

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 745
3306560

	BETWEEN	LOVEPREET SINGH Applicant
	AND	ARIANA ENTERPRISES LIMITED First Respondent
	AND	BHUPINDER KAUR Second Respondent
	AND	AMRINDER SINGH Third Respondent
Member of Authority:	Peter van Keulen	
Representatives:	John Wood and Susanne Lass for the Applicants Bhupinder Kaur for the Respondents	
Investigation Meeting:	7 July 2025 in Christchurch	
Submissions Received:	18 July 2025 from the Applicants 21 August 2025 from the Respondents	
Date of Determination:	18 November 2025	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Lovepreet Singh was living in India when he became aware of an opportunity to work for Ariana Enterprises Limited's restaurant business in Timaru.

[2] Mr Singh says that in discussions about possible work in New Zealand he was told by Amrinder Singh, the husband of Bhupinder Kaur who was the manager of Ariana Enterprises' restaurant businesses, that he had to pay INR 3,000,000 (NZ\$60,000) for his job. Mr Singh says he paid INR 3,000,000 as directed and was then given his Accredited Employer Work

Visa (AEW Visa) enabling him to work as a Kitchen Hand for Ariana Enterprises.

[3] Mr Singh travelled to New Zealand in August 2023 and commenced work at Ariana Enterprises' Turkish restaurant on 28 August 2023.

[4] Mr Singh says that in the course of his work for Ariana Enterprises:

(a) He worked variable hours often less than the minimum hours in his employment agreements but sometimes more than 30 hours per week. Regardless of the hours worked for either company he was not paid for all the hours worked at the correct wage rate being \$29.66.

(b) He did not receive correct payment for public holidays that he worked.

(c) He was unjustifiably dismissed by Ariana Enterprises.

[5] Ms Kaur denies demanding and receiving NZ\$60,000 from Mr Singh for his employment.

[6] Ariana Enterprises says:

(a) It had an agreement with Mr Singh that varied the hours he would work and his wage rate such that the hours and wage rate in his employment agreements were not correct. Based on the agreed variation and the hours he worked as recorded in time sheets, Mr Singh was paid correctly for the work he did, including any work on public holidays.

(b) Mr Singh was dismissed by Ariana Enterprises as the restaurant he worked in was sold – this dismissal was justified.

The Authority's investigation

[7] Mr Singh raised personal grievances for unjustified action causing disadvantage and unjustified dismissal. He then lodged a statement of problem in the Authority, which set out claims for:

(a) Repayment of NZ\$60,000 being an unlawful premium demanded by the Ms Kaur and paid by Mr Singh.

(b) Wage arrears for unpaid work and public holiday entitlements.

(c) A personal grievance for unjustified dismissal.

(d) Orders against Ms Kaur and Mr A Singh as persons involved in the breaches pursuant to ss 142W and 142Y of the Employment Relations Act 2000 (the Act).

(e) Penalties against Ariana Enterprises and Ms Kaur.

[8] I investigated this employment relationship problem by receiving written evidence and documents, holding an investigation meeting on 7 July 2025 and assessing the written submissions of the parties' representatives.

[9] In my investigation meeting, under oath or affirmation, the witnesses confirmed their written statement and gave oral evidence in answer to questions from myself and the parties' representatives.

[10] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Unlawful premium

[11] Pursuant to s 12A Wages Protection Act 1983, no employer may seek or receive a premium for employment from any person employed by it (or proposed to be employed by it) and if this occurs then the employee may recover the amount paid, as a premium, through the Authority.

[12] To resolve Mr Singh's claim for repayment of an alleged premium I must decide, on the evidence I have received, whether Ms Kaur through Mr A Singh demanded a payment for employment with Ariana Enterprises, from Mr Singh and if so, if he paid it.

Analysis

[13] Mr Singh says he was initially told about the possibility of obtaining a work to

residency visa in New Zealand by a relative. He was given Mr A Singh's phone number, and he called Mr A Singh. Mr A Singh told him that the cost of securing a job with Ariana Enterprises in New Zealand was INR 3,000,000. Based on his discussions with Mr A Singh, Mr Singh paid INR 3,000,000 as follows:

- (a) INR 500,000 to Daljit Kaur, Ms Kaur's sister-in-law on 22 May 2023.
- (b) A further INR 200,000 to Ms D Kaur on 9 July 2023.
- (c) Two payments on 25 July 2023, by bank transfer to Ms Kaur's bank account, of INR 699,995 and INR 699,995.
- (d) A payment on 27 July 2023 of INR 705,257 by bank transfer to Ms Kaur's bank account.
- (e) A payment on 3 August 2023 of INR 200,000 by bank transfer to Ms Kaur's bank account.

[14] Ms Kaur's response to this evidence is that she did not demand any payment of money from Mr Singh as a premium for employment, either directly or through Mr A Singh. She says Mr Singh owed Ms D Kaur INR 3,000,000. As proof of this debt Ms Kaur produced a copy of an affidavit verified in India by Mr Singh that states he had borrowed INR 3,000,000 from Ms D Kaur. And Ms Kaur says that repayment of that loan was made in part directly to her as she needed money at the time of repayment and payment rules in India prevented Mr Singh from paying the whole sum owed to Ms D Kaur directly to her.

[15] In response to Ms Kaur's evidence about a loan with Ms D Kaur, Mr Singh says he did not sign the affidavit that Ms Kaur has produced, and he never had any financial dealings with Ms D Kaur. He also produced an affidavit declared in India by Ms D Kaur in which Ms D Kaur declares that she has had no previous financial dealings with Mr Singh.

[16] Clearly the evidence of Mr Singh and Ms Kaur is conflicting. In assessing the evidence to establish which I prefer I note the following:

- (a) Mr Singh provided written evidence of the various payments he says he made and then supported that with oral evidence – his answers to my questions were

consistent and credible.

- (b) Mr Singh also provided contemporaneous documents evidencing the various transactions, including bank statements and bank transfer records.
- (c) Mr Singh's version of what he paid and why he paid made sense and appeared to be credible.
- (d) Ms Kaur's evidence lacked substance – there was no explanation for how Ms D Kaur and Mr Singh knew each other and why Ms D Kaur had loaned money to Mr Singh.
- (e) Ms Kaur's affidavit evidence is questionable given Mr Singh's denial and the affidavit of Ms D Kaur. At the end of the day, it would have been best if Ms Kaur had arranged for Ms D Kaur to give evidence in the investigation meeting – the absence of direct evidence is a significant factor. .

[17] Overall, I preferred the evidence of Mr Singh and am satisfied that Ms Kaur, through Mr A Singh, demanded payment from Mr Singh for his employment with Ariana Enterprises and Mr Singh made the various payments as described. In this case Ms Kaur is to repay the unlawful premium of INR 3,000,000 (NZ\$60,000) to Mr Singh.

Wage arrears

[18] When Mr Singh arrived in New Zealand he worked in Ariana Enterprises' Turkish restaurants in Timaru.

[19] Mr Singh's evidence is that there were rosters for working hours but rather he was told what hours to work, and these hours were often changed at short notice or cancelled. Sometimes Mr Singh worked over 30 hours in a week but generally he worked less than 30 hours which was the minimum hours recorded in his employment agreement. Mr Singh was not paid regularly for the work he did and was consistently underpaid. In the end, Mr Singh was not paid correctly for all the hours he had worked and the pay he did receive was not paid at the correct hourly rate

[20] Mr Singh's claim for wage arrears is based on his own record keeping of the hours he

worked and the payments he did receive including in connection with holidays. His claims are supported by contemporaneous documents including his record of hours worked and bank statements.

[21] Mr Singh quantifies the amount of wage arrears including holiday pay owed to him by Ariana Enterprises as \$4,505.18 (net)¹ and \$30,806.23 (gross).²

[22] Ms Kaur's evidence in response to Mr Singh's wage arrears claim is that when Mr Singh worked for Ariana Enterprises its restaurant businesses did not make enough money to pay him for 30 hours per week (the hours in his employment agreement) at \$29.66 (the wage rate in his employment agreement). So, she had an agreement with Mr Singh that he would be given hours of work based on a fair distribution of the work between all employees and he would be paid minimum wage (at the time \$22.70). And, based on this, Ms Kaur says Mr Singh was paid correctly for the hours he worked at the minimum wage rate.

[23] I find that Mr Singh's calculation of the hours he worked and the money he is owed to be accurate. I do not accept that there was an agreement with him that he would work reduced hours at minimum wage – rather both things were imposed on him by Ms Kaur. Mr Singh is owed as \$4,505.18 (net) and \$30,806.23 (gross) by Ariana Enterprises.

Unjustifiable dismissal

Issues

[24] The issues for an unjustifiable dismissal grievance are:

- (a) Was the employee dismissed; and
- (b) If so, were the actions of the employer in deciding to dismiss the employee, justifiable?

What happened?

[25] On 14 June 2024 Mr Singh received a letter from Ms Kaur, as the director of Ariana Enterprises, giving him one month's notice of termination as the business was in the process of being sold.

¹ This being the shortfall of money he received against what is recorded in his income and tax summary from IRD.

² This amount comprising wage arrears, public holiday entitlements and annual leave.

[26] In response to this Mr Singh sought legal advice and then resigned, without giving notice, on 3 July 2024.

Was Mr Singh dismissed?

[27] As Mr Singh resigned before the end of the one month notice period he was not dismissed.

[28] In the circumstances, I am satisfied that Mr Singh can pursue a personal grievance for unjustified action causing disadvantage in connection with the consultation undertaken over the possible dismissal. That is, a grievance based on whether in deciding to dismiss Mr Singh, Ariana Enterprises act justifiably.

Were Ariana Enterprises' actions in dismissing Mr Singh justified?

[29] The test for justification is set out in s 103A of the Act; the test being whether the actions of the employer were what a fair and reasonable employer could have done in all the circumstances. Applying that test here the question is whether Ariana Enterprises' actions in reaching the decision to dismiss Mr Singh were the actions a fair and reasonable employer could have done in all the circumstances at the time – this applies to the process adopted by Ariana Enterprises and the substantive justification for the decision.

[30] In terms of process, a fair process is governed by s 4(1A) and s 103A of the Act. In this case a fair process involves Ariana Enterprises consulting with Mr Singh over the potential sale of its business and giving him an opportunity to provide feedback on the potential loss of his employment.

[31] Having considered the evidence I find that Ariana Enterprises did not consult adequately with Mr Singh over the sale of its business and his potential dismissal as a result.

[32] For this reason, notwithstanding Mr Singh's resignation, Ariana Enterprises acted unjustifiably in coming to a decision to dismiss Mr Singh and this caused a disadvantage to Mr Singh's employment.

Remedies for Mr Singh's personal grievance

[33] As Mr Singh has been successful with a personal grievance, I must turn to consider

what remedies he may be entitled to. In this regard, I may award any of the remedies provided for under s 123 of the Act.

The remedies sought by Mr Singh

[34] Mr Singh seeks:

- (a) Compensation - this is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers from the unjustified actions of the employer and the award is made pursuant to s 123(1)(c)(i) of the Act.
- (b) Lost remuneration – if an applicant has lost remuneration because of their personal grievances then pursuant to sections 123 and 128 of the Act, I may reimburse them for their lost remuneration. In this case I am not satisfied that Mr Singh lost remuneration because of the unjustifiable actions, any loss of remuneration comes from his decision to resign.

[35] So, I find Mr Singh is entitled to compensation for his personal grievance but not lost remuneration.

[36] I will turn to consider the level of compensation for Mr Singh. My task is to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out of the unjustified actions by Ariana Enterprises. Recent decisions of the Employment Court provide guidance on this exercise of quantification.³

Compensation

[37] Mr Singh gave evidence of being stressed and depressed because of being told of his dismissal. I am satisfied that the quantum for the harm and loss suffered by Mr Singh is valued at \$16,000.00.

Contribution

[38] As I have awarded compensation to Mr Singh, I must now consider whether he contributed to the situation that gave rise to his grievance.⁴ This assessment requires me to

³ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

⁴ Section 124 of the Act.

determine if Mr Singh behaved in a manner that was culpable or blameworthy, and this behaviour contributed to his grievance.⁵

[39] Having assessed the evidence I conclude that Mr Singh did not act in a way that contributed to his grievance such that the compensation I have awarded should be reduced.

Persons involved in the breaches

[40] Mr Singh did not continue with his application to have Mr A Singh declared a person involved in the breaches.

[41] Mr Singh seeks orders against Ms Kaur as a person involved in breaches of employment standards pursuant to ss 142W and 142Y of the Act.

[42] Having assessed the evidence I am satisfied that Ms Kaur was sufficiently involved in the day-to-day management of Ariana Enterprises' restaurant businesses that she knew of or made many of the decisions about the work Mr Singh did and the payment he received. Ms Kaur is a person involved in the breaches of employment standards by Ariana Enterprises.

[43] As a result of my order against Ms Kaur if Ariana Enterprises does not pay the wage arrears owed to Mr Singh, he can apply to Authority for an order that Ms Kaur is to pay.

Penalties

[44] I am not satisfied that there is a basis to award the various penalties sought in the statement of problem given the way they are articulated.

[45] I will not order any penalties against Ariana Enterprises or Ms Kaur.

Summary and orders

[46] Ms Kaur demanded and received a premium of INR 3,000,000 (NZ\$60,000) from Mr Singh for his employment with Ariana Enterprises. Ms Kaur must pay Mr Singh INR 3,000,000 (NZ\$60,000).

[47] Ariana Enterprises failed to pay Mr Singh the correct wage amount for all the hours that worked and public holidays he worked. Ariana Enterprises must pay Mr Singh \$4,505.18

⁵ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

(net) and \$30,806.23 (gross).

[48] In settlement of Mr Singh's personal grievance Ariana Enterprises must pay Mr Singh \$16,000.00 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

[49] Ms Kaur is a person involved in breaches of employment standards – Mr Singh may apply to have her pay any of the wage arrears that Ariana Enterprises does not pay.

Costs

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

[51] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Singh may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ariana Enterprises and Ms Kaur 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.

[52] 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.⁶

Peter van Keulen
Member of the Employment Relations Authority

⁶ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1