

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 68
3153103

BETWEEN AMANDEEP SINGH
Applicant

AND SURF 'N' TURF HOSPITALITY
LIMITED
Respondent

Member of Authority: Antoinette Baker

Representatives: Applicant in person
Simon Graham, counsel for the Respondent

Investigation Meeting: 2 August 2023 at Timaru,
16 August 2023 at Christchurch and by AVL

Submissions received: 6 November 2023 from the respondent

Determination: 7 February 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Singh was employed by the respondent (SNT) from 7 October 2020 until 4 July 2021 when he resigned. Mr Singh's employment was based on a work visa with Immigration New Zealand that recorded he was employed as a 'venue general manager'. At the time of his resignation, he says that a restructuring process to disestablish that role was not genuine and was predetermined resulting in his resignation. Mr Singh also says he resigned because he was not getting enough hours of work as agreed to and was not getting statutory breaks. He further says that SNT did not pay for his first three months of his family accommodation as was agreed.

[2] Mr Singh claims compensation and lost earnings because he was disadvantaged and constructively dismissed. He also claims the short fall from the hours he says he should have been provided and for the breaks not taken. He further claims for the accommodation costs that he says should have been paid by SNT and penalties for various statutory breaches.

[3] SNT denies the claims and stands by the genuineness and fairness of procedure of its restructuring process.

The Authority's investigation

[4] An investigation meeting was scheduled to be held across three days in Timaru (1,2,3 August 2023) with both this claim and Mr Singh's wife, Ms Simran Kaur's claim against SNT. Both were heard together. A determination about Ms Kaur's claim is also made today. Before any written evidence was lodged, the representative for both Ms Kaur and Mr Singh communicated that she no longer had instructions to act but that Ms Kaur and Mr Singh would appear at the investigation meeting and give oral evidence. The Authority communicated with Ms Kaur and Mr Singh about providing written evidence and they provided brief statements before the investigation meeting was due to be held.

[5] Mr Zandbergen and his counsel appeared on the first day of the scheduled investigation meeting in Timaru. Mr Singh and Ms Kaur did not. Neither had previously communicated that they would not be attending nor was any reason given prior to the meeting dates. Because there had been email participation by Ms Kaur and Ms Singh about their evidence and noting they were now unrepresented, I stood the matter down while the Authority made inquiries. These inquiries resulted in the matter being adjourned to recommence the following day. Mr Singh explained something to the effect of not knowing about appearing on the first day but could travel up from Dunedin by the second day which he did. He indicated that his wife, Ms Kaur was out of the country for a family bereavement and provided copies of tickets showing she had travelled in a family group on 29 June 2023 to India. In these circumstances I continued to hear the claim for Mr Singh on 2 August 2023 hearing from Mr Singh, Mr Zandbergen and

three witnesses (employees of SNT) for SNT by phone. I then adjourned to complete hearing Mr Singh's claim and also to hear Ms Kaur's claim. The continued hearing was held on 16 August 2023 in Christchurch by AVL, Ms Kaur in India, Mr Singh in Dunedin, Mr Zandbergen and his counsel in person.

[6] At the investigation meeting on 16 August 2023 I asked for some further information, this was received, and I reserved my decision.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[8] The issues requiring investigation and determination are:

- a. Did SNT breach a contractual obligation to provide Mr Singh with 40 hours per week and, if so, what if any amount is to be paid to Mr Singh including any associated holiday pay?
- b. Did SNT breach a contractual obligation to pay Mr Singh's first three months of accommodation and, if so, what if any amount is to be ordered for repayment for this loss?
- c. Did SNT breach its statutory obligation to ensure Mr Singh received breaks during his employment and, if so, what is the remedy?
- d. Was Mr Singh disadvantaged in his employment due to the actions of SNT through its director Mr Zandbergen?
- e. Did SNT unjustifiably dismiss Mr Singh by way of constructive dismissal?
- f. Depending on the above, what if any remedies are to be awarded for compensation and lost earnings?
- g. Should any remedies awarded be reduced for blameworthy conduct by Mr Singh?

- . Should penalties be awarded?
- a. Should either party be ordered to pay a contribution towards their legal costs by the other?

Did SNT breach a contractual obligation to provide Mr Singh with 40 hours per week and, if so, what if amount is to be paid to Mr Singh including any associated holiday pay?

[9] Mr Singh says he is entitled to be reimbursed for the hours not offered during his employment. He says this was a breach of contract. He says he was employed ‘full time’ for 40 hours per week on a permanent basis and this did not happen.

[10] If I am satisfied that the parties to this employment relationship agreed that Mr Singh would be employed for 40 hours for every week then not providing these hours to Mr Singh would be a breach of that agreement. I would then consider whether Mr Singh should be reimbursed for the short fall in these hours being his resulting loss. This would need to include a consideration of his entitlement to holiday pay on any award made. I therefore need to first consider what the parties agreed to about Mr Singh’s hours of work. This will include primarily understanding what was agreed to in Mr Singh’s individual employment agreement (IEA).

Mr Singh’s IEA

[11] Mr Singh has put forward what was described for him in his Statement of Problem as the IEA that applied to his employment. This is the only ‘IEA’ I have in evidence, SNT did not retain a copy or provide anything different. Mr Zandbergen says that this ‘version’ of the IEA is altered from the one he provided to Mr Singh, and he did not retain a copy. He says it was for the purpose of assisting with the requirements of Mr Singh’s application for a work visa. This is consistent with the employer declaration Mr Zandbergen also signed.

[12] Much was made of Mr Singh’s integrity about the IEA that was provided. I make no finding about this. I observed that he seemed unperturbed and lacking insight into his

acknowledgement in his oral evidence at the very least that the job description was added to the IEA (and not added by SNT). He appeared to think this was all standard for his application to Immigration New Zealand (INZ). I make no findings about this other than I am not satisfied Mr Singh has been well advised or supported, or at worst he has not listened to reliable advice when formulating his application for a work visa.

[13] What I find Mr Zandbergen does not dispute is that the wording in relation to this IEA contains the agreement as to hours of work and the definition of 'full time'.

[14] Schedule A carries the same filled in handwriting that Mr Zandbergen filled in on Schedule A of Ms Kaur's IEA. That includes handwritten '40 hours' next to printed 'Hours of work' with the following printed words immediately underneath:

'Flexible hours as required by the employer. Hours may vary
from week to week. Minimum Engagement of 2 hours per shift.'

[15] At Clause 5.1 Mr Singh's position is described as 'Venue General Manager. The position is full time.'

[16] Full time and part time employees are defined in the IEA as:

- 2.1 **Full time employees** Full time employees are those generally employed for 30-40 hours a week, but not more than 40 hours per week unless the parties agree otherwise.
- 2.2 **Part-time employees** Part-time employees are those employed for flexible hours depending on the requirements of the employer. Hours are expected to be less than 40 hours per week. A particular number of hours cannot be guaranteed.

[17] I find a plain reading of the above inclusions in the IEA show that Mr Singh's hours were agreed to be a minimum of 30 hours per week and not the 40 that he rests his claim for wage arrears on. If there were verbal representations about more hours per week I have

contested evidence about this. In other words, the best evidence is the IEA that both parties appear to rely on. Despite Mr Zandbergen's misgivings about the changed format of the agreement, he only has himself to blame for not retaining a copy of what he offered. I further note that submissions on SNT's behalf invite me to consider the wording in the IEA which I have and agree that they refer to a minimum of 30 hours per week.

[18] I find further support for this 'full time' interpretation from the way Mr Singh's application to INZ appears have been interpreted as 'Hours: 30-meets full time employment requirements'.¹

[19] Standing back from the above context I find that the IEA records what was agreed to between the parties as to hours of work. This was a minimum of 30 hours per week.

[20] My review of the payroll records provided by SNT for the period of Mr Singh's employment show me that of the 32 weeks he worked for SNT it is only the final week that Mr Singh is showing as having worked under 30 hours (28 hours). I note that the final week was when Mr Singh resigned without notice on 4 July 2021.

[21] In considering these records I have added hours of work for weeks that clearly included payment at time and a half for working statutory holidays. I have not counted payments at ordinary time for public holidays which I take to be public holidays not worked. If I was wrong to do so, these hours would have increased rather than decreased Mr Singh's weekly hours. I also note that in the week's pay dated 9 May 2021 Mr Singh took 16.5 hours of paid sick leave. This with the ordinary hours of 16.5 I take to be 33 hours for that week.

[22] While the payroll records show that Mr Singh took annual leave in advance, (later reconciled against accrued leave when he left before completion of 12 months) this is consistent with his evidence that he kept asking for more hours. His time sheets show he did this with

¹ Further information provided by Mr Singh at my request after the Investigation Meeting: 'Application Notes' created by an INZ officer recording a check list of the application type; 'Visa, Work' Essential Skills' for Surf 'N Turf Hospitality Limited dated 14 Sept/2020/02:21pm.

short notes asking about more hours. I am not persuaded that this alters my finding that what he agreed to work in his IEA was a full-time position at a minimum of 30 hours. I am satisfied based on Mr Zandbergen's evidence and other employees at SNT that the venue was subject to seasonal hospitality fluctuations. Mr Singh says this was not discussed but he must have known this having worked already in hospitality in a managerial position.

[23] Based on the above I dismiss Mr Singh's claim to be reimbursed based on a breach of his IEA for hours up to 40 hours.

Did SNT breach a contractual obligation to pay Mr Singh's first three months of accommodation and if so what if any amount is to be ordered for repayment for this loss?

[24] Mr Singh says there was a verbal agreement that SNT would pay his first three months of accommodation. He relies on an advertisement that attracted him to the position. His evidence was inconsistent about when he actually saw that agreement and in the end I find a likelihood it as not until after he had met with Mr Zandbergen. This is because I accept that an Immigration Agent for Mr Singh had contacted Mr Zandbergen first about the advertisement.

[25] Even if I am wrong about the timing of when this advertisement was seen by Mr Singh, the advertisement referred to an accommodation package for the 'right' candidate. For the same reasons that I rejected Mr Kaur's claim that this accommodation package was part of her agreement I find that it was not agreed to. I accept Mr Zandbergen's evidence that the accommodation available for employees was not suitable for a family and that he only supported Mr Singh and Ms Kaur to obtain their accommodation. I further find it implausible that such a significant living costs as weekly rent for three months was only mentioned after the employment ended and some months after the three months had passed.

[26] Accordingly, I dismiss the claim for reimbursement of the accommodation of three months for Mr Singh because I have not found SNT likely did not agree to pay this as part of Mr Singh's employment.

Did SNT breach its statutory obligation to ensure Mr Singh received breaks during his employment and if so, what is the remedy?

[27] In the Statement of Problem lodged on Mr Singh's behalf he claimed he did not receive breaks, ten minutes and 30-minute breaks. He claims this was a statutory breach. He has provided little evidence of this other than to state generally this was what happened.

[28] Mr Zandbergen has put forward in the Statement in Reply that Mr Singh did the rosters so could have scheduled breaks. I am not satisfied that is what happened at this work place. I found after hearing oral evidence from Mr Singh and Mr Zandbergen that I conclude that it was Mr Zandbergen who controlled the rosters. I will return to this issue below when considering the genuineness of the proposal to disestablish Mr Singh's role.

[29] I find the evidence of Mr Zandbergen that a hospitality business of the type run by SNT had busy service delivery times during which a team would work in together to take breaks when they could. I do not find the evidence of other employees of SNT overly helpful in relation to their observations about Mr Singh taking breaks. Neither Ms Everett nor Ms Chamberlain appear to have worked closely with him. Mr Anit Kaur's evidence included a generalised statement saying Mr Singh only seemed to work when he felt like it. I did not find this unspecified evidence helpful when considering what breaks Mr Singh may or may not have taken.

[30] Mr Singh has also only generalised about what breaks he believes he was not able to take. It appeared to become something that he began to raise in his feedback to the proposal to disestablish his role. Mr Singh also gave oral evidence that Mr Zandbergen did not tell him he could not take a break but that he was told 'not just yet.' I find this consistent with the way that busy service times were conducted as described by Mr Zandbergen and Ms Cunningham.

[31] To find a statutory breach here I would need to be satisfied I have sufficient evidence to consider at least it was more than likely that Mr Singh did not receive the breaks he complains of. I do not have that evidence and dismiss this part of his claim.

Was Mr Singh disadvantaged in his employment due to the actions of SNT through its director Mr Zandbergen?

[32] I note that this part of Mr Singh's claim appears to be based on the process or communications leading to Mr Singh's resignation or a decision to disestablish his role. It is not entirely clear, and Mr Singh did not progress this. I find this is likely about the same factual matrix that I need to consider as part of the claim of constructive dismissal. To that end I find it appropriate to consider Mr Singh's grievance under that head.

Did SNT unjustifiably dismiss Mr Singh by way of constructive dismissal?

Resignation

[33] I am satisfied that Mr Singh resigned on 4 July 2021 without notice by a letter that opens with: 'Please accept this letter as formal notification that I am leaving my position [Venue General Manager] and walk off. Today will be my last day of work.' He then refers to his reason being that SNT has not met its obligations to him about hours of work and pay. He then refers to wanting government agencies to be involved to investigate 'job titles' for migrant workers at SNT and says that it was 'not a pleasure to work in your company' referring to his view that SNT was 'exploiting employees like me.'

Proposed Restructuring

[34] Before Mr Singh resigned Mr Zandbergen had commenced a restructuring process that included letters that invited Mr Singh to feedback on a proposal for a 'flat management structure' that involved his 'Venue General Manager' role being disestablished and replaced with a new permanent 'Duty Manager'. The reason given was that after talking to senior staff about the existing structure there were communication problems and a duplication of tasks

between the general manager (I understand this is the role Mr Zandbergen says he was doing) and the 'Venue General Manager' role that Mr Singh says he was employed to do.

[0] Two comparative charts were provided in SNT's proposal to restructure, and it is clear from Mr Singh's feedback that he was upset about the proposal and saw it as a demotion for no good reason. He says the proposal was not genuine.

[1] Ms Everett gave evidence for SNT that Mr Zandbergen talked to her generally about the then existing structure, and that she told him that communication needed to be improved. She confirmed to me that there was nothing in writing and just a casual conversation. I have no other evidence showing who or what SNT did to form its main premise for proposing to disestablish Mr Singh's role. Its communications about the proposal do not include anything about the actual duplicated tasks or what communication problems were causing it to propose to restructure.

[35] A restructuring process took place and Mr Singh was asked for feedback and provided this. I acknowledge that an employer has the right to organise its business interests, but I find that the role 'Venue General Manager' was likely a title used for the purpose of getting Mr Singh's required visa to work for SNT and work in New Zealand. Mr Zandbergen's oral evidence to me was that the role, in reality, did not exist, and he had no real answer for me when I asked him how he could disestablish a role that did not exist. While he also says that everyone just pitched in to run the venue and said that 'titles' are just titles, there is further evidence that satisfies me that in fact Mr Singh was not likely doing the role of Venue General Manager.

[36] Mr Singh initially said he made no alterations to the IEA after an original was provided to him by Mr Zandbergen to take away to his agent. I accept Mr Zandbergen's evidence that he did not see the version before me until it appeared in these proceedings. The IEA included the title 'Venue General Manager' and an attached job description. In cross examination Mr Singh conceded that he did add the job description for the 'Venue Duty Manager' and explained that was the standard job description for that title. The job description is extensive, and I find it

unlikely that Ms Singh performed many of the tasks in the job description attached to the IEA. My reasons follow.

[37] The straightforward evidence of Ankit Kaur was that he ran the restaurant for SNT and did not regard Mr Singh as being his manager. He recalled Mr Singh referring to himself as a Duty Manager. The job description in the IEA for 'Venue General Manager' inconsistently refers to managing staff in the restaurant.

[38] SNT submits that I should take note of Mr Singh's Time Sheets that show split shifts working the restaurant and bar. I asked Mr Singh about this. These would appear inconsistent with the senior role of 'Venue General Manager'. Mr Singh then told me he completed admin tasks, but also that Mr Zandbergen had the overall control of rosters or the final say, altering anything he put forward. Mr Singh seemed unhappy about this, but I understood it related to his concern about not getting enough hours of work rather than whether this impacted on him performing the IEA job description as an overall senior manager. Mr Singh explained he did not order supplies beyond the bar. Again, inconsistent with overall duties in the job description about managing stock and supplies. I understand separate manager or senior staff ordered for example kitchen supplies. Mr Zandenbergs says the admin tasks that Mr Singh completed would only have been minimal and I find that more likely. Mr Singh said he did not recruit staff again inconsistent with the job description. Attached to the IEA.

[39] Standing back from the above I find this is a situation where the application to get a work visa with SNT was more important likely to both parties than the IEA accurately recording the role done. I am asked to cast doubt on Mr Singh's credibility about this however I note that Mr Zandbergen signed a declaration to INZ that the role was called 'Venue General Manager' and has then subsequently used that title when proposing to disestablish that role, a role he accepts likely never existed. This in itself calls into serious question the genuineness of the proposal to disestablish the role.

Was the proposal to disestablish Mr Singh's role decided before his resignation?

[2] I find that SNT had already decided to go ahead with its proposal to disestablish the 'Venue General manager' role before Mr Singh resigned.

[3] This is because a plain reading of the letter from SNT to Mr Singh on 24 June 2021 includes that SNT proposed to advertise the new position for Duty Manager 'immediately' and then 'after completion of three weeks of advertisement which is generally required by INZ I will be able to determine *whether*² I can support you for the purpose of a new work visa for the duty manager position.' The letter continues 'If ... you do not wish to apply for the new duty manager position, please advise me as a matter of urgency as I will take alternative steps to recruit for this new position.' 'If you are interested in this position, I propose to hold off disestablishing the venue manager position for a period of approximately six weeks from the date of this letter. This should be sufficient time for me to undertake the recruitment process and hopefully be in a position to support your application for a visa and allow sufficient time for INZ to process your application.' The letter then concludes that, 'Ideally, this should be a seamless process. Subject to the company being in a position to support your application and INZ issuing you with a new visa, there is unlikely to be any disruption in your employment with the company.'

[4] I find that this letter shows that Mr Zandbergen had decided to disestablish the role of 'Venue general manager' that was attributed to Mr Singh. He was advertising the replacement role of Duty Manager 'immediately'. Mr Singh's ongoing employment with SNT was then conditional upon Mr Singh being able to obtain a work visa that covered this role. The letter shows me that Mr Zandbergen intended to support this, but I do not accept this could be a foregone conclusion that it would be successful. I find at this stage a decision was made that put any continuation of Mr Singh's job or at least his ability to work in New Zealand in jeopardy. Mr Singh's response was to resign on the 4 July 2021 including that he had concerns about the use of 'job titles' by SNT.

² Italics emphasis added.

Constructive dismissal

[45] The Court of Appeal³ has listed three non-exhaustive situations where constructive dismissal might occur:

- a. Where the employee is given a choice of resignation or dismissal;
- b. Where the employer has followed a course of conduct with the deliberate and dominant purpose or coercing an employee to resign;
- c. Where a breach of duty, by the employer leads a worker to resign.

[46] When considering whether there has been a constructive dismissal the Court of Appeal⁴ has said it is,

essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the border line which separates inconsiderate conduct causing some unhappiness or resentment to the employee, from dismissive or repudiatory conduct reasonably sufficient to justify the termination of the employment relationship.

[47] It appears that the breach of duty of good faith is what has been claimed for Mr Singh as leading to his resignation.

[48] Section 4 of the Act includes that parties are to deal with each other in good faith. This includes not doing anything to mislead or deceive each other⁵; to be ‘active and constructive in establishing and maintain a productive employment relationship, in which the parties are, amongst other things, responsive and communicative⁶’ and if proposing to make a decision that will likely have an adverse effect on the ‘continuation of employment’ to provide access to

³ Cooke J in *Auckland Shop Employees Union v Woolworths (New Zealand) Limited* (1985) 2 NZLR372 (CA) at 374 following an approach previously taken in the former Arbitration Court in NZ.

⁴ *Wellington Clerical Union v Greenwich* [1983] ACJ 965 at 975

⁵ Section 4(1).

⁶ Section 4(1A)(b).

relevant information about this and give the opportunity for the employee to comment before a decision is made.⁷

Was there a breach of good faith by SNT that likely caused Mr Singh to resign?

[49] Mr Singh challenges the restructuring process that was initiated by SNT to disestablish his role saying it was not genuine and that it led to him resigning and as such a constructive dismissal. I also note that his reason in the resignation letter also related to the lack of hours which I have already dismissed above.

[50] I find that SNT breached its duty of good faith owed to Mr Singh. This is because I find the restructuring process was not genuine, the role did not in reality exist. What I find likely was a problematic situation for Mr Zandbergen, in part of his own making. He said in oral evidence he really did not think it through when he created the new position. I find his rationale was more likely that he needed to employ a Duty Manager and agreed to support a description of a more senior comprehensive role to make that happen. That Mr Singh likely knew this I will return to. For now, however I accept Mr Singh became distressed about this situation together also with the financial situation he says occurred from reduced hours. He says that the proposal was also in line with the quiet season. I find some likelihood that this timing was not a coincidence. Overall, I find that SNT ought reasonably to have foreseen Mr Singh would resign.

I say this because I am satisfied that Mr Zandbergen ought to have known that the role being disestablished was not the reality. He was familiar with what needed to be provided for work visa applications and I do not find this was a matter of naivety. The actions were not what a fair and reasonable employer could have done in the circumstances, and this makes the dismissal unjust.⁸

⁷ Section 4(1A)(c).

⁸ Employment Relations Act 2000, section 103A.

Lost wages

[5] Mr Singh's Statement of Problem included a claim for significant remedies for lost wages. It is unclear to me what the lost wages were, and I note the submission for SNT that Mr Singh secured another position having applied for this before he resigned. Earnings are reflected in his IRD records. However, Mr Singh explained to me that he received other assistance from his new employer. I am not prepared to make a lost wages claim.

Compensation

[6] Mr Singh provided oral evidence that the reductions in his hours (based on not receiving 40 hours per week) took a financial strain and a toll on his relationship with Ms Kaur. Her evidence is consistent with this. Ms Kaur had to get employment in another town, Mr Singh became visibly upset in his evidence about the separation from his young child as a result. While SNT submits there is little evidence to support compensation I find the above satisfies me that some compensation should be awarded and find \$12,000.00 to be appropriate.

Should any remedies be reduced for employee contribution?

[7] Under s 124 of the Act I must consider whether any remedies awarded for the person grievance should be reduced due to 'the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance' and reduce any remedies that otherwise would be awarded. I have considered the situation here. At the heart of my finding that SNT constructively dismissed Mr Singh was that the role proposed to be disestablished did not likely exist and Mr Singh likely played some part in this situation as I have already traversed above.

[8] The Employment Court⁹ has summarised an approach when considering this issue and made observations about past awards for contribution reducing a 50% contribution award made

⁹ *Maddigan v Director-General of Conservation* [2019] NZEmpC190 at [71] to [77].

by the Authority to no more than 20%. In that case the employee's contribution was described by the Court as blameworthy for reasons I find were considerably more blameworthy than the present situation.

[9] Accordingly, I find that a 5% reduction in the compensation remedy is appropriate which is \$600.00 deducted from the \$12,000.00 I have found above, a total of \$11,400.00.

Penalties

[10] Penalties for breaches of various sections of the Act open a company to liability to a maximum amount of \$20,000.00 per penalty.

[11] In deciding whether to impose a penalty, and if I decide to, I would need to consider the factors in s 133A of the Act and the approach as set out by the Employment Court.¹⁰ This includes a consideration of the number and nature of the breaches; the severity of each breach; the ability of the person in breach to pay; and proportionality to ensure that any final penalties awarded are 'just in all the circumstances.'

[12] Penalties are punitive and a reason to award them is to support compliance with employment standards and not primarily to compensate employees individually. The Employment Court has observed that there can be a risk of doubling up of penalties in relation to things that effectively arise from the same facts that give rise to the grievances claimed. Global penalties are sometimes awarded.¹¹

[13] Mr Singh in his Statement of Problem instructed his then representative to apply for a lengthy list of penalties none of which were then progressed by Mr Singh. I note further that I did not conclude he had proven his contractual breach claims to which most of the penalties appear to have been lodged.

¹⁰ *Borsboom v Preet PVT Limited* [2016] NZEmpC43 at [151].

¹¹ *Xu v McIntosh* [2004]2 ERNZ 448 at [43] – [45]

[14] I note further that INZ noted SNT was an employer without a history of noncompliance with the Labour Inspectorate when considering Mr Singh's application for a work visa sponsored by SNT.¹²

[15] Accordingly, standing back from this matter and the way it has played out this determination should serve as sufficient deterrence, and I do not find it is appropriate to further consider making an award of penalties.

Summary of orders

[16] Within 28 days from the date of this determination Surf 'N Turf Hospitality Limited is to pay Amandeep Singh \$11,400.00 as compensation under s103(1)(c)(i) of the Employment Relations Act 2000.

Costs

[17] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[18] If they are not able to do so and an Authority determination on costs is needed Mr Singh may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum SNT would then have 14 days to lodge any reply to memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

¹² See above at note 1.

[65] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless circumstances required an upward or downward adjustment of that tariff.¹³

Antoinette Baker
Member of the Employment Relations Authority

¹³ <https://www.era.govt.nz/determinations/awarding-costs-remedies/>.