

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 419
3159481

BETWEEN	A LABOUR INSPECTOR Applicant
AND	RURAL PRACTICE LIMITED First Respondent
AND	REZA ABDUL-JABBAR Second Respondent

Member of Authority:	Andrew Dallas
Representatives:	Amy Webster, counsel for the Applicant Mark Hammond, counsel for the Respondent
Submissions and other information:	Received up to, and including, 15 April 2025
Date:	15 July 2025

OBSTRUCTION DETERMINATION OF THE AUTHORITY

[1] In determinations previously issued, the Authority found in favour of the Labour Inspector's contentions of breaches of minimum employment standards by Rural Practice Limited. Reza Abdul-Jabbar was found to be a person involved in those breaches. Recovery of arrears was ordered.¹ Penalties were subsequently ordered payable.²

¹ *A Labour Inspector v Rural Practice Limited* [2024] NZERA 66

² *A Labour Inspector v Rural Practice Limited (No.2)* [2024] NZERA 183. This determination is under challenge.

[2] In the Authority's second determination in this matter, the then investigating Member stated as follows:

[10] The Authority also deferred [in the first determination] resolving an own-motion enquiry into whether conduct of RPL or Reza Abdul-Jabbar during the Authority's investigation, had obstructed it. Submissions were sought from the parties on that issue.

...

[12] As to the Authority's enquiry into obstruction, further information or evidence may need to be sought before the Authority concludes an investigation into that matter, which will be referred to again at the end of this determination.

...

[160] The Authority member presently presiding considers that further investigation should be carried out before this side issue can be resolved. As there will be a change in the Authority and another member will become responsible for completing outstanding work on this file, that Member will decide what has to be done and how.³

[3] It has fallen to me to undertake this investigation. This determination resolves the issue of obstruction substantively.

So, what occurred?

[4] In short, during the Labour Inspector's investigation, RPL and Mr Abdul-Jabbar claimed they were owed money by one of their workers, Agus Sutaji for recruitment costs paid on his behalf to Suryo Firmanto, a national of Indonesia. A document purporting to be an invoice in the amount of 50 million Rupiah for the same would be produced.

[5] The significance of this invoice to the Authority's investigation was that RPL and Mr Abdul-Jabbar had advised the Labour Inspector that Mr Sutaji authorised deductions from his pay to reimburse RPL the amount it paid on his behalf to Suryo Firmanto. RPL produced a document purporting to be an invoice from Mr Firmanto made out to Mr Sutaji. RPL also provided the Labour Inspector with a document purporting to show Mr Sutaji's written consent to having the invoiced amount deducted from his wages. When questioned about this Mr Sutaji told the Labour Inspector that he had not engaged Mr Firmanto as a recruitment agent and had not received an invoice from him.⁴

³ Above n 2

⁴ Above n 1 at [107] – [110]

[6] During the Authority's investigation the Member apprehended the Authority may have been obstructed. This apprehension resulted from the provision by RPL and Mr Abdul-Jabbar of two different versions of the receipt for payment of Suryo Firmanto's invoice.

[7] In the Authority's first determination, the Member made the following observations:⁵

[129] During the investigation meeting RPL did not volunteer any documentary proof of its claim that the invoiced amount of 50 million Rupiah had been paid by it to Mr Firmanto.

[130] The sum of over \$5,000 is a large one for any employer to pay on behalf of an employee. It is a large sum for any business to pay for any reason. It might be expected that if it was paid, whether as a loan or a gift to an employee, it would go through the books of RPL and be able to be seen in a bank statement of RPL, or the Trust entity that RPL served.

[131] The Inspector was given a copy of a handwritten memorandum of Silvia Abdul Jabbar, which simply referred to \$5,400 as 'a debt that Agus has incurred'. There are no signatures on the memorandum.

[132] Another debt referred to as incurred by Agus is 'Malcolm Pacific' for \$3,450. Mr Sutaji did acknowledge that he engaged the firm Malcolm Pacific Immigration as his agent when seeking a visa from INZ. He acknowledged the debt and that he had consented to it being paid back from his wages. There is no dispute that he did pay that debt.

[133] Mr Sutaji doubted he had consented in writing, on 27 May 2019, to wages deductions for 'recruitment cost from Indonesia', written on page 1 of the memorandum in English. The handwritten memorandum makes no reference to either 'Suryo Firmanto' or 'Malcolm Pacific', or to any monetary amount of cost to be deducted from wages. If the invoice in the name of Suryo Firmanto had been paid by RPL in November 2018, the exact amount of 'recruitment cost from Indonesia' would have been known to RPL in May 2019. The only monetary amounts referred to for deduction are \$98 for power, \$150 for clothing, and \$1,552 as an 'advance' from RPL. Mr Sutaji doubted the 'advance' item had been written on page 2 of the memorandum at the time he signed his consent for the power and clothing deductions.

[134] Page 1 of the handwritten 27 May 2019 memorandum signed by Mr Abdul-Jabbar, seems to have been written in quite vague terms, especially when RPL had agreed with Mr Sutaji 'to compile all invoices incurred on my behalf'. According to the document and the date of it, the invoice of Suryo Firmanto would have been available for several months for compilation by May 2019.

⁵ Above n 1

[135] Mr Abdul-Jabbar in giving evidence was confident he could provide the Authority with proof of payment of the invoiced amount to Mr Firmanto. After directing him to provide whatever proof he had, the Authority on 24 August 2023 received a photograph of a receipt. Mr Abdul-Jabbar said that on behalf of RPL or the Rural Practice Trust, his mother in Indonesia had paid to Mr Firmanto the invoiced amount and their signatures were those that could be seen on the receipt.

[136] The signatures and writings are on a standard form of a receipt which has words in Indonesian printed on it. They describe the form as being one for use where there has been payment or repayment of arrears of money.

[137] The receipt has on it a stamp for stamp-duty purposes, for 6,000 Rupiah (about 60 cents in New Zealand currency). The signatures are written partly across both the receipt form and the stamp.

[138] The date of the photographed receipt Mr Abdul-Jabbar provided, 15 October 2019, is curious, as it is about 10 months after the date of Mr Firmanto's invoice, 10 November 2018, which stated the invoiced amount had by then been paid. It is unexplained by the respondents what prompted the issue of a receipt long after the payment it records had been made.

[139] The Authority requested production of the original of the receipt shown in the photograph. A document was received from the respondents on 14 December 2023. At first sight it appeared to be the one in the photograph but, on closer inspection by the Authority, differences in the documents could be seen.

[140] Some of the differences are in the way the signatures are formed on the documents, and also in the alignment of the stamp and signatures on each document in relation to the printed words and borders of the form.

[141] The most striking difference is in the stamp-duty stamp, across which is a code in small but readable letters and numerals. The codes are printed as below across the stamp on each receipt:

Original receipt – 0C661AFF178544932

Photographed receipt – A66T5AEF982159667

[142] Both documents were produced by or on behalf of the respondents, at the request of the Authority, as proof that RPL had paid or repaid Suryo Firmanto a recruitment fee of 50 million Rupiah. Although both have the date 15 October 2019 handwritten on them, one is not a photograph of the other.

[143] The purported original appears to have been purposefully made to look like the one in the photograph. As the Authority had requested production of the 'original' of the photographed receipt, the document received in December can be taken to have been presented to the Authority for it to be received as the original of the receipt shown in the photograph.

[144] Mr Firmanto's signature and initials were notarised on the fixed term employment agreement he provided to the Rural Practice Trust and Mr Sutaji in September 2018. The Authority does not have evidence that the signature on the photographed receipt and the purported original is that of Mr Firmanto or is not. There has been no evidence from him at all. The receipt documents had not been produced by the respondents when the handwriting and signature expert, Gordon Scharfe, was retained by the Inspector to give an opinion.

[145] After receiving the purported original receipt from the respondents, the Authority advised counsel for the parties that the documents appeared to be different. Counsel were offered an opportunity to view the document the Authority received on 14 December.

[146] As directed at the end of this determination, the parties are to have an opportunity to provide further information or submissions in relation to the documents produced by the respondents to the Authority, on 24 August 2023 and 14 December 2023.

[147] At this point the Authority has found that RPL breached s 4 of the WPA by underpaying Mr Sutaji his contractual remuneration. After the Authority has received any submissions as to penalties the parties wish to make, it will be giving a further determination to resolve the claim for penalties. Depending on any further information or submissions received about the Suryo Firmanto invoice and the documents produced in August and December as proof of its payment by RPL, the Authority's next determination may make further findings about that issue.

[148] This determination gives notice to the respondents that the Authority may, after receiving submissions from the parties, also determine whether the conduct of any of the first or second respondents in producing those documents, amounted to an obstruction of the Authority and, if so, whether a penalty should be imposed under s 134A of the ER Act against them.

The Authority's investigation

[8] As set out above, RPL and Mr Abdul-Jabbar were put on notice the Authority may, after receiving submissions from the parties, determine whether their conduct in producing those documents amounted to an obstruction of the Authority and, if so, whether a penalty should be imposed under s 134A of the Act. Having reviewed the file, the determinations already issued and the photographed and the purported original receipt at the heart of the issue, I see no reason to deviate from the proposed plotted course.

[9] The Authority received some submissions from the Applicant on this issue during its substantive investigation of the matters between the parties.⁶ Having reviewed those submissions, the parties were afforded the opportunity to provide any further submissions they wished to have considered and a timetable for a sequential exchange was directed in the event the parties took up the opportunity. They both did.

⁶ A Labour Inspector, *Submissions in reply – penalties and obstruction*, 6 March 2024 at [113] – [116]

[10] Further submissions were then called for in respect of updated financial information for RPL and Mr Abdul-Jabbar. In response, RPL and Mr Abdul-Jabbar provided the Authority with affidavits prepared for the court, upon which they were seeking to rely as part of their substantive challenge. The Labour Inspector submitted there had been problems throughout the course of Authority proceedings with disclosure of RPL and Mr Abdul-Jabbar's financial position and the introduction of the affidavits to the challenge proceedings was opposed on both procedural and substantive grounds.

[11] Subsequently, *Rural Practice Limited v A Labour Inspector*⁷, an interlocutory judgment of the court arising out of that challenge was issued.⁸ The interlocutory judgment was required, among another matter, to consider whether RPL and Mr Abdul-Jabbar should be permitted to place the affidavits before the court. The court declined to allow this on the basis the material contained therein was not relevant to whether the Authority had erred in law and fact.⁹

[12] In response to this judgment, the Labour Inspector said the affidavits were "problematic" and should not be considered. RPL and Mr Abdul-Jabbar said it was open to me not to give the affidavits "no weight". Indeed, that is what I have decided to do. The affidavits are set aside.

Relevant law

[13] Section 134A of the Act relevantly provides:

134A Penalty for obstructing or delaying Authority investigation

(1) Every person is liable to a penalty under this Act who, without sufficient cause, obstructs or delays an Authority investigation, including failing to attend as a party before an Authority investigation (if required).

(2) The power to award a penalty under subsection (1) may be exercised by the Authority—

(a) of its own motion; or

(b) on the application of any party to the investigation.

⁷ [2025] NZEmpC 65

⁸ Above n 7

⁹ Above n 7 at [14]

[14] The Authority has full and exclusive jurisdiction to recover penalties under s 134A of the Act:

133 Jurisdiction concerning penalties

(1) The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this Act—

(a)...

(b) for a breach of any provision of this Act for which a penalty in the Authority is provided in the particular provision.

[15] In imposing a penalty, the Authority is required to have regard to particular matters:

133A Matters Authority and court to have regard to in determining amount of penalty

In determining an appropriate penalty for a breach referred to in section 133, the Authority or court (as the case may be) must have regard to all relevant matters, including—

(a) the object stated in section 3; and

(b) the nature and extent of the breach or involvement in the breach; and

(c) whether the breach was intentional, inadvertent, or negligent; and

(d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and

(e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and

(f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and

(g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.

[16] The starting point for a penalty for a body corporate is a maximum of \$20,000 per breach.¹⁰ The maximum penalty for an individual found liable for a penalty is \$10,000 per breach.¹¹ The standard of proof to be applied in this matter, which was subject to submissions by the parties, is discussed further below.

¹⁰ Employment Relations Act, s 135(2)(b).

¹¹ Employment Relations Act, s 135(2)(a)

[17] As stated, this is an own motion investigation by the Authority with the focus being on the possible obstruction of its investigation by RPL and Mr Abdul-Jabbar. In *Ahuja v A Labour Inspector*,¹² the court considered obstruction within the context of s 134A of the Act as follows:

[30] One of the definitions of “obstruct” in the Oxford English Dictionary is “stand in the way of ...; retard the course of...”. “Obstruct” is an active verb; it is the action of obstructing, not whether it is ultimately successful, that determines whether obstruction has occurred. “Obstruction” is defined as: “The action or an act of obstructing something or someone; the condition of being obstructed.” It would be enough under that definition that the investigation process becomes more difficult for either the Authority itself or for one of the parties. More time, effort and expense would be used to continue the process as a result of the actions taken by the person committing the breach. This in turn affects the unimpeded course of justice. (footnote omitted)

[18] In that case, the court imposed total penalties of \$12,000 penalties on two individuals who were found on the balance of probabilities to have organised a gang member to intimidate two witnesses so they would not appear at the Authority’s investigation into the Labour Inspector’s case.

Submissions

Labour Inspector

[19] The Labour Inspector said the issue arises in the context of the Authority’s finding that RPL and Mr Abdul-Jabbar created or altered documents to suit their needs, in particular:

- (i) providing “misleading information to INZ and the Inspector” in the form of an individual employment with different salaries to each agency in respect of each migrant employee;¹³
- (ii) created two versions of pay slips for Mr Sembiring, which “had been ‘engineered’ to mislead INZ”¹⁴ and “with the intent to mislead or deceive INZ or the Inspector or both”;¹⁵
- (iii) Mr Sutaji did not give written consent to any deduction from his pay for the Suryo Firmanto invoice,¹⁶ and that the signature on a document purporting to give that consent “was not his”;¹⁷ and

¹² [2018] NZEmpC 31

¹³ Above n 2 at [72]

¹⁴ Above n 2 at [115]

¹⁵ Above n 2 at [78]

¹⁶ Above n 15

¹⁷ Above n 2 at [311]

(iv) the Authority found the creation of two sets of payslips “casts considerable doubt over the credibility of the respondents”¹⁸ and “must raise the strongest doubts... about the credibility of the second respondent Mr Abdul-Jabbar”.¹⁹

[20] The Authority also described Mr Abdul-Jabbar as having an attitude “of disrespect for employment and immigration statutory rules and regulations - ‘officialdom and bureaucracy”.²⁰

[21] The Labour Inspector said within this context, the explanations given by RPL and Mr Abdul-Jabbar in relation to the issue of possible obstruction of the Authority should be treated with extreme caution in circumstances where no persuasive documentary evidence was available to support them.

[22] The Labour Inspector made several general observations about the issue of a possible obstruction of the Authority including:

- a. versions one and two of the receipt purporting payment of the invoice were lodged in the Authority in an attempt to prove the authenticity of the invoice;
- b. RPL and Mr Abdul-Jabbar did not take any steps to proactively lodge evidence to corroborate the authenticity of the invoice either before or during the Authority’s investigation meeting and if these receipts existed since 2019, why had these receipts not been lodged earlier;
- c. despite the differences noted by the Authority between the two versions of the receipt, RPL and Mr Abdul-Jabbar offered no proactive explanation to the Authority; and
- d. given the serious nature of an own-motion enquiry into possible obstruction, it is surprising RPL and Mr Abdul-Jabbar have not lodged any further evidence to corroborate the receipts’ authenticity, other than a letter of uncertain origin, purportedly from Mr Firmanto.

¹⁸ Above n 1 at [158]

¹⁹ Above n 1 at [183]

²⁰ Above n 2 at [110]

[23] The Labour Inspector made the following specific comments about version one of the receipt:

- a. RPL and Mr Abdul-Jabbar refer to version one as “a scanned copy that [Mr Abdul-Jabbar’s] mother (who is 76 years old) had kept”;
- b. it appears obvious that version one is in fact a photograph of a receipt on a table with a green plastic tablecloth, not a scan;
- c. Mr Abdul-Jabbar sent the photograph to Counsel for the Respondent from his “iPhone”;
- d. in the absence of any email or other form of electronic communication from Mr Abdul-Jabbar’s mother attaching the photo either in 2019 or 2023, it is not clear how he came into possession of the photograph of version one and the possibility that Mr Abdul-Jabar took the photo therefore cannot be discounted;
- f. even if evidence is belatedly lodged in an attempt to prove the authenticity of version one, and how Mr Abdul-Jabbar came into possession of the photograph of it, the Labour Inspector submitted it would not necessarily prove when the photograph was taken; the metadata of the photograph could be required to determine that; and
- g. both versions of the receipt contain more English than would be expected in relation to a transaction between two Indonesian speaking people in Indonesia.

[24] The Labour Inspector made the following comments regarding version two of the receipt:

- a. RPL and Mr Abdul-Jabbar were asked to provide the original of version one of the receipt;
- b. It is not clear how version two came into Counsel for the Respondents’ possession: was it received direct from Indonesia or via Mr Abdul-Jabbar in Invercargill?
- c. RPL and Mr Abdul-Jabbar caused version two to be provided to the Authority knowing it was different from version one and with no accompanying explanation;

- d. the conclusion drawn by the Authority was that version two was to be “taken to have been presented to the Authority for it to be received as the original of [version one]”;²¹
- e. while RPL and Mr Abdul-Jabbar have since provided an explanation for the difference, in the context of this case, involving multiple allegations and findings of inappropriate creation and alteration of documents by them, it seems implausible they would knowingly file a different document without an explanation, unless their intention was to deceive the Authority into thinking it was the same document; and
- f. it is also notable that while RPL and Mr Abdul-Jabbar have provided an explanation, no documentary evidence has been filed to satisfactorily corroborate that explanation.

[25] In summary, the Labour Inspector said, at best, for RPL and Mr Abdul-Jabbar version one and version two of the receipt are both genuine and they have delayed the Authority’s investigation by not providing evidence and explanations in a proactive and timely manner. At worst, version one and version two are not genuine and were created to mislead the Authority into thinking invoice had been paid. And, given the “surprising lack of evidence” to corroborate the authenticity of the receipts, the Labour Inspector’s view was the latter was the more likely scenario and a penalty warranted.

RPL and Mr Abdul-Jabbar

[26] RPL and Mr Abdul-Jabbar said the information provided to the Authority in support of payment of the invoice was genuine, and for that reason opposed the imposition of any penalty. In response to the then Member’s request for proof of payment of the invoice, Mr Abdul-Jabbar went to the agent who received the payment and asked if he could locate and send back his receipt. These receipts were made several years ago, and it was not anticipated they would be required years later.

[27] RPL and Mr Abdul-Jabbar said both the payer and the receiver of payment for the invoice had an original receipt, which showed stamp duty on it. Mr Abdul-Jabbar provided the Authority with a scanned copy his mother (who is 76 years old) had kept. However, she could not find the original receipt to send to New Zealand; due most likely to the effusion of time.

²¹ Above n 1 at [143]

[28] Mr Abdul-Jabbar said “both originals” of the receipt, each party kept their own records, contained the same content and handwriting using legal formatting of the country of origin and with the original stamp duty, that was no longer printed now. This meant they could not be replaced. At that time, the stamp duty was Rupiah 6,000. Soon after, the stamp duty became Rupiah 10,000. Therefore, no more Rupiah 6,000 in stamp duty could be found, as Rupiah 6,000 had stopped being produced. Any perceived or actual discrepancies with the receipts were explicable and innocent.

[29] Additionally, Mr Abdul-Jabbar contacted Suryo Firmanto who provided him with an “explanation letter” dated 19 February 2024 which stated: “I hereby explain that the receipt (payment of Agus Sutaji’s recruitment fees) that I sent to **The Rural Practice Trust** is correct, there are 2 receipts, one at **The Rural Practice Trust** and the other at me”. (bolding observed). RPL and Mr Abdul-Jabbar said it was worth noting within this context that engagement with Suryo Firmanto was initiated by Mr Sutaji and RPL and Mr Abdul-Jabbar were not involved. Reference was made to paragraph [111] of the first determination, which states, “Mr Sutaji told the Inspector he knew Mr Firmanto ...”.

[30] RPL and Mr Abdul-Jabbar said it was Suryo Firmanto who secured employment for Mr Sutaji with them and this is recorded in the first determination at paragraph [112]: “After contacting Mr Firmanto and while still in Indonesia, Mr Sutaji received from Mr Firmanto an employment agreement dated 21 September 2018”. Mr Sutaji could not afford to pay the fee, and it was therefore paid on his behalf by RPL and Mr Abdul-Jabbar. Mr Abdul-Jabbar said Mr Sutaji had agreed to reimburse them.

[31] RPL and Mr Abdul-Jabbar submitted that clearly securing a role in New Zealand is different from securing a visa, which was through a different process. And, there was a direct benefit of the work he secured through Suryo Firmanto, by his introduction, which he may not otherwise have obtained. RPL and Mr Abdul-Jabbar said they are entitled to “financial consideration” for payment of the \$5,000 to Suryo Firmanto and that the documents provided to support this payment are in all respects genuine and can be relied on by the Authority

[32] RPL and Mr Abdul-Jabbar submitted any assertion that they had deliberately obstructed the Authority by production of evidence they paid the Suryo Firmanto invoice on behalf of Mr Sutaji is tantamount to an allegation of fraud. Such an allegation carries a serious connotation of dishonesty against them.

[33] RPL and Mr Abdul-Jabbar said it follows that with such a serious allegation the standard, or threshold of proof, must be higher than the balance of probabilities standard normally applied by the Authority. It is inherent in an allegation of fraud that there must be some deliberate fraudulent behaviour by the perpetrator of the alleged fraud rather than carelessness or negligence or a balance of probabilities assessment. And there was no such deliberate fraudulent conduct, and the Labour Inspector's contentions are unsubstantiated.

[34] RPL and Mr Abdul-Jabbar submitted in context, Mr Abdul-Jabbar is an Imam of the Muslim faith and is a highly respected member of the Muslim community. An Imam is like a Bishop in the Anglican faith. Mr Abdul-Jabbar's faith is something he holds dear, and part of his faith involves supporting and giving back to the community. Mr Abdul-Jabbar provided support to the Indonesian workers by providing financial support. It is deeply offensive to Mr Abdul-Jabbar to be accused of deliberate, fraudulent behaviour.

[35] RPL and Mr Abdul-Jabbar submitted it was Mr Sutaji who approached Suryo Firmanto for his assistance in obtaining work in New Zealand and Mr Abdul-Jabbar had nothing to do with that introduction. In support of this submission, they referred to Mr Sutaji's witness statement lodged in the Authority:²²

...

[2] In 2018 I was working on a farm in Indonesia when my work colleague at the time, name Ecen Setyo Ali, told me that he had heard from his farming friend Suryo Firmanto, who worked at a farm in West Java, that there was a job going with his former employer Reza Abdul-Jabbar and Silvia Abdul-Jabbar in New Zealand

[3] I asked Ecen if Suryo could contact me and tell me more about it. I arranged to go to Suryo's workplace in West Java. Suryo had planned to call Reza.

²² Witness Statement of Agus Sutaji, March 2023

[36] RPL and Mr Abdul-Jabbar also referred to the following paragraphs from the Authority's first determination:

[111] Mr Sutaji told the Inspector he knew Mr Firmanto. When he was in Indonesia, he had contacted Mr Firmanto after hearing he had previously worked in New Zealand on dairy farms, including RPL's farm with Mr Abdul-Jabbar. Through Mr Firmanto, telephone contact was arranged between Mr Abdul-Jabbar in New Zealand and Mr Sutaji in Indonesia, to discuss employment with RPL.

[112] After contacting Mr Firmanto and while still in Indonesia, Mr Sutaji received from Mr Firmanto an employment agreement dated 21 September 2018. It was for fixed term employment until 1 June 2022 with Rural Practice Trust of Invercargill. RPL is a trustee of that trust.

[37] RPL and Mr Abdul-Jabbar said it was not disputed that Mr Sutaji was aware Mr Abdul-Jabbar was providing training and work opportunities for Indonesian workers on his farm and that he made the enquiries of Mr Firmanto entirely of his own volition. Consequently, Mr Firmanto made the introduction and provided Mr Sutaji with employment agreements. The invoice is not a fiction or a creation of RPL and Mr Abdul-Jabbar. It was created and sent by Mr Firmanto to Mr Sutaji in November 2018 for services provided securing him employment in New Zealand. Notably, Mr Sutaji also engaged Malcolm Pacific for the significant charge of \$3,450.00 which RPL and Mr Abdul-Jabbar paid, showing a pattern of support for migrant workers at their considerable cost.

[38] RPL and Mr Abdul-Jabbar said the invoice from Suryo Firmanto to Mr Sutaji contained details including amount, bank account, date (10 November 2018) and "Recruitment Fee". There is no proof to any standard that this was other than genuine. The invoice also records: "this invoice has been paid by Rural Practice Trust". The position advanced by Labour Inspector must establish that this invoice was "bogus" (despite its details, source and date) and that the invoice had not been paid by Rural Practice Trust. That is an implausible and long bow to draw. It is also unproven.

[39] RPL and Mr Abdul-Jabbar said the explanation for any apparent discrepancies in the receipts were simple. Both the payer and payee had received an original receipt that had stamp duty on them. All the content and signatories are the same. Any perceived or actual discrepancies are explicable and innocent. Mr Abdul-Jabbar provided a scanned copy that his mother had kept. However, she had not kept the original one sent to New Zealand.

The Labour Inspector in reply

[40] The Labour Inspector said RPL and Mr Abdul-Jabbar did not provide any legal authority in support of their proposition that the enquiry into whether they had obstructed the Authority's investigation was "tantamount to an allegation of fraud" and therefore the standard or burden of proof must be higher than the balance of probabilities standard normally applied by the Authority.

[41] The Labour Inspector said the standard of proof to be applied was the civil standard and the Supreme Court decision in *Z v Dental Complaints Assessments Committee*²³ and the High Court decision in *Work v IAG NZ Limited*²⁴ supported this view.

[42] The Labour Inspector said the assertion by RPL and Mr Abdul-Jabbar "there was no such deliberate fraudulent conduct" is implausible in the context of knowingly lodging a different version of the "original" receipt without an explanation, unless their intention was to deceive the Authority into thinking it was the same document.

[43] The Labour Inspector said the Authority had already made findings about Mr Abdul Jabbar's credibility and the relevance of his standing in the community. In support of this, the Labour Inspector highlighted the following from the Authority's second determination:²⁵

[84] It is submitted that imposing a penalty will be an affront to Mr Abdul-Jabbar's moral code. Having a code and living by it may be two different things. The Authority has found that the actions of Mr Abdul-Jabbar involved him in a breach of employment standards by RPL, the company he was the controlling mind of.

...

[89] The Authority also agrees that the status of Mr Abdul-Jabbar as an Imam is not a mitigating factor. Because he is in the public-eye the Authority's findings may have greater consequences for him than others, but as in any employment relationship he is to be judged on the basis of his involvement in the lawful performance of those relationships and not on his work as an Imam or holder of any other prominent position or office.

[90] Having his moral code sullied by the imposition of penalties, is a matter for Mr Abdul-Jabbar to wrestle with. If he has not adhered to values he holds, on searching his conscience he may feel he let himself down and harmed others in the course of doing so.

²³ [2008] NZSC 55

²⁴ [2023] NZHC 3428

²⁵ Above n 2

[91] Reference is made to the respondents' participation in the intern programme and acts of generosity and kindness shown towards the Indonesian workers. The Authority does not consider the respondents acted totally without scruple or any care for the workers or their rights, but the good that was done by them makes the breaches harder to explain or understand. These matters are not mitigation of the breaches.

[44] Regarding RPL and Mr Abdul-Jabbar's assertion that Mr Sutaji incurred the invoice, the Labour Inspector referred to the following paragraph from the Authority's first determination²⁶, which relevantly provides:

[321] The 50 million Rupiah 'recruitment fee' the respondents told the Inspector had been invoiced by Suryo Firmanto was, the Authority finds, a premium RPL sought from Mr Sutaji. That seems clear from the description Mr Firmanto gave of his role as acting 'for and on behalf of the Indonesian Agency of the Rural Practice Trust', and by his description of Mr Sutaji as acting without an agent.

[45] In response to RPL and Mr Abdul-Jabbar's assertion the invoice is not a "fiction or creation of the respondents", the Labour Inspector submitted if correct, then RPL and Mr Abdul-Jabbar would have been able to provide documentary evidence that they received it from Mr Firmanto in 2019, and documentary evidence that payment was made by RPL or Rural Practice Trust. This has still not been provided to the Authority. Further, another employee also gained employment with RPL through Mr Firmanto, yet there is no evidence of a similar invoice or recruitment fee.

[46] In response to RPL and Mr Abdul-Jabbar's contention that there was "no proof to any standard that [invoice] is other than genuine, the Labour Inspector referred to the following paragraphs of the Authority's first determination:²⁷

[117] The document is an unusual invoice for a number of reasons. Although it is for a relatively large sum, \$5,000 or more in New Zealand currency – RPL's own estimate was \$5,400 – there is no description or breakdown of the work carried out or services provided, for which that high level of fee was charged.

[118] The fixed employment contract Mr Firmanto sent to Mr Sutaji had been written in Indonesian. As at the date of the invoice for services, 10 November 2018, Mr Sutaji remained living in Indonesia. He did not arrive in New Zealand to start work for RPL until about four months later, in March 2019.

²⁶ Above n 1

²⁷ Above n 1

[119] The document is also unusual because it is entirely in English although Mr Sutaji and Mr Firmanto are Indonesian. In giving his evidence to the Authority, Mr Sutaji required an interpreter. There seems no good reason why Indonesian, the first language of all parties involved was not used. The fee is purportedly incurred in Indonesia and is required to be paid in the local Rupiah currency. The invoice at the top has the name of Malang, a city in Java, and an address there for Mr Firmanto, suggesting the invoice was produced and sent from Java.

[120] The document states the invoiced amount has already been paid. In that regard it is as much a receipt as an invoice, although it is not unusual for an invoice to record that it has been paid. That may occur when payment is made at the same time as services are provided and an invoice for them is rendered. That is not the situation here, because RPL says it stepped in and paid an invoice that Mr Sutaji had not paid.

...

[125] In the way invoicing is commonly utilised, an invoice which had been expressly directed 'To: Agus Sutaji', did not need in addition to declare that Mr Sutaji was 'responsible' for payment of it.

[127] In circumstances where English was chosen as the language of the invoice, and from its underlying purpose, the invoice gives a sense that it was written to be read by someone who might not understand written Indonesian, as well as by Mr Sutaji.

[128] The Inspector was given the invoice to read by Mr Abdul-Jabbar. He suggested in evidence it had been emailed to him from Indonesia, but did not produce proof of that and was unable to say when he first saw the invoice. The evidence is that Mr Sutaji had an email address which Mr Firmanto had used when sending him the fixed term employment agreement. Mr Sutaji's evidence is that he did not receive the invoice directly from Mr Firmanto or indirectly from Mr Abdul-Jabbar, but first saw it when the Inspector showed it to him.

[47] In response to RPL and Mr Abdul-Jabbar's assertion the Applicant "must establish that this invoice was bogus... and that in fact the invoice had not been paid by Rural Practice Trust", the Labour Inspector disagreed and said the Authority directed Mr Abdul-Jabbar to provide "whatever proof he had" that the invoice had been paid.²⁸ And rather than providing evidence of a bank transfer, he chose to provide a photograph of a receipt, followed by a different receipt when asked for the original, with no accompanying explanation. The Labour Inspector said "understandably" then a question was raised by the Authority as to the authenticity of that proof and whether it had been obstructed. In such circumstances, it is for RPL and Mr Abdul-Jabbar to provide corroborating evidence. In support of this, the Labour Inspector cited the Court of Appeal decision in *Grant v Lotus Gardens Limited* which considered a failure to adduce available evidence in the context of a liquidation.²⁹

²⁸ Above n 1 at [135]

²⁹ [2014] 2 NZLR 726 (CA)

[48] The Labour Inspector said if the documents were authentic, were created in Indonesia and sent to Mr Abdul-Jabbar electronically this means there should be ample contemporaneous evidence available to corroborate their authenticity, such as:

- a. emails, text messages, Whatsapps or other messages between Mr Firmanto and Mr Sutaji relating to the provision of the invoice to Mr Sutaji in 2018; and the non-payment of the invoice by Mr Sutaji in 2018/2019;
- b. emails, text messages, Whatsapps or other messages between Mr Firmanto and Mr and Mrs Abdul-Jabbar relating to: the non-payment of the invoice by Mr Sutaji in 2019; he provision of the invoice to RPL in 2019; confirmation Mr Abdul-Jabbar's mother would pay the invoice in 2019; confirmation the invoice had been paid in 2019; requesting the original receipt be sent to New Zealand and lodged in the Authority in 2023; and confirmation it had been found and sent in 2023;
- c. emails, text messages, Whatsapps or other messages between Mr Abdul-Jabbar and his mother relating to: arranging for her to pay the invoice; confirming payment had been made; providing the "scan" of the receipt in 2019; asking her to find the original receipt and send it to New Zealand in 2023; confirmation she could not find it; and providing the "scan" in 2023;
- d. the metadata from invoice's computer file proving when it was created;
- e. the metadata from the "scan" of the receipt to prove when it was created; and
- f. bank records showing a withdrawal of the relevant amount from Mr Abdul-Jabbar's mother's account going to Mr Firmanto in 2019, a deposit of the relevant amount in Mr Firmanto's account in 2019; or a transfer from Mr Abdul-Jabbar or RPL to his mother by way of repayment.

[49] The Labour Inspector said it was "extremely surprising", given RPL and Mr Abdul-Jabbar were in contact with Mr Firmanto, he had not provided a statement to confirm the purported invoice was correct and genuine and that he had received payment from Mr Abdul-Jabbar's mother, on behalf of RPL, on behalf of Mr Sutaji.

[50] The Labour Inspector said it appeared RPL and Mr Abdul-Jabbar had changed their explanation regarding what happened with the second version of the receipt held by Mr Abdul-Jabbar's mother. Initially it was advanced that Mr Abdul-Jabbar's mother "could not find the original one to send over to New Zealand".³⁰ Now, it was said Abdul-Jabbar's mother had "not kept the original one sent to New Zealand".³¹ The Labour Inspector said if the new "story" was correct and that version was sent to New Zealand, presumably it was sent to Mr Abdul-Jabbar, so he should have been able to produce it to the Authority and he had not.

[51] Ultimately, the Labour Inspector submitted given the adverse findings about Mr Abdul-Jabbar's credibility, the findings about the creation or alteration of pay slips and individual employment agreements before providing them to different government agencies, the circumstances surrounding the provision of two versions of the receipt, the failure to proactively provide an explanation when the Authority raised concerns about the second version thereof, and then failing to adduce any evidence to corroborate their explanations, it was more likely than not RPL and Mr Abdul-Jabbar have obstructed the Authority.

The Authority's conclusion on obstruction

[52] There is a lot of smoke around this issue but the fire itself is neither fully involved nor widely defined.

[53] At the outset, I reject the characterisation by RPL and Mr Abdul-Jabbar that this own motion enquiry by the Authority of their apparent obstruction "is tantamount to an allegation of fraud" which "carries a serious connotation of dishonesty against them". A finding of fraud in relation to the Suryo Firmanto invoice is not necessary for there to be obstruction of the Authority. What is required is a finding that the production of the invoice in materially relevant circumstances to the Labour Inspector's investigation, and subsequently that of the Authority, and the ongoing failure to demonstrate payment of the invoice to the satisfaction of the Authority, is obstruction to the requisite evidential standard.

³⁰ *Respondent's submissions on Suryo Firmanto Invoice*, 26 February 2024 at [5]

³¹ *Respondent's further submissions on Suryo Firmanto Invoice*, 18 June 2024 at [15]

[54] In light of this finding, even if viable, RPL and Mr Abdul-Jabbar's contention the standard, or threshold, of proof to be applied here must be higher than the balance of probabilities falls away. The standard of proof is on the balance of probabilities.³²

[55] In respect of RPL and Mr Abdul-Jabbar's submission that it is "deeply offensive" to Mr Abdul-Jabbar to be accused of deliberate, fraudulent behaviour given his standing in the Muslim community, I simply refer to the findings of the Authority contained in its second determination, which are set out above.³³ These findings speak for themselves.

[56] RPL and Mr Abdul-Jabbar put Suryo Firmanto's invoice into issue during the Labour Inspector's investigation. The Authority asked Mr Abdul-Jabbar for "whatever proof he had" that the invoice had been paid. It was inevitable the Authority would do this but seems to have come as a surprise to RPL and Mr Abdul-Jabbar. What was provided by RPL and Mr Abdul-Jabbar was, in effect, a photograph of a receipt. When the Authority asked for the original of the receipt, a different version of the receipt was provided without explanation.

[57] In the end, RPL and Mr Abdul-Jabbar said any apparent discrepancies in the receipts were "simple" as "both the payer and payee" had received an "original" receipt. Each "original" had the same content and handwriting using legal formatting of the country of origin, with the original stamp duty and the signatories are the same. Suryo Firmanto who provided him with an "explanation letter" confirming "there are 2 receipts".

[58] I do not find this position remotely credible in the absence of the provision of further corroborative evidence such as, and, indeed, particularly that identified by the Labour Inspector in paragraph [48] above. None of this reasonably available, and objectively verifiable, corroborative material, has ever been provided. I do find it more likely than not this material does not exist. Why else would it not be provided despite repeated opportunities to do so.

³² *Ahuja v A Labour Inspector* [2018] NZEmpC 31 at [42], [43] and [44]

³³ Above n 2 at [84], [89], [90] and [91]

[59] The actions of RPL and Mr Abdul-Jabbar here made the investigation process significantly more difficult for both the Authority and the Labour Inspector in circumstances where they put the invoice and subsequently the two “original” receipts into issue in the first place. The Authority (and the Labour Inspector) were obstructed.³⁴

[60] So then, on the balance of probabilities, I find that RPL and Mr Abdul-Jabbar obstructed the Authority through the ongoing failure to provide evidence to corroborate the authenticity of two receipts – both materially different but said to be “original” – for payment of an invoice for recruitment services on behalf of Mr Sutaji and put into issue by them before the Authority.

Penalty

[61] Having found that RPL and Mr Abdul-Jabbar obstructed the Authority, in the circumstances of the matter, the imposition of a penalty is warranted. As outlined above, it is necessary to consider the factors set out s 133A of the Act when doing so.

[62] The first thing I must have regard to is the object of the Act, which is set out in s 3. Two matters are directly relevant here: the promotion of good faith behaviour³⁵ and the effective enforcement of employment standards, in particular, the conferral of enforcement powers on the Labour Inspector and the Authority.³⁶ I find the conduct of RPL and Mr Abdul-Jabbar causally connected to undermining the latter and inconsistent with both. Indeed, obstructing enforcement is an aggravating factor.

[63] The nature of RPL and Mr Abdul-Jabbar’s conduct in obstructing the Authority’s investigation was serious and sustained.³⁷ The obstruction was not mere inadvertence or negligence.³⁸ There is no evidence of *direct* loss or damage because of RPL and Mr Abdul-Jabbar’s obstruction of the Authority. However, the circumstances surrounding the breach certainly affected Mr Sutaji.³⁹

³⁴ Above n 17

³⁵ Employment Relations Act, s 3(a)(i)

³⁶ Employment Relations Act, s 3(ab).

³⁷ Employment Relations Act, s 133(A)(b)

³⁸ Employment Relations Act, s 133(A)(c)

³⁹ Employment Relations Act, s 133(A)(d)

[64] RPL and Mr Abdul-Jabbar have taken no active steps to redress or make amends for their obstruction of the Authority.⁴⁰ The circumstances in which the breach took place have been dealt with above.⁴¹ RPL and Mr Abdul-Jabbar have previously been penalised by the Authority but not for obstruction of the Authority.⁴²

[65] There are two other factors which are also relevant here: deterrence and ability to pay.⁴³ Deterrence is relevant both in terms of effective enforcement of employment standards and more generally in terms of cooperation and compliance with the Authority and its processes.

[66] As to the ability of RPL and Mr Abdul-Jabbar to pay a penalty, I agree with the Labour Inspector's submission that the provision of financial information throughout the course of these proceedings has been "problematic". Furthermore, the issue of RPL and Mr Abdul-Jabbar to pay (a costs award) was recently considered by the Authority, as currently constituted.⁴⁴ In the end, this factor is, at best, neutral for them.

Outcome

[67] All factors considered, I order a total penalty of \$15,000 for obstruction of the Authority under s 134A(1) of the Act, apportioned as \$10,000 for Rural Practice Limited and \$5,000 for Mr Abdul-Jabbar. This must be paid into a Crown Bank Account within 14 days of the date of this determination.

Certificate of determination

[68] The Authority Officer is directed to prepare and issue a certificate of determination.

Costs

[69] The Labour Inspector does not seek costs. There is no order for costs.

Andrew Dallas
Chief of the Employment Relations Authority

⁴⁰ Employment Relations Act, s 133(A)(e)

⁴¹ Employment Relations Act, s 133(A)(f)

⁴² Employment Relations Act, s 133(A)(b). See, also above n 1 at [154]

⁴³ See, *Tan v Yang* [2014] NZEmpC 65 and *Borsboom v Preet PVT Ltd* [2016] NZEmpC 143

⁴⁴ See, *A Labour Inspector v Rural Practice Limited* [2024] NZERA 609 (Costs) at [21] – [25]; [44]