

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 553
3322160

BETWEEN GURWINDER SINGH
Applicant

AND HGS LIMITED
First Respondent

AND GAURAV UPPAL
Second Respondent

Member of Authority: Helen van Druten

Representatives: Vikram Singh, counsel for the Applicant
No appearance by or for the First or Second Respondent

Investigation Meeting: On the papers

Submissions received: 3 June and 4 July 2025 from Applicant
No submissions from either Respondent

Determination: 4 September 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Singh arrived in New Zealand on 15 September 2023 to work for HGS Limited. He said that he had paid a significant sum to an agent in India for his work visa and on arrival in New Zealand HGS Limited provided him with casual employment rather than the permanent, full-time work specified in his employment agreement.

[2] Mr Singh further claims that he is owed wage arrears for the period from 18 September 2023 to 17 December 2023 and leave entitlements for the period of his employment. In addition, Mr Singh claims unjustified dismissal when his employer stopped offering work to him and ceased wage payments, effectively terminating his employment.

[3] Mr Gaurav (Garry) Uppal is the sole director of HGS Limited. Mr Uppal did not engage with the Authority on this matter.

The Authority's investigation

[4] HGS Limited and Mr Uppal have both failed to engage with the Authority on this matter. In addition, Mr Uppal has not communicated with Mr Singh.

[5] All documents were served on HGS Limited at its address for service registered with the Companies Office. This is the same address used by Mr Uppal as his registered address as director. All documents were also sent to Mr Uppal's email address as provided by the applicant. Documents were served twice by courier and returned as both HGS Limited and Mr Uppal were unknown at that address. On the third attempt on 10 December 2024, service was effected successfully as confirmed by the Duty Member.

[6] A case management call was held on 6 May 2025. Mr Uppal did not attend and there was no representative for HGS Limited. I was satisfied that all relevant documents and details of the case management meeting were served correctly on HGS Limited and Mr Uppal as Director and on that basis the call proceeded.

[7] After the case management call, directions were sent to all parties by email and by courier and service was effected on 13 May 2025. No evidence or submissions were received from either HGS Limited or Mr Uppal and the Authority approved determination of this matter on the papers.

[8] The matter was timetabled for receipt of evidence and witness statements from HGS Limited and Mr Uppal by 17 June 2025. No response or submissions were received. Mr Singh's advocate provided written closing submissions on 4 July 2025.

[9] I am satisfied that HGS Limited and Mr Uppal were provided with several opportunities to engage and respond to the claims made by Mr Singh. In accordance with s 12 Schedule 3 of the Act the Authority investigation proceeded without HGS Limited or Mr Uppal's input. Written witness statements were lodged from Mr Gurwinder Singh, his father Mr Buta Singh and his mother Ms Paramjit Kaur.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[11] The issues requiring investigation and determination were:

- (a) Whether Mr Uppal or HGS Limited received a premium in respect of Mr Singh's employment. If so, should a penalty be payable for breach of s 12A Wages Protection Act 1983?
- (b) Whether Mr Singh was paid in accordance with the terms of his employment agreement including whether Mr Singh is owed:
 - i. For \$1,479.34 of work undertaken since 1 July 2024; and
 - ii. Statutory leave entitlements payable upon termination of employment.
- (c) Was Mr Singh unjustifiably dismissed from his employment in July 2024? If so, what remedies should be awarded, considering:
 - i. Lost wages (subject to evidence of reasonable endeavours to mitigate his loss); and
 - ii. Compensation under s 123(1)(c)(i) of the Act
- (d) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Singh that contributed to the situation giving rise to his grievance?
- (e) Should either party contribute to the costs of representation of the other party?

Payment of a premium

[12] Mr Singh says that he and his family paid a premium of INR 3,000,000 (approximately NZD58,000) to an agent in India in respect of his employment and HGS Limited received the benefit of that premium.

[13] Mr Singh further says that Mission Abroad Immigration, an immigration agency in India, advised him that they could secure him a work visa and employment. They connected him to HGS Limited as an accredited employer. He spoke with Mr Uppal

directly by telephone and both parties signed an employment agreement on 28 July 2023.

[14] Based on Mr Singh's evidence, the first instalment of the premium was paid to the agent in India before commencing the visa process. Once that was paid, HGS Limited sent the Accredited Employer Work Visa (AEWV) job token to Mr Singh. Mr Singh's family then paid the second and final instalment of the premium to the agent, received the work visa on 10 August 2023 and Mr Singh arrived in New Zealand on 15 September 2023.

[15] Affidavits provided by Mr Singh's mother and uncle confirm that the payment of Rs. 30 Lakh was paid in cash to the Mission Abroad Immigration offices in Punjab, India. Interest is now being charged on that money.

[16] Under s 12A of the Wages Protection Act 1983, a person is prohibited from requiring an employee or prospective employee to pay "an employment premium" to obtain employment. Any employee who is the subject of any such breach may recover the amount of the premium. A penalty could also be issued against a person who has breached this requirement.

[17] Mr Vikram Singh, as Mr Singh's advocate, provided case law to support the possibility of recouping overseas premiums.¹ That aside, for Mr Singh as applicant, he is facing the difficulty of a premium paid in cash to an agent overseas and no documentation to evidence that i) the agent was seeking an unlawful premium (as opposed to expensive immigration fees) or ii) that HGS Limited or Mr Uppal received any benefit of that payment.

[18] Mr Vikram Singh submitted video evidence of Mr Singh displaying his visa with Mission Abroad Immigration as the backdrop. It is not disputed that Mr Singh obtained his visa through this agency. What is at issue is Mr Singh's claim that HGS Limited had no intention of providing the 30 hours per week of work it contractually agreed with him and may have benefitted in some way from the premium paid to the agent in India in breach of the Wages Protection Act. While I have no reason to doubt

¹ *Labour Inspector of the Ministry of Business, Innovation and Employment v New Zealand Fusion International Ltd* [2019] ERNZ 525.

the affidavit evidence of Mr Singh's mother, there is simply no evidence or link to show a benefit to HGS Limited or Mr Uppal from that payment.

[19] In any event, there is also no evidence to determine the quantum of any benefit HGS Limited or Mr Uppal may have received. Mr Singh's counsel submitted the actions of the agent and HGS Limited were dependent on each other. While this is true, there is an insufficient link to show that HGS Limited or Mr Uppal received any of the premium paid to the agency.

[20] I was referred to the recent Authority decision in *Arushi v Isher Enterprises & Ors*² where the balance fell in Ms Arushi's favour. In her circumstances, there was a handwritten piece of paper and a video providing the link of the premium payment to the employer. I distinguish this from Mr Singh's circumstances as, unlike Ms Arushi, Mr Singh was unable to provide any similar evidence to link the premium payment to HGS Limited or Mr Uppal other than the fact that a visa had been issued. For these reasons, his claim under s 12A of the Wages Protection Act 1983 is unsuccessful.

Outstanding wages and leave entitlements

Terms and conditions of Mr Singh's employment

[21] Mr Singh entered New Zealand on an AEWV work visa on 15 September 2023 requiring him to work for HGS Limited as a Truck Driver. The terms of the accredited employer work visa issued to Mr Singh by Immigration New Zealand on 10 August 2024 stated:

“The holder may only work as Truck Driver in Gisborne, Auckland, Waikato, Hawkes Bay, Bay of Plenty, Manawatu-Wanganui, Taranaki, Wellington, Northland for HGS Limited” and “must be paid at or above \$29.70 an hour.”

[22] Mr Singh's signed employment agreement was consistent with the conditions of his work visa. It provided that “this agreement is of permanent and ongoing duration” and “the employee will start working for the employer as soon as they gain work rights to work for HGS Limited and continue until either the employer or employee end this relationship”.

² *Arushi v Isher Enterprises & Ors* [2024] NZERA 615 at [69] to [84].

[23] Mr Singh's employment agreement with HGS Limited also provided that "the employer operates a 7 days a week business and the employer will guarantee a minimum of 30 hours work each week for the employee from Monday to Sunday". It also specified that "The employee will be paid \$29.70 (gross) an hour".

[24] Within both the terms and conditions of his employment agreement and the requirements of his visa application, HGS Limited agreed to provide, and Mr Singh agreed to work, 30 hours per week for the 41 weeks from 18 September 2023 to 12 July 2024 at \$29.70 gross per hour. Mr Singh was granted a work visa and entered New Zealand on the terms of the signed employment agreement. If he had done so, Mr Singh would have received NZD37,422.00 gross earnings on the basis that public holidays were not worked and paid at ordinary time.

Was Mr Singh available, willing and able to work?

[25] HGS Limited is only required to pay Mr Singh for the agreed hours if Mr Singh was available, willing and able to work. I viewed text messages between 27 September and 19 December 2023 exchanged between Mr Singh and Mr Uppal and between Mr Singh and another employee showing repeat occasions where Mr Singh asked if there was work and Mr Uppal replied that there was no work available. These text messages show that Mr Singh was ready, available and willing to work but the work was not always available.

[26] Having regard to all the information and evidence before me, I find that HGS Limited failed to provide Mr Singh with his guaranteed minimum hours of work and on that basis, I turn to quantifying those wage arrears.

Quantifying wage arrears owed

[27] Mr Singh says that he arrived on 15 September 2023 and was ready and available for work from 18 September 2023 so I consider this the first day of his employment. The last wages payment into his account from HGS Limited was 12 July 2024. As his wages were paid in arrears and paid on the Wednesday following the week of employment, I take 9 July 2024 as his last day of employment.

[28] Mr Singh claims that he was entitled to rely on a minimum of 30 hours' work per week as agreed between the parties. The employment agreement is clear evidence

this was the parties intentions at the time of entering into the employment relationship with each other and his visa was granted on this basis.

[29] I must therefore consider what is owed to Mr Singh as wage arrears. HGS Limited was required to provide Mr Singh 30 hours per week for the period from 18 September 2023 to 12 July 2024 (42 weeks) at \$29.70 per hour, equating to \$37,422.00 gross (calculated as approximately \$32,342.00 net). HGS paid the following amounts into Mr Singh's personal bank account between 22 September 2023 and 12 July 2024. I have deducted the following from the net amount owed to Mr Singh had he worked the contracted agreed hours:

- (a) Payments of 11 October 2023, 28 October 2023, 5 November 2023 and 10 December 2023, totalling \$3,822 paid into Mr Singh's account by Mr Uppal personally marked as "help", "COF", "help" and "rent" respectively;
- (b) Six payments of \$1,480.58 between 4 January and 15 March 2024 marked "HGS Ltd...wage";
- (c) Seven payments of \$1,479.34 between 5 April and 12 July 2024 marked "HGS Ltd...wage";
- (d) Payments between 29 October 2023 and 2 July 2024, totalling \$1,580 paid into Mr Singh's account by Mr Uppal personally marked as "diesel"; and
- (e) Payment of \$50 by Mr Uppal personally for "Tel" paid on 18 November 2023.

[30] Mr Singh provided his bank statements to the Authority showing these payments made by HGS Limited and Mr Uppal.

[31] Mr Singh also provided a list of the hours he worked between 18 September 2023 and 1 February 2024. While I accept an individual may have multiple bank accounts, this is consistent with Inland Revenue records showing Mr Singh's earnings.

[32] On the basis that Mr Singh was being paid his contracted 30 hours per week from 4 January 2024, I have calculated his accrued leave entitlement as \$2,993.76, being leave accrued and unpaid during his employment. In the absence of evidence from Mr Uppal or HGS Limited to dispute the hours worked as presented by Mr Singh, I accept Mr Singh's evidence as an accurate record of his hours worked.

[33] I therefore conclude that Mr Singh should be paid:

- (a) \$7,651.14 net as his unpaid contracted work hours for the duration of his employment as detailed above; and
- (b) \$2,993.76 gross as his accrued annual leave entitlement.

Unjustified dismissal claim

[34] Mr Singh has raised a personal grievance relating to what he considers was an unjustified dismissal from his employment in July 2024. His evidence provides that he got his last pay on 12 July 2024 and stated that his employer did not give him work as he could not afford to pay him and the other workers. Mr Singh never heard from Mr Uppal after that.

[35] As evidenced by Mr Singh's text messages, he received work from HGS Limited by text. Mr Singh texted and made at least two email attempts to contact Mr Uppal on 8 and 25 July 2024 but his queries went unanswered. According to Mr Singh he has had no response from HGS Limited or Mr Uppal since 25 July 2024.

[36] Despite not having the benefit of Mr Uppal's evidence, I am satisfied that based on the evidence before the Authority, Mr Uppal did not actively dismiss Mr Singh, he stopped communicating with him as he had no more work for him. Neither party actively ended the relationship until 25 July 2025 when Mr Singh asked about payment of his leave balance and entitlements in an email.

Nature of the dismissal

[37] Based on the circumstances surrounding the end of the working relationship, it is appropriate for me to consider whether this was a constructive dismissal. As outlined by the Authority in *Hai Zheng v JACD NZ Limited*,³ the concept of constructive dismissal is well-established and concerns circumstances where the employer's behaviour or other actions compels the employee to leave the employment. Such conduct, resulting in a resignation, is held in employment law to be as much a dismissal as if an employer had actually dismissed the employee. If the employer's behaviour or other actions really caused the employee to take step by resigning, then the case is one of constructive dismissal.

³ *Hai Zheng v JACD NZ Limited* [2025] ERNZ 453 at [66] to [69].

[38] The first step is to consider if the employer's conduct clearly crossed the line from being inconsiderate and causing some unhappiness or resentment for the employee to becoming dismissive or repudiatory conduct that could reasonably be seen as enough to justify ending the employment relationship. If so, then next is to consider whether it was reasonably foreseeable that the employer's action/s would cause the employee to resign and if the actions of the employer were sufficiently blameworthy or unreasonable that they destroyed the employee's trust and confidence in the employment relationship.

[39] Based on Mr Singh's evidence, and that Mr Uppal has chosen not to participate in the Authority investigation, it has not been established that HGS Limited and/or Mr Uppal intended to provide Mr Singh with ongoing employment. From his first day at work, Mr Singh was not provided with the hours that were contractually agreed, and HGS Limited failed to pay him any wages during the first 15 weeks of his employment. The four payments he received were in response to Mr Singh's requests for money to pay his rent and buy food and were marked "rent" and "help" when transferred into Mr Singh's bank account. Both the failure to provide hours and to pay wages were breaches of fundamental terms of his employment agreement.

[40] Based on the evidence before the Authority, HGS Limited never raised any performance concerns or disciplinary matters with Mr Singh and there was no evidence provided that he was dismissed within the 90-day trial period of his employment agreement as he was still working in July 2024.

[41] If HGS Limited was unable to provide work for its employees, it owes good faith obligations to be responsive and communicative with its employees.⁴ Section 4(1A) of the Act:

“...requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide...

- i. access to information, relevant to the continuation of the employee's employment, about the decision; and
- ii. an opportunity to comment on the information to their employer before the decision is made”.

⁴ Employment Relations Act 2000, s 4(1A).

[42] The sample of text messages and by Mr Singh's own evidence, he was required to text Mr Uppal and request work each day, not knowing whether there would be any work from one day to the next. A casual employee works on an as-needed basis. An employment relationship of "permanent and ongoing duration" does not.

[43] Looking at the above evidence, HGS Limited's actions as an employer go beyond being inconsiderate. A fair and reasonable employer, could not have:

- (a) Offered permanent employment in support of a work visa and then fail to provide the stipulated work hours to the employee;
- (b) Failed to pay wages when due to that employee;
- (c) Failed to engage with the employee about the reduction in available work and potential impact on the employee's employment; and
- (d) Failed to respond to requests for wage payments and available work.

[44] I go on to consider whether it was reasonably foreseeable that the employer's action(s) would cause the employee to resign. In Mr Singh's specific circumstances, he is a young man in his twenties and was a vulnerable new migrant without significant support in place in Auckland. He relied on this truck driver position to provide the money he needed to pay his living expenses and for his family in India. It was not sustainable for him to be tied to a company that could not provide him with the work and income that he needed and not provided it at all at the start of the employment relationship.

[45] Both the need for him to text his employer asking for his wages to pay basic living costs and the lack of response to his emails from his employer were unnecessary and understandably destroyed his trust and confidence in the employment relationship.

[46] In light of this evidence and the actions of Mr Singh's employer, Mr Singh's claim for unjustified dismissal is successful.

Remedies

[47] As Mr Singh's claim for unjustified dismissal is successful, it is appropriate for me to consider what remedies should be awarded. Mr Singh seeks compensation under

s 123(1)(c)(i) and 13 weeks lost wages to 13 September 2024 when he obtained his new visa.

[48] In his statement, Mr Singh expressed the impact that the sudden cessation of work had on his mental, physical and financial health. Financially, his mother was paying interest on the premium back in India and he felt the pressure of this responsibility. Additionally, his work visa was tied to HGS Limited and he did not receive a new Migrant Protection visa until 23 September 2024 so was unable to find alternative work. Mr Singh also said that the sudden nature of the termination and lack of communication from HGS or Mr Uppal caused him stress and had physical effects on his health.

[49] I find that Mr Singh suffered hurt, loss of dignity and injury to feelings in respect of the process of his dismissal. Looking at equivalent awards for similar claims, I order that HGS Limited pay Mr Singh the sum of \$9,000 as compensation pursuant to s 123(1)(c)(i) of the Act.

[50] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded. I do not find any contribution by Mr Singh to warrant any reduction.

[51] Further to Mr Singh's claim for lost wages, he ceased employment for HGS Limited while still tied to the company for his work visa. As his last communication was with Mr Uppal on 25 July 2024 and he received his new visa on 23 September 2024, I order HGS Limited to pay Mr Singh eight weeks wages at his usual rate of \$29.70 for 30 hours per week.

Is Mr Uppal a person involved in HGS Limited's breaches of employment standards?

[52] Given the findings made against HGS Limited in this determination, its failure to date to communicate with Mr Singh and the Authority it is appropriate to consider Mr Singh's application for leave to recover against Mr Uppal personally.

[53] Under s 142Y(2)(a) and (b) of the Act, an employee seeking to recover money from a person who is not their employer can only do so with prior leave of the Authority (or Court) and, to the extent the employer is unable to pay the money owing.

[54] The first matter for the Authority is to be satisfied there has been default in payment of money payable to the employee. I am satisfied this is the case. Mr Singh has not been paid the contracted work hours owed to him or his final holiday pay leave entitlements upon termination.

[55] Next, I must be satisfied that the default involves a breach of employment standards.⁵ Employment standards include the requirement to pay holiday pay under the Holidays Act 2003 and wages owed under s 4 Wages Protection Act 1983. I am also satisfied that there is a breach of employment standards as detailed above.

[56] Mr Uppal's involvement in the breach is now to be considered.⁶ Mr Uppal is the sole director and shareholder of HGS Limited. He provided the day-to-day work to Mr Singh, paid the four unspecified amounts and diesel reimbursements into Mr Singh's account and was his main point of contact in HGS Limited. Mr Singh contacted Mr Uppal about work and pay and Mr Uppal told Mr Singh there was no more work. There was no one else in the business for him to contact. On the information before the Authority Mr Uppal was directly knowingly concerned in, or party to, the breach of the failure to pay Mr Singh his wage arrears, leave entitlements, provide work as required and communicate with him about his employment. I am satisfied he is a person involved in a breach of employment standards under s 142W of the Act.

[57] HGS Limited remains on the companies register and filed a return in April 2025, classified as a furniture removal service. While there is limited information available, HGS Limited has failed to make any payment to Mr Singh including the arrears of wages and holiday pay to date. I am satisfied there is reasonable grounds for granting Mr Singh leave to recover the wages or other money HGS Limited owes him from Mr Uppal personally under s 142Y of the Act.

⁵ Employment Relations Act 2000, ss 5 and 142W.

⁶ Employment Relations Act 2000, s 142W.

[58] If HGS Limited fails to comply with the order in full at [61] of this determination within the set timeframe Mr Uppal is liable to pay Mr Singh the arrears of wages and holiday pay within a further 7 days of the expiry of that timeframe.

[59] In the event HGL Limited fails to comply as ordered it is appropriate that Mr Singh is able to recover interest on the arrears and that Mr Uppal, given his knowing involvement in the breaches of employment standards, is liable for payment of interest on the sums of breaches for wage and holiday pay arrears calculated from date of the grant of leave, being the date of this determination, until those arrears are paid in full. Interest is to be calculated using the civil debt calculator on the Ministry of Justice website.

Reimbursement of filing fee

[60] Mr Singh is entitled to recover the filing fee incurred in lodging this application.

Summary of orders

[61] Within 28 days of this determination, HGS Limited is ordered to pay Mr Singh the following sums:

1. \$7,651.14 net as his unpaid contracted work hours for the duration of his employment;
2. \$2,993.76 gross as accrued annual leave payable upon termination of his employment.
3. \$9,000.00 as compensation pursuant to s 123(1)(c)(i) of the Act;
4. \$7,128.00 as lost wages pursuant to s 123(1)(c)(ii); and
5. \$71.55 in respect of the Authority filing fee.

Costs

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

[63] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Singh 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, HGS Limited 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.

[64] 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.⁷

Helen van Druten
Member of the Employment Relations Authority

⁷ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.