

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 52  
3251119

BETWEEN            A LABOUR INSPECTOR  
Applicant

AND                    NODLH LIMITED (T/A  
NOODLE CANTEEN LOWER  
HUTT)  
Respondent

3251839

BETWEEN            A LABOUR INSPECTOR  
Applicant

AND                    JTJ INTERNATIONAL LIMITED  
(T/A WHERE'S CHARLIE  
THORNDON QUAY)  
Respondent

Member of Authority:    Sarah Kennedy-Martin

Representatives:        Patrina Siania, counsel for the Applicant  
No appearance for the Respondents

Investigation Meeting:    On the papers

Submissions Received:    11 November 2024 from the Applicant

Determination:            3 February 2025

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**DETERMINATION OF THE AUTHORITY**

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[1]     The Labour Inspector seeks penalties for non-compliance with Improvement Notices issued to JTJ International Limited (JTJ) and NODLH Limited (NODLH). The sole director and shareholder of both companies is Ming Jie Yang.

[2] After investigation the Labour Inspector concluded both JTJ and NODLH had breached minimum employment standards in more than one way. Improvement Notices were issued requiring NODLH to remedy the breaches identified.

[3] Neither company complied with the Notices. On 19 April 2024, the Authority issued compliance orders giving JTJ and NODLH 90 days to comply. Consideration of penalties was adjourned for 90 days under s 138(5) of the Employment Relations Act (the Act) to enable the compliance while the matter was adjourned.<sup>1</sup>

[4] The time frame for compliance has lapsed and the Labour Inspector now seeks penalties for non-compliance with the Improvement Notices. No submissions were received from JTJ or NODLH.

### **Background**

[5] The respondents, JTJ and NODLH, are employers who operate a Vietnamese restaurant trading as “Where’s Charlie – Thorndon Quay” and a noodle shop franchise trading as “Noodle Canteen” in Lower Hutt respectively. The sole director and shareholder of both companies is Ming Jie Yang.

[6] On 12 October 2021, the Labour Inspector received a complaint from former employee Tianxiao Zhou alleging that JTJ had not provided employment agreements and minimum entitlements to employees including entitlement to annual holidays.

[7] On 1 March 2022 the Labour Inspector initiated a proactive investigation into NODLH as it had been established that both respondents shared a common director. After the investigation, the Labour Inspector concluded that both JTJ and NODLH had breached minimum employment standards and issued improvement notices requiring NODLH to remedy the breaches identified by 31 January 2023 and JTJ by 14 February 2023.

[8] Despite extensions to allow time for compliance, neither company has complied with the Improvement Notices. While some information was subsequently provided by Mr Yang and the appointed accountant represented an attempt to address requests from the Labour Inspector, it did not demonstrate compliance with the Improvement Notices.

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<sup>1</sup> *A Labour Inspector v NODLH Limited and JTJ International Limited* [2024] NZERA 225.

[9] The Labour Inspector received no further communications from either respondent and the accountant advised that all communications were to be with Mr Yang, the director of both companies. No further communications were received from either respondent.

[10] The Labour Inspector filed proceedings in the Authority on 15 September 2023 and compliance orders were made on 19 April 2024 giving the respondents 90 days to comply.

[11] On 11 July 2024 the Labour Inspector emailed the respondents and copied the accountant into the email, to enquire whether the compliance orders in the Authority's determination had been complied with or whether any steps had been taken to comply with those orders. No response was received.

[12] All notices issued by the Authority were served on the addresses for service listed in the Companies Office register.

### **Penalties**

[13] An employer who fails to comply with an Improvement Notice issued under s 223D of the Act is liable to a penalty imposed by the Authority under s 223F of the Act.

[14] The maximum penalty against each respondent company is \$20,000.00. Penalties are imposed for breaches of employment standards to punish and deter employment breaches, compensate those who are victims of such breaches and eliminate unfair competition.<sup>2</sup>

[15] It was submitted this is an appropriate case to impose a penalty to deter these employers and employers generally from failing to comply with Improvement Notices and to reinforce the role and importance of improvement notices.

[16] I have had regard to the matters I am required to in s 133A of the Act in determining an appropriate penalty. The objects of the Act, including to support good faith behaviour in employment relationships, promote the effective enforcement of

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<sup>2</sup> *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143 [61-63].

employment standards and to acknowledge and address the inherent inequality of power in employment relationships are all relevant in the context of this matter.

[17] Additional factors such as deterrence, degree of culpability, consistency of penalty awards in similar cases, ability to pay and proportionality of outcome to breach are also taken into consideration.<sup>3</sup>

[18] It was submitted the respondents' failure to comply with the Improvement Notices demonstrates a failure to adhere to required employment standards as detailed in the Notices and in doing so the respondents have undermined the effective enforcement of employment standards. The respondents were given multiple opportunities to rectify the identified breaches and have failed to do so.

[19] There is one breach committed by each company for failing to comply with an Improvement Notice. A single penalty of between \$6,000.00 and \$8,000.00 is sought for each respondent company.

[20] It is also requested that the Authority make an order that a portion of any penalties awarded to the named employees for their financial loss in not being paid the correct holiday pay and specifically to Tianxiao Zhou who was taken advantage of due to his lack of knowledge about employment laws in New Zealand.

[21] The breaches are serious in that they represent failures to comply with minimum entitlements being breaches of the Holidays Act 2003 for failure to pay four weeks annual holiday entitlement and one failure to pay time and half to an employee for working on a public holiday. There are additional breaches for failing to provide wage and time records and individual employment agreements under the Employment Relations Act 2000 and to conduct an audit to identify and rectify any other instances of non-compliance.

[22] The employees are financially disadvantaged through not having their entitlements paid correctly in accordance with the law. Six employees are affected. Four employees worked for NODLH while the original complainant and a former employee worked for JTJ.

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<sup>3</sup> *Nicholson v Ford* [2018] ERNZ 393 and *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

[23] At least one employee affected is vulnerable by virtue of being a migrant. He provided evidence in his formal written statement that he was unaware of his legal entitlements and was advised by Mr Yang he could help him get a work visa and later a residence visa if he worked for him full time.

[24] The lack of engagement with the Labour Inspector and compliance with the Improvement Notices is at the serious end of the scale in this case. While there was one attempt to provide information it was incomplete. There has been no further communication with the Labour Inspector or the Authority. More than one extension was given to the respondents and a 90-day time frame for compliance was ordered to enable compliance.

[25] The ability of the Labour Inspector to carry out its function is severely hampered when employers fail to engage or comply with notices. There is therefore a need to deter future conduct of this sort particularly in relation non-compliance with statutory notices issued under the Act. The involvement of at least one migrant worker also elevates the seriousness of the respondents' conduct.

[26] There is no previous relevant conduct to consider and no information about the respondents' ability to pay was provided although it is noted both companies appear to still be trading. Penalties should be set at a level which both punishes a party for its breaches and deters it from future non-compliance. The Authority must take into account whether any penalty would be significantly out of proportion to the gravity of the breaches, and whether there is a real risk that it could be of such magnitude as to create a significant risk of non-payment.<sup>4</sup>

## **Conclusion**

[27] On review of similar cases involving breaches of improvement notices I consider an appropriate penalty to be \$7,000.00 for each respondent.<sup>5</sup> It is clear these penalty sums are within the range of penalty orders made by the Authority and the Court. I am satisfied these sums are proportional to the nature of the breaches in this case and reflect the gravity by which the law should regard the failures of JTJ and

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<sup>4</sup> Above n2 at [147].

<sup>5</sup> [2021] NZERA 176 at [18], [2019] NZERA 439 at [46] and [2019] NZEmpC 115 at [61] – [63].

NODLH to comply with Improvement Notices issued by the Labour Inspector in the course of carrying out its statutory functions.

## **Orders**

[28] The following orders are made:

- (a) JTJ International Limited is to pay a penalty of \$7,000.00 to the Crown Account.
- (b) NODLH Limited is to pay a penalty of \$7,000.00 to the Crown Account.
- (c) The Labour Inspector is to apportion and remit 50 per-cent of the total penalties against each respondent between the employees in accordance with the proposal set out above at [20].

## **Costs**

[29] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[30] 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 this determination. From the date of service of that memorandum JTJ and NODLH will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[31] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>6</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>6</sup> [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)