] NODLHL is ordered to provide the information specified in paragraph 6.2 of the improvement notice to the Labour Inspector and to:

- (a) Ensure daily time and wage records are kept for all employees and that these records are kept going forward.
- (b) Identify employees who do not have an individual employment agreement and provide each employee with an individual employment agreement, or individual terms and conditions of employment as per s 64 of the Employment Relations Act 2000.
- (c) Carry out an audit going back six years to 10 January 2017 and identify all employees who were paid annual holidays with their pay incorrectly or who did not meet the criteria to receive annual holiday with their pay.
- (d) Ensure employees who had been paid their annual holidays incorrectly with their pay under s 28 of the Holidays Act 2003 receive entitlement to four weeks annual holidays for each 12-month period of continuous employment. Despite payments that have already been made to staff under s 28 of the Holidays Act 2003.
- (e) Holiday and leave records need to be kept at all times by the employer for each employee showing all elements as per s 81 of the Holidays

Act 2003. Ensure holiday and leave records are kept for all employees going forward.

[19] The time frame for compliance is 90 days from the date of this determination.

Penalties

[20] The Labour Inspector also seeks penalties but requested an opportunity to make submissions on penalties at a later date. Under s 138(5) of the Act the matter is adjourned without imposing a penalty to enable the compliance order to be complied with while the matter is adjourned.

[21] Leave is reserved for the Labour Inspector to return to the Authority to seek penalties after the 90-day time frame for compliance.

Orders for specific employee

[22] An order was also sought for JTJIL to provide payment and the method of calculation of the final annual holiday payment for Tianxiao Zhou, a former employee. No order is made specifically in relation to Mr Zhou because a compliance order can only be made in relation to the matters set out in the improvement notice.

[23] The Authority can make an order for payment of wages or other money payable, by an employer to an employee, under an employment agreement on application by an employee commenced in the prescribed way in the Authority.⁴

Costs

[24] Costs are reserved.⁵

Sarah Kennedy-Martin
Member of the Employment Relations Authority

⁴ Employment Relations Act 2000, s 131.

⁵ For further information about the factors considered in assessing costs see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1