

Attention is drawn to the order prohibiting publication of certain information in this Determination<sup>1</sup>

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 480  
3248319

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	FWP First Respondent
	LEM Second Respondent

Member of Authority:	Peter van Keulen
Representatives:	Greg La Hood and Claudia Milesi-Humm, counsel for the Applicant Ginrick Credo counsel for the Respondents
Investigation Meeting:	On the papers
Submissions Received:	9 August 2024 from all parties
Date of Determination:	12 August 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] During the course of the Authority's management of this matter, the parties were able to resolve their employment relationship problem.

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<sup>1</sup> *A Labour Inspector of the Ministry of Business Innovation and Employment v FWP and LEM* [2024] NZERA 482

[2] The Labour Inspector, FWP and LEM have recorded their agreement in a memorandum dated 9 August 2024 (the Memorandum) which has been lodged with the Authority.

### **Orders**

[3] Based on the Memorandum, and in particular the admissions made by FWP and LEM, I find that FWP breached:

- a. section 6 of the Minimum Wage Act 1983 by failing to pay minimum wage for all hours worked by [Redacted], [Redacted] and [Redacted] during their employment;
- b. sections 16, 21, 23, 24, 25, and 27 of the Holidays Act 2003 by failing to correctly provide and pay annual holidays during and on termination of their employment to [Redacted], [Redacted] and [Redacted];
- c. Sections 40, 49, 50, 55, 56, and 60 of the Holidays Act 2003 by failing to pay [Redacted], [Redacted] and [Redacted] their correct public holiday entitlements, including time and a half, alternative holidays, and payment for public holidays not worked;
- d. section 71 of the Holidays Act 2003 by failing to provide paid correct sick leave entitlements to [Redacted] and [Redacted];
- e. section 69ZD of the Employment Relations Act 2000 by failing to provide [Redacted], [Redacted] and [Redacted] with rest and meal breaks;
- f. section 130 of the Employment Relations Act 2000 by failing to keep compliant wages and time records for [Redacted], [Redacted] and [Redacted];  
and
- g. section 81 of the Holidays Act 2003 by failing to keep compliant holidays and leave records for [Redacted], [Redacted] and [Redacted].

[4] I also find that LEM:

- a. was a person involved in the above breaches, pursuant to s 142W(1)(c) of the Employment Relations Act 2000; and
- b. is liable pursuant to s 142Y(1) of the Employment Relations Act 2000.

[5] In relation to the above breaches, the FWP is liable for wage arrears, holiday pay and sick leave in the total sum of \$108,618.93 (gross) made up as follows:

- a. \$84,069.85 to [Redacted] consisting of: \$57,580.05 for minimum wage arrears; \$8,977.02 for public holiday pay; \$7,773.21 for alternative holiday pay; and \$9,739.57 for annual holiday pay;
- b. \$2,823.81 to [Redacted] consisting of: \$649.22 for minimum wage arrears; \$688.72 for public holiday pay; \$1,267.82 for alternative holiday pay; \$195.71 for annual holiday pay; and \$22.34 for sick leave;
- c. \$21,659.27 to [Redacted] consisting of: \$15,921.20 for minimum wage arrears; \$1,506.93 for public holiday pay; \$778.40 for alternative holiday pay; and \$3,452.74 for annual holiday pay; and
- d. \$66.00 to [Redacted] for sick leave.

[6] FWP will pay \$108,618.93 to the Labour Inspector within 30 days of this determination.

[7] The Labour Inspector will distribute the arrears to the relevant employees.

### **Penalties**

[8] The Labour Inspector's claims for penalties will be determined by the Authority on the papers and directions for submissions have been made.

### **Costs**

[9] FWP and/or LEM will make a contribution to the Labour Inspector's costs in this matter of \$6,637.42.

[10] The issue of any further costs is adjourned pending resolution of the claims for penalties; the assumption being that if penalties are determined on the papers, then any remaining costs will lie where they fall.

Peter van Keulen  
Member of the Employment Relations Authority