

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 711
3264879

BETWEEN A LABOUR INSPECTOR
Applicant

AND NZ NEW EMPEROR LIMITED
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Jessica Allison, counsel for the Applicant
Ali Mohammed Farahani, representative for the
Respondent

Investigation Meeting: On the papers

Determination: 29 November 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] A Labour Inspector of the Ministry of Business, Innovation and Employment commenced proceedings against NZ New Emperor Limited (NZ Emperor) on 24 November 2023 seeking orders that it comply with an improvement notice issued under s 223D of the Employment Relations Act 2000 (the Act). The Labour Inspector also sought a penalty for the company failing to comply with the improvement notice.

[2] The Labour Inspector requested proceedings in respect of its application for a compliance order be adjourned until such time as either all arrears are paid, or NZ Emperor fails to adhere to the instalment arrangement. Accordingly, this determination deals only with the penalties the Labour Inspector seeks against NZ Emperor as a result of it failing to comply with the improvement notice.

Discussion

[3] The parties agreed that the Authority should deal with the penalty issue on the papers. Although submissions were received from the Labour Inspector, NZ Emperor has not filed submissions within the agreed timetable, therefore its view on penalties remains unknown.

[4] Section 223F of the Act provides that an employer who fails to comply with an improvement notice issued under s 223D is liable, in an action brought by a Labour Inspector, to a penalty imposed by the Authority.

[5] As the Labour Inspector submits, the purpose of imposing a penalty in circumstances such as these, is to deter employers from failing to comply with improvement notices. Although there are no submissions from NZ Emperor, it is clear that the company was aware of the improvement notice and acknowledged their obligation to rectify the issues identified by the Labour Inspector. These failures related to non-compliance with the provisions of the Holidays Act 2003.

[6] In deciding whether a penalty is appropriate, deterrence is a key consideration. When an employer receives an improvement notice, compliance is mandatory. If an employer has issues with an improvement notice, it has an ability to object under s 223E of the Act. NZ New Emperor has not done this.

[7] There is one breach, namely non-compliance with the improvement notice. The maximum penalty against a company is \$20,000.00. I have had regard to that as I am required to by s 133A of the Act in determining an appropriate penalty. The breach is intentional, but NZ Emperor has not previously appeared before the Authority for breaches under the Act. As I mention above, an employer needs to take an improvement notice issued under s 223D seriously. I conclude the failure to comply with the improvement notice was intentional and there are no mitigating factors. Having considered other similar penalty awards in other cases, a fair penalty for the breach is \$3,000.00.

Orders

[8] NZ New Emperor Limited is ordered to pay a penalty of \$3,000.00 to the Crown, such payment to be made within 28 days of the date of this determination.

Costs

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

[10] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the Labour Inspector may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum NZ New Emperor Limited will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[11] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹

Geoff O’Sullivan
Member of the Employment Relations Authority

¹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1