

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 346
3295819

BETWEEN VIKASH SHARMA
Applicant

AND CHAUHAN NZ LIMITED
First Respondent

AND ANKUR CHAUHAN
Second Respondent

AND MITU SHARMA
Third Respondent

Member of Authority: Lucia Vincent

Representatives: Vana Vadiveloo, counsel for the Applicant
No appearance for the Respondents

Investigation Meeting: 25 March 2025 in Christchurch

Submissions Received: Up to and including 28 April 2025 from the Applicant
No submissions from the Respondents

Determination: 17 June 2025

DETERMINATION OF THE AUTHORITY

What is the Employment Relationship Problem?

[1] Mr Sharma says Chauhan NZ Limited (CNZ) unjustifiably dismissed him when it stopped rostering him for work, then sent a message terminating his employment. He claims substantial remedies, including compensation, lost wages and costs.

[2] Prior to starting work, Mr Sharma says CNZ through its directors, Ms Sharma and Mr Chauhan, obtained unlawful premiums from him, payments totalling approximately NZ\$60,000. Mr Sharma also seeks a finding that Ms Sharma and Mr Chauhan are persons involved in a breach for the purposes of enforcing any employment standards breaches.

[3] The respondents did not participate in the Authority's investigation.

How did the Authority investigate?

[4] Mr Sharma lodged his statement of problem in May 2024. The respondents failed to lodge a statement in reply and did not engage throughout the investigation process, including when called on numbers provided and contacted at the addresses listed on the Companies Office website for the company and directors.

[5] After a case management conference in September 2024, the Authority timetabled evidence into the New Year for an investigation meeting on 25 March 2025. In December 2024 an application was made to join the directors as controlling third parties, although this application was later superseded by an application for finding the directors were persons involved.

[6] The respondents did not comply with any of the timetabling directions. They did not appear at the investigation meeting on 25 March 2025 and did not answer when called after the start time had come and gone.

[7] The Authority may proceed in the absence of a party failing to attend or be represented if there is no good cause shown.¹ The Authority was not satisfied that there was any good reason for the respondents failing to engage or attend, so proceeded in their absence.

[8] At the investigation meeting a Hindi interpreter assisted witnesses, particularly Mr Sharma. At that stage Mr Sharma was residing in India. He and other witnesses attended by AVL and answered questions under oath or affirmation.

[9] An oral application was made at the investigation meeting to find Ms Sharma and Mr Chauhan were persons involved. This resulted in a Minute being issued to the parties that same day advising of the application, then providing an opportunity to the respondents to contact the Authority should they wish to be heard on the application and any other matter, on or before 11 April 2025. None of the respondents engaged.

¹ Employment Relations Act 2000 (Act), Clause 12 of Schedule 2.

[10] As permitted by s 174E of 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 were the issues?

[11] The issues for determination were:

- (a) Did CNZ unjustifiably dismiss Mr Sharma?
- (b) Does CNZ owe Mr Sharma wages? If so, are they recoverable from CNZ under s 11 of the Wages Protection Act 1983 (WPA)?
- (c) Did CNZ breach s 12A of the WPA by seeking or receiving from Mr Sharma a premium regarding his employment?
- (d) Are Ms Sharma and Mr Chauhan persons involved in a breach for the purposes of s 142W of the Act and should leave be granted under s 142Y of the Act or s 11A of the WPA?
- (e) What (if any) remedies should the Authority award Mr Sharma, such as compensation, lost wages and costs?

What happened?

While in India, Ms Sharma approached Mr Sharma about a job in New Zealand

[12] Mr Sharma first met Ms Sharma in Jammu, India, in early 2023 where she stayed for a few weeks. Ms Sharma had come to know of Mr Sharma through a relative. She approached him about a job. At the time Mr Sharma owned a small fashion garment business in Jammu where he lived with his wife and two young children.

[13] Mr Sharma says Ms Sharma enticed him to come to New Zealand with promises of a good life, a good education system for his children and eventually obtaining permanent residency for him and his family to move to New Zealand. The two shared cultural heritage too. Mr Sharma trusted Ms Sharma – so much so, he was prepared to borrow money to pay her for the employment package she later negotiated with him.

[14] CNZ is a New Zealand registered company. Ms Sharma and Mr Chauhan are directors; Ms Sharma the sole shareholder. They are husband and wife. At the time of meeting Mr Sharma CNZ traded as Candy's Kitchen, a restaurant and takeaways

serving traditional Indian food in Ōtautahi (Christchurch). At the time of employing Mr Sharma, CNZ was on the Accredited Employers List.

Ms Sharma offered Mr Sharma a package deal

[15] Ms Sharma offered Mr Sharma a package deal for his immigration and employment requirements. CNZ would employ him as Kitchen Hand in its restaurant. It would also take care of everything to bring him and his family to New Zealand including residency, flights and fees. Ms Sharma estimated it would cost between NZ\$20,000 to 30,000 in total. Mr Sharma agreed.

[16] Regrettably, over the course of nine months, Mr Sharma ended up paying approximately NZ\$60,000. This was because Ms Sharma continued to ask for money between January and September 2023. After arriving in New Zealand, Mr Chauhan threatened to cancel Mr Sharma's visa and have him deported if he did not make the final payment. Payments were either made to Ms Sharma or members of her family, at the direction of Ms Sharma or Mr Chauhan, as follows:

Date 2023	MOP	Recipient	NZ\$ (est.)	Lakhs Rupees	Place
30 January	Cash	Ms Sharma	10,000	5	Jammu, India
January/ February	Cash	Ms Sharma	8,000	4	Jammu, India
5 April	Transfer		4,000	2	Jammu, India
13 September	Bank transfer	Ms Sharma	2,042	1	New Zealand
14 September	Bank transfer	Ms Sharma's father Romesh Kumar	12,000	6	Jammu, India
20 September	Cash/ bank transfer	Mr Kumar	8,000	4	Jammu, India
20 September	Cash/ bank transfer	Ms Sharma mother Seema Sharma	8,000	4	Jammu, India
29 September	Bank transfer	Sunil Sharma /Ms Sharma	4,000	2	Australia
30 September	Cash	Mr Chauhan	4,000	2	New Zealand

TOTAL			60,042	30	
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[17] Mr Sharma provided evidence including documents that show:

- (a) Significant withdrawals, transfers or payments similar to the amounts paid in cash to Ms Sharma and her parents, Mr Kumar and Mrs Sharma, in Jammu, India;
- (b) WhatsApp messages between Mr Sharma and Ms Sharma regarding payment details including Ms Sharma messaging Mr Sharma with her bank account details and confirmation from Mr Sharma when a payment had been made; and
- (c) Mr Sharma's brother-in-law, Mr Sunil Sharma, paying Ms Sharma \$2,042 on 13 September 2023 and \$4,000 on 30 September 2023 (at Mr Chauhan's request at the behest of Ms Sharma) – the only payments made in New Zealand.

[18] Mr Sharma also included a claim about flights Ms Sharma booked and charged him for. Flight costs have been excluded from the table above.

CNZ provided an employment agreement

[19] Midway through 2023, CNZ provided Mr Sharma with an individual employment agreement (IEA) for full time employment as a Kitchen Hand in its restaurant. Mr Sharma signed the IEA on 31 July 2023 and returned it to Ms Sharma. It contained the following key clauses:

- (a) Employment was conditional on having a valid work visa;
- (b) The role was permanent and full time;
- (c) Mr Sharma would be rostered to work for a minimum of 30 hours each week from Monday to Sunday, between the hours of 10:00am to 10:00pm;
- (d) Mr Sharma would be paid \$29.66 an hour with wages paid weekly into his bank account;
- (e) Either party could end employment on four weeks' notice.

[20] Although Mr Sharma says he and Ms Sharma initially discussed her covering his rent and food, this was not included in the IEA.

Work visa obtained

[21] Mr Sharma completed an online application for Kiwiana Immigration Limited (Kiwiana) with some of the information required for a work visa. Kiwiana submitted an authority to act for Mr Sharma in his application dated 8 August 2023 to Immigration New Zealand. Despite this, Mr Sharma says he only ever communicated with Ms Sharma about his application for a work visa and his employment.

[22] Mr Sharma received an Accredited Employer Work Visa on 1 September 2023. For a period of 36 months, Mr Sharma could only work for CNZ as a Kitchen Hand in Canterbury for \$29.66 per hour.

Mr Sharma started work after paying Mr Chauhan more money

[23] Mr Sharma flew from Delhi to Christchurch, New Zealand on 26 September 2023. When Mr Chauhan picked him up, Mr Sharma says Mr Chauhan demanded he pay \$4,000 before he started work (captured in the table set out above). Because Mr Sharma did not have enough cash, Mr Chauhan told Mr Sharma to go to Wellington to stay with his sister until he did. He flew to Wellington where he stayed until Mr Sharma's brother-in-law arranged a payment of \$4,000 to Ms Sharma by way of bank transfer.

[24] On 22 October 2023 Mr Sharma was contacted and he started work on 24 October 2023 after returning to Christchurch. He reported to Ms Sharma and Mr Chauhan. He worked the hours he was asked to.

[25] Despite wanting to work at least 30 hours each week as agreed, during his time working at CNZ, Mr Sharma worked less than the 30 hours he was guaranteed by the IEA. CNZ paid Mr Sharma for the hours he worked, but did not make up the shortfall to the minimum hours guaranteed, and did not consistently pay him weekly as agreed in the IEA. Mr Sharma did not agree to work fewer hours. He was struggling to make ends meet including paying for rent and food and expressed concern about this to CNZ.

CNZ stopped rostering Mr Sharma for work then terminated his employment

[26] From 14 December 2023 CNZ stopped rostering Mr Sharma for work and removed him from the CNZ WhatsApp group. Ms Sharma did not contact Mr Sharma and did not respond to his calls and messages.

[27] Eventually, on 17 December 2023, Mr Sharma, Ms Sharma and Mr Chauhan met to discuss his employment. Ms Sharma and Mr Chauhan said CNZ had no work for Mr Sharma. They encouraged him to work elsewhere, despite it being in breach of his work visa conditions. After being left in limbo in the week before Christmas, Mr Sharma was told on 26 December 2023 there was still no work available for him and he should return to Wellington and again work elsewhere in breach of his visa conditions.

[28] On 28 December 2023 Ms Sharma sent Mr Sharma a message that said:

Hi Vikas, Thanks for your response.
Since you haven't showed up from last two weeks. We tried to contact you via phone and txt but you didn't reply back. So as considering your unaccepted attitude at work place and after many meetings with you and no positive outcome we would like to provide you with termination notice with immediate effect.
We are struggling because of you. As keeping in mind you are on company visa we tried our best that things work with you. Wishing you good luck for future adventures.
Kind Regards
Candy
Chauhan nz limited

[29] Ms Sharma's message seemed strange to Mr Sharma. He had worked the hours he had been asked to work, performed the tasks he was asked to and was keen to work more. However the message confirmed what he already knew – there was no further work for him; he had been dismissed.

Mr Sharma raised a personal grievance

[30] Mr Sharma raised a personal grievance and other concerns through his legal counsel by way of letter dated 20 February 2024.

INZ issued Mr Sharma with a migrant exploitation visa

[31] Immigration New Zealand issued a migrant exploitation visa on 6 March 2024. Unable to find work, Mr Sharma returned to India sometime in September 2024.

Did CNZ unjustifiably dismiss Mr Sharma?

[32] An employer must justify a decision to dismiss an employee. The Authority assesses justification by determining on an objective basis if CNZ acted how a fair and reasonable employer could in all the circumstances at the time it dismissed Mr Sharma.²

[33] The Authority must also consider whether CNZ met minimum procedural and good faith requirements, such as whether before dismissing Mr Sharma:³

- (a) Having regard to resources, CNZ sufficiently investigated the allegations against Mr Sharma;
- (b) CNZ raised its concerns with Mr Sharma and gave him information relevant to its (proposed) decision to end his employment;
- (c) CNZ gave Mr Sharma a reasonable opportunity to respond to its concerns and relevant information; and
- (d) CNZ genuinely considered Mr Sharma's explanations (if any) to the allegations and any response to the information provided.

[34] CNZ stopped giving Mr Sharma work, told him to work elsewhere, then sent him a message saying it had terminated his employment. CNZ did not meet any minimum procedural requirements – these failures were more than minor.⁴ CNZ also did not have a good reason to dismiss Mr Sharma.

[35] CNZ unjustifiably dismissed Mr Sharma.

Does CNZ owe Mr Sharma wages?

[36] The IEA guaranteed Mr Sharma at least 30 hours work each week. CNZ did not obtain Mr Sharma's agreement to reduce his hours of work – he objected to working fewer hours and expressed concern because he was struggling to survive financially.

[37] Mr Sharma provided timesheets and payslips supporting his claim for hours worked and payments received. I accept his account of what he worked and was paid.

[38] Between 24 October and 14 December 2023 CNZ should have rostered Mr Sharma on for eight weeks work at a minimum of 30 hours a week, as agreed in the

² Act, s 103A.

³ Act, 103A(3) and 4(1A)(c).

⁴ Act, 103A(5).

IEA. This totals 240 hours that he should have been paid for, even if he did not work. Mr Sharma worked 155.5 rostered hours leaving a shortfall of 84.5 hours he ought to be offered and worked, or been paid for.

[39] CNZ is liable for the difference between the minimum 30 hours it should have rostered Mr Sharma on for and the hours he did work and was paid for. CNZ owe Mr Sharma \$2,506.27 (based on an hourly rate of \$29.66).

[40] Under s 4 of the WPA an employer must pay the entire amount of wages payable to a worker without deduction when those wages become payable. A failure to pay wages in full or in part can amount to an unlawful deduction.⁵ Section 11 allows a worker to recover any unlawful deductions made. Mr Sharma is entitled to recover \$2,506.27 from CNZ as an unlawful deduction.

Did CNZ breach s 12A of the WPA by seeking or receiving from Mr Sharma a premium regarding his employment?

[41] Section 12A of the WPA says:

12A No premium to be charged for employment

- (1) No employer or person engaged on behalf of the employer shall seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person.
- (2) Where an employer receives any amount of money in contravention of subsection (1), whether by way of deduction from wages or otherwise, then, irrespective of any penalty to which the employer thereby becomes liable, the person by whom the money was paid or, as the case may be, from whose wages it was deducted, may recover that amount from the employer as a debt due to the person; and civil proceedings for the recovery of the amount may be instituted in the Employment Relations Authority by the person.

...

[42] Section 12A is broadly worded to prohibit anyone asking for or receiving a premium for someone's employment on behalf of an employer. The Employment Court has commented on the "elasticity" of the meaning of "premium" to extend beyond "straightforward cases of payment being sought or received to purchase a job," to "... more subtle or ingenious arrangements."⁶

⁵ See for example *Raggett anor v Eastern Bays Hospice* [2020] NZERA 266 at [23] to [24].

⁶ *Labour Inspector v Tech5 Recruitment Limited* [2016] NZEmpC 167 at [53].

[43] As directors of CNZ, Ms Sharma and Mr Chauhan asked for and received (or their relatives received) a substantial amount of money from Mr Sharma or others making payments on his behalf. This money was for a package that Ms Sharma had negotiated with Mr Sharma to cover the job with CNZ and associated immigration and employment requirements. The payments were all connected to Mr Sharma's job as a Kitchen Hand for CNZ in New Zealand - the employment agreement expressly said Mr Sharma's employment would not come into effect until he received a valid work visa. I find the arrangements fall within what would be considered a premium under s 12A.

[44] I note that to the extent Mr Sharma could have been said to have paid for any services that were not connected to his job or legitimate expenses capable of being recouped by CNZ from Mr Sharma, he did not receive them (such as residency for Mr Sharma and his family and flights to and from India). In addition, without any documentation from CNZ about what the package covered and how any money paid was apportioned (such as invoices itemising any costs charged or expenses incurred), it was difficult to distinguish between what may have been a legitimate expense incurred on Mr Sharma's behalf (such as a fee for applying for a work visa) and what was not. In the absence of any records, it is reasonable to conclude the entirety of the money paid by or on behalf of Mr Sharma for the package was for his employment and falls within the definition of premium prohibited by s 12A of the WPA.

[45] If any issue arises as to payments made overseas being beyond the reach of the Authority, the circumstances of this case would justify a finding that the payments are within jurisdiction. The IEA was for a job based in New Zealand with a company registered here with both directors and its sole shareholder living and working in the business. The work was performed only in New Zealand and subject to New Zealand law – the IEA referred to the Act and complied with its requirements in support of a work visa issued by Immigration New Zealand.

[46] The Chief Judge commented on the possibility of recouping overseas premiums in *Labour Inspector of the Ministry of Business, Innovation and Employment v New Zealand Fusion International Ltd* [2019] ERNZ 525:⁷

... (P)remiums for employment are unlawful in New Zealand, give rise to recovery action and the imposition of penalties under the Act. The Labour Inspector did not seek such orders because of a previous judgment of the Court in *Mehta v Elliott*. That judgment was viewed as preventing recovery action for a bond paid out of the

⁷ At [59] (footnotes and numbering omitted).

jurisdiction. I am not sure that it is the impediment that the Labour Inspector perceives. The decision was the subject of academic discussion at the time, and may have been affected by subsequent changes to the relevant legislation and a judgment of the Supreme Court.

[47] The Supreme Court's decision in *Brown v New Zealand Basing Ltd* [2017] NZSC 139,⁸ and changes made to Regulations in the Authority and Employment,⁹ confirm the Authority has extraterritoriality jurisdiction where the circumstances warrant. In *Arushi v Isher Enterprises & Ors* [2024] NZERA 615,¹⁰ the Authority noted that the authorities do not directly address the extraterritoriality of the WPA, but was satisfied the Authority could order recovery of premiums paid overseas in the circumstances of that case.

[48] I am satisfied that the Authority can recover overseas premiums in this case for the reasons set out above. I find CNZ breached s 12A of the WPA by seeking and receiving from Mr Sharma premiums regarding his employment. Mr Sharma may recover the money paid as a debt due to him from CNZ.

Are Ms Sharma and Mr Chauhan persons involved in a breach for the purposes of s 142W of the Act and should leave be granted under s 142Y of the Act or s 11A of the WPA?

[49] Ms Sharma and Mr Chauhan are both directors of CNZ. They were involved in the employment of Mr Sharma, the hours he worked at the restaurant and the payments he received (and did not receive) and the premiums paid. They were involved in communications about his work, the IEA, meetings about his employment and its termination. At the time of determination, CNZ remains registered as a company although notice has been given for removal unless objections have been received.

[50] I find Ms Sharma and Mr Chauhan were directly or indirectly knowingly concerned in CNZ's breaches of employment standards i.e. breaches of provisions of the WPA regarding unlawful deductions and premiums.

[51] I am satisfied Ms Sharma and Mr Chauhan are persons involved for the purposes of s 142W of the Act. I grant Mr Sharma leave to recover under s 142Y or 11A of the

⁸ From [41].

⁹ As analysed in *Radford v Chief of New Zealand Defence Force* [2021] NZEmpC 35 from [129] to [153].

¹⁰ At [69] to [84].

WPA for payment to the extent CNZ defaults in payment of the amounts subject of the orders made in this determination that are employment standards breaches.

What (if any) remedies should the Authority award to Mr Sharma?

Unlawful deduction

[52] CNZ owes Mr Sharma \$2,506.25. Mr Sharma may recover this as an unlawful deduction made by CNZ to his wages under s 4 and s 11 of the WPA.

Compensation

[53] Mr Sharma claims compensation of \$75,000 for the impact of the exploitation of him, ongoing underemployment and his termination. He visited a nurse practitioner who gave evidence about a significant impact on his physical and mental health, including emotional distress, depression and sleep deprivation.

[54] In the circumstances, and after considering the evidence, what has been awarded in other cases and trends generally,¹¹ I award Mr Sharma \$25,000 under s 123(1)(c)(i) of the Act.

Remuneration lost

[55] Mr Sharma claims remuneration for the entire period from when he was dismissed through to when he left New Zealand and returned to his business. Mr Sharma provided limited evidence about his attempts to find work. In the circumstances, I consider it fair to award the equivalent of three months ordinary time remuneration of \$11,567.40.¹²

Contribution?

[56] Mr Sharma did not contribute to the situation giving rise to his grievance in terms of section 124 of the Act.

Premiums

[57] CNZ breached s 12A of the WPA by seeking and receiving from Mr Sharma a premium regarding his employment. Mr Sharma may recover the money paid as a debt due to him from CNZ. CNZ must pay the amount of \$60,042 to Mr Sharma.

¹¹ Such as *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [161] to [162].

¹² Based on 30 hours per week work at the hourly rate of \$29.66.

Other remedies claimed

[58] Mr Sharma claimed an amount for payment of rent. If Mr Sharma and Ms Sharma discussed CNZ covering Mr Sharma's rent initially, it did not then make it into the IEA and was not raised by Mr Sharma at the time. I decline to award it.

[59] Mr Sharma has claimed for the cost of airfares. I decline to reimburse the cost of airfares. Flight costs are a legitimate expense an employee may pay personally or have passed on as a cost incurred on their behalf by an employer.

[60] Mr Sharma has claimed damages for abandonment and migrant exploitation. It was unclear on what basis this was claimed and was not explored further by his legal counsel.

[61] There is no jurisdiction for the Authority to order the written apology sought by Mr Sharma from the respondents.

Costs

[62] This matter took half a day. Costs would normally be awarded using the tariff rate set out in the Authority's Practice Direction on costs,¹³ being \$2,250 plus reimbursement of the filing fee of \$71.55, unless circumstances require an adjustment.

[63] Mr Sharma was legally aided. Should he wish to claim costs then he has seven days to lodge a memorandum with an opportunity for the respondents to provide any reply within seven days of that.

Summary of Orders

[64] Chauhan NZ Limited must pay Mr Sharma:

- (a) Compensation of \$25,000;
- (b) Remuneration lost of \$11,567.40;
- (c) Unlawful deductions of \$2,506.25; and
- (d) Premium of \$60,042.

¹³ [Practice Direction of the Employment Relations Authority](#)

[65] Ms Sharma and Mr Chauhan are persons involved in terms of s 142W of the Act. To the extent that CNZ cannot pay the amounts in [64] (c) and (d) above, Mr Sharma can recover those amounts directly from Ms Sharma and Mr Chauhan.

Lucia Vincent
Member of the Employment Relations Authority