

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 724  
3298339

BETWEEN	JASPREET SINGH Applicant
AND	SHARAN SOLUTIONS LIMITED First Respondent
AND	MASHARAN SINGH SOHI Second Respondent

Member of Authority: Robin Arthur

Representatives: John Wood and Susanne Lass, advocates for the  
Applicant  
Dillon Tan, counsel for the Respondent

Investigation Meeting: 28 and 29 August 2025 in Auckland

Determination: 11 November 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Jaspreet Singh, an Indian national, arrived in New Zealand on 30 November 2023 with an accredited employer work visa allowing him to work for up to three years as a “construction trade worker” for Sharan Solutions Limited (SSL).

[2] SSL trades under the name Alliance Construction. It provides plasterboard installation (‘gib fixing’) services at commercial and residential building projects across Auckland.

[3] Jaspreet Singh said he started worked on 4 December 2023. SSL said he started on 8 January 2024. On either account, his employment did not last long.

[4] On 16 February 2024 SSL's director and sole shareholder Masharan Sohi issued Jaspreet Singh with a letter headed "Warning regarding incompetence and performance". During a performance review meeting held on 25 March Mr Sohi told Jaspreet Singh that the company was "looking into a redundancy process". On 4 April 2024 SSL gave Jaspreet Singh four weeks' notice of dismissal on the grounds of redundancy.

[5] In an application to the Authority Jaspreet Singh said he had personal grievances over how he was treated during his employment and how it came to an end, along with claims for payment of arrears of wages and holiday pay for hours of unpaid work. He also asked for penalties to be imposed for failures to pay him properly. He also sought findings that SSL breached employment standards and that Mr Sohi was involved in those breaches. He asked for leave to pursue Mr Sohi personally for the claimed arrears of wages and holiday pay in the event that SSL could not pay those amounts.

[6] The statement in reply lodged by SSL and Mr Sohi disputed Jaspreet Singh's account of events. It said they had tried to address performance issues with his work. During this time, however, the company faced uncertain future work prospects and decided to disestablish his position, along with reducing hours for other workers.

[7] They denied Jaspreet Singh had worked hours and days for which he was not paid in full and denied he was owed any arrears.

[8] The parties were unable to resolve their differing views in mediation so an Authority investigation was arranged.

### **The Authority's investigation**

[9] For the Authority's investigation the following people provided written witness statements:

- Jaspreet Singh;
- Mr Sohi;
- Gursimranjeet (Gursim) Singh (He was a high school friend of Jaspreet Singh from the same area of northern India and Mr Sohi recruited him to work for SSL at the same time as Jaspreet Singh);

- Ajay Kumar (He had worked in the construction industry for around seven years and joined SSL soon after it was set up in 2022. He was, in effect, the team leader of SSL workers when Mr Sohi was not on site);
- Deepak Kumar (He was also employed by SSL as a “construction trade worker” from February 2024. He was recruited in New Zealand and had been here, initially on a visitor visa, since March 2023); and
- Sahil (He uses only this single name. He also recruited by Mr Sohi in India in late 2023 but arrive and start work for SSL under an accredited work visa until April 2024).

[10] All witnesses answered questions under oath or affirmation from me and the parties’ representatives. Witnesses were assisted in answering questions by an interpreter of Punjabi and Hindi provided by the Authority.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the ER 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.

### **Assessment of evidence**

[12] The findings made and conclusions expressed in this determination were reached on the civil standard of the balance of probabilities. This is an assessment of what is more likely than not to have been the case. This weighs the evidence of witnesses, both written and oral, alongside what can be corroborated by, or is consistent with, contemporaneous documents or other records that are likely to be reliable.

[13] This assessment proved challenging in this case. An instance of that difficulty concerned the evidence Jaspreet Singh and Mr Sohi each gave, under affirmation, in answer to questions about documents they had each provided that were said to record hours and days of work.

[14] Both initially insisted the documents they provided were correct records of hours and days worked and, importantly, were made on or near the dates given on those records. In Mr Sohi’s case those documents were said to be a record of hours worked by other workers as well Jaspreet Singh.

[15] Both of them, however, admitted during questioning that their documents were, at best, compilations they had made at some later date. Each said they relied on some other notes, records or diaries made earlier that they had then referred to in preparing the later record provided in evidence. In neither case were the supposed ‘source’ documents provided.

[16] Similarly, Ajay Kumar, Deepak Kumar and Sahil were each asked during the Authority’s investigation meeting about timesheets bearing their signatures that Mr Sohi had provided as records of their work. They each said they had signed them at the end of those working weeks in 2024. In Sahil’s case he also gave evidence that the timesheets he was asked to look at were written by him when, as clear from comparison with the handwriting on the sheets for other workers and Mr Sohi’s later evidence, the dates, times and tally of hours on those sheets were in fact written out by Mr Sohi. As Mr Sohi later disclosed in answering questions, he had not made those records during or soon after the weeks worked by those workers. Rather, he had written those sheets some time later and then got the workers to sign them. He did so because he needed timesheets as part of responding to Jaspreet Singh’s personal grievance and to an Immigration New Zealand audit, around June 2024, made to check SSL’s compliance with documentation and wage requirements for an accredited employer.

[17] As a result, the assessment of evidence in this determination has relied, where possible, on those records that bear a time or date that is set externally, rather than handwritten by Jaspreet Singh or Mr Sohi at an uncertain time. Of particular importance in that regard were photographs Jaspreet Singh took at particular worksites on particular days. As explained later in this determination, the times and dates shown on those photographs at SSL workplaces did not match the later records Mr Sohi had created which suggested Jaspreet Singh was not at work on those days. Jaspreet Singh’s evidence about days worked is more reliable than what SSL records show of supposed days worked.

[18] The issue of what *hours*, as opposed to *days*, were *actually* worked is less straightforward, again as explained later in this determination. Put plainly, Jaspreet Singh’s account of how *long* he worked on some days was not reliably established to the evidential standard of being more likely than not.

## **The employment relationship**

[19] Mr Sohi has worked in the construction industry since moving from India to New Zealand in 2015. Relying on his experience as a project manager, Mr Sohi incorporated SSL in 2022 and set up its business of providing gib fixing and stopping services for building developers.

[20] In 2023 Mr Sohi took steps to recruit new workers under the provisions of the accredited employer work visa programme. This led to SSL employing Jaspreet Singh, Gursim Singh, and Sahil.

[21] While visiting family in India Mr Sohi's father introduced him to an uncle of Jaspreet Singh. The uncle arranged for Mr Sohi to meet Jaspreet Singh and Jaspreet's friend, Gursim Singh. At the time Jaspreet Singh and Gursim Singh, both in their early twenties, were working on family farms. Neither had any experience in construction work or had ever been in paid employment. Neither had been outside India before.

[22] After interviewing them Mr Sohi offered them both a job. He gave them a video about gib fixing. In his oral evidence Mr Sohi said he envisaged they could "start from the bottom" by clearing up rubbish and "moving stuff" once they got to the workplace and learn about gib fixing once they got to know the product.

[23] After the employment documentation and visa process was completed Jaspreet Singh and Gursim Singh travelled to New Zealand, arriving on 30 November 2023. Mr Sohi picked them up from the airport, taking them home to his place where they were to be provided with accommodation.

[24] They stayed at Mr Sohi's home, travelling to work with him each morning, until they got a flat of their own which they moved into in mid-February 2024.

[25] On 4 December 2023 Jaspreet Singh and Gursim Singh went to an SSL workplace. They said this was the date they began work for SSL and should be paid for. Mr Sohi denied this was correct. He said both men had only accompanied them to work that day, and on subsequent days in December, because they were bored by staying at home. He said they were not permitted to start work until arrangements for bank accounts and IRD numbers were completed, and that had not happened until late December. Mr Sohi said they started work on 7 January 2024.

[26] Mr Sohi said the training for both men began with them assisting either him or Ajay Kumar in carrying out work. This initially included helping to shift and lift sheets of plasterboard and then progressing to learning how to screw sheets to the walls and ceiling and, later, measuring and cutting the sheets.

[27] According to Mr Sohi their hours of work were no more than 32 a week, the number specified in their employment agreements. Jaspreet Singh said this was incorrect because he regularly worked up to 50 hours a week.

[28] Both Mr Sohi and Ajay Kumar said Gursim Singh learnt the requirements of the job quickly but Jaspreet Singh was slower to learn. They criticised Jaspreet Singh for poor work in fixing the sheets, either leaving screws too high or pushing them in too far. This meant the work was less likely to pass stringent building inspection requirements and could need expensive remedial work. They also said Jaspreet Singh made mistakes once he was introduced to the work of measuring and cutting sheets, resulting in more wasted materials.

[29] Jaspreet Singh said he had made what he called a small mistake on 12 February 2024 which led to Mr Sohi shouting at him and refusing to let him work in the following days. Mr Sohi's description differed. He said when asked why two gib sheets were wrongly installed, Jaspreet Singh got angry, said he did not want the job anymore and left the work site. He did not come to work in the following days. Jaspreet Singh said this was because he was suspended. Mr Sohi said Jaspreet Singh chose not to return.

#### *Warning letter*

[30] On 16 February Mr Sohi sent Jaspreet Singh a written warning letter. It said he was not meeting expectations after "a comprehensive four-week training period". It said he was expected to take immediate action to improve his performance or he could face "further disciplinary action, up to and including termination of employment".

[31] Mr Sohi did not meet with Jaspreet Singh to formally discuss his concerns before issuing that written warning. He said he wrote it with the assistance of his wife, who worked as a business advisor and had more experience of business than him. He said they prepared that letter, and subsequent correspondence to Jaspreet Singh, with the assistance of an artificial intelligence software programme.

[32] Jaspreet Singh and Gursim Singh moved out of Mr Sohi's residence into their own flat around this time and Jaspreet Singh returned to work the following week. By then they had also purchased a car so no longer relied on travelling to and from work with Mr Sohi.

*Sick leave*

[33] Jaspreet Singh said Mr Sohi and Ajay Kumar continued to criticise his work in subsequent weeks which led him to take sick leave from 4 March to 17 March. He had provided SSL with medical certificates from a local GP, dated 5 March and 11 March, for both weeks.

[34] At the beginning of the second week of sick leave he sent Mr Sohi an email saying he was "experiencing significant challenges with depression" which had made it difficult to perform at his best. He asked for Mr Sohi's "understanding" that he needed more time to recover before returning to work.

[35] On 14 March Jaspreet Singh sent Mr Sohi a further medical certificate from his GP. The certificate said he was "struggling with low mood but is motivated to return to work".

[36] This led to Mr Sohi writing to Jaspreet Singh's GP, copying the message to Jaspreet Singh. Mr Sohi asked the GP for an urgent and detailed report about Jaspreet Singh's "recent communication regarding his low mood and mental health concerns". Mr Sohi's request said Jaspreet Singh had not disclosed any medical conditions or history during the hiring process and failure to co-operate with the request for more information "may result in serious consequences, including termination of employment".

[37] The GP responded with a further certificate, dated 18 March, saying her "understanding" was that Jaspreet Singh had not suffered any medical problems until the past six weeks. The GP wrote that, as Jaspreet Singh had worked for SSL for the past three months, "there was nothing to disclose in his pre-employment medical".

[38] In his oral evidence Jaspreet Singh said his mother had, during this time, also arranged for him to take part in a video call with a doctor in India. Jaspreet Singh said the doctor described his symptoms as depression and arranged to send medication to him in New Zealand. He said he received and took the medication.

### *Performance review*

[39] Jaspreet Singh returned to work on 18 March. On the following day he received an email from Mr Sohi calling him to a performance review meeting to be held at the end of the week. The email said his work had “not been up to the mark” and that, before he took sick leave, he had been “put on a training plan for 10 days”.

[40] The meeting was delayed while Jaspreet Singh sought advice and a translator to support him. A transcript of a recording taken of the meeting showed Mr Sohi referred to Jaspreet Singh as taking ten days off work, in addition to his sick leave, within a two-month period. He also said Jaspreet Singh was putting up far fewer sheets each day than other workers. He said Gursim Singh, who had started at the same time and had the same training, was putting up three times more sheets a day than Jaspreet Singh.

[41] Jaspreet Singh did not accept that description, saying he did not get the same opportunities as others.

[42] No specific further steps for managing Jaspreet Singh performance were referred to in the transcript. Near the end of the discussion, however, Mr Sohi said performance reviews were being conducted with other workers and the company was “looking into a redundancy process” because it was “suffering financially at the moment”. He said letters were being sent to all employees that night and the company would “try and fit in everyone” in any restructuring.

### *The redundancy process and outcome*

[43] Mr Sohi said the workers were updated at weekly site meetings about a restructuring process. His documentation in support of that description were notes that he kept on his phone. His note for 12 March, for example, said he met with Deepak Kumar and Ajay Kumar but Jaspreet Singh was on sick leave and Gursim Singh was absent. He wrote that he had “shared with a heavy heart” that restructuring would happen “in the coming weeks”, that “redundancy is now unavoidable” and “at least one team member will need to be let go” as there were “no alternative roles”.

[44] His note for 19 March, showing all four employees present, said that “all staff were informed that performance review and redundancy meetings are scheduled for each individual next week”.

[45] His 26 March note referred to having “a heated argument” at his review meeting with Jaspreet Singh the day before and that “redundancy consultations” were part of “a challenging and hectic week for everyone”.

[46] There was no reliable evidence Mr Sohi spoke with Jaspreet Singh again about the prospect of redundancy or any alternatives to it before sending him a letter on 4 April headed “notification of redundancy”.

[47] According to Mr Sohi the letter was, again, prepared by him and his wife with the assistance of artificial intelligence software. The elaborately-worded description given in the following extracts from the letter did not match the evidence from him or Jaspreet Singh of what had, in fact, happened:

It is with a profound sense of regret that I must convey the difficult resolution we have arrived at regarding your tenure with Alliance Construction. Following meticulous deliberation and thorough examination of our current circumstances, it has become evident that the prevailing economic recession, coupled with a dearth of projects within the company, necessitates a reconsideration of our employment structure.

In our recent deliberations, it was duly acknowledged that exploring alternative arrangements for your role would be constrained by the stringent conditions of your visa status with the company. Despite earnest efforts to explore viable options, regrettably, none have materialized.

Thus, it is with sincere remorse that I inform you of the regrettable necessity to declare your position redundant, effective immediately, with a notice period extending over four weeks in accordance with our established company protocol. Your last day of work would be 1/05/2024.

[48] As revealed in Mr Sohi’s oral evidence however, there was no “established company protocol” and the description of “a dearth of projects” did not refer to SSL’s current work but his assessment of prospects for SSL gaining contracts for work on other building projects. No documentation of any financial analysis made at the time was provided for the Authority investigation.

[49] Jaspreet Singh was the only employee dismissed for redundancy. Two other workers, who had also been recruited in late 2023 but who did not actually start work until later than Jaspreet Singh and Gursim Singh, were kept on. Deepak Kumar began working in February 2024 while Sahil did not start until April because he had remained in India for several months for family reasons.

[50] Those two other workers, along with Ajay Kumar, did however have their work hours reduced in later months due to a reduction in project contracts. Mr Sohi had decided to dismiss Jaspreet Singh rather than include him in the distribution of those reduced hours.

*Suspension during notice period*

[51] On the evening of 14 April, a Sunday and day off work for Jaspreet Singh, he received an email from Mr Sohi. The message said Mr Sohi had heard from colleagues that Jaspreet Singh had applied for a work visa elsewhere but his employment and work visa were linked to SSL. It said Jaspreet Singh could not attend work until he provided “a copy of your current legal status”.

[52] Mr Sohi’s reasoning for this request was that if Jaspreet Singh had arranged a transfer of his visa to a new employer, SSL could not legally allow him to work on its work sites.

[53] By this time Jaspreet Singh had engaged his current employment advocates and correspondence was exchanged with Mr Sohi over the situation in following days. Mr Sohi said Jaspreet Singh had come to work on 15 April but “wasn’t allowed to work” because he “chose not to provide his visa copy”.

[54] His advocates’ response said Jaspreet Singh was shouted at and sent home “due to perceived issues with his work performance”. Mr Sohi replied that Jaspreet Singh was “wanting to just show up and not do any work and wanting to get paid while serving his notice”.

[55] After those exchanges arrangements were made for Jaspreet Singh to return to work on 18 April and serve the remainder of his notice.

[56] Soon after the end of his employment Jaspreet Singh’s advocates raised his personal grievance for unjustified dismissal and unjustified disadvantage along with an extensive claim for wage arrears. The arrears claim included wages for the period in December in which he said he began work for SSL and for hours beyond his contractual minimum of 32 which he said he worked but was not paid.

## **The issues**

[57] The issues for determination were:

### *Arrears*

- (a) Was Jaspreet Singh paid for all hours worked?
- (b) Was he properly paid for public holidays?
- (c) Is he owed annual holiday pay?
- (d) Should interest be awarded on any sums found due to him as wages and holiday pay?

### *Personal grievances*

- (e) Did SSL act justifiably in:
  - (i) Suspending Jaspreet Singh on 12 February 2024?
  - (ii) Issuing him a written warning on 16 February 2024?
  - (iii) Requests and communication to him during sick leave taken from 4 March 2024?
  - (iv) Holding a performance review meeting (25 March) and raising a redundancy proposal in that meeting?
  - (v) Giving him notice of dismissal on the grounds of redundancy on 4 April 2024 (including whether there were genuine business reasons for that decision, he was given adequate opportunity to comment and alternatives were adequately explored)?
  - (vi) Suspending him on 15 and 17 April 2024?
- (f) If SSL's actions were not justified (in disadvantaging or dismissing Jaspreet Singh), what remedies should be awarded, considering:
  - (i) Lost wages (assessing the period for which loss is claimed; what was done, if anything, in that period to find alternative work and income; and whether what was, or was not done over that period was reasonable in the circumstances); and
  - (ii) Compensation under s123(1)(c)(i) of the ER Act
- (g) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Jaspreet Singh that contributed to the situation giving rise to his grievance?

### *Breach of employment standards and penalties*

- (h) Is SSL liable to a penalty for breach of the Wages Protection Act 1983 (the WPA) for failure to pay wages and holiday pay when due?

- (i) Is SSL liable to a penalty for a breach of good faith in its dealings with Jaspreet Singh?
- (j) Is Mr Sohi liable to a penalty for aiding and abetting breaches of the terms of Jaspreet Singh's employment agreement (regarding payment of wages and holiday pay and consultation over redundancy)?
- (k) If penalties are awarded should any part of those penalties be paid to Jaspreet Singh?
- (l) Did SSL breach employment standards in its dealings with him?
- (m) If so, was Mr Sohi a person involved in those breaches?
- (n) If so, should Jaspreet Singh be given leave under s 142Y of the ER Act to recover from Mr Sohi personally any arrears of wages and holiday pay SSL is unable to pay?

*Costs*

- (o) Should either party contribute to the costs of representation of the other party.

**Arrears**

*Assessing the evidence on the hours worked*

[58] The records SSL provided as its evidence for actual days and hours worked were not reliable for two reasons.

[59] Firstly, there were days where SSL said Jaspreet Singh was not at work but he provided photographs showing him on work sites on some of those days. The photographs had date and time stamps and, in some cases, included a geolocation label for the area.

[60] The first of these photographs was electronically stamped as being taken at 10:38am on 5 December 2023. It showed Jaspreet Singh and Gursim Singh in a partially lined room, standing in front of a stack of gib sheets, wearing hi-vis Alliance branded shirts and holding screw guns. Mr Sohi said they had asked for this photo to be taken, to send to family back home, but he denied they were working that day.

[61] While that explanation was possible, it did not adequately explain what was shown in photographs taken on other days that SSL's records said Jaspreet Singh was not at work. A photograph dated 14 December showed him at a construction site in Papatoetoe. A photograph dated 21 December showed him in an unlined room, wearing

a hi-vis work shirt and standing in a ‘scissor-lift’ work platform. A photograph dated 6 January showed him up a ladder holding a sealant gun. Further photographs stamped as being taken on 19 February, 23 February, 24 February, 26 February, 1 March and 2 March also showed him in work gear at work sites.

[62] In their evidence Mr Sohi and Ajay Kumar accepted the photographs were of work sites that were probably places SSL had jobs on at those times. As Ajay Kumar accepted, in answer to a question, there was no explanation for Jaspreet Singh being in a scissor lift or up a ladder with a sealant gun if he was not working on those days.

[63] Mr Sohi initially denied Jaspreet Singh did any work at all when he came to work sites in December. He later accepted they may have been asked to help with some tasks, such as moving sheets of gib but he said it was “for one or two hours here and there” and that he “would not call it working”.

[64] On the balance of probabilities, those photographs established that Jaspreet Singh’s evidence that he was working for SSL from 4 December onwards was more likely to be correct. They also established that SSL timesheets recording him as absent on those, and some other days, could not reasonably be relied on.

[65] Secondly, some SSL records showed Jaspreet Singh working fewer hours than Ajay Kumar and Gursim Singh although they appeared to be at the same work site. Ajay Kumar, as a senior employee and responsible for work arrangements when Mr Sohi was absent, may have arrived at work earlier and stayed longer. Gursim Singh and Jaspreet Singh, however, travelled to and from work together, initially in Mr Sohi’s utility vehicle and later in their own car. They did the same type of work at the same sites and it was not likely they were expected to work different hours from one another.

[66] The following two samples taken from the timesheets prepared by Mr Sohi illustrates the point:

	Ajay Kumar	Jaspreet Singh	Gursim Singh
15/01/24	9	8	9
16/01/24	8	8	8
17/01/24	8	8	5
20/03/24	8.25	6.5	8
21/03/24	9.5	6.5	8
22/03/24	9	6.5	8

[67] Generally SSL paid Jaspreet Singh only the minimum 32 hours provided in his employment agreement. This resulted in him not being paid at all for some days he had worked. On some other days he was paid but not for all the hours he had worked.

#### *Assessing arrears*

[68] When Jaspreet Singh's representatives asked for his wage and time records, as they were entitled to do under s 130 of the Act, SSL failed to provide the appropriate records. Instead the company provided only payslips for the weeks from 8 January to 5 May 2024 during which it said he had worked.

[69] In circumstances where an employer defending an arrears claim has failed to keep or produce the required records, and this has prejudiced the employee's ability to bring an accurate claim, the Authority may accept the employee's claims about what hours and days were worked and what wages were paid, unless the employer can prove those claims are incorrect.<sup>1</sup> This power to prefer the employee's account is discretionary, not automatic. The Authority must still be satisfied the claim is credible, to the extent possible when the employee has been hindered from preparing it by shortcomings in the employer's record keeping.

[70] In this case Jaspreet Singh had established he was not paid from some hours that he, more likely than not, had worked. He had not established, however, that the extent of the shortfall was as large as he claimed.

[71] This was a situation, as submitted by SSL's counsel in closing submissions, in which neither parties' records or accounts of what had happened could be entirely relied on. Given the limits of the available information, only a broad assessment was possible. On the balance of probabilities, Jaspreet Singh typically worked more than the bare 32 hours that SSL's pay slips showed he was paid for weeks that he was not away on sick or other leave. He did not, however, typically work between 45 and 50 hours a week as he claimed in a wages calculation provided as part of his evidence for the Authority investigation. Instead, the arrears claim is to be determined on the likelihood that, on average, he was required to work 40 hours a week. This accorded with evidence from all witnesses that there were some days whether shorter hours were worked but other days were longer.

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<sup>1</sup> Employment Relations Act 2000, s 132.

[72] The available evidence is not amenable to a detailed day by day, week by week analysis of actual hours worked for comparison with this deemed likely average hours of 40 a week. Rather, Jaspreet Singh is accepted as having worked from 4 December 2023, including during weeks worked in the Christmas and New Year period. The paysheets prepared by Mr Sohi show Ajay Kumar was working on SSL projects during those weeks so Jaspreet Singh was also likely doing so.

[73] The arrears due to Jaspreet Singh for his employment spanning 22 weeks, from 5 December 2023 to 1 May 2024, comprise the following:

Week commencing	Payslip	Hours due as arrears (includes paid public holiday days)	Shortfall due as arrears
4 December	-	40	40
11 December	-	40	40
18 December	-	40	40
25 December	-	40	40
1 January	-	40	40
8 January	32	40	8
15 January	32	40	8
22 January	32	40	8
29 January	32	40	8
5 February	32	40	8
12 February	6.25	8 (not at work other days)	1.75
19 February	25.5	40	14.5
26 February	25.5	40	14.5
4 March	-	0 (no sick leave entitlement)	0
11 March	-	0 (no sick leave entitlement)	0
18 March	32	40	8
25 March	34.75	40	5.25
1 April	22	40	18
8 April	25.75	40	14.25
15 April	26.25	40	13.75
22 April	42	40	-2
29 April (to 1 May)	17.5	24	6.5
<b>Total hours due as arrears</b>			<b>334.5</b>

[74] For reasons explained later, this calculation is made on the basis that Jaspreet Singh's absence from work in the week of 12 February was not due to an unlawful suspension but that he was suspended in the week of 15 April and would have worked in that week had Mr Sohi permitted him to do so.

[75] On this calculation Jaspreet Singh is entitled to payment of arrears for 334.5 additional hours of work. At the \$30 an hour pay rate in his employment agreement, those arrears totalled \$10,035.

*Was Mr Singh properly paid for public holidays?*

[76] Based on the findings made about when he started work and his likely actual working hours, SSL short paid Jaspreet Singh for five public holidays and paid him nothing for four other public holidays that fell during his employment from 4 December 2023 and up until the expiry of his four weeks' notice period on 1 May 2024.

[77] Because SSL denied he was working until January 2024, he was not paid for the public holidays of Christmas Day, Boxing Day, New Year's Day and the 2 January holiday. He was entitled to five days of his relevant daily pay for those days.<sup>2</sup>

[78] He was paid for only five hours for the Waitangi Day, Good Friday, Easter Monday and Anzac Day holidays. He was owed an additional 15 hours' pay for the shortfall of three hours on each of those five days.

[79] His claim for pay for two days in lieu is declined because it was not established, on the balance of probabilities, that he had worked on two public holidays for which those lieu days were claimed.

[80] The amount due for those public holidays, that were either not paid or underpaid, have been included in the arrears calculated. Pay for the 40-hour weeks includes pay for the public holidays falling in the relevant weeks.

*Is Mr Singh owed arrears of holiday pay?*

[81] Because Jaspreet Singh was not paid for all hours worked, the calculation of his holiday pay entitlement at the end of his employment did not include his entire gross earnings as now calculated.<sup>3</sup> Accordingly, it was appropriate to award a further amount of arrears due as holiday pay. Calculated as eight percent of the amount of \$10,035 due as arrears of wages, SSL must also pay Jaspreet Singh the further sum of \$802.80 as holiday pay.

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<sup>2</sup> Holidays Act 2003, s 49.

<sup>3</sup> Holidays Act 2003, s 25.

*Interest to be paid on the amounts due as wages and holiday pay*

[82] The amounts now awarded as arrears of wages and holiday pay are money Jaspreet Singh should, if paid correctly at the time, have received by at least the end of his employment on 1 May 2024.

[83] Because he was deprived use of that money, it is appropriate for an award of interest to be imposed on those amounts for the period from 2 May 2024 until the amounts due to him are paid in full. This order is made under clause 11 of Schedule 2 of the ER Act. Interest is to be calculated by using the Civil debt interest calculator.<sup>4</sup>

**Personal grievances**

[84] Relying on the extended description of events given earlier in this determination, conclusions on the personal grievance claims can be stated concisely.

*No suspension on 12 February 2024*

[85] The evidence did not establish Jaspreet Singh was sent away from work, and told to stay away from work, when Mr Sohi spoke to him about mistakes made in cutting gib sheets. What Mr Sohi said may have been brusque but it was not unfair or unreasonable for an employer to express concerns about the care taken in cutting and fixing the sheets.

*Written warning on 16 February not a justified action*

[86] SSL did not act fairly and reasonably in the way it issued Jaspreet Singh with the letter of 16 February headed “Warning regarding incompetence and performance”.

[87] It was another form letter, drafted using artificial intelligence software and a template downloaded from the internet. It claimed Jaspreet Singh was not willing to learn and said he could face further disciplinary action, including termination of employment, if he did not address areas of concern and improve his performance.

[88] Mr Sohi did not, however, meet with Jaspreet Singh to discuss the prospect of a warning and seek his explanation about the concerns raised before issuing the letter. The letter told him to “proactively seek assistance” to improve his performance but did

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<sup>4</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator).

not set out the steps needed or identify clear goals against which his progress, or lack of progress, might be measured.

*Unjustified requests and communication during sick leave*

[89] Jaspreet Singh had provided appropriate medical certificates when he took sick leave in March. It was not unreasonable for SSL to seek further information about his progress. Its heavy-handed threat, however, that he could face “serious consequences, including termination of employment” if he did not co-operate in having his doctor provide further detailed medical information clearly went too far. SSL also misleadingly told Jaspreet Singh that it was incurring additional costs to hire “temporary casual workers from agencies” to cover his role while he was on sick leave. As Mr Sohi confirmed in his oral evidence, it was not.

*Redundancy proposal raised in performance review meeting*

[90] SSL could appropriately hold a performance review meeting, as it did with Jaspreet Singh on 25 March. The meeting did not, however, adequately canvas steps to guide and measure his performance. Rather, its key outcome was advising Jaspreet Singh of a redundancy process. Frankly assessed, it was also more likely than not that Mr Sohi had already decided to resolve his concerns over Jaspreet Singh’s performance by dismissing him on the grounds of redundancy.

*Dismissal for redundancy without adequate consideration of alternatives*

[91] The pre-determined course taken by Mr Sohi became apparent when he gave Jaspreet Singh four weeks’ notice on 4 April. Other workers were retained, including Sahil who had only started his employment in April. All other workers had their hours reduced in the following weeks but that was not an alternative to dismissal discussed with Jaspreet Singh.

[92] While there likely were genuine business reasons to consider staffing levels, SSL provided no evidence for the Authority investigation to substantiate what Mr Sohi said about its financial position or forecasting of work at that time.

[93] Even if the reasons for considering restructuring were genuine, SSL did not act justifiably because it failed to adequately consult Jaspreet Singh, including by not adequately exploring what alternatives to dismissal there may have been at the time.

*Suspending Mr Singh on 15 and 17 April 2024?*

[94] SSL again acted unjustifiably in refusing to let Jaspreet Singh come to work on some days during his notice period. It did so by acting on a second-hand story, passed on through Gursim Singh talking to Sahil, that Jaspreet Singh was looking to change his work visa. His accredited employer work visa expressly limited him to working for SSL but it was not unreasonable for Jaspreet Singh, during his notice period, to have made inquiries about changing or transferring that visa. Mr Sohi may have justifiably asked for more information but had not established that it was necessary, before giving Jaspreet Singh an opportunity to answer that concern, to suspend him from work.

**Remedies for grievances**

[95] Having established grievances of unjustified disadvantage and unjustified dismissal, Jaspreet Singh was entitled to an assessment of remedies. Those remedies address the grievances as a whole rather than separately.

*Lost wages*

[96] Jaspreet Singh sought an order for lost wages for the period of eight months from his dismissal by SSL until he got a new job.

[97] An order for such a long period was not warranted for two reasons.

[98] Firstly, the length of time awarded for lost wages has to allow for contingencies which may have resulted in a different outcome. In this case, had SSL taken more care with the process of consulting about the prospect of redundancy and properly explored alternatives, Jaspreet Singh's employment could have justifiably ended in the coming weeks in any event. Similarly, fairly handled, the performance concerns may not have been resolved satisfactorily and his employment could have ended on that basis in the following weeks.

[99] Secondly, Jaspreet Singh has not established that he did all he reasonably could have done to seek a new job. The information he provided about his job search in the eight months for which he claimed lost wages showed he made job applications on only 11 days in that period. While he said his confidence in seeking work was initially affected by his negative experience with SSL, and he had experienced some specific health issues in September, this did not adequately explain his limited activity through the whole of the period for which he claimed lost wages.

[100] Accordingly, the award for lost wages is limited to 12 weeks. For that period, Jaspreet Singh is awarded \$14,400, along with the further sum of \$1,152 as holiday pay due on the lost wages awarded for that period.<sup>5</sup>

*Compensation for humiliation, loss of dignity and injury to feelings*

[101] Jaspreet Singh's evidence established how upset he was by how he was treated in seeking to establish himself in a new job and a new country, both of which he had no prior experience. Because Mr Sohi had recruited him personally in India, SSL was also aware of the potential vulnerability of Jaspreet Singh in those circumstances. The medical evidence, available through the certificates of his GP, established the effect of that distress on him.

[102] Considering the particular circumstances of this case, and the range of awards in similar cases, the sum of \$15,000 was an appropriate award of compensation for the humiliation, loss of dignity and injury to feelings that Jaspreet Singh experienced.<sup>6</sup>

*Contribution*

[103] Where remedies are awarded for a personal grievance, the Authority must consider whether actions of the employee contributed in a blameworthy way to the situation giving rise to the grievance and, if so, reduce the remedies accordingly.<sup>7</sup>

[104] Dismissal for redundancy is said to a 'no fault' termination of employment, made for business reasons rather than individual performance concerns so, generally, no reduction for contribution by the employee is warranted.

[105] In this case there was some performance concerns, which had led to SSL issuing the warning letter and conducting a performance review, that were part of the situation giving rise to Jaspreet Singh's grievance. However, it was Mr Sohi who had taken the risk of recruiting an employee from abroad with no training and no experience in the construction industry or even of being in paid employment. In that situation, responsibility for the difficulty Jaspreet Singh had in meeting expectations of him arose from his employer's actions rather than a blameworthy failure by him. No reduction of remedies was required.

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<sup>5</sup> Employment Relations Act 2000, s 123(1)(b).

<sup>6</sup> Employment Relations Act 2000, s 123(1)(c)(i).

<sup>7</sup> Employment Relations Act 2000, s 124.

## **Breach of employment standards and penalties**

### *Penalty for breach of s 4 of the WPA*

[106] SSL was liable to a penalty under s 4 of the WPA for failing to pay Jaspreet Singh the entire amount of wages, including his holiday pay, due to him while employed or at the end of his employment. The breach of this statutory obligation occurred in circumstances where, as a young person from a different country and without experience in the world of paid employment, Jaspreet Singh was particularly vulnerable to harm from the breach. It occurred as part of how SSL intentionally operated its business. It denied him the use of money he was entitled to have either during his employment or at its end.

[107] Weighing the relevant factors for determining the amount of a penalty under s 133A of the ER Act, and the range of penalties in similar circumstances, SSL must pay a penalty of \$3,000 for its breach of s 4 of the WPA.

### *Penalty for a breach of good faith*

[108] Jaspreet Singh sought a penalty against SSL for a breach of good faith in its dealings with him over his performance and restructuring proposal. While the employment was for a relatively brief period, SSL did breach its good faith obligations in how it went about issuing a letter of warning and concluding a restructuring process without properly consulting its employee, including by providing information and an adequate opportunity to comment.<sup>8</sup>

[109] In this case a penalty for those breaches was warranted because it was both deliberate, serious and sustained and was intended to undermine the employment relationship.<sup>9</sup> For reasons already noted, Jaspreet Singh was particularly vulnerable to harm from those breaches.

[110] Weighing the relevant factors for determining the amount of a penalty under s 133A of the ER Act, and the range of penalties in similar circumstances, SSL must pay a penalty of \$2,000 for its breach of s 4(1A)(c) of the ER Act.

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<sup>8</sup> Employment Relations Act 2000, s 4(1A)(c).

<sup>9</sup> Employment Relations Act 2000, s 4A.

*Penalty for aiding and abetting a breach of employment agreement*

[111] Jaspreet Singh also sought a penalty to be imposed on Mr Sohi personally for aiding and abetting a breach of his employment agreement.<sup>10</sup> This related to a term of his written employment agreement which provided for his wages to be paid weekly to his nominated bank account. It also related to a term regarding the process for considering any redundancy proposal, which included a commitment to consult and to consider alternatives.

[112] In the circumstances of this case, the personal penalty claim has an element of 'double jeopardy' given the penalties already awarded against SSL, a company in which Mr Sohi is the sole director and sole shareholder. Although technically separate legal personalities, imposing a penalty against him as well as the company would really be punishing him twice for the same wrong. In this case I considered it appropriate to decline to impose the additional personal penalty. In part this was because, as explained later in this determination, Mr Sohi may have to personally pay the substantial amounts awarded for arrears of wages and holiday pay if SSL is not able to do so.

*Penalties to be paid to the Crown*

[113] Jaspreet Singh sought an order for part of any penalties imposed to be paid to him. The remedies awarded to him by orders made elsewhere in this determination address the wrongs done to him. Penalties are not a means to obtain additional compensation for the various failures of SSL to meet its statutory obligations. Rather, the full amount of the penalties imposed on SSL are to be paid to the Crown. This recognises two aspects of the public interest in matters of this type. Firstly, there is the overarching public interest in maintaining employment standards for workers. Secondly, there is a public interest in protecting businesses who do comply with those standards from the unfair competitive advantage gained by businesses who reduce their costs of operation through failing or avoiding their obligations to meet the statutory standards regarding pay and other entitlements. This relates specifically to the object of the ER Act at s 3(ab) to promote effective enforcement of employment standards through the Authority.

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<sup>10</sup> Employment Relations Act 2000, s 134(2).

## **Employment standards breached and Mr Sohi person involved in the breach**

### *SSL breached employment standards*

[114] As established by findings made earlier in this determination, SSL breached s 4 of the WPA by failing to pay Jaspreet Singh all his wages and holiday pay at the time those amounts were due to be paid to him. This is also a breach of one of the employment standards set in the ER Act.<sup>11</sup>

### *Mr Sohi was a person involved in the breach*

[115] Under s 142W of the ER Act a person may be identified as involved in a breach of employment standards if they procured the breach or were knowingly concerned, directly or indirectly, in the breach. A director of a company is one category of person who may be found to be involved in such breaches.

[116] In this case there was no doubt Mr Sohi, as the director and shareholder and active throughout in the work and administration of SSL, was a person involved in this breach. He accepted in his evidence that he was responsible for all decisions made by or on behalf of the company.

### *Leave given to recover from Mr Sohi any arrears SSL is unable to pay*

[117] In those circumstances it was appropriate to give Jaspreet Singh prior leave under s 142Y of the ER Act to recover from Mr Sohi the arrears of wages and other money that SSL has been ordered to pay, if SSL is unable to pay those arrears.<sup>12</sup>

## **Summary and orders**

### *Arrears*

[118] SSL owes Jaspreet Singh wages and holiday pay for 334.5 hours he worked but was not paid during or at the end of his employment.

[119] Under s 131 of the ER Act SSL is ordered to pay Jaspreet Singh the following amounts within 28 days of the date of this determination:

- (i) \$10,035 as arrears of wages; and
- (ii) \$802.80 as holiday pay due on those wages.

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<sup>11</sup> Employment Relations Act 2000, s 5 “employment standards”.

<sup>12</sup> Employment Relations Act 2000, s 142Y(2).

[120] SSL must also pay Jaspreet Singh interest on the sum of \$10,837.80 for the period from 2 May 2024 until this amount is paid in full.

#### *Personal grievance*

[121] Actions of SSL unjustifiably disadvantaged and unjustifiably dismissed Jaspreet Singh.

[122] In settlement of his personal grievances SSL must pay Jaspreet Singh the following amounts within 28 days of the date of this determination:

- (i) \$15,552 in reimbursement of wages and other money lost as a result of the grievances; and
- (ii) \$15,000 as compensation for humiliation, loss of dignity and injury to his feelings.

#### *Penalties*

[123] SSL must pay the following the following penalties to the Authority for transfer to a Crown account within 28 days of the date of this determination:

- (i) \$3,000 for breach of s 4 of the WPA; and
- (ii) \$2,000 for breach of s 4(1A(c) of the ER Act.

#### *Breach of employment standards*

[124] SSL breached employment standards by its breach of s 4 of the WPA.

[125] Mr Sohi was a person involved in the breach.

[126] Jaspreet Singh has leave under s 142W of the ER Act to recover from Mr Sohi the arrears of wages and other money due to him, to the extent SSL is unable to pay those arrears.

#### **Costs**

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

[128] If unable to do so, and an Authority determination on costs is needed, Jaspreet 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, SSL and Mr

Sohi would then have 14 days to lodge any reply memorandum. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

[129] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>13</sup> In this case, involving an investigation meeting held over two days, this rate totals \$8,000.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>13</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).