

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 8
3133457

BETWEEN SIMRANJIT SINGH
 Applicant

AND THE NEW ZEALAND
 NANAKSAR THATH ISHER
 DARBAR
 Respondent

Member of Authority: Peter Fuiava

Representatives: May Moncur, advocate for the Applicant
 Michelle Pollak, counsel for the Respondent

Investigation Meeting: 15-18, 21 November 2022, 13-17 March, 7-8 June 2023

Submissions received: 9 October 2023 from the Applicant
 10 October 2023 from the Respondent

Determination: 10 January 2024

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] This employment problem was brought by Simranjit Singh who alleges he was exploited by The New Zealand Nanaksar Thath Isher Darbar, a Sikh temple in Manurewa (the Temple). However, Simranjit Singh is a pseudonym and the applicant's real name is Tarsem Singh, a 35-year-old citizen of India who currently holds a New Zealand residence visa.

[2] Tarsem alleges that from 1 April 2013 to 20 December 2020 he completed a minimum of 5,500 hours of maintenance/handyman work for the Temple for which he has not been paid. He says that he was threatened with the cancellation of his earlier work visas if he refused to perform the maintenance/handyman work which he says he

undertook at the Temple, at its two childcare centres, and six rental properties, all of which are within walking distance of each other on Great South Road, Manurewa.

[3] Both parties agree that Tarsem was engaged by the Temple as an assistant Sikh priest on a volunteer basis. He is not seeking to be compensated for that work. However, he is seeking wage arrears, penalties, and compensation for the non-religious work he did as an alleged maintenance worker/handyman. The Temple denies entering into an employment relationship with Tarsem in relation to that work and any involvement with the creation of his false passport. If any maintenance/repair work was performed by Tarsem, the Temple says that he did so of his own volition and in accord with the principle of *sewa* or selfless service and without instruction or expectation of reward.

Lapse of interim non-publication order

[4] On 14 March 2023, the Authority made an interim non-publication order to prevent any reporting of this case until it released its determination. With the release of this determination, the interim non-publication order is no longer extant.

How has the Authority investigated?

[5] In addition to several days of investigation, a site visit of the Temple and its various properties was conducted on 8 June 2023. For its investigation, the Authority received several written witness statements. For Tarsem, witness statements from joinery business owner Kulwinder Singh, tiler Manjinder Singh, project manager Ross Thrupp, former flatmate Ranjit Singh, classmate Raminder Singh, friend Harmandeep Singh, former tenant Harpreet Singh Mann, former Temple trustee Gurcharan Singh, registered electrician Yadvinder Singh, former Facebook page administrator Iqbal Singh and former roommate Kulvir Singh were provided.

[6] For the Temple, witness statements from chairperson and spiritual leader Babaji Amar Singh (Babaji), lawyer and current Temple trustee Ranbir Singh, Temple Facilities Manager Tarunjeet Kaur, and lead priest Ishvar Singh were provided.

[7] For ease of reference, I have referred to various witnesses by their first name several of whom attended the investigation meeting by audio-visual link (AVL). Of

Tarsem's witnesses, Mr Thrupp, Harpreet, Kulvir, and Iqbal attended by AVL. For the Temple, Babaji, Ranbir and Ishvar attended remotely also.

[8] As part of its investigation, the Authority issued a witness summons for former manager of the Temple's childcare centres, Rajvinder Singh, who answered the summons and attended the investigation meeting in person. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also spoke to their closing written submissions and answered questions from the Authority about the same.

[9] 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.

What is the issue?

[10] The issue requiring investigation and determination is whether Tarsem undertook maintenance/handyman work for the Temple outside of his volunteer duties as a Sikh priest for which he should have been paid because he was an employee under s 6 of the Act.

What happened?

[11] Tarsem first arrived in New Zealand in March 2010 under his real name of Tarsem Singh and as the holder of a student visa. He was 21 years of age at the time and had studied an electrician's course in India part-time while assisting his father, a wheat farmer. The cost of Tarsem's student visa application amounted to NZD15,800 which the father paid by way of a farming loan. Tarsem's student visa conditions required him to study for a Diploma of Information Technology at Computer Power Institute New Zealand (CPI). However, Tarsem stated that he was not provided with any formal teaching and that the course was 'self-study' only. As a result, he stopped attending his classes and sought a refund of his tuition fees.

[12] Tarsem stated that rather than refund his money, CPI reported him to Immigration New Zealand (INZ) for not being a genuine student. It was during this time, he started to volunteer at the Temple in Manurewa and in particular assisted with

the building of a new retaining wall. He befriended Rajvinder, the then day care centre manager for the Temple, sharing with him his predicament regarding his student visa.

[13] With Rajvinder's help, Tarsem submitted another student visa application to INZ in April 2011 but that application was declined because of information that he had not attended any of his courses at CPI. With the decline of his student visa application, Tarsem returned to India in July 2011 without a qualification and a student debt of approximately NZD20,000. Relying on his friendship with Rajvinder, Tarsem went to the Temple's head office in New Delhi where he met Paramjit Singh Lali (Paramjit), who until recently was the general secretary and an advisor to Babaji, the Temple's chairperson and spiritual head. From 2011 to 2013, Tarsem worked for the Temple as a volunteer.

[14] In New Delhi, Tarsem received religious training concerning the reading of the Sikh sacred text, the *Guru Granth Sahib*. He impressed Babaji with his sincerity for religious life and when questioned about his decision to return Tarsem to New Zealand, Babaji stated that he had taken Paramjit's advice on the matter.

[15] Tarsem stated Paramjit, Rajvinder and Babaji discussed in India how they would send him back to New Zealand and it was agreed that an application for a temporary religious work visa would be made for him for which he would need to pay a premium of ₹70,000 (approximately NZD1,350) to apply. However, that application was declined on account of Tarsem's immigration history.

[16] When asked about the alleged ₹70,000 payment, Rajvinder denied that this was required from Tarsem and that he was hearing this for the first time. Rajvinder also denied that he consulted Babaji and Paramjit to bring Tarsem to New Zealand and that in any case, Babaji had not instructed him to do so. Rajvinder further stated that it was Paramjit who prepared the false passport and that he (Rajvinder) was simply following instructions because there was a hierarchy.

[17] Babaji also denied the alleged premium payment, stating that he never talked about money with anyone and to his knowledge neither he nor his organisation had been investigated by INZ or any other immigration agency. Furthermore, Babaji denied the suggestion that he had been banned or prohibited from entering other countries.

[18] According to Babaji, he met Tarsem for the first time in 2011 in New Delhi through Paramjit who made the introduction and who referred to Tarsem as 'Sema'. Consequently, Babaji has since referred to the applicant as Sema not knowing his true identity until after INZ and the Police conducted a dawn raid of Tarsem's home on 20 December 2020, some nine years after the initial introduction.

[19] However, Tarsem claims that he first met Babaji in 2011 in New Zealand and that he was introduced through Rajvinder who referred to him by his real name. While Babaji agreed that via Rajvinder he had met the applicant in New Zealand, this was in 2013 and not 2011. Further, Babaji stated that Rajvinder had also referred to Tarsem as Sema.

[20] When asked about that meeting, Rajvinder denied having taken Tarsem to meet Babaji. This was unlikely in his view because Babaji was the spiritual head and was regarded as a living Saint. Rajvinder further stated that it was Kulvir, Tarsem's former roommate, who had taken him to see Babaji. When questioned by the Authority, Kulvir confirmed that he was present at that meeting which took place in Babaji's private room at the Temple in Manurewa. However, he neither overheard nor confirmed that Babaji was aware of the applicant's real name.

[21] Following the decline of Tarsem's first religious work visa application which was made under his real name, he stated that Paramjit applied for a new passport for him at the cost of a further ₹70,000 which Tarsem says he paid. Upon receiving the passport Tarsem stated that he was shocked that it contained a new name for him, a date of birth that was not his, different names for his parents and that Babaji had been named as his father. He was told not to worry about the passport because everything would be organised for him and that he would be working in New Zealand for the Temple as a volunteer assistant priest for the next three years.

[22] Commenting on the false passport, Rajvinder rejected the notion that it simply fell onto Tarsem's lap without his involvement. However, Rajvinder claimed that Babaji was aware of the false passport because it could not have been created without his say so. When asked, Babaji denied this was the case stating that he never instructed anyone to provide Tarsem with a false name or a false passport. Babaji further stated that he knew nothing about the decline of Tarsem's first religious work visa application

and that since matters have come to light, he has transferred Paramjit to another temple for his part in creating a false passport for Tarsem without the Temple's authority.

[23] Tarsem returned to New Zealand on 1 April 2013 under the pseudonym of Simranjit Singh. He lived at the Temple in Manurewa and assisted with the chores at the Temple on a daily basis under Rajvinder's supervision. From January 2013 to March 2017, INZ received multiple applications for further religious work visas from Tarsem under the alias of Simranjit Singh, each application relying on details from his false passport and various sponsorship forms completed by Rajvinder with the knowledge that Simranjit was not Tarsem's real name.

[24] As to the claim that Rajvinder was following orders, Babaji stated that this was Rajvinder covering up for his own mistakes and shortcomings. Babaji denied directing Paramjit to instruct Rajvinder to provide Tarsem with a false passport. As to the suggestion that Babaji gave instructions for Tarsem to do maintenance/repair work for the Temple, the spiritual head accepted that he was aware of the Temple's various properties in New Zealand. However, he was not involved with the day-to-day management of these properties because he was primarily responsible for preaching, giving sermons, and aspects of religious services for the Temple. Ranbir, a current trustee of the Temple and a lawyer stated that if Babaji had asked him to do something unlawful (which he never did), he would have refused.

[25] Tarsem stated that in 2016, he wished to apply for residence but was told that Babaji's preference was that he work for one more year before applying. In response, Rajvinder stated that Tarsem was the third priest in line to apply for residence that year and that there were others before him. Babaji did not accept that he had delayed Tarsem from applying for residence. Neither did he accept the assertion that he instructed Temple management to file a complaint against a priest who did not follow his instructions.

[26] In March 2017, INZ received an application for residence from Tarsem under the work to residence/religious worker category. As with his previous work visa applications, this too was sponsored by Rajvinder on the Temple's behalf who would have known that the information in that application concerning the applicant's identity

was false and misleading. INZ granted Tarsem residence on 17 June 2017 with conditions that he work for the Temple only until 17 June 2022.

[27] Sometime in 2018, Rajvinder had a falling out with the Temple and is understood to have resigned as childcare manager. That same year, Ranbir became a Temple trustee on a voluntary basis. Also occurring in 2018, Tarsem expressed an interest to become a registered electrician and he is understood to have embarked on a course of study that was initially paid for by the Temple but reimbursed by Tarsem by instalment. After completing his first year of study, Tarsem stated that he asked Rajvinder and Ranbir to pay him wages for his alleged maintenance/handyman work but was refused. Both men deny that such a request by Tarsem was ever made.

[28] In December 2018, Tarsem returned to India to marry his wife. The previous year there were trips to India (to see his parents) and Christchurch (to visit his sister) and a conference in Melbourne all of which were paid for by the Temple. Tarsem returned to New Zealand as a resident in February 2019 and applied for a work visa for his wife the following month. Because Babaji had not helped him financially towards his marriage, Tarsem stated that he started working as an Uber driver in April 2019 and that Ranbir had given him his approval.

[29] Ranbir denied this was so stating that the alleged conversation never took place. When he found out that Tarsem was working for Uber, he confronted him because this was in breach of the conditions of his residence visa, for which the Temple had responsibilities, having sponsored the visa application. Ranbir stated that Tarsem denied working for Uber, which he later learnt during the course of this investigation that Tarsem had lied about. It is noted that Tarsem applied to vary his residence visa conditions however he withdrew that application and consequently his visa conditions remained unchanged. He was thus prevented from working for any other employer including Uber.

[30] It was Ranbir's evidence that following the INZ and Police raid of Tarsem's rented accommodation, stories began to circulate that his wife's work visa application included a wedding card that recorded his real name and the real names of his parents. That inconsistency ultimately led INZ to discovering the deception. Ranbir stated that

the raid caught him and facilities manager Ms Kaur by surprise because neither knew that he had used a false passport to return to New Zealand in April 2013 and that his real name was Tarsem.

[31] Rajvinder, who sponsored Tarsem's earlier visa applications, was prosecuted by INZ and pleaded guilty to a representative charge of providing false or misleading information. On 31 March 2023, he applied unsuccessfully for a discharge without conviction in the District Court and was sentenced to 80 hours' community work. While Rajvinder appealed that decision, the appeal was dismissed in the High Court.

[32] INZ has not charged anyone else in relation to Rajvinder's offending.

[33] Between April 2013 and 20 December 2020, which is when Tarsem resigned from his position as assistant priest, he alleged that he worked a minimum of 5,500 hours of maintenance/repair work for which he has not been paid by the Temple. When asked about this, Rajvinder rejected the assertion outright.

[34] Tarsem alleged that his employer did not want to pay him anything and had exploited him for his free labour, threatening that it would lodge a complaint with INZ if he refused. He claimed that before priests were sent offshore, they were required to sign a blank piece of paper which was held over them by Temple management. Babaji stated that he has 'no clue' of such a practice. Tarsem further stated that he felt that he had no choice but to continue performing his non-religious duties for nothing which both depressed and scared him. Babaji denied any such coercion.

[35] Rajvinder stated that while he was aware of Tarsem's false passport, he would not have used it against him because he considered him a younger brother and Tarsem was highly regarded in the community. Rajvinder further stated that Tarsem never approached him about needing money noting that having agreed to work in New Zealand as a volunteer priest, he would have known what he was getting himself into. Similarly, Ranbir stated that Tarsem had not approached him about money either.

[36] Tarsem stated that he wanted to get some money in order to get married because he had been working for free for the Temple. He further stated that he never received any donations from the two donation boxes that were in the Temple. It is understood

that one box was for the religious singers for their services while the other donation box was for the Temple generally. The contents of that box was accounted for, banked and declared as income to Inland Revenue because the Temple is a registered charity. During Rajvinder's time as manager, Tarsem deposited the coin donations with the bank. However, since Ranbir's time as Temple trustee (post-2018 onwards), that role has been taken over by Ms Kaur.

[37] While there is no designated box for the priests, lead priest Ishvar commented that the Temple provided for the priests' day-to-day needs including food, clothing, accommodation, and a mobile phone. Ishvar further acknowledged that members of the community donated food, clothes, and money to priests, especially if they offered private prayers at their home. In recent times, and in response to the impact of the COVID-19 pandemic on religious operations, Ms Kaur explained that immigration instructions have changed so as to create a pathway to residence for volunteer priests. This involves them becoming employees of their religious organisation. Ishvar confirmed that he obtained residence through this pathway which did not exist at the time for Tarsem.

[38] Tarsem stated that the priests had access to a Temple credit card but any purchases with it needed to be related to the Temple or to its childcare centres. However, Ishvar stated that the credit card was kept by another priest and could be accessed at any time and used to purchase personal items as well. Personal purchases with the credit card was corroborated by Rajvinder and Ms Kaur, with the former stating that the priests simply needed to keep a copy of the invoice, and the latter stating that the card could be used by anyone and that she never questioned the priests about their use of the card.

[39] Ranbir stated that the priests received a donation from the community of approximately \$400-\$500 per week for their religious work, which Tarsem stated was not the case. Only the religious singers received the donations. However, Ishvar stated that the donations were for both and because Tarsem did not have the same training as the other priests and was reticent about asking parishioners for money, his share of the donations was less as a result. Ishvar further stated that it was commonly understood that a priest could not survive without their community's support.

[40] Rajvinder stated that any donation from the community was primarily for the religious singers. As for the priests, if they were to do prayers outside the Temple at someone's home, they might receive a donation by the homeowner.

[41] Tarsem's religious duties as assistant priest required him to attend to the morning and evening prayers only. As a result, he was free during the day from 8 am to 5 pm. However, Tarsem stated that in 2019, he reduced his religious hours because he wished to work as an Uber driver because he needed the money. He further stated that in between his hours of religious work, the Temple had him doing non-religious work as a maintenance worker/handyman for which he was never paid.

[42] Tarsem's non-religious and maintenance work included work at 106A Great South Road (GSR), a childcare centre owned by the Temple. He stated that he was required to do the lawn mowing every fortnight for three hours, clear the rubbish from the back of the day centre for five hours, sweep the playground for three hours per month, wash the carpet yearly for four hours, clear the roof gutters every month for two hours, replace and repair the lights and door locks for 40 hours per year, and move items between the Temple office and the day centre every week for two hours.

[43] Rajvinder denied that Tarsem did any lawn mowing at 106A GSR because there was no lawn and any mowing of Temple property was performed by contractors. Apart from a large skip bin used by the Temple, no cleaners were hired to clear rubbish. Sweeping was done by the teachers and professional cleaners were responsible for washing the carpet.

[44] Tarsem provided evidence that Ranbir's wife taught Punjabi lessons in the basement of 106A GSR and that she had texted him to clear some water and fix the whiteboard. Ranbir stated that his wife was not an employee of the childcare centre and that she was a volunteer who gave Punjabi lessons in a basement area that was not part of the childcare centre. Ranbir further stated that his wife had texted Tarsem for a favour. She was not instructing him to do any maintenance work.

[45] Ranbir explained that it was unlikely that Tarsem, as assistant priest, would have access to the keys to the childcare centre which was held by Ms Kaur. Ishvar commented that because there were women inside, the priests had no reason to be there

and that he had himself visited the child care centre (which is behind the Temple) only once or twice.

[46] Rajvinder stated that because the childcare centres were licensed premises, not anyone could enter. Ms Kaur stated that it was a requirement of the Ministry of Education that visitors to the day centre needed to sign in. Having checked the visitor's book, Ms Kaur could find no record of Tarsem having done that. Rajvinder further stated that Tarsem would not have cleared the gutters because he did that himself. As licensed premises, trained personnel replaced the lights and doors. As for moving items between the day care and the Temple office, Rajvinder found the assertion to be too vague to comment.

[47] Tarsem's written witness statement to the Authority records that in 2015-2016 he provided his labour for the construction of a second childcare centre at 71 GSR. Prior to the building work commencing, he mowed the lawn, did the gardening for two hours a fortnight and weed sprayed the site for two hours a fortnight. When construction commenced in 2015, Tarsem stated that he was involved in demolishing the old building which took three months and five hours of his time per day, slept overnight at the site for two weeks, coordinated with the project manager Mr Thrupp, compacted metal and concrete, and assisted the glass installer and electrician.

[48] Tarsem stated that in 2017 to 2018, he installed children's furniture at the same property for 40 hours, built a new sandpit that took four hours, put up the garden shed (five hours), helped install a heat pump for five hours, repaired/installed new lights for 40 hours per year, mowed the lawn for one hour every fortnight, moved items from the Temple office to the day care centre for two hours per week, and water blasted for five hours. Tarsem kept no diary or notebook of any of the work he did at 71 GSR because it never occurred to him to do so.

[49] Tarsem stated that Rajvinder had required him to do the above work but that he would have needed Babaji's permission. However, Tarsem accepted that he never had a conversation with Babaji about doing any of the alleged non-religious work either at the Temple or any of its properties.

[50] It was Mr Thrupp's evidence that the Temple sent Tarsem to work for him as a general labourer from 2014 to 2016. However, Rajvinder stated that Tarsem and a number of other people from the community including himself offered to help with the work for free. Rajvinder further stated that 71 GSR was a construction site from 2013 to 2014 and that the day care centre was completed sometime in 2015. This was supported by Ms Kaur who recalled the day care centre operating in 2015. As to the claim that Tarsem had slept at the site over night during construction, Rajvinder denied this because Tarsem had accommodation at the Temple. He also denied the claim that he instructed Tarsem to provide additional labour so as to keep costs as low as possible for the Temple.

[51] During the investigation meeting, Mr Thrupp was asked whether there was an agreement for Sema to be paid wages for his services. According to Mr Thrupp this was never discussed but he noted that Tarsem was a hard worker who had done a lot of hours which were not recorded.

[52] As to the assertion that Tarsem mowed the lawns of the property at 71 GSR, Rajvinder stated that the centre had artificial grass, a large concrete car park in front, and that the next door neighbour mowed the berm out front and not Tarsem. Rajvinder and Ranbir both stated that the Temple did not have its own water blaster and that a lot of the water blasting occurred during working bees with members of the community. Rajvinder further stated that he never instructed Tarsem to do maintenance/repair work which was done by professionals. In line with that evidence, Ishvar stated that he had never seen Rajvinder or Ranbir ask a priest to do non-religious work that was not covered by the principle of *sewa* or selfless service.

[53] Ishvar gave evidence that he had served as a priest at the Temple in 2010, 2013, 2016 and 2019 and that he had only ever seen Tarsem do religious work. Ishvar stated that he himself had never been asked to change a bulb because there were registered tradespeople for that. Ishvar stated also that the Temple provided for his clothing, food and medical needs and that he had kept coming back to work for the Temple as a priest because of the way he had been looked after. Ms Kaur stated that the priests were happy at the Temple and if that were not the case they would not have returned

[54] Rajvinder stated that when technicians visited the Temple, Tarsem was on hand to advise them to cover their head and to take off their shoes. He was not required to change any lights himself. Ms Kaur also stated that the Temple used third party contractors to do its repair and maintenance work for its various properties and that she never saw Tarsem carrying any of the maintenance/repair work herself or witnessed Rajvinder instruct him or force him to do so.

[55] Tarsem alleged that he had done handyman/repair work at six other rental properties belonging to the Temple which included weed spraying, lawn mowing, water blasting and other repairs and maintenance work including building a basement room. The alleged work was denied by Rajvinder who stated that this was the responsibility of the respective tenants and that he never instructed Tarsem to do any of the alleged work. Further, there was no need to mow the lawn at 1/95 and 94b GSR because there was a large metal road area with little to no grass to warrant regular mowing.

[56] Tarsem alleged also that he had done repair and maintenance work at the Temple. He referred in particular to an email (28 August 2018) from Ms Kaur in which she asked whether he had installed some emergency electrical lights for the building's warrant of fitness. When asked about her email, Ms Kaur explained that at the time, she had just started working for the Temple as its facilities manager and because Tarsem had been with the Temple for so long, she approached him about the lights as he had been assisting the electrician as part of his electrical course. Ms Kaur clarified that she was not instructing Tarsem to do that work himself.

[57] Tarsem alleged that Ranbir made him do all the same maintenance/repair work as before because he knew everything from previous management. However, by his own admission, Tarsem acknowledged that Ranbir had never admitted to knowing that Rajvinder had brought him to New Zealand on a false passport.

[58] Tarsem referred to another email (10 April 2020) from Temple management to himself and his former flatmate Ranjit. The email concerned a tenancy dispute that the Temple had with the pair who lived at 1/95 GSR. Tarsem had moved into the property in August 2019 and the dispute concerned compensation for some additions made to the property during the course of the tenancy for which Ranjit sought compensation. The email however referred to the applicant by his real name, which meant that, in

addition to knowing that he was involved in a tenancy dispute with the Temple, someone in Temple management knew his real name.

[59] Rajwinder and the Temple had gone separate ways by this stage so this ruled him out as being the author. Ranbir commented that he did not personally have access to the Temple's email account and observed that it had been sent from an android phone. Ranbir and Ms Kaur had iPhones at the time and both denied writing the email. The author's identity remains unknown.

[60] Tarsem alleged that after Rajwinder left the Temple in 2018, Ranbir instructed him to do maintenance/repair work. This was strongly denied by Ranbir who emphasised that he was a volunteer trustee and not a manager for the Temple. He also operated his own law firm and simply did not have the time to give any instructions. Ranbir noted that Tarsem was well provided for by the Temple who refurbished his rented accommodation at the cost of NZD45,000. If the Temple was treating him like a slave (which was denied), it would not have gone to the effort and expense of refurbishing the rental property for the benefit of Tarsem and his wife. Ranbir further stated that Tarsem was not in a vulnerable position and that all of the Temple's maintenance work was performed by paid contractors. He was never required to purchase items from Bunnings or collect people from the airport as claimed.

What is the relevant law?

[61] To determine whether the alleged handyman/maintenance work meant that Tarsem was an employee of the Temple, the definition of 'employee' under s 6 of the Act requires consideration. The section relevantly states:

6 Meaning of employee

- (1) in this Act, unless the context otherwise requires, **employee**—
 - (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and
 - (b) includes—
 - (i) a homemaker; and
 - (ii) a person intending to work; but
 - (c) excludes a volunteer who—
 - (i) does not expect to be rewarded for work to be performed as a volunteer; and
 - (ii) receives no reward for work performed as a volunteer.
- (2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or

the Authority (as the case may be) must determine the real nature of the relationship between them.

- (3) For the purposes of subsection (2), the court or the Authority—
- (a) must consider *all relevant matters*, including any matters that indicate the intention of the persons; and (emphasis added)
 - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.

[62] The Supreme Court’s decision in *Bryson v Three Foot Six Limited (No.2)* is the leading case on s 6.¹ Briefly stated, “all relevant matters” was interpreted by the court as including the written and oral terms of the contract between the parties and the way it operated in practice. Regard was to be given to the features of control and integration and whether the contracted person was effectively working on his or her own account (the fundamental test).²

[63] In *Pilgrim v Attorney-General* Chief Judge Inglis recently stated:³

[41] The position adopted by the parties revealed an interpretative tension which can be summarised as follows. Section 6(1) requires the existence of a contract of service. Does that mean the Court must be satisfied that there was a common intention to create legal relations and to enter into an enforceable contract? (what I call the contract-centric approach to s 6). Alternatively, is the Court required to assess the real nature of the relationship having regard to a range of common law indicia (including any matters indicating the intention of the parties) to determine whether a contract of service is deemed to exist? (what I call the relationship-centric/purposive approach to s 6).

...

[44] Drawing the threads together, determining whether a person is employed under a contract of service does not require the Court to first ascertain whether there was an intention to create a contractual relationship, or a contractual relationship in the nature of a contract of service. Rather it requires the Court to undertake a broad contextual enquiry to ascertain what the real nature of the relationship between the parties was. To do this, the Court must have regard to “all relevant factors”. The factors that will be relevant may well vary between cases, particularly in cases which do not fall squarely within the traditional mould. Party intention is a mandatory factor to weigh into the mix (as s 6(3) (a) makes clear), but it is not determinative and is to be objectively determined. All of this underscores the key point that ascertaining the true nature of working relationships is not susceptible to conventional contractual analysis, and the task is not to be approached in that way...

[64] Her Honour’s ‘relationship-centric/purposive approach’ means that every s 6 inquiry will be intensely fact-specific resulting in outcomes that will inevitably vary from case to case.

¹ *Bryson v Three Foot Six Limited (No.2)* [2005] ERNZ 372.

² At [32].

³ *Pilgrim v Attorney-General* [2023] NZEmpC 105.

[65] As to the exclusion clause of s 6(1)(c) relating to volunteers, Chief Judge Colgan in *Kidd v Beaumont* interpreted the section to mean that a volunteer is someone who works but does not expect to be rewarded for doing so and receives no reward for the work performed.⁴

[66] Before considering the common law indicia of control, integration and economic reality, it is necessary to make an assessment of the evidence provided to the Authority by various witnesses. While Tarsem called several witnesses in support of his case, it was clear from the outset that a number of them were expressing their opinion of the Temple and/or repeated what had been reported to them by Tarsem as opposed to having observed matters for themselves.

[67] For example, joinery business owner Kulvinder Singh ‘believed’ that Tarsem was exploited, tiler Manjinder Singh stated that Tarsem was ‘probably’ threatened by Temple management, classmate Raminder Singh felt that Tarsem had been taken advantage of, friend Harmandeep Singh admitted that he did not have first-hand knowledge of the details including knowledge of any payment arrangement between Babaji and Tarsem.

[68] Other witnesses displayed a clear animus or bias towards the Temple which affected adversely the weight that could be given to their evidence. For example, former Temple trustee Gurcharan Singh was critical that Babaji (his cousin) did not contact him following the murder of his daughter, Iqbal Singh had been asked to relinquish the administration rights to the Temple’s Facebook page after posting things that were not approved by the Temple. He now accuses the Temple of human trafficking. Former flatmate Ranjit Singh was involved in a tenancy dispute with the Temple so his evidence cannot be accepted at face value.

[69] Another witness, registered electrician Yadvinder Singh, failed to come up to brief and resiled from much of his written witness statement to the extent that his evidence did not add to my investigation. However, I accept that as part of his electrician course, Tarsem worked closely with Yadvinder. I find that in writing her email of 28 August 2018 (see [56]), Ms Kaur had Yadvinder in mind.

⁴ *Kidd v Beaumont* [2016] ERNZ 257 at [39].

[70] Project manager Ross Thrupp was a credible but unreliable witness as he was clearly mistaken that the Temple provided him with manpower and labour for the construction of a child day centre at 71 GSR from 2014 to 2016. The Temple provided two bundles of documents that included invoices from various contractors involved with the project. These invoices were issued in 2014, corroborating Rajvinder and Ms Kaur's evidence that construction of the day care centre was completed in 2014 and was open for business in 2015.

[71] While Mr Thrupp stated that Tarsem had worked a lot of hours, he did not keep a track of those hours so as to provide a comparator with the many others in the community, including Rajwinder, who offered their services for free to support a venture that would ultimately benefit the local Sikh community.

[72] Kulvir Singh was a credible witness and I accept his evidence that he was present when Babaji was talking with Tarsem in New Zealand sometime in 2013. I acknowledge that several witnesses saw Tarsem doing tasks at the Temple which would appear to the uninformed to be non-religious in nature. However, even so, I find this work to be encompassed by the principle of *sewa* or selfless service which underpins Sikhism. This is not too dissimilar to the cloistered life in various Christian communities whose members remain busy with the general upkeep of their monastery or convent as part and parcel of a disciplined and structured religious life.

[73] As for the alleged maintenance/repair work at the Temple's two day centres and six rental properties, Tarsem is a helpful and multi-skilled individual. I can say this confidently having spent the better part of 11 days with him during the course of this investigation. However, his propensity to help others leads me to conclude that Tarsem acted of his own volition. As a mature adult man, Tarsem is not someone who could be coerced into doing something he did not want to do. Rather, the opposite is true. In 2018, Tarsem let the Temple know that he wished to become a registered electrician. In 2019, he reduced his religious work hours and moved out of the Temple into rented accommodation. Further, in 2019, despite the clear prohibition of his resident visa, he worked as an Uber driver on his own accord and without the Temple's approval.

[74] Tarsem may have been called upon by tenants or fellow volunteers such as Ranbir's wife to provide assistance. This simply reflects his affability and willingness

to help which is laudable. However, this does not make him an employed maintenance/repairman for the Temple. Moreover, my site visit confirmed that Tarsem had inflated the number of hours of maintenance and repair work claimed. For example, the presence of artificial turf, metal driveways and large concreted areas dispel the notion that regular mowing was required. The schedule provided by Tarsem must therefore be approached with caution.

[75] As an applicant, Tarsem has the responsibility of establishing his case on the balance of probabilities and he has made several serious accusations against the Temple without proper evidence. For example, apart from Tarsem's own evidence that he made two premium payments of ₹70,000 for his religious work visa and passport, no supporting evidence was provided such as a receipt, bank statement, loan, or a written statement from his parents if the money had come from them.

[76] By his own admission, Tarsem had nothing in writing from either Rajvinder or Ranbir instructing him to do any of the alleged maintenance/repair work. After seven years of purportedly doing this work, it is reasonable to expect to see a text message or an email from either men instructing Tarsem to undertake such work. In the absence of such evidence, an expectation of reward has not been established.

[77] When I asked Tarsem whether Rajvinder had ever represented to him that he would be paid for the alleged maintenance/repair work, Tarsem stated that he did not. I asked Tarsem whether Ranbir had said to him that he would be paid for his work and the response was 'no'. I also asked Tarsem whether he ever had a conversation with Rajvinder about doing the lawnmower's job and getting paid for it, Tarsem stated that no such discussion occurred because he knew that Rajvinder would not have paid him. Finally, I asked Tarsem how he could expect to be paid for the maintenance/repair work if he never had a conversation with the Temple to which Tarsem's response was that the Temple should have realised that the priests had family in India to support.

[78] Tarsem's responses compel me to conclude that the parties never reached an agreement about him being paid for doing maintenance/repair work for the Temple.

[79] As for the false passport, I find it implausible that Tarsem had nothing to do with its creation. At the very least, he would have had to have his photograph taken, a

police clearance form completed and documents that required his signature. While Tarsem sought to minimise his part in the endeavour, he is as equally culpable as Paramjit and Rajvinder for providing INZ with false information multiple times across several work visa applications over a sustained period of time.

[80] It comes as no surprise therefore that Tarsem lodged his Statement of Problem when he did, some two months after INZ and the Police raided his rented property on 20 December 2020. I cannot accept that Tarsem felt trapped. Rather he was well looked after by the Temple and could have applied for a variation of conditions to his resident visa if he wished to earn income for another employer. Alternatively, he could have returned to India in order to regularise his visa status with a view to returning to New Zealand under his true name and identity.

[81] As to the thesis that the Temple threatened Tarsem by reporting him to the authorities about his false passport, there is no evidence of any such threat. This was denied by Rajvinder who neither party called to give evidence but was summonsed by the Authority. Presumably this was because neither knew what he would say. It may be noted that at the time Rajvinder gave his evidence, he was yet to be sentenced in the District Court for providing false and misleading information to INZ.

[82] Given his circumstances, I expected Rajvinder to be particularly hostile to the Temple but that was not the case. He balked at the suggestion that Tarsem did maintenance/repair work for the Temple which Rajvinder rejected. He was very clear that neither he nor Babaji forced or instructed Tarsem to undertake the maintenance/repair work. While Rajvinder continued to attribute ultimate responsibility for the deception to Babaji, it is difficult to imagine that an 81-year-old could micromanage the maintenance/repair work for a Temple in Manurewa while being the spiritual head of an international organisation with Temples and other properties both here and around the world.

[83] Despite his age, Babaji was unequivocal and firm in his evidence that he met the applicant in India in 2011 and that he had been introduced to him as 'Sema'. I accept Babaji's evidence that he did not know Sema by his real name until the INZ and Police raid of his rented accommodation some nine years later.

[84] Given the above findings, the common law indicia relating to s 6 of the Act can be briefly summarised. The intention test concerns what the parties intended their working relationship to be. When Tarsem re-entered New Zealand in April 2013 posing as Simranjit Singh, he was issued with a religious work visa that required him to work as an assistant priest for the Temple. While the role was on a volunteer basis, Tarsem's day-to-day needs were met by the Temple. Lead priest Ishvar Singh gave credible and reliable evidence concerning the support he and his fellow priests received from the Temple which gave him the confidence to return to New Zealand time and time again.

[85] While there is clear evidence of what the parties intended their relationship to be concerning Tarsem's religious work as an assistant priest, there is a paucity of evidence as to the parties' intention (if any) concerning the alleged maintenance and repair work. Further, because of the conditions of Tarsem's work visa and subsequent resident visa, both of which restricted him to working as a priest only, it cannot be said that the parties were *ad idem* or had a common intention for Tarsem to be employed as a maintenance/repair worker. The voluminous invoices before me from third party contractors indicate that this work was contracted out and that the Temple clearly had the means to pay for that work. There was no reason for the Temple to employ Tarsem as a maintenance/repair worker and it has not been established that it did.

[86] The control test looks at the degree of control or supervision exercised over a person's work and requires an analysis of the level of control one party has over the work of the other and how that work is done. Apart from Tarsem's own uncorroborated evidence, it has not been established that Rajvinder, Babaji, Ranbir, or Ms Kaur had threatened or coerced Tarsem into performing the alleged maintenance/repair work.

[87] The fundamental or economic reality test requires a general analysis of the work relationship to determine its economic reality. The Temple is concerned with the spiritual lives of its congregation and providing religious services for them. It is not in the business of maintenance and repair work.

[88] The integration test considers whether the work performed by the employee is integral part of the business and whether he or she has effectively become part and parcel of the organisation. Based on the information and evidence before me, I find

that Tarsem was integrated into the Temple as a volunteer assistant priest and not as a maintenance/repair worker.

[89] For the above reasons, Tarsem's application is unsuccessful and is dismissed.

Costs

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

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

[92] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff. For more information as to how costs are awarded in the Authority the parties are referred to its revised and consolidated Practice Note, effective 25 August 2023.⁵

Peter Fuiava
Member of the Employment Relations Authority

⁵ <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>