

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 623  
3321560

BETWEEN	RAJESH KUMAR Applicant
AND	GURUKIRPA WELLINGTON LIMITED (IN LIQUIDATION) First Respondent
AND	GURFATEH SINGH Second Respondent

Member of Authority:	Davinnia Tan
Representatives:	Jessica Sarkar, advocate for the Applicant No appearance for the Respondent
Investigation Meeting:	On the papers
Submissions received:	24 June 2025 from the Applicant 24 July 2025 from the Respondent
Determination:	3 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Kumar brought a claim against his former employer, Gurukirpa Wellington Limited (GKWL), and also sought leave under s 142Y of the Employment Relations Act 2000 from the Authority to recover arrears in wages and other money from GKWL's sole director and shareholder, Gurfateh Singh, as a person involved in a breach of employment standards (pursuant to s 142W of the Act), in the event GKWL is unable to pay. GKWL was liquidated in July 2025. As such Mr Kumar is unable to continue with proceedings against it.

[2] Mr Kumar's claim is that he was employed by GKWL as a cleaner and is due outstanding wages and holiday pay for the period from 30 October 2023 to 14 April 2024.

[3] Mr Kumar also claimed that:

- a. GKWL failed to provide a copy of a wage and time record upon request;
- b. GKWL unlawfully deducted his wages without consent;
- c. GKWL required Mr Kumar to work without being paid
- d. GKWL unlawfully charged Mr Kumar a premium in return for employment at a sum of \$19,120.

[4] For reasons set out below, leave has been granted under s 142Y of the Act for Mr Kumar to pursue his claims against GKWL.

### **Background**

[5] On 15 September 2023, Mr Kumar obtained a work visa from Immigration New Zealand which required him to be paid \$29.66 per hour. The individual employment agreement (IEA) terms and conditions mirrored the requirements set out under Mr Kumar's work visa.

[6] His IEA signed 31 August 2023, provided the following:

- a. Mr Kumar was a permanent employee;
- b. There was a guarantee of a minimum of 30 hours per week and a maximum of 40 hours per week;
- c. Wage was \$29.66 per hour to be paid weekly;
- d. Premises was stated as 22 Brian Hughes Road, Wainuiomata, Lower Hutt, Wellington;
- e. A requirement to undertake "any other duties the employer may reasonably require".

[7] Mr Kumar provided two payslips but says he worked for a total of 12 weeks for GKWL. He says that he was not paid for 10 weeks. These pay slips showed that:

- a. from 18-31 March 2024, he was only paid for 29 hours for the fortnight;
- b. from 1-14 April 2024, he was only paid for 38 hours for the fortnight.

[8] Mr Kumar stated that he worked from 30 October 2023 but was not paid when he first commenced employment.

[9] Mr Kumar also provided screenshots showing that two payments of \$9,560.00 were made to a third person, Sam Thind, on 27 January 2024 and 30 January 2024. Mr Kumar says Mr Singh had required him to make that payment to Mr Thind in return for the visa and employment with GKWL. Mr Kumar provided a text message exchange between himself and Mr Thind. In this exchange, Mr Thind asked Mr Kumar to use “Armaan” as a reference, rather than “Thind”; and Mr Kumar added “help” as an additional reference for the payments.

### **The Authority’s investigation**

[10] For the Authority’s investigation, following several failed attempts by the parties to settle the dispute and the rescheduling of an in-person investigation meeting, the parties agreed to have the matter heard on the papers. Submissions were provided by both parties, including several documents from Mr Kumar in support of his claim. However no affidavits were provided. On 22 September 2025, the Authority sought additional evidence (bank statements from the period 30 October 2023 to 17 March 2024) from Mr Kumar to support several claims. The Authority sought this information by 1 October 2025 5pm. On 2 October 2025, his representative sought an extension on the basis that Mr Kumar was offshore. Given the length of time the matter has taken, including the conduct of proceedings and the fact the evidence sought can be retrieved irrespective of whether Mr Kumar is in the country or not, I declined the request for this extension.

[11] All material from the parties was fully considered. However as permitted by s 174E the Act, this determination has not recorded all evidence and submissions received.

### **The issues**

[12] The issues requiring investigation and determination were:

- (a) Whether Mr Singh is a person involved under s142W of the Act;
- (b) Whether there has been a breach of the following employment standards:
  - a. Section 6 of the Minimum Wage Act 1983 (MWA)
  - b. Section 130 of the Employment Relations Act 2000 (the Act)

- c. Section 12A(1) of the Wages Protection Act 1983 (WPA)
- (c) Whether penalties should be awarded, and if so, what should those penalties be?
- (d) Should either party contribute to the costs of representation of the other party.
- (e) The Authority must also determine whether leave should be granted to recover arrears in wages and other money from GKWL's sole director and shareholder, Gurfateh Singh, as a person involved in a breach of employment standards, in the event GKWL is unable to pay.

**Was Mr Singh a person involved in a breach of employment standards?**

[13] Leave has been sought under s 142Y to recover wages payable to Mr Kumar to the extent GKWL is unable to pay the arrears in wages. This requires an assessment of whether Mr Singh is involved in a breach of employment standards as defined under s 142W.

[14] Mr Singh was listed as the sole director and shareholder of GKWL on the Companies Office website during the time of Mr Kumar's employment at GKWL.

[15] In considering whether Mr Singh was involved in a breach of employment standards, I note that he had offered Mr Kumar employment, advised of the terms and conditions of employment, including payment of wages and day to day operations, and was the sole decision maker in charge and responsible for GKWL's affairs and its conduct as Mr Kumar's employer.

[16] As such, I find that he was directly involved in the breaches in the manner set out in s 142W of the Act and therefore a person involved in a breach of employment standards pursuant to s 142W of the Act.

[17] Accordingly, leave is granted to Mr Kumar to seek compliance against Mr Singh in respect of the orders made with respect to the arrears in wages claim (which includes his annual holiday pay and statutory holiday entitlements) to the extent GKWL is unable to pay.

## Wages owing

[18] Evidence provided to support Mr Kumar's claim showed he was paid less than the guaranteed 30 hours per fortnight for the period of 18 March 2024 to 31 March 2024, and 1 April 2024 to 14 April 2024.

[19] On this point, I note that s 132 of the Act sets out the following:

1. Where any claim is brought before the Authority under [section 131](#) to recover wages or other money payable to an employee, the employee may call evidence to show that—
  - (a) the defendant employer failed to keep or produce a wages and time record in respect of that employee as required by this Act; and
  - (b) that failure prejudiced the employee's ability to bring an accurate claim under [section 131](#).
  
2. Where evidence of the type referred to in subsection (1) is given, the Authority may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of—
  - (a) the wages actually paid to the employee, including overtime rate payments, and penalty rate payments;
  - (b) the hours, days, and time worked by the employee;
  - (c) the district in which the employee worked for each hour and day ...

[20] Mr Singh's submissions in response stated that:

- a. He denied the allegations
- b. He had "informed the other party well in advance that due to the ongoing recession, business had slowed down significantly, and would not be able to continue providing the...work hours that were...promised."

[21] Submissions provided by Mr Singh clearly indicate acceptance that the hours as stipulated in the IEA were not the hours that he had paid Mr Kumar, nor did he have any evidence to show the IEA was amended in any way.

[22] Pursuant to s 132(2), I accept the claims made by Mr Kumar in respect of the outstanding wages owing to him for the period of March and April 2024. I accept that during the period of 30 October 2023 to 14 April 2024 he was only paid 29 hours for the period 18 March 2024 to 31 March 2024, and only paid 38 hours for the period 1

April 2024 to 14 April 2024. His IEA sets out a minimum of 30 hours per week, and as such I accept that Mr Kumar is owed \$919.46 outstanding wages for the period 18 March 2024 to 31 March 2024, and \$652.52 for the period 1 April 2024 to 14 April 2024.

[23] However, there was no evidence provided to support Mr Kumar's claim that he was not paid for the period prior, from 30 October 2023 to 17 March 2024. As such, I am unable to reach the same conclusion in respect of the following periods:

- a. 30 October 2023 – 12 November 2023
- b. 13 November 2023- 26 November 2023
- c. 27 November 2023- 10 December 2023
- d. 11 December 2023 – 24 December 2023
- e. 25 December 2023 – 7 January 2024
- f. 8 January 2024 – 21 January 2024
- g. 22 January 2024 – 4 February 2024
- h. 5 February 2024 – 18 February 2024
- i. 19 February 2024 – 3 March 2024
- j. 4 March 2024 – 17 March 2024

### **Wages and time record**

[24] Section 130 of the Act requires that an employer keeps a wages and time record. This provision is plain that the responsibility to keep a wages and time record in either written form or in a form easily converted into written form lies with the employer.

[25] The payslips provided by Mr Kumar indicate there was some form of wages and time record keeping at least from March 2024.

[26] Mr Singh did not provide evidence to show he had any form of wages and time record keeping for the period prior to those stipulated in the payslips, nor did he deny Kumar commenced employment in October 2023. However, on the evidence provided it is not clear whether or not work was undertaken prior to March 2024. Following receipt of parties' submissions, I asked for further evidence to support the claim of wages owing prior to this period. This evidence may have also been helpful to determine whether s130 was breached during this period. However Mr Kumar has not

provided any further evidence to support these claims. I am therefore not in a position to conclude that there has been a breach of s130 of the Act. Further I note that the evidence of payslips from March 2024 indicates that any failure to keep a wages and time record has since been rectified.

[27] As such, Mr Kumar's claim on this issue has not been made out.

### **Unlawful premium charged for employment**

[28] Section 12A of the Wages Protection Act 1983 (WPA) prohibits any employer from seeking or receiving any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person. In these circumstances, Mr Kumar is entitled to recover the amount if I find that GKWL has contravened this provision.

[29] Mr Kumar claims that GKWL required him to pay the amounts to secure his New Zealand visa and employment. Mr Singh did not address this allegation in his submission.

[30] On the evidence Mr Kumar provided to the Authority, there was no indication, nor was there other evidence presented, to support that these payments were specifically made in exchange for employment with GKWL and support with the work visa. Submissions advanced on Mr Kumar's behalf did not address the ambiguities, nor address who Sam Thind was, or what the reference to "help" or "Armaan" meant.

[31] As such, on this evidence alone, I am unable to conclude that an unlawful premium was made. This claim has not been made out.

### **Unlawful deduction of wages**

[32] Mr Kumar also claims that unlawful deductions were made from his wages. However the evidence provided were screen shots of bank statements of various deductions at retail outlets. It was not clear that such deductions were made by GKWL from Mr Kumar's wages. As such, I was not satisfied on the evidence that unlawful deductions were made. This claim has not been made out.

### **Additional work undertaken and unpaid**

[33] Mr Kumar also claims that he was required to work at Mr Singh's private home. However no evidence was provided to support this claim.

[34] As such, this claim has not been made out.

### **Orders**

[35] Gurfateh Singh is to pay Rajesh Kumar, within 28 days of this determination, the sum of \$1,697.73. This sum represents \$1,571.98 (wages owing for the period 18 March 2024- 14 April 2025 calculated at \$29.66 per hour multiplied by the shortfall of 53 hours) + 8% Holiday Pay<sup>1</sup> (\$125.75).

### **Costs**

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

[37] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the party who believes they are entitled to costs 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, the other party 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.

[38] 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>2</sup>

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<sup>1</sup> Section 23 of the Holidays Act 2003.

<sup>2</sup> For further information about the factors considered in assessing costs see: [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)

[39] Notwithstanding the above, as the matter was heard on the papers and given the conduct of proceedings, the Authority may likely consider that costs should lie where they fall in these circumstances.

Davinnia Tan  
Member of the Employment Relations Authority