

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 281
3323242 & 3327600

BETWEEN	GURVINDER SINGH Applicant in 3323242
AND	PARMINDER SINGH Applicant in 3327600
AND	ROHIT RANA Respondent

Member of Authority:	Robin Arthur
Representatives:	Susanne Lass, advocate for the Applicant No attendance by the Respondent
Investigation Meeting:	16 May 2025
Determination:	19 May 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Gurvinder Singh and Parminder Singh both worked as drivers for Roadstar Transport Limited from early 2024 until they resigned on 2 August 2024 because of problems in getting their wages paid in full and on time.

[2] At the time of their resignations their wages were nine or more weeks overdue.

[3] In applications to the Authority both men initially pursued personal grievances against RTL saying, because their resignations were caused by a prolonged failure to pay their wages, they were constructively dismissed.

[4] Those grievance claims were discontinued when RTL was placed in liquidation on 10 February 2025. A Companies Act provision halts proceedings when a company goes into liquidation, unless the liquidator consents or a High Court order is obtained

to allow the proceedings to continue.¹ The applicants did not seek the liquidator's consent, accepting their grievance claims could not continue against RTL in liquidation.

[5] The applicants were, however, still able to continue with some claims against Mr Rana, the registered director and sole shareholder of RTL. They sought a finding that Mr Rana was a person involved in a breach of employment standards, due to the failure to pay their wages when due. If that finding was made, they sought leave to pursue Mr Rana personally for payment of the arrears that RTL, now in liquidation, had owed them.

[6] They also sought a penalty against Mr Rana for aiding and abetting a breach of their employment agreements by not paying their agreed wages on an agreed fortnightly basis.²

[7] Neither RTL nor Mr Rana lodged a statement in reply to the applicants' statements of problem lodged in September 2024. Mr Rana did attend an Authority case management conference, convened by telephone on 7 January 2025.

[8] Mr Rana's view, as explained at that conference and by emails he sent to the Authority, was that a previous director and sole shareholder of RTL listed in the Companies Office register, Khushwinder Singh, was responsible for any arrears due to the applicants.

[9] According to Companies Office records Mr Rana became a director of RTL on 23 July 2024. The records also show Mr Rana became the sole shareholder of the company on 5 August 2020. On the same day, Kushwinder Singh was removed as a director of RTL.

[10] In an email to the Authority on 11 May 2025 Mr Rana described his view of this matter in this way:

Sorry for the late reply, the thing is the employees you are talking about, I neither kept them on the job nor did they work for me. They worked for Khushwinder Singh who was the owner of this company before me. They were given the contract by him not by me.

When this company was transferred to my name, at that time there was no work in this company and no one was working in the company.

¹ Companies Act 1993, s 248(1)(c).

² Employment Relations Act 2000, s 134(2).

And as you know that company has now gone into liquidation because when Khushwinder Singh was the owner of this company, he had to pay money to some companies which he did not pay and we were not aware of due to which the company got liquidated.

So basically there is nothing to do with me, I think you have to talk to Khushwinder Singh about this matter.

The Authority's investigation

[11] Under directions set at the case management conference Gurwinder Singh and Parminder Singh each lodged and served witness statements setting out their account of events.

[12] They also provided a substantial bundle of background documents. These included copies of WhatsApp messages they exchanged with Mr Rana; copies of 'runsheets' for their driving deliveries; and bank statements showing payments to their respective bank accounts from "Roadstar Tran". Importantly, both applicants provided a clearly set out table showing what wages they had been paid, as recorded in their bank statements, and identifying weeks for which they received no payment. From this information they identified the amount claimed as arrears of wages and, from the total net payments made or due to them, an amount of holiday pay also due to them.

[13] The applicants attended the investigation meeting and, under affirmation, answered questions from me. In doing so, they had the assistance of an Authority-appointed interpreter of Hindi. Their representative also asked additional questions, provided written submissions and discussed those submissions with me.

[14] Mr Rana did not attend the investigation meeting. The meeting continued in his absence, after a 15-minute delay in the start time in case Mr Rana was running late. The Notice of Investigation Meeting had been served on him on 13 January 2025, by email to the address from which he communicated with the Authority. Notes on that Notice advise an investigation meeting may continue and a determination be issued if a respondent does not attend. Email messages from the Authority to Mr Rana on 11 and 12 May 2025 also reminded him of that prospect. In those circumstances, I considered it was reasonable to proceed in Mr Rana's absence.³

³ Employment Relations Act 2000, s 173(2) and Schedule 2 clause 12.

[15] 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

[16] The issues requiring investigation and determination were:

- (a) Who was liable for payment of arrears due to the applicants at the date of their resignation – RTL, Mr Rana or Mr Kushwinder Singh?
- (b) What arrears were due?
- (c) Was the failure to pay wages and holiday pay when due a breach of employment standards?
- (d) Was Mr Rana a person involved in a breach of employment standards?
- (e) If so, should the applicants be given leave to recover the arrears from Mr Rana, to the extent RTL (in liquidation) is unable to pay the arrears due?
- (f) Should either party contribute to the costs of representation of the other party?

RTL was liable for payment of the arrears

[17] Contrary to Mr Rana's 11 May email, referred to above, the transfer of shares from Kushwinder Singh to Mr Rana on 5 August 2024 did not change responsibility for the liabilities of RLT. Those liabilities remained with the legal entity of the company, not individual shareholders. This was expressly noted in the following provision, added by the parties, on their signed share transfer form:

Terms and conditions –

1) all current assets of company will remain in company & Rohit Rana will be owner of all company assets.

2) All current liabilities of company will remain with company & all the IRD, ACC debt will be paid by Rohit Rana.

By signing this document we both buyer & seller accept terms & conditions.

[18] In this situation, “current liabilities” included the wages or other money owed to former employees. RLT remained liable for that debt, at that time.

Arrears due have been properly calculated and quantified

[19] An ongoing problem with payment of arrears was acknowledged in the following email Mr Rana sent Gurvinder Singh on 7 July 2024:

I Rohit Rana confirmed that yours (Parminder and Gurwinder) 9 weeks wages payment are pending which I'm going to clear on 20 July 2024.

I confirmed that you both are working for me in Mondiale company, so it's my responsibility to make sure that the payment will come by 20th of July 2024.

Sorry for the inconvenience.

Thanks
Rohit Rana

[20] Gurvinder Singh, in his oral evidence, said Mr Rana sent him that email at his request because of concerns, raised in the weeks previous to 7 July 2024, about when he and Parminder Singh would get their wages paid.

[21] The "Mondiale company" referred to is a large freight business. Other evidence showed RLT had a contract to provide services to Mondiale, loading containers at Auckland Ports and delivering them to Mondiale clients. This is the work the two applicants did, driving a truck provided by RTL. Gurvinder Singh drove the truck for the day shifts. Parminder Singh drove the night shifts.

[22] The WhatsApp messages exchanged with Mr Rana before July show repeated queries from the applicants about their pay and some responses from Mr Rana undertaking to attend to payment.

[23] The applicants' personal bank statements show they were paid some of their wages on 20 July, but had not received everything they were due for other weeks before and after that date.

[24] By the end of his employment Gurwinder Singh was not paid for 11 weeks' work, to a nett amount outstanding of \$11,691.43. The following arrears are accepted as due to him for the period from 12 May to 4 August 2024, after deducting some payments that were made in that period:

	Nett	Gross*
Outstanding wages	\$11,691.43	\$14,392.15
Holiday pay	\$3,120.00	\$3,840.72

**Applying 23.1 per cent for PAYE*

[25] By the end of his employment Parminder Singh was owed wages for nine weeks, to a nett amount outstanding of \$11,399.99. The following arrears are accepted as due to him for the period from 12 May to 2 August 2024, after deducting some payments that were made in that period:

	Nett	Gross*
Outstanding wages	\$11,399.99	\$14,235.17
Holiday pay	\$2,040.00	\$2,547.35

**Applying 24.87 per cent for PAYE*

[26] The applicants' quantification of arrears has been accepted because they accord with the supporting information they have assembled, particularly what can be seen in deposits to their personal bank accounts and because RTL did not respond to the requests made by their representative for wage and time and holiday and leave records. In response to a request made for those records under s 130(2) of the Act on 5 August 2024, Mr Rana said he would provide them by 19 August. He did not do so by then or on any subsequent date. As a result, as permitted by s 132(2) of the Act where an employer fails to provide requested pay records, this determination has accepted the applicants' claims about their wages and holiday entitlements.

[27] The applicants are also entitled to an award of interest on those arrears. This is because they were denied the use of money, which they should have been paid in full by no later than 3 August 2024 (and, in large part, earlier). Under orders made later in this determination, interest is to be paid from 3 August 2024 until they are paid the amounts due to them.

Failure to pay the wages was a breach of employment standards by RTL

[28] The object of the Act includes promoting effective enforcement of employment standards. Those standards, as defined in the Act, include the provisions of the Wages Protection Act 1983 (the WPA). Section 4 of the WPA requires an employer to pay the entire amount of wages due to a worker when those wages become due.

[29] The failure of RTL to pay the wages identified above, as part of the arrears due to each applicant, plainly amounted to a breach of the employment standard set by s 4 of the WPA.

Mr Rana was a person involved in the breach of standards

[30] The evidence of Gurwinder Singh and Parminder Singh confirmed Rohit Rana was effectively the person running RTL's trucking business throughout their employment, and not just once he was formally registered as a director from 23 July 2024. Khushwinder Singh, while formally a director up until 5 August 2024, referred all queries from Gurwinder Singh and Parminder Singh about their wages to Mr Rana, as the person able to make the necessary decisions.

[31] The reality of that situation is confirmed by the 7 July email, referred to above, in which Mr Rana clearly demonstrates his decision-making role, confirms the nature of the working relationship with RTL (providing services to Mondiale) and acknowledges responsibility for making sure payments are made.

[32] In light of that evidence Mr Rana met the criteria set by s 142W of the Act for being found to be a person involved in a breach of employment standards. He knew about the essential fact that the workers' wages were not paid in full and on time, so was knowingly concerned in, and directly party to, the events that amounted to the breach of s 4 of the WPA.⁴ He also fell within the categories of people who are to be treated as officers of an entity breaching a standard. Prior to his formal appointment as a director in August 2024, Mr Rana's email of 7 July confirms he was a person in a position exercising significant influence over the management or administration of RLT,⁵ even if Khushwinder Singh was nominally the director and sole shareholder at the time. From 5 August 2024 Mr Rana was also the registered director of a company that had liabilities for the payment of wages to, by then, former employees.⁶

[33] Sections 142W and 142Y of the Act, as explained by the Court of Appeal in *A Labour Inspector v Southern Taxis Ltd*, impose the risk of a company being unable to meet minimum obligations under employment legislation on its directors, with limited exceptions or defences:⁷

A director cannot escape liability on the basis that they did not turn their mind to the legal consequences of what they knew. Nor can they escape liability on the basis that they genuinely but erroneously believed that the obligations in question did not apply, unless that incorrect understanding of the position was the result of reasonable reliance on information supplied by another person.

⁴ *A Labour Inspector v Southern Taxis & Ors* [2021] NZCZ 705 at [42].

⁵ Employment Relations Act 2000, s 142W(3)(e).

⁶ Employment Relations Act 2000, s 142W(3)(a).

⁷ *A Labour Inspector*, above at n 4, at [50].

[34] For those reasons, this determination confirms Mr Rana was a person involved in breaches of employment standards at the relevant times.

Leave to recover arrears from Mr Rana is granted

[35] Gurwinder Singh and Parminder Singh are granted leave to recover from Mr Rana personally the wages and holiday pay, with interest, owed to them by RLT, now in liquidation. The leave is granted because:

- (i) There has been a default in payment of money payable to them, as quantified in the arrears referred to earlier in this determination;
- (ii) The default is due to a breach of the employment standard in WPA s 4;
- (iii) Mr Rana was a person involved in the breach; and
- (iv) Their former employer, RLT now in liquidation, appears unable to pay the arrears of wages and holiday pay owed to the applicants.

[36] The First Liquidators' Report for RLT, lodged with the Companies Office on 17 March 2025, sets out the company's financial position at the date of liquidation on 10 February 2025. It showed the sum of more than \$1.5 million owed to creditors, including a large mortgage. Other information on the Companies Office records shows the mortgagee had exercised its security rights over four vehicles which appeared to be RLT's sole significant assets.

Penalty for aiding and abetting breach of employment agreement

[37] Mr Rana was also liable to a penalty for aiding and abetting breaches of RLT's employment agreements by the failure to pay wages due.

[38] A signed copy of Gurvinder Singh's written employment agreement, provided as part of his evidence, included the following clause:

Your wages will be paid fortnightly provide the [sic] use of timesheet provided, by direct credit into your nominated bank account.

[39] Parvinder Singh had not signed a written employment agreement given to him but the document included the same clause and was clearly part of the terms on which he had gone on to work for RLT.

[40] The breaches of that requirement to pay their wages was a breach of their employment agreement. For reasons already given, Mr Rana was directly involved in

the decisions that resulted in the wages not being paid so had aided and abetted the breach.

[41] A penalty for the breaches was appropriate because of the Act's object of promoting the effective enforcement of employment standards. The following factors also guided determination of an appropriate penalty for what should be treated as two breaches, one in respect of each of the applicants.⁸

[42] Firstly, the breaches resulted in each worker going without money they needed for family and living expenses for an extended period. The breaches were a deliberate business decision not to pay amounts due at the time they were due, rather than occurring by an inadvertent or negligent slip in administration of a pay system. Mr Rana had not taken any steps to avoid or mitigate the effects on the two workers of going without their wages for so long.

[43] As there were two breaches, one in respect of each applicant, the potential maximum penalty which could be imposed on Mr Rana as an individual was \$20,000.⁹

[44] Weighing the relevant matters for determining a penalty, as canvassed above, and considering the range of penalties imposed for similar breaches in other cases, the sum of \$6,000 was an appropriate amount to require Mr Rana to pay as a penalty in this case.

[45] Amounting to \$3,000 for the breach affecting each individual applicant, it was 30 per cent of the maximum that could be imposed. It was an appropriate amount to impose as a deterrent to Mr Rana in his other business ventures failing to observe minimum standards, as well as encouragement to employers generally to observe those standards. At the lower end of the scale, it was a relatively modest penalty but still addresses the extent and severity of the effect of the breaches on the applicants.

[46] Mr Rana must pay the penalty within 28 days of the date of this determination. One quarter of the penalty, that is \$1,500, must be paid to each applicant, to reflect the effect of the penalised breach on them. The remaining \$3,000 must be paid to the Authority for transfer to a Crown Bank Account on recovery.¹⁰

⁸ Employment Relations Act 2000, s 133A.

⁹ Employment Relations Act 2000, s 135(2)(a).

¹⁰ Employment Relations Act 2000, s 136(2).

Costs

[47] The applicants are entitled to an award contributing to costs incurred in pursuing these two jointly-investigated applications. The appropriate level of costs to be awarded in this case is \$3,375.

[48] This amount is set by applying the Authority's usual daily tariff of \$4,500 to an investigation meeting which lasted half a day and then making an upward adjustment equivalent to tariff costs for a further quarter of a day.

[49] There are two reasons for this upward adjustments in the contribution to costs required from Mr Rana.

[50] Firstly, Mr Rana did not co-operate in providing documents, and particularly pay records, properly requested by the applicants. This meant they were put to the cost of a more elaborate preparation of information to quantify arrears due to them.

[51] Secondly, the applicants had made a settlement offer. If accepted, their offer would have placed Mr Rana in a better position than reached by the outcome in this determination and saved costs for both parties. Having failed to take that better opportunity, Mr Rana must not contribute to some of the costs the applicants had to go on and incur.

[52] The applicants are also entitled to be reimbursed for the expense of the \$71.55 they each paid to lodge their applications in the Authority.

[53] The costs of \$3,375 and expenses totalling \$143.10 must be paid by Mr Rana to the applicants by no later than 28 days after the date of this determination.

Summary and orders

[54] RLT owed arrears of \$14,392.15 (gross) as wages and \$3,840.72 (gross) as holiday pay to Gurwinder Singh.

[55] RLT owed arrears of \$14,235.17 (gross) as wages and \$2,547.35 (gross) as holiday pay to Parminder Singh.

[56] Failure to pay those arrears to the applicants was a breach of employment standards. Mr Rana was a person involved in the breach. Under s 142Y of the Act the

applicants have leave to recover those arrears from Mr Rana because RLT, now in liquidation, is unable to pay them.

[57] The arrears recoverable from Mr Rana are to include interest of those amounts, calculated from the latest date those amounts fell due to them, that is 3 August 2024, until the date the applicants recover the amounts due in full. Interest due is to be calculated using the Civil debt interest calculator.¹¹

[58] Mr Rana must also pay a penalty of \$6,000 for aiding and abetting breaches of the Wages Protection Act 1983 s 4. Within 28 days of the date of this determination Mr Rana must pay the penalty in the following portions: \$1,500 to each applicant and \$3,000 to the Authority for transfer to a Crown account.

[59] Mr Rana must also pay costs of \$3,375 to the applicants and reimburse each of them for the additional expense of \$71.55 paid to lodge their applications in the Authority.

Robin Arthur
Member of the Employment Relations Authority

¹¹ www.justice.govt.nz/fines/civil-debt-interest-calculator.