

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 642
3302301
3361703

BETWEEN A LABOUR INSPECTOR OF
THE MINISTRY OF
BUSINESS, INNOVATION
AND EMPLOYMENT
Applicant in 3302301/3361703

AND THE PRO TEAM LIMITED
(IN LIQ)
First Respondent in 3302301

AND TAZVITYA
MUKOROMBINDO
Second Respondent in 3302301
and Respondent in 3361703

Member of Authority: Nicola Craig

Representatives: Tim Gray and Owen Zhang, counsel for the applicant
No appearance for the first respondent
Tazvitya Mukorombindo in person

Investigation Meeting: On the papers

Submissions (and other material) received: 21 July, 15 and 17 September 2025 from the applicant
Nothing received from the first respondent
6 September 2025 from the second respondent

Determination: 13 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Pro Team Limited (now in liquidation) (the company) was previously the employer of three employees who a Labour Inspector of the Ministry of Business, Innovation and Employment, Hugh Devlin, asserts were not paid or given their

minimum wage, public holiday pay, annual holiday pay and other employment entitlements.

[2] The company was in the construction industry with Tazvitya Mukorombindo being its sole director and shareholder since 3 September 2022.

[3] The Pro Team Ltd went into liquidation on 1 September 2023.

[4] The Labour Inspector first came to the Authority in June 2024 seeking the company pay outstanding minimum wage and holiday entitlements to the three employees.¹ The liquidator had consented to the proceedings continuing regarding the company. The Labour Inspector also sought to pursue payments and penalties from Mr Mukorombindo as a person involved in breaches.²

[5] The parties went to mediation and on 16 October 2024 a mediator employed by the Chief Executive of the Ministry of Business, Innovation and Employment signed a record of settlement previously signed by the parties, along with an agreed summary of facts.

[6] The Labour Inspector then lodged a second application with the Authority in March 2025 seeking to enforce the record of settlement solely against Mr Mukorombindo.³

[7] More recently Mr Mukorombindo became bankrupt on 22 August 2025.

[8] The Labour Inspector seeks a determination to cover the implications of the bankruptcy on these proceedings. There is no objection to that request.

The Authority's process

[9] Although the company's liquidator has consented to the first application proceeding regarding The Pro Team Ltd (in liq), the Labour Inspector does not now seek orders regarding the company. He advises that the liquidator has indicated the company would have no means available to pay.

[10] Prior to the bankruptcy a case management conference was held with the parties on 13 March 2025. Mr Mukorombindo indicated he was looking to make payments

¹ File no 3302301.

² Including under the Employment Relations Act 2000 (the Act), s 142W.

³ File no 3361703.

towards what was owing under the record of settlement but was not able to pay substantial amounts due to only having modestly paid work. The Labour Inspector identified a wish to ensure money was received for the employees, rather than prioritising penalties, although no payments had yet been received under the record of settlement. It was agreed that the parties would be allowed some time to pursue discussion on resolution.

[11] After a time, the Labour Inspector advised that no proposal had been received from Mr Mukorombindo. At the 9 June 2025 case management conference Mr Mukorombindo accepted that he had breached the record of settlement by failing to make payment under it. The parties and the Authority agreed that these matters could be dealt with by an ‘on the papers’ investigation and a timetable was set for submissions.

[12] Submissions were received from the Labour Inspector. No submissions were received from Mr Mukorombindo within the time set but later he advised the Authority of his bankruptcy. Comment was sought from the Labour Inspector. An extensive response was received along with subsequent additional comment. These indicated that the Labour Inspector sought a determination from the Authority, preferably reflecting the procedural history of the proceedings.

[13] Having indicated that the Authority intended to issue a determination, it gave the parties and the Official Assignee’s office the opportunity to provide comment by 9 October 2025. Nothing further was received.

[14] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings and expressed conclusions.

The original issues

[15] The issues for investigation were originally identified in the 11 June 2025 Directions of the Authority as:

- (a) Should a penalty be imposed on Mr Mukorombindo (file 3302301) regarding breaches of:
 - section 6 of the Minimum Wage Act 1983
 - sections 23, 49, 50, 56, 60 and 81 of the Holidays Act 2003
 - section 130 of the Employment Relations Act 2000?

- (b) Should the Authority make an order requiring Mr Mukorombindo to comply with the record of settlement (file 3361703)?
- (c) Should a penalty be imposed on Mr Mukorombindo for breach of the record of settlement (file 3361703)?
- (d) Should any party have to contribute to the costs of another?

Agreed Summary of Facts

[16] The agreed summary of facts entered into by the Labour Inspector, The Pro Team Ltd (in liq) and Mr Mukorombindo as a part of the record of settlement includes the following facts:

- The liquidator has consented to the continuation of this matter although the first respondent is not in a position to pay penalties or arrears.
- Mr Mukorombindo was personally involved in each of The Pro Team Ltd's breaches as set out in this summary of facts. He was responsible for recruiting employees (including the affected employees in this matter), instructing employees as to when and where they would work and carrying out payroll functions. Mr Mukorombindo was the sole operator of the company and accepts he was a person involved in accordance with s 142W(1)(c) of the Act in respect of all breaches.
- The Labour Inspector carried out an investigation and calculated arrears based on records provided to him. Each of the three affected employees were not paid minimum wage for all the hours they worked.
- The Pro Team Ltd (in liq) and Mr Mukorombindo acknowledge and accept all breaches as set out in the statement of problem [in file 3302301] – including three breaches of s 130 of the Act and three breaches of s 81 of the Holidays Act 2003.
- The three employees were all employed by The Pro Team Ltd from 9 February 2023 or later.

The current issue

[17] Now the issue for this determination is whether the original issues above regarding Mr Mukorombindo can proceed in the Authority now that he is bankrupt.

This determination does not decide whether what the Labour Inspector originally sought should be ordered.

[18] The Labour Inspector submits that his applications for penalties and a compliance order against Mr Mukorombindo would be halted by dint of s 76 of the Insolvency Act 2006.⁴ No other submissions were received.

Insolvency Act

[19] Bankruptcy is dealt with in the Insolvency Act. That Act restricts the progression of certain proceedings by providing that:

Court proceedings are halted

s 76 Effect of adjudication on court proceedings

- (1) On adjudication, all proceedings to recover any debt provable in bankruptcy are halted.
- (2) However, on the application of any creditor or any other person interested in the bankruptcy, the court may allow proceedings that had already begun before the date of adjudication to continue on the terms and conditions that the court thinks appropriate.

Application to the Authority

[20] First, there is a question about whether the Authority is captured by section 76 of the Insolvency Act.

[21] The two headings set out above refer to “court proceedings”. The Authority is more properly identified as an investigative tribunal rather than a court.⁵ Its proceedings are however declared in the Employment Relations Act to be “judicial proceedings”.⁶

[22] Second, section 76(1) of the Insolvency Act, refers simply to “all proceedings”, with no reference to “court”. Authority matters would, on their face, come within the broad reference to “proceedings”. However, as a matter of interpretation, account should be taken of the reference in the part and section headings to “court”.⁷

⁴ Reliance placed on *Chauhan v SD & SD Investments Ltd and Kolluru* [2024] NZERA 295.

⁵ Employment Relations Act 2000 (the Act), s 157.

⁶ The Act, s 176(2).

⁷ Legislation Act 2019, s 10(4).

[23] Importantly, the broader situation should be examined. A major purpose of insolvency legislation is to ensure that all creditors and potential creditors are treated equally.⁸ Some creditors are not to get a head start over others. In the bankruptcy context, it is hard to see why an Authority determination which requires a payment to be made by an individual should be seen as different to a District Court judgment, for example, which requires an individual to pay money. Both can have the effect of creating a creditor. This approach is more compelling than reliance on the reference to “court” in the headings.

[24] This issue was previously considered in *Chauhan v SD & SD Investments Ltd and Others*⁹. I again conclude the more purposive interpretation of the provision is that Authority proceedings are caught by section 76 of the Insolvency Act and that approach should be adopted.

Provable debts

[25] Although others must make decisions about what debts are provable in bankruptcy, the Authority needs to examine the question to determine whether the claims regarding Mr Mukorombindo are halted because they come within that definition. Although the Authority generally focuses on investigating issues rather than claims as such, the language of claims has relevance in this context.

[26] Provable debts are described in section 232 of the Insolvency Act:

s 232 What debts are provable debts

- (1) A provable debt is a debt or liability that the bankrupt owes –
 - (a) at the time of adjudication; or
 - (b) after adjudication but before discharge, by reason of an obligation incurred by the bankrupt before adjudication.

[27] The existence of a claim is not necessarily sufficient for a provable debt as it can be seen that no debt or liability for breach of a statute is established until the claim is heard and liability determined.¹⁰

⁸ *Re Nortel* [2013] UKSC 52.

⁹ Above at n 4.

¹⁰ *Fehling v Appleby* [2014] NZHRRT 17 and *Gazupan v Pratt & Whitney Air NZ Services* [2015] NZEmpC 27.

[28] The Labour Inspector was seeking:

- a penalty be imposed on Mr Mukorombindo regarding breaches of the Minimum Wage Act, the Holidays Act and the Employment Relations Act
- an order requiring him to comply with the record of settlement
- a penalty be imposed on Mr Mukorombindo for breach of the record of settlement.

[29] A Labour Inspector may obtain a penalty against a director where they are a person involved in various statutory breaches. In the agreed summary of facts Mr Mukorombindo agrees that he was personally involved in each of the breaches identified in the statement of problem (in file 3302301). This includes three breaches of s 130 of the Act and three breaches of s 81 of the Holidays Act.

[30] In the agreed summary of facts the Labour Inspector and Mr Mukorombindo agree that:

- The first employee who worked from 9 February 2023 to 6 June 2023 (Employee A) was owed \$5,297.55 total arrears
- The second employee who worked from 14 March 2023 to 6 October 2023 (Employee B) was owed \$6,880.80 total arrears
- The third employee who worked from 18 February 2023 to 7 October 2023 (Employee C) was owed \$4,838.18 total arrears.

[31] The arrears total was \$17,016.53. Taking into account payments made, the full amount remaining was agreed by the Labour Inspector and Mr Mukorombindo to be \$16,016.53. A payment schedule was agreed, which had a final instalment date of 15 June 2025.

[32] The agreed summary of facts also includes an agreement by Mr Mukorombindo that where arrears are owed there has been a breach of minimum entitlements and penalties are available for those breaches and breaches of s 130 of the Act and s 81 of the Holidays Act.

[33] During case management conferences with the Authority prior to bankruptcy Mr Mukorombindo acknowledged that he had not made payments as required by the

record of settlement. The Labour Inspector confirmed in September 2025 that no payments had been received towards the amount owing under the record of settlement.

[34] Although there is no Authority finding that there has been breaches of the Employment Relations Act, the Minimum Wage Act and the Holidays Act, and of the record of settlement, the elements are present which could enable such findings to be made. That would give a potential basis for a compliance order with the record of settlement to be made as well as penalties to be imposed for the statutory and record of settlement breaches, had Mr Mukorombindo not become bankrupted.

[35] In any event, there has been a shift towards seeing more contingent liabilities as captured within the description of provable debts. I note particularly the United Kingdom Supreme Court decision in *Re Nortel*, which was followed by the Supreme Court in New Zealand in *Bradbury v Commissioner of Inland Revenue*.¹¹

[36] If the Authority found Mr Mukorombindo was a person involved in breaches of the relevant statutory obligations and the record of settlement, that he owed money under the record of settlement and/or penalties should be imposed, those would at the least be liabilities which he owed after his bankruptcy adjudication.

[37] The liabilities would relate to obligations he incurred before becoming bankrupt as the employment relationships with the three employees, the record of settlement and all the instalments to be paid under it were in place before his bankruptcy on 22 August 2025.

[38] In conclusion, the claims against Mr Mukorombindo, would be provable either as debts or liabilities owed at the time of adjudication or owed after bankruptcy adjudication but before discharge, by reason of an obligation incurred by Mr Mukorombindo before he was adjudicated bankrupt.

Impact on proceedings

[39] In the absence of any permission from the High Court, the claims regarding Mr Mukorombindo are therefore halted under s 76 of the Insolvency Act and cannot currently proceed.

¹¹ *Re Nortel* [2013] NZSC 52 and *Bradbury v Commissioner of Inland Revenue* [2015] NZSC 80.

Costs

[40] Costs are reserved but in the circumstances of The Pro Team Ltd's liquidation and Mr Mukorombindo's bankruptcy, it may be appropriate that costs lie where they fall.

Nicola Craig

Member of the Employment Relations Authority