

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA519  
3192039

BETWEEN	A LABOUR INSPECTOR Applicant
AND	ALAM HORTICULTURE (2017) LIMITED First Respondent
AND	MORSHED ALAM Second Respondent

Member of Authority:	Shane Kinley
Representatives:	Claudia Milesi-Humm, counsel for the Applicant David Sorensen, for the Respondents
Investigation Meeting:	On the papers
Submissions received:	22 July 2024 from the Applicant
Determination:	29 August 2024

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**SECOND DETERMINATION AND COSTS DETERMINATION OF THE  
AUTHORITY**

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[1] On 24 June 2024, I issued a determination in this matter<sup>1</sup> finding Alam Horticulture (2017) Limited (Alam Limited) failed to provide on request from the Labour Inspector all records as required under s 130(1) of the Employment Relations Act 2000 (the Act) and s 81(2) of the Holidays Act 2003 (HA2003).<sup>2</sup> I also found 23 breaches of the HA2003 by Alam Limited claimed by the Labour Inspector were established, although did not consider a further four breaches had been established.<sup>3</sup>

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<sup>1</sup> *Labour Inspector v Alam Horticulture (2017) Limited and Alam* [2024] NZERA 371.

<sup>2</sup> *Ibid* at [79]a.

<sup>3</sup> *Ibid* at [79]b to e.

[2] I further found Morshed Alam was a person involved in breaches of employment standards under s 142W of the Act, and Alam Limited and Mr Alam, as a person involved in breaches of employment standards, were liable for penalties under the Act and the HA2003 for the breaches established.<sup>4</sup>

[3] I ordered Alam Limited pay arrears totalling \$2,565.53 to the Labour Inspector, for payment to three identified employees.<sup>5</sup> Penalties of \$32,000.00 for Alam Limited and of \$16,000.00 for Mr Alam were to be paid to the Labour Inspector, to then be transferred to a Crown bank account.<sup>6</sup>

[4] I ordered the Labour Inspector to re-calculate arrears owing to one identified employee CLE<sup>7</sup> for the six days I had found established as unworked public holidays that were otherwise a working day for CLE as required by s 49 of the HA2003, with Alam Limited to then pay that amount to the Labour Inspector for payment to CLE.<sup>8</sup> If the parties were unable to agree on the Labour Inspector's re-calculation, then the Labour Inspector was able to revert to the Authority to have their re-calculations reviewed and a further order made accordingly.<sup>9</sup>

[5] In my earlier determination, I also encouraged the parties to resolve any issue of costs between them, and made reference to the Authority's usual practice of applying the daily tariff to determine costs.<sup>10</sup>

[6] The parties have not been able to agree on the Labour Inspector's re-calculation referred to at paragraph [4] above or to resolve costs between themselves and the Labour Inspector filed a memorandum on 22 July 2024 seeking an order in relation to their recalculation of arrears owing to CLE and a contribution to costs.

[7] As no submissions in response have been received for Alam Limited or Mr Alam, I now proceed to determine the matter, as they were advised I would.

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<sup>4</sup> Ibid at [79]f and h.

<sup>5</sup> Ibid at [80]a.

<sup>6</sup> Ibid at [80]c.

<sup>7</sup> The four workers identified in the original determination were referred to by randomly generated identifiers, which bear no resemblance to their actual names. The randomly generated identifier for CLE is retained for the same reasons as it was used in the original determination.

<sup>8</sup> *Labour Inspector v Alam Horticulture (2017) Limited and Alam* at [80]b.

<sup>9</sup> Ibid at [81].

<sup>10</sup> Ibid at [84] to [86].

### **Calculation of arrears**

[8] The Labour Inspector set out their recalculated arrears due to CLE under s 49 of the HA2003 for the six days I had found established as unworked public holidays that were otherwise a working day for CLE. The total arrears claimed by the Labour Inspector are \$769.50, with separate payment rates identified for each of the six identified days.

[9] I accept the Labour Inspector's recalculated arrears due to CLE under s 49 of the HA2003 and orders are made below accordingly.

[10] The Labour Inspector sought this order be made against both respondents. I treat this as an application for prior leave of the Authority, to the extent Alam Limited is unable to pay the amounts of arrears ordered to be paid under paragraph [17] below, under s 142Y(2) of the Act to recover those amounts from Mr Alam as a person involved in breaches of employment standards as defined in s 142W of the Act. An order to this effect was made in my earlier determination in relation to arrears due to other workers<sup>11</sup> and is appropriate here as well.

### **Contribution to Costs**

[11] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Act. The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>12</sup>

[12] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[13] While the investigation meeting for this matter took one full day and concluded at 11am on the second day, counsel for the Labour Inspector agreed at the investigation meeting this should be treated as one day should a determination on costs be required. I indicated my preliminary view was the notional daily rate for one day was the appropriate starting point for a determination of costs.<sup>13</sup>

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<sup>11</sup> Ibid at [83].

<sup>12</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

<sup>13</sup> *Labour Inspector v Alam Horticulture (2017) Limited and Alam* at [87].

[14] The Labour Inspector submitted an award of costs of \$4,500 reflecting the daily rate for the first full day of an investigation was appropriate and said efforts of counsel were commensurate with this. Payment of the filing fee of \$71.56 was also sought.

[15] The appropriate starting point is the tariff for a one-day investigation meeting, being \$4,500. The Labour Inspector did not suggest there were any circumstances which would require an upward or downward adjustment from this amount. No adjustment is made.

[16] The Labour Inspector also submitted the respondents could be made jointly and severally liable for the payment of costs. I consider this is appropriate.

### **Orders**

[17] Alam Horticulture (2017) Limited is ordered to pay \$769.50 in arrears to the Labour Inspector, for payment to CLE, within 28 days of the date of this determination.

[18] To the extent Alam Limited is unable to pay the amounts of arrears ordered to be paid under paragraph [17], then the Labour Inspector has prior leave of the Authority under s 142Y(2) of the Act to recover that amount from Morshed Alam as a person involved in breaches of employment standards as defined in ss 5 and 142W of the Act.

[19] Alam Horticulture (2017) Limited and Morshed Alam are jointly and severally ordered to pay to the Labour Inspector within 28 days of the date of this determination the sum of \$4,500 as a contribution to costs and to reimburse the filing fee of \$71.56.

Shane Kinley  
Member of the Employment Relations Authority