

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 739
3298439

BETWEEN	CAMERON STEELE Applicant
AND	BETTERSAVER LIMITED First Respondent
AND	JOSEPH TAYLOR Second Respondent

Member of Authority:	Nicola Craig
Representatives:	Claudia Serra, advocate for the applicant Joseph (Joe) Taylor for the respondents
Investigation Meeting:	On the papers
Submissions and further information received:	24 September, 8 and 16 October 2025 from the applicant 25 September, 8 and 13 October 2025 from the respondents
Determination:	17 November 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In 2022 Cameron Steele was a Business Development Manager for BetterSaver Ltd (BetterSaver or the company). BetterSaver provides advice about KiwiSaver. Joseph (Joe) Taylor is the director of BetterSaver.

[2] Mr Steele came to the Authority dissatisfied about not being paid his final wages and holiday pay by the company.

[3] BetterSaver accepts there was a delay in payment but that it dealt with Mr Steele and his representatives in good faith, says it has now paid and accepts it may have some

obligations as a result of paying late although not accepting all that is sought by Mr Steele.

The Authority's process

[4] Mr Steele began these proceedings in 2024. The parties went to mediation.

[5] Later BetterSaver made a payment to Mr Steele. But Mr Steele seeks to pursue his proceeding as he sees some issues as still outstanding.

[6] The Authority held a case management conference, then given the parties' approaches, allowed them a period to attempt to resolve outstanding issues between themselves. They agreed that if that was not successful the matter could be dealt with on the papers. When resolution was not achieved, a timetable was set for submissions and any additional documents to be provided. Having received those, the Authority sought comment from the parties on whether there was a limitation period issue with the penalties sought. Both parties responded.

[7] 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 of fact and law, expressed conclusions and specified orders made as a result.

Anonymisation or suppression declined

[8] Submissions for BetterSaver seek the anonymity or non-publication of names as a fair and proportionate course. It downplays the nature of the residual matters being considered as narrow, technical issues and says public identification of it, given that it is in the financial services sector would create disproportionate reputational harm.

[9] The Authority has the power to make non-publication orders.¹

[10] The process involves identifying specific risks of harm then weighing the reasonable likelihood of occurrence against the open justice principle.²

[11] There is some risk of BetterSaver facing reputational damage. However, I do not accept the description of, for example, whether KiwiSaver contributions have been forwarded to the IRD, as a minor technical matter. There is a public interest in knowing

¹ The Act, Sch 2, cl 10.

² *MW v Spiga Limited* [2024] NZEmpC 147.

about organisations which fail to forward Kiwisaver contributions to the IRD on behalf of staff. Also, the company's financial position and steps it took could be seen to ameliorate the risk.

[12] The risk of reputational harm has not been satisfactorily established as sufficiently high to warrant anonymity or a non-publication order.

The issues

[13] The issues for investigation regarding BetterSaver are:

- why the money BetterSaver paid Mr Steele in December 2024 is not showing up in Mr Steele's IRD records;
- whether BetterSaver should have to pay interest from 2022 to 2024 on the wages and holiday pay that was outstanding;
- whether there are unpaid Kiwisaver contributions owed by BetterSaver;
- whether Mr Steele is able to pursue a penalty claim and if so, whether BetterSaver should have to pay a penalty for breaches of:
 - section 27 of the Holidays Act 2003 - holiday pay not paid when employment came to an end
 - section 4 of the Wages Protection Act 1983 - deductions from wages
 - section 130 of the Employment Relations Act - failure to keep or provide wages and time records
 - the employment agreement - failure to pay wages; and
- if either party should be required to contribute to the other's costs.

[14] Submissions for Mr Steele also refer to Mr Taylor as a person involved in breach of minimum employment standards under s 142W of the Act and seek leave to seek recovery from him if BetterSaver is unable to pay.

Mr Steele's completion of work at BetterSaver and seeking of payment

[15] Mr Steele worked from April to August 2022 for BetterSaver. His final date of employment was 26 August 2022, after being made redundant. There were reported difficulties financing the enterprise, in circumstances where a number of companies were under financial pressure.

[16] Relations thereafter seemed fairly convivial between Mr Taylor and Mr Steele with BetterSaver seeking a new investor but indicating there may be some delay in payments. Submissions for the company characterise it deliberately deciding to continue to operate the business during this difficult period, rather than ceasing operations entirely, which ensured payment could ultimately be made.

[17] Mr Steele sought outstanding wages plus holiday pay owing to him. In late 2022 BetterSaver CEO and director Joe Taylor confirmed by email \$9,723.08 gross as the amount owed to Mr Steele and hoped for some payment dates to be provided. The itemisation of the amount owing, which Mr Steele sought, was not provided.

[18] Intentions to pay at some point, including via a repayment plan, continued to be expressed, but no money was received by Mr Steele. His myIR income summary for the tax year to 31 March 2023 records income from BetterSaver when he did not receive corresponding payments at that time. The entry was later removed. Mr Steele reports assessment for additional tax as a result and having to get accounting assistance to sort the situation out.

[19] Repeated acknowledgement of the debt did not result in payment. After some time, Mr Steele sought representation to try to obtain receipt of his entitlements. Despite good intentions continuing to be expressed by BetterSaver, Mr Steele's representative was unable to achieve payment and had to lodge his claim with the Authority. BetterSaver's response was that it was working to resolve the issue as soon as possible and was happy to attend mediation if required. As noted above, mediation was held but did not immediately resolve matters. Later a net payment was made on 20 November 2024. Wages and time records requested have not been provided thus making assessments about wages, tax and KiwiSaver difficult.

Records and tax

[20] Mr Steele's Inland Revenue records fail to show any PAYE tax receipt recorded relating to the payment made to him in late 2024. BetterSaver should forthwith pay any PAYE outstanding to the IRD regarding Mr Steele.

[21] BetterSaver's wages and time records have also not been provided and should forthwith be sent to Mr Steele.

Interest is payable

[22] BetterSaver accepts that interest is payable on the net wage arrears amount, with the interest amount it sees as owing as \$844.06.

[23] The employment agreement provides that payment is to be made on a monthly basis. In the absence of other information, I conclude from KiwiSaver records that payment, at the latest, should have been made by the 20th of the month following when the work was undertaken. Interest should be calculated on the gross amounts owing. Interest is therefore payable from 20 September 2022 to the date of payment 20 November 2024.

[24] The Civil debt interest calculator assesses the interest owing for the period of unpaid wages and holiday pay as \$1,130.31 and this is to be paid by BetterSaver within 28 days of the date of this determination.³ Further interest regarding KiwiSaver is outlined below.

Kiwisaver looks to be payable

[25] Payments were made towards Mr Steele's KiwiSaver by BetterSaver from May to August 2022. There is no indication in Mr Steele's KiwiSaver accounts provided to the Authority of any payment on behalf of BetterSaver in the period from September 2022 to September 2025. Thus it appears that Kiwisaver, at least as regards the final payment, was not made by BetterSaver for Mr Steele.

[26] BetterSaver says it understood that it had paid Kiwisaver contributions for Mr Steele however, there was a complication with getting confirmation of that (with an advisor on parental leave) and if that turned out not to be the case, it was willing, not having knowingly delayed payment, to pay the sums owing plus interest under the Civil debt calculator.

[27] In the absence of evidence of BetterSaver making payment towards Mr Steele's KiwiSaver account regarding the wages belatedly paid to him in November 2024, BetterSaver is to pay to the IRD within 28 days of the date of this determination:

- (a) its contribution for his Kiwisaver account regarding the \$9,723.08 gross payment, estimated at \$291.69;

³ [Civil debt interest calculator | New Zealand Ministry of Justice](#)

- (b) interest on its contribution, estimated at \$291.69, from 20 September 2022 to the date of payment calculated under the Civil debt interest calculator;
- (c) any outstanding employee deductions which have not been sent to the IRD; and
- (d) interest on any outstanding employee deduction from 20 September 2022 to the date of payment calculated under the Civil debt interest calculator.

Penalty sought

[28] Mr Steele seeks a penalty be imposed on BetterSaver for breaches of statute and the employment agreement.⁴ This covers alleged breaches:

- s 27 of the Holidays Act 2003 - holiday pay not paid when employment came to an end
- s 4 of the Wages Protection Act 1983 - deduction from wages
- s 130 of the Employment Relations Act 2000 -failure to keep or provide wages and time records
- the employment agreement - failure to pay wages.

Penalty outside limitation period

[29] The first question which needs to be considered is whether Mr Steele sought a penalty within the limitation period under s 135(5) of the Act:

An action for the recovery of a penalty under this Act must be commenced within 12 months ...after the earlier of-

- (a) the date when the cause of action first became known to the person bringing the action: or
- (b) the date when the cause of action should reasonably have become known to the person bringing the action.

[30] Submissions on behalf of Mr Steele raise these arguments:

- (a) the cause of action was not reasonably known until November 2023;

⁴ The Act, s 134 and Wages Protection Act, s 13.

- (b) regardless, the penalty for breach of s 130 of the Act is within time;
- (c) the non-payment constitutes an on-going breach; and
- (d) an extension should be granted.

[31] BetterSaver considers the limitation period to have expired on all the penalty applications made by Mr Steele.

[32] Mr Steele's employment was terminated in August 2022. His final pay including holiday was due shortly thereafter. This covers most of the penalties sought.

[33] The action here in the Authority was commenced when Mr Steele first lodged his statement of problem in the Authority – 20 May 2024.

First argument

[34] The submissions for Mr Steele refer to the cause of action becoming known or should have become known to him only in November 2023 when he first sought expert advice. So the 12 month limitation period should run from then.

[35] Mr Steele is suggested to have no particular employment law expertise so should not have known the precise date when his final pay became legally due. However, he was employed as a business development manager and his employment agreement specified that remuneration will be paid on a monthly basis.⁵ A November 2022 email supports him being aware of there being money owed to him at that point.

[36] In *New Zealand Post Primary Teachers' Association Inc v Secretary of Education* the Employment Court described a cause of action as a "factual situation that enables one party to obtain a remedy from the Court against another party".⁶

[37] I am satisfied that Mr Steele was aware from 2022 that there was an obligation to pay him wages and holiday pay, on a statutory or contractual basis. He did not lodge his penalty application until May 2024 so the Holidays Act, Wages Protection Act and employment agreement penalties are not saved under this argument.

⁵⁵ Employment agreement, cl 6.2.

⁶ *New Zealand Post Primary Teachers' Association Inc v Secretary of Education* [2020] NZEmpC 74 at [42], citing *Letang v Cooper* [1965] 1 QB 232 (CA) at 242-243.

Second argument

[38] The time for a penalty regarding the failure to provide wages and time records runs from a reasonable period for provision of the records, after they are sought. On the evidence before the Authority Mr Steele did not personally seek those records. They are first sought in the letter of 2 November 2023 from Mr Steele's representative. Mr Steele's first statement of problem in May 2024 sought a penalty for the breach of s 130 of the Act so is within 12 months of when there was a failure to provide the records sought. A penalty is available.

Third argument

[39] The next argument is that the non-payment of outstanding wages and holiday pay became an ongoing breach.

[40] Reference is made to *Payne v Chief Executive of the Ministry for Primary Industries* where it was stated that each non-payment could potentially be found to be a breach establishing a cause of action.⁷ The difference is that that case related to employees with on-going employment regarding payments that were argued to be payable in every pay period, whereas in this case Mr Steele's employment finished in 2022 so all payments related to the time leading up to or shortly after that point.

[41] The argument for Mr Steele is that Mr Taylor promised in December 2023 to start drip feeding cash monthly. The communication relied on is a 15 December 2023 email from Mr Taylor to seemingly Mr Steele's former colleague, although the email does note Mr Taylor having spoken to a number of "you directly over the last month", presumably former staff.

[42] The email states that if the investor is not signed by 1 March enabling full payment to be made, Mr Taylor will start drip-feeding cash monthly. I struggle to see what is described as this "promise" or "undertaking" by Mr Taylor and failure to honour it as extending the time from which the limitation period runs.

[43] This issue was considered in *NZ Amalgamated Engineering etc IUW v Rotorua Motor Bodies Ltd*, where Judge Colgan, as he then was, held that the limiting provisions could not be ameliorated by categorising breaches as continuing:

⁷ *Payne v Chief Executive of the Ministry for Primary Industries* [2025] NZERA 79.

Although, of course, the employer's liability to pay wages is of a continuing nature after the initial breach of the award by non-payment, I find that the 'arising' of 'the cause of action' occurs at the first instant of breach. Looked at another way, even although the cause of action continues from that instant it is the 'arising' of that cause of action which is significant and which triggers the limitation timer ... In this case the cause of action arose from the time when the union might first have been able to have prosecuted the employer for the breach or, more likely, to have sought compliance ...

[44] There the failure to pay proper holiday pay and arrears of wages could not have arisen more than seven days following the worker's resignation.

[45] I have considered whether the provision about when the cause of action "should reasonably have become known" to Mr Steele may provide an extended time. In the absence of other evidence, statements that payments would be made soon or a timetable provided are not sufficient to establish that Mr Steele can be said to have not reasonably have known that his wages and holiday pay were owing shortly after he finished his employment in August 2022.

[46] This argument does not succeed.

Fourth argument

[47] Alternatively, submissions for Mr Steele seek that the Authority grants an extension of time for the bringing of a penalty application. There is acknowledgement that the Employment Court in *Blue Water Hotel Ltd v VBS* established that general discretionary powers may not override specific statutory limitation periods.⁸

[48] Submissions argue that the absence of a specific and detailed pathway to enable an extension for penalty claims should not be interpreted as an absolute prohibition on extending time. Particularly, where Parliament has not prescribed a test for extension, the matter falls to be considered under the Authority's broad jurisdiction in ss 219 and 221 of the Act to "more effectually dispose of any matter before it according to the substantial merits and equities of the case".

[49] In *Blue Water Hotel* a full bench of the Employment Court examined whether the three-year time limit in s 114(6) of the Act for commencing a grievance action after the date the grievance was raised could be extended. It held that ss 219(1) (validation

⁸ *Blue Water Hotel Ltd v VBS* [2018] NZEmpC 128.

of informal proceedings, etc) and 221 (joinder, waiver and extension of time) of the Act cannot be used to extend the time in s 114(6).

[50] Regarding the Act's s 135(5) the Court noted that there was already the possibility of a later date by the reference to the date the cause of action "should reasonably have become known" in s 135(5)(b) – the reasonable discoverability test.⁹ I add the exception in s 135(6) of the Act – where the Court refuses to make a pecuniary penalty order, an action for recovery of a penalty in relation to the same matter must be commenced within three months of the refusal.

[51] In terms of s 114(6) of the Act the Court stated:

Were the general powers of extension to be available, there would be no time limits at all. Time limits are just that; if they are to be open to extension, express language is required.¹⁰

[52] The same comment is applicable to s 135(5). Penalties, which are sometimes described as quasi-criminal in nature, would be available with effectively no time limit at all. I must conclude that the particular time limitation provisions in s 135(5) should have primacy over the general powers found in ss 219 and 221. There is no power to extend.

Penalty awarded

[53] I have considered whether a penalty should be awarded regarding the breach of s 130 of the Act for failing to provide wages and time records and conclude that it should be.

[54] No justification has been provided by BetterSaver. On the information available, it is a company in the financial industry and should be able to comply with record keeping obligations. In the absence of other evidence, I cannot but conclude that the failure to provide the records was intentional. This failure has caused difficulties for Mr Steele and his representatives establishing what he is owed and what is going on with tax and Kiwisaver payments. These factors support a penalty being imposed and are also relevant to the assessment of the size of the penalty.

⁹ Above, at [42].

¹⁰ Above, at n [96].

[55] I conclude that a penalty of \$2,000 for breach of s 130 of the Act is to be paid by BetterSaver, with a quarter (\$500) going to the Crown via payment into the Authority's account and three quarters (\$1,500) to be paid to Mr Steele, both within 28 days of the date of this determination.

Mr Taylor as person involved

[56] Mr Steele seeks to have leave granted for wages and other money payable to be recovered from Mr Taylor as a person involved in breaches of employment standards if BetterSaver defaults in payment.

[57] The breaches of employment standards which submissions for Mr Steele rely on are the non-payment of wages and holiday pay.¹¹

[58] Under s 4 of the Wages Protection Act 1983 an employer shall pay the entire amount of wages when they become payable to a worker without deduction. No exceptions apply here and BetterSaver clearly owed Mr Steele his wages from shortly after his employment finished in August 2022 and payment was not made until November 2024, a breach of s 4 of the Wages Protection Act.

[59] Under s 27 of the Holidays Act holiday pay must be paid when the employee's employment comes to an end. That did not occur here and non-payment of entitlements under the Holidays Act is a breach of employment standards.¹²

[60] Submissions suggest Mr Taylor was directly and knowingly concerned in the on-going failure to pay Mr Steele's final wages and holiday pay.

[61] Mr Taylor is the person who responded to Mr Steele's initial request for confirmation of the amount owing to him and request for payment. Mr Taylor confirmed the total amount owing in wages and holiday pay. He is also the only person to communicate with Mr Steele's representative and with the Authority in this matter.

[62] In addition to dealing with Mr Steele's payment claims, Mr Taylor was one of BetterSaver's directors for the period Mr Steele was employed and from December 2023 onwards has been the sole director. Thus he was the sole director at the time Mr Steele received the payment of wage arrears in 2024.

¹¹ Definition of employment standard in s 5 of the Act.

¹² The Act, s 5.

[63] On the evidence before the Authority Mr Taylor was a person who aided or procured the breaches and was otherwise directly knowingly concerned in and a party to the breaches, as set out in s 142W of the Act.

[64] Leave is granted to recover from Mr Taylor wages or other money owing by BetterSaver to the extent the company is unable to pay the arrears.

Summary of orders

[65] BetterSaver Ltd is ordered to pay to Cameron Steele within 28 days of the date of this determination:

- Interest of \$1,130.31 for the period of outstanding wages and holiday pay;
- Regarding KiwiSaver:
 - its contribution for his Kiwisaver account regarding the \$9,723.08 gross payment, estimated at \$291.69;
 - interest on its contribution, estimated at \$291.69, from 20 September 2022 to the date of payment calculated under the Civil debt interest calculator;
 - any outstanding employee deductions which have not been sent to the IRD; and
 - interest on any outstanding employee deduction from 20 September 2022 to the date of payment calculated under the Civil debt interest calculator; and
- \$1,500 of the penalty which is payable to Mr Steele.

[66] BetterSaver is also to pay to the Authority's account for payment to the Crown, \$500 of the penalty.

[67] Leave is granted to recover arrears from Mr Taylor to the extent BetterSaver is unable to pay.

Costs

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

[69] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Steele may lodge and serve a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum BetterSaver 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.

[70] The costs for a one-day investigation meeting on the Authority's "daily tariff" would be \$4,500, with potential for an adjustment upwards or downwards.¹³ As this matter was determined on the papers without an investigation meeting a portion of that amount, would usually be the starting point unless any adjustments are warranted.

Nicola Craig

Member of the Employment Relations Authority

¹³ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1