

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 223
3352561

BETWEEN	CHRISTOPHER BILLINGTON First Applicant
AND	TAYLOR MCMULLIEN Second Applicant
AND	HOLIDAY MATHIESON Third Applicant
AND	AMARJIT ENTERPRISES LIMITED T/A WIN-WIN BAR Respondent

Member of Authority:	Rachel Larmer
Representatives:	Applicants in person No appearance by the Respondent
Investigation Meeting:	17 April 2025 in Auckland
Oral Determination:	17 April 2025
Written Record of Oral Determination:	17 April 2025

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Christopher Billington, Mr Taylor McMullien and Ms Holiday Mathieson (the applicants) were employed by the respondent, Amarjit Enterprises Limited trading as Win-Win Bar at 212 Ponsonby Road Auckland.

[2] Mr Bradley Whelligan is the respondent's sole director and shareholder.

[3] Mr Billington was employed by the respondent as the Duty Manager of Win-Win Bar on 2 September 2024 to work for 30 hours a week, in accordance with a seven day roster, at an hourly rate of \$27.00. His employment ended on 14 January 2025.

[4] Mr McMullin was employed by the respondent on 2 September 2024 as a Bartender, to work 20 hours per week in accordance with a seven day roster, at an hourly rate of \$23.15. His employment ended on 11 January 2025, which he said was a constructive dismissal.

[5] Ms Mathieson was employed by the respondent on 27 September 2024 as a Bartender, to work 20 hours per week in accordance with a seven day roster, at an hourly rate of \$23.15. Her employment ended on 26 December 2024.

[6] The respondent failed to pay the applicants their wages from 16 December 2024 to 14 January 2025 for hours they had worked. The respondent also failed to pay the applicants their statutory entitlements under the Holidays Act 2003 (the HA03). The applicants sought recovery of their wage arrears.

[7] The applicants claimed the respondent falsely stated they had been paid their wages when they had not, lied about remedying their wage arrears and falsified payroll records they were given. Mr Billington claimed these actions had unjustifiably disadvantaged him because he had not been paid correctly or on time. Mr Taylor said these actions constructively dismissed him.

[8] The respondent failed to respond to any of the applicant's claims.

The Authority's investigation

[9] The respondent failed to engage in the Authority's investigation.

[10] The statement of problem (SoP) was served on the respondent on 31 January 2025 by track and trace courier at its registered address for service, as recorded on the Companies Register. The statement in reply (SiR) was due on 14 February 2025, but no SIR was lodged.

[11] The respondent did not respond to the Authority's attempts to set up a Case Management Conference (CMC), so that proceeded with only the applicants attending.

[12] On 3 March 2025 the respondent was directed to provide copies of the applicants' wage and time records as required by s 130 of the Employment Relations

Act 2000 (the Act), and their holiday and time records as required by s 81 of the HA03. That did not occur. Section 132(2) of the Act therefore applied.

[13] The respondent was informed on 3 March 2025 that it was required to seek leave from the Authority to defend this matter because it had failed to lodge a SiR within the required 14 days' time period. The respondent was advised how to seek leave and was given until 10 March 2025 to do so. No leave application has been lodged.

[14] On 6 March 2025 the SoP, the Directions of the Authority dated 26 March 2025 which were issued after the CMC held that day, and the Notice of Investigation Meeting (Notice of IM) and copies of the applicants' witness statements (together referred to as "the service documents") were couriered to the respondent at its registered address for service. An individual identified as "Chinku Singh" signed for receipt of the service documents at 11.40am on 28 March 2025.

[15] A further copy of the service documents was sent to Mr Whelligan at the address he has recorded on the Companies Register for himself as the respondent's sole director and shareholder. Photo proof of delivery at 10.02am on 28 March 2025 was provided by the courier.

[16] The respondent has not responded to the Authority's various attempts to engage with it via email, telephone or by way of couriered correspondence.

[17] An in-person investigation meeting (IM) was held in Auckland which the applicants attended. The respondent did not attend the IM.

[18] The applicants gave evidence under affirmation and were questioned by the Authority about their evidence. Section 132(2) of the Act applied, because the applicants' evidence about the days and hours they had worked and about what they had been paid was not proven to be incorrect. Accordingly, the applicants' uncontested evidence was accepted.

[19] An oral determination was issued by the Authority at the conclusion of the applicants' evidence.

The issues

[20] The following issues are to be determined:

- (a) Did the respondent keep, and produce on request, legally compliant employment documentation for the applicants?
- (b) Are the applicants owed wage arrears?
- (c) If so, how much wage arrears is each applicant owed?
- (d) Should interest be awarded on any wage arrears?
- (e) Has there been a breach of employment standards?
- (f) If so, was Mr Whelligan ‘a person involved in any breaches of employment standards’ that occurred?
- (g) If so, should the applicants be granted leave to recover from Mr Whelligan personally any wage arrears and other money that the respondent defaults on paying them?
- (h) Was Mr Billington unjustifiably disadvantaged in his employment?
- (i) Was Mr McMullien unjustifiably dismissed?
- (j) What remedies should be awarded for any successful personal grievance claims?
- (k) What costs and disbursements should be awarded?

Did the respondent keep and produce on request, legally compliant employment documentation for the applicants?

[21] Section 130 of the Act requires an employer to keep, and produce on request, legally compliant wage and time records for employees. Section 81 of the HA03 requires an employer to keep and produce on request legally compliant holiday and leave records for employees. These records are together called “the employment documentation”.

[22] The respondent failed to comply with the Authority’s directions to provide copies of the employment documentation for each of the applicants. No employment documentation has been provided. Section 132(2) of the Act permits the Authority to accept as proven the applicants’ evidence about the days and hours they worked and about what they were paid, as none of their information about that had been proven to be incorrect.

Are the applicants owed wage arrears?

[23] The payslips the respondent gave the applicants for the period from 22 December to 5 January 2025 were incorrect, as they did not include hours they had worked on public holidays. None of the applicants had taken paid annual holiday while employed. Nor were any of the applicants paid any annual holiday pay when their employment ended, in breach of s 23 and s 27 of the HA03.

[24] Although all of the applicants had worked on various public holidays, they were not paid time and a half for the hours they worked on public holidays. Nor had they received an alternative day holiday for working on a public holiday. There was no final pay paid to any of the applicants, so they were not paid their HA03 entitlements.

Hours worked but not paid

[25] Mr Billington worked 116.33 hours that he has still not yet been paid for. He worked 39.41 hours from 16 December to 24 December 2024; 38.36 hours from 30 December 2024 to 5 January 2025; 31.33 hours from 6 to 12 January 2025; and 7.23 hours on 13 January 2025. He is therefore owed \$3,140.91 gross for hours he had worked but had not been paid, being \$27.00 per hour x 116.33 hours.

[26] Mr McMullien worked 116.45 hours they have not yet been paid for. They worked 51.09 hours from 16 to 22 December 2024; 38.84 hours from 20 December 2024 to 5 January 2025; and 26.52 hours from 6 to 12 January 2025. He was therefore owed \$2,695.82 for hours he had worked but had not been paid, being \$23.15 per hour x 116.45 hours,

[27] Ms Mathieson was not paid for six hours she worked over the period 16 to 22 December 2024. She was therefore owed \$138.90 for hours she had worked but had not been paid, being \$23.15 per hour multiplied by six hours.

Public holiday arrears

[28] Mr Billington worked from 12am until 4.33am on 1 January 2025 (4.5 hours) but was not paid any public holiday entitlements. He should have been paid time and a half of \$40.50 per hour for the 4.5 hours he had worked, but he was only paid his usual \$27.00 per hour.

[29] Clause 15.1 of Mr Billington's employment agreement provided that he would be paid time and a half for any hours he worked on a public holiday. Mr Billington was therefore owed \$60.75 (being \$13.50 x 4.5 hours) as unpaid time and a half for the hours he had worked on 1 January 2025, the New Year's Day public holiday.

[30] Mr Billington did not usually work on Wednesdays, so 1 January 2025 was not "otherwise a working day" for him. That meant he was not entitled to an alternative day holiday pursuant to s 56 of the HA03 for working on 1 January 2025.

[31] Mr McMullien worked eight hours on Thursday, 26 December 2024 (Boxing Day); 9.05 hours on Wednesday, 1 January 2025 (New Year's Day); and 8.10 hours on Thursday, 2 January 2025 (the day after New Year's Day). He worked a total of 25.15 hours over these three public holidays, but was only paid \$23.15 per hour.

[32] Mr McMullien was owed \$291.24 wage arrears for unpaid time and a half (being \$11.58 x 25.15 hours) for the 25.15 hours he had worked on public holidays, as per clause 16.1 of his employment agreement and in accordance with s 50 of the HA03.

[33] Because Mr McMullien usually worked on Wednesdays and Thursdays, the three public holidays he worked were "otherwise working days" for him. That meant that in accordance with s 56 of the HA03 he was entitled to an alternative day holiday for each of these three public holidays he had worked.

[34] Mr McMullien had not used any of these alternative day holidays when his employment ended, so in accordance with s 60(2) of the HA03 he was entitled to have them paid out in his final pay.

[35] Mr McMullien's three alternative day holidays were to be paid in accordance with s 9A of the HA03. Mr McMullien worked a total of 628.43 hours over the 65 days he had worked. He was therefore owed \$223.86 wage arrears for his three unpaid alternative day holidays, being \$23.15 per hour x 9.67 hours a day, which was based on the average number of hours he had worked on each working day over the period he had been employed by the respondent.

[36] Holiday Mathieson worked four hours on Thursday, 26 December 2024 (Boxing Day), but was paid her usual hourly rate of \$23.15. She should have been paid time and a half, as clause 15.1 of her employment agreement stated she would be paid at that rate for any public holidays she worked. Ms Mathieson is therefore owed \$46.32

gross unpaid public holiday pay, being the four hours she worked multiplied by \$11.58 (being half of her normal hourly rate of pay).

[37] Ms Mathieson usually worked on Friday or Saturday, so the Boxing Day public holiday which fell on a Thursday in 2024 was not otherwise a working day for her. She was therefore not entitled to an alternative day holiday for the work she did on Boxing Day.

Annual holiday pay arrears

[38] All three applicants had worked for less than 12 months, so in accordance with s 23 of the HA03 they were entitled to be paid eight percent of their total gross earnings as annual holiday pay when their employment ended.

[39] Section 27 of the HA03 required the respondent to pay the applicants their annual holiday pay in their final pay. However, that did not occur. No annual holiday pay has been paid to any of the applicants.

[40] If Mr Billington had been paid correctly when employed, then his total gross earnings would have been \$16,947.90. He was therefore owed \$1,355.83 annual holiday pay arrears.

[41] If Mr McMullien had been paid correctly when employed, then his total gross earnings would have been \$15,073.12. He was therefore owed \$1,205.85 annual holiday pay arrears.

[42] If Holiday Mathieson had been paid correctly when employed, her total gross earnings while employed would have been \$2,144.52. She was therefore owed \$171.56. annual holiday pay arrears.

How much wage arrears is each applicant owed?

[43] The respondent is ordered to pay Mr Billington wage arrears of \$4,557.49, consisting of:

- (a) \$3,140.91 gross wage arrears for hours he worked but was not paid;
- (b) \$60.75 gross unpaid contractual time and a half for the 4.5 hours he worked on 1 January 2025;

- (c) \$1,355.83 gross annual holiday pay arrears, calculated as 8% of his total gross earnings of \$16,947.90.

[44] The respondent is ordered to pay Mr McMullien wage arrears of \$4,426.77, consisting of:

- (a) \$2,695.82 for hours work but not paid;
- (b) \$291.24 unpaid time and a half for the 25.15 hours he worked in total over the three public holidays in December 2024 and January 2025;
- (c) \$233.86 for the three alternative day holidays he was owed for having worked on Boxing Day 2024; New Years Day 2025; and the Day After New Year's Day 2025;
- (d) \$1,201.85 gross annual holiday pay arrears, calculated as 8% of his total gross earnings of \$15,073.12.

[45] The respondent is ordered to pay Ms Mathieson wage arrears of \$356.78, consisting of:

- (a) \$138.90 gross wage arrears for six hours she worked but was not paid; and
- (b) \$46.32 gross for unpaid contractual time and a half for the four hours she worked on 26 December 2024;
- (c) \$171.56 gross annual holiday pay arrears, calculated as 8% of her total gross earnings of \$2,144.52.

Should interest be awarded on the wage arrears?

[46] The applicants were to be paid weekly, but that did not occur. The respondent has therefore had the advantage of using what was the applicants' money for its own purposes. It was therefore appropriate to award the applicants' interest on their wage arrears to reflect that.

[47] Interest is to be calculated in accordance with the Civil Debt Interest Calculator on the Ministry of Justice website.

[48] Mr Billington is awarded interest on his wage arrears of \$4,557.49 which is to run from 15 January 2025 (the day after his employment ended) until that has been paid

in full to him. He is owed interest of \$60.38 from 15 January 2025 to the date of this determination.

[49] Mr McMullien is awarded interest on his wage arrears of \$4,369.82 which is to run from 12 January 2025 (the day after his employment ended) until that amount has been paid to him in full. He is owed interest of \$59.90 from 12 January 2025 to the date of this determination.

[50] Ms Mathieson is awarded interest on her wage arrears of \$356.78 which is to run from 27 December 2024 (the day after her employment ended) until that amount has been paid in full to her. She is owed interest of \$5.78 from 27 December 2024 to the date of this determination.

[51] Interest continues to run from the 18 April 2025 (the day after the date of this determination) until the wage arrears and all interest owing been paid to each applicant in full. Future interest is also to be calculated using the Civil Debt Interest Calculator on the Ministry of Justice website.

Has there been a breach of employment standards?

[52] Section 5 of the Employment Relations Act 2000 (the Act) defines employment standards. This includes (among other things):

- (a) A breach of s 130 of the Act which requires an employer to keep and produce wage and time records for employees;
- (b) Breaches of the minimum entitlements and payments to employees due under the Holidays Act 2003 (HA03);
- (c) A breach of the requirements in s 81 and 82 of the HA03, regarding the employer's obligation to keep and produce holiday and leave records for employees;
- (d) A breach of the minimum entitlements provided for by the Minimum Wage Act 1983 (the MWA); and
- (e) A breach of the provisions of the Wages Protection Act 1983 (WPA).

[53] The respondent breached s 130 of the Act and s 81 of the HA03 by failing to keep and/or produce employment records for the applicants. It also breached s 4 of the

MWA and s 4 of the WPA by failing to pay each of the applicants their correct wages on time.

[54] The respondent also breached the minimum entitlements and payments to employees required under sections 23, 27, 50, 56 and 60 the HA03 because it failed to pay any of the applicants their annual holiday entitlements when their employment ended. The respondent also failed to pay Mr McMullien his public holiday entitlements under the HA03.

[55] The respondent has engaged in multiple breaches of employment standards.

Was Mr Whelligan ‘a person involved in the breaches of employment standards’ that occurred?

[56] Section 142W of the Act sets out when ‘a person is involved in a breach of employment standards’. That occurs where the person has aided, abetted, counselled or procured the breach or has induced the breach or has in any way, directly or indirectly, knowingly been concerned in or party to the breach (among other things).

[57] Section 142W(2) of the Act provides that where a company has engaged in a breach of employment standards then a person may only be treated as a person involved in a breach if they are an officer of the company.

[58] Mr Whelligan is the respondent’s sole director. He was the person responsible for the applicants not being paid. Accordingly, at the material time Mr Whelligan was ‘a person involved in a breach of employment standards’, as defined by sections 5 and 142W of the Act.

[59] It was Mr Whelligan’s responsibility as the respondent’s sole director to take appropriate steps to ensure that the respondent did not breach its minimum code obligations to the applicants. That did not occur. Mr Whelligan also failed to address the applicant’s concerns that they had not been paid correctly, or on time, when that was raised with him. Mr Whelligan also failed to respond to the personal grievance claims that Mr Billington and Mr McMullien raised with him.

[60] Mr Whelligan was therefore directly involved in aiding, abetting, instigating and inciting and in directly causing the respondent’s breaches of employment standards for all three applicants.

Should the applicants be granted leave to recover from Mr Whelligan personally wage arrears and/or other money the respondent defaults paying them?

[61] Section 142Y of the Act provides that an employee may recover from a person who is not their employer wages or other money they are owed by the employer if the default in the payment of wages or other money to them by the employer is due to a breach of employment standards, and the person who is liable to pay is a person involved in the breach of employment standards, within the meaning of s 142W.

[62] That is the case here. There has been a breach of employment standards by the applicants' employer, which was unable to pay them, the default was due to a breach of employment standards and Mr Whelligan was the person who was directly involved in these breaches of employment standards that have occurred.

[63] Section 142Y of the Act permits the recovery of wage arrears or other money from an individual with the prior leave of the Authority, and to the extent that the employees' employer is unable to pay the wage arrears or other money, as per s 142Y(2) of the Act.

[64] The applicants are given leave to recover the wage arrears they are owed by the respondent from Mr Whelligan personally, to the extent that the respondent defaults paying them what they are owed.

Was Mr Billington unjustifiably disadvantaged in his employment?

[65] On 13 January 2025 Mr Billington raised personal grievance claims for himself and Mr McMullien with the respondent. These were set out in an email he sent to Mr Whelligan, which also referred to the fact that the concerns in their personal grievance letter "had been raised multiple times since October 2024".

[66] Mr Billington claimed he had been unjustifiably disadvantaged by the respondent's failure to pay his wages correctly or on time. Although the respondent was contractually required to pay them weekly, he and Mr McMullien were both still owed wage arrears for the work they had done in December 2024. Their payslips were inaccurate, and Mr Whelligan previously told Mr Billington that the respondent had already paid him and Mr Taylor, when it had not.

[67] Mr Billington said the respondent's failure to pay him and Mr McMullien weekly, as required under their employment agreements, had caused them stress and

put them under financial pressure at an expensive time of the year. He also pointed out they had not been paid time and a half for the public holidays they had worked.

[68] Mr Billington said he and Mr McMullien were not prepared to continue working when they had not been paid, and said they wanted to leave immediately. Mr Billington worked one more shift on 14 January 2025 before he stopped working for the respondent.

[69] Mr Billington therefore could not rely on the personal grievance letter to have raised a constructive dismissal grievance as personal grievance claims cannot be raised in advance or in anticipation of a breach or dismissal. A personal grievance claim must relate to something that has already occurred. Therefore, Mr Billington correctly identified his personal grievance in the personal grievance letter as disadvantage grievances.

[70] The respondent's failure to pay Mr Billington correctly or on time were fundamental breaches of the employment relationship, which had unjustifiably disadvantaged him. It put him under considerable financial pressure and meant he was unable to meet his financial obligations, which included finance payments.

[71] There was no attempt by the respondent to justify the disadvantage its actions had caused Mr Billington. Accordingly, Mr Billington's unjustified disadvantage personal grievance claim succeeded.

Was Mr McMullien unjustifiably dismissed?

[72] The personal grievance letter Mr Billington sent to the respondent (via Mr Whelligan) on 13 January 2025 recorded that Mr McMullien was not prepared to continue working when he had not been paid for the work he had done. He had previously been paid late, he had not been paid for hours he had previously worked when he was due to have been paid and he had not been paid his public holiday entitlements.

[73] The payslips Mr McMullien had been given were incorrect. Mr Whelligan had also told Mr McMullien that the respondent had already paid him, when it had not. This fundamentally undermined the trust and confidence inherent in the employment relationship.

[74] These were fundamental breaches of Mr McMullien's key terms and conditions of employment. It was therefore reasonably foreseeable he would not continue working for the respondent in such circumstances.

[75] Mr McMullien's personal grievance letter linked his decision to end his employment to the respondent's failure to pay him, so the causal connection was established. He therefore established that the initiative for the ending of his employment came from the respondent. He did not freely or voluntarily resign.

[76] Mr McMullien also confirmed to the Authority when giving his evidence that he would have continued working for the respondent had he been paid correctly. Mr McMullien established that he had been constructively dismissed.

[77] There was no attempt by the respondent to justify Mr McMullien's constructive dismissal. Accordingly, Mr McMullien's personal grievance claim for unjustified dismissal succeeded.

What remedies should be awarded for the successful personal grievance claims?

[78] Mr Billington and Mr McMullien did not seek lost remuneration, because they accepted the respondent faced financial difficulties. They did both however seek an award of distress compensation for the unfair and procedurally unjustified manner in which they had been treated.

[79] Mr Billington and Mr McMullien both faced stress, distress and financial embarrassment as a result of their successful personal grievance claims. Mr Billington faced difficulty paying his fortnightly finance payments, and Mr McMullien was unable to pay his rent because he did not receive his wages when they were due. Mr McMullien had to move out of his rental accommodation because of the problems he faced paying rent when the respondent failed to pay him correctly or on time.

[80] They both gave evidence about the hurt, humiliation and injury to feelings they suffered as a result of the respondent's actions and in the case of Mr McMullien, as a result of the respondent's constructive dismissal of him.

[81] The respondent is ordered to pay Mr McMullien \$6,000.00 without deduction under s 123(1)(c)(i) of the Act to compensate him for the humiliation, loss of dignity and injury to feelings he suffered because of his constructive dismissal.

[82] The respondent is ordered to pay Mr Billington \$2,500.00 without deduction under s 123(1)(c)(i) of the Act to compensate him for the humiliation, loss of dignity and injury to feelings he suffered as a result of the respondent's unjustified actions that had disadvantaged him in his employment.

What costs and disbursements should be awarded?

[83] The applicants were self-represented parties, so they did not incur any legal costs. Mr Billington paid the filing fee, so the respondent is ordered to reimburse him \$71.55 for that.

Orders

[84] Mr Whelligan is a person who was involved in breaches of employment standards, as per s 142W of the Act. In accordance with s 142Y(2) of the Act the applicants have been granted leave to recover from Mr Whelligan personally any wage arrears and other money (such as interest) the respondent defaulted on paying them.

[85] The respondent has failed to pay the applicants correctly or on time. Accordingly, within 28 days of the date of this determination, the respondent is ordered to pay:

- (a) Christopher Billington \$7,189.42, consisting of:
 - (i) \$4,557.49 gross wage arrears;
 - (ii) \$60.38 interest on the wage arrears from 15 January 2025 to the date of this determination;
 - (iii) \$2,500.00 distress compensation without deduction under s 123(1)(c)(i) of the Act for his unjustified disadvantage grievance;
 - (iv) \$71.55 to reimburse the filing fee he paid for this matter;
- (b) Taylor McMullien \$10,477.73, consisting of
 - (i) \$4,426.77 gross wage arrears;
 - (ii) \$50.96 as interest on the wage arrears from 12 January 2025 to the date of this determination; and
 - (iii) \$6,000 without deduction under s 123(1)(c)(i) of the Act as distress compensation for his constructive dismissal;

- (c) Holiday Mathieson \$362.56 gross wage arrears, consisting of
 - (i) \$356.78 gross wage arrears; and
 - (ii) \$5.78 interest on the wage arrears from 27 December 2024 to the date of this determination.

[86] The respondent is also ordered to pay ongoing interest to each individual applicant based on the total amount of wage arrears plus interest they have been awarded in this determination.

[87] Ongoing interest is to run from the 18 April 2025 (the day after this determination was issued) until each applicant has been fully paid all money they are owed. Ongoing interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

Rachel Larmer
Member of the Employment Relations Authority