

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 391
3372563

BETWEEN A LABOUR INSPECTOR
Applicant

AND BIG SKY FOOD LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Amy Webster, counsel for the Applicant
Edward Mark Miller, for the Respondent

Investigation Meeting: On the papers

Submissions Received: 24 June 2025 from the Applicant
26 June 2025 from the Respondent

Date of Determination: 3 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem (described in summary)

[1] On 24 August 2024, the Labour Inspector issued an Improvement Notice pursuant to s 223E of the Employment Relations Act 2000 (the Act) pertaining to food retail outlets operated by Big Sky Food Limited trading as “Phat Phillip” (BSF) . The Improvement Notice required BSF pay a specified amount of arrears of wages to identified workers and asked BSF

to undertake a remediation project to address systemic payroll management issues and record keeping matters.

[2] BSF in a separate application has objected to the Improvement Notice in accord with s 223E of the Act. The latter action was filed with the Authority on 16 September 2024 but this has not proceeded to an investigation meeting. The Labour Inspector is contending that BSF has failed to advance the latter application in a timely fashion and is being obstructive. This has initially involved BSF failing to specify grounds on which the objection to the Improvement Notice was being advanced and ongoing delays. I have chosen not to detail the attempts by the Authority to get clarity on BSF's application in favour of advancing this matter to a resolution.

[3] The Labour Inspector has also raised concerns with the Authority that it believes BSF is taking steps to divest its assets by franchising at least four of its outlets.

[4] As a result, the Labour Inspector on 9 April 2025, filed an application for a compliance order pursuant to ss 223D(6) and 137 of the Act seeking that:

- a) BSF comply with the extant Improvement Notice by paying arrears to the Labour Inspector on behalf of identified workers in the total amount of \$12,644.80.
- b) That the above arrears amount be held in an interest-bearing account by the Labour Inspector until BSF's objection to the Improvement Notice is determined by the Authority.
- c) BSF comply with all other requirements of the Improvement Notice and that they pay interest on the identified arrears from 16 October 2024 (the date the Improvement Notice sought compliance from) until the date of this Authority determination.

[5] The Labour Inspector also sought that the objection to the Improvement Notice be dealt with at the same time and that the Authority adjourn their investigation findings to allow compliance by BSF prior to the consideration of any potential penalty actions.

[6] In a directions teleconference held on 6 May 2025, the Authority after noting that the parties had on 11 April 2025 come to an agreed statement of facts pertaining to events leading up to the Improvement Notice being issued and filed that statement in the Authority, resolved to deal first with the compliance order application. An initial investigation meeting was set but in the light of concerns raised by the Labour Inspector it was resolved the matter would be determined by submissions only, to be lodged by 24 June 2025.

[7] In the interim, the parties were encouraged to resolve their differences by negotiation suggesting that no tangible grounds had been identified by BSF to object to the Improvement Notice. On the latter, I note the BSF representative at the time, (Lennon Xi) appeared not to understand what grounds he was advancing to have the Improvement Notice set aside other than seeking the Authority's assistance to determine the quantum of arrears they accepted were owed. The parties have been unable to resolve their differences.

Submissions

BSF

[8] In a submission from BSF's Edward Mark Miller, that the Authority received on 26 June 2025, he set out that BSF was willing to comply with the Labour Inspector's Improvement Notice but then sought to negotiate on the amount of arrears owed due to BSF's belief that there were "material flaws in the calculation methodology" that were then detailed. BSF then raised concerns about the Authority not convening an investigation meeting to determine evidential matters on the quantum of the arrears the Labour Inspector is claiming as owed.

[9] In a further submission BSF questioned the independence of the Authority suggesting it "operates under the Ministry of Business, Innovation, and Employment (MBIE). The same ministry to which the Labour Inspector belongs." Mr Miller later described the Authority as sitting within MBIE and thus having an apparent conflict of interest.

[10] BSF noted that if the Authority rushed their decision or it was deemed to be procedurally unfair, they would reserve their right to file a judicial review in the High Court.

[11] In summary, other than suggesting they had an alternative view on the quantum of what arrears were owed, BSF made no submission on why a compliance order should not be granted.

The Labour Inspector

[12] The Labour Inspector's submission recounts concern about the potential for BSF to dissipate its assets to avoid any orders of the Authority that I will not detail other than to indicate the Labour Inspector appears to raise legitimate concerns that BSF has chosen not to address in their submissions.

[13] The Labour Inspector has highlighted their main concern is since the issuing of the Improvement Notice some eight months ago, no remedial action has been taken by BSF to pay any of the identified workers' wage arrears hence their departure from the need to await the outcome of BSF's Objection application that they consider is being used as a frustration mechanism.

Assessment

[14] It is the Authority's view that while respecting BSF's right to challenge the Improvement Notice, it is apparent that a somewhat obstructive approach is being adopted by them that may well have been assisted more if independent legal advice had been sought. This would have included an explanation of the fact that Authority Members act independently and are not employees of the Ministry of Business, Innovation and Employment. Authority members are independent and pursuant to s 167 of the Act, appointed by the Governor-General on the recommendation of a government minister. Further, under s 168 of the Act, all Authority

Members swear or affirm, an oath before a Judge of the Employment Court that they “will faithfully and impartially” perform their duties. ¹

[15] In considering this matter the Authority is of the view that given the agreed statement of facts and acceptance by BSF of liability to pay arrears, it is evident that a pragmatic approach to timeliness of getting the quantum of arrears determined should be adopted. In addition, the Authority understands from BSF’s submission that they are willing to comply with all other matters directed to rectification in the issued Improvement Notice.

[16] To this end, the Authority considers that the Labour Inspector’s suggestion of placing the relatively modest disputed amount, in an interest-bearing bank account with an undertaking that once the dispute has been determined it will be released and allocated as directed by the Authority is a sensible way forward. This would be consistent with the discretionary power the Authority has under s 137(2) of the Act to ‘do any specified thing’ to prevent non observance of an order the Authority may make.

[17] Given the above, the urgent compliance order sought by the Labour Inspector is granted on terms set out below.

[18] In granting compliance with the Improvement Notice, the Authority will then convene a further teleconference to set down a process and timeline to determine the remaining disputed issue about the quantum of arrears accepted as being owed by BSF as part of resolving their application objecting to the Improvement Notice.

Terms of orders

¹ Employment Relations Act 2000, ss 167 and 168.

[19] By order of the Authority under section 137 Employment Relations Act 2000, a compliance order is granted to remedy the fact that Big Sky Foods Limited has not complied with the Improvement Notice issued on 24 August 2024. The terms of the compliance order are that:

- a) Big Sky Food Limited is to pay an amount of \$12,644.80. to the Labour Inspector and this amount will be placed in an interest-bearing Crown account with an undertaking to Big Sky Foods Limited, that upon the extant wage arrears dispute being determined by the Authority as part of Big Sky's objection to the Improvement Notice, the amount ordered as being owed will be transferred to the identified workers with any determined remainder funds to be returned to Big Sky Food Limited.

- d) Big Sky Foods Limited is to comply with all other requirements of the Labour Inspector's Improvement Notice of 24 August 2024 and pay interest to the Labour Inspector on the identified arrears from 16 October 2024 (the date the Improvement Notice sought compliance from) until the date of this Authority determination being issued in an amount to be calculated as per Schedule 2, Interest on Money Claims Act 2016.

[20] Pursuant to section 137(3) Employment Relations Act 2000, the Authority orders that the above requirements be put in place within 14 days of the issuing of this determination.

Costs

[21] Costs are reserved.

[22] The parties are encouraged to resolve any issue of costs between themselves.

[23] If the parties are unable to resolve costs, and an Authority determination on costs is needed, The Labour Inspector may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that

memorandum Big Sky Food Limited will then have 14 days to lodge any reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[24] The parties can expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²

David G Beck
Member of the Employment Relations Authority

² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1