IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 846
3310720

	BETWEEN	A LABOUR INSPECTOR Applicant
	AND	KCR BOUTIQUE PAINTERS & DECORATORS LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	Erin Spence for the Applicant No appearance for the Respondent
Investigation Meeting:	On the papers
Submissions received:	Up to 3 October 2025 from Applicant No response from the Respondent
Determination:	23 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] KCR Boutique Painters and Decorators Limited (KCR) provides painting and decorating services in the Waikato area. Its director operates a number of legal entities providing the services including SGD P&D Limited (SGD) and Simply Girls Painters and Decorators Limited (SGP).

[2] Following a complaint from a former employee of SGD and KCR, a Labour Inspector commenced an investigation on 17 February 2023 into compliance with minimum employment standards. The investigation began with the complainant's concerns and expanded to include four other "sampled employees". Employment agreements and wage and leave records were provided for those employees and indicated that, from 22 August 2022 onwards, KCR was the employer for all those employees.

[3] On 17 November 2023, the Labour Inspector issued an Improvement Notice (IN) to KCR pursuant to s 223D of the Employment Relations Act 2000 (the Act) requiring KCR to:

a. pay wage arrears and holiday pay;
b. to conduct a review of their wage and time records for all current and former employees from 5 July 2022;
c. pay any arrears identified; and
d. maintain accurate wage, time and leave records moving forward.

[4] KCR did not file an objection to the IN. To the Authority's knowledge at the date of this determination, there is no evidence of compliance with the IN and the monies owed to the named employees remains outstanding.

[5] This determination resolves the issue of whether KCR has complied with the IN, and whether compliance should be ordered. It also considers the imposition of a penalty for non-compliance with the IN.

Anonymisation

[6] The sampled employees selected by the Labour Inspectorate are anonymised to protect their privacy. Their information was used by the Labour Inspector to support the issuance of the IN therefore I consider it is appropriate they are not specifically named.

The Authority's investigation

[7] A case management conference took place on 1 September 2025 to discuss progression of this matter in the Authority. As granted by order of the Authority on 13 June 2025, substituted service was confirmed by affidavit of 7 July 2025 from Erin Spence as Labour Inspector to an address with an empty lot in Waikato and by email to two known email addresses. The Labour Inspectorate earlier received several responses from Ms Courtenay-Roe from one of those email addresses so that was a valid email address. As I was satisfied that service was effected, the call proceeded on that basis.

[8] During the case management conference, Ms Spence advised that all documentation for the Labour Inspectorate was provided at time of filing so no further timetabling was required for applicant documents.

[9] Following the case management conference, a copy of the Authority directions, submissions and supporting documents were served to a residential address in Hamilton provided for KCR and also emailed to the known email addresses on 1 October 2025. An affidavit was provided from a Labour Inspector to verify service.

[10] The Authority was also provided with a copy of a complaint made by the residents at that address to the Companies Office claiming that the address was falsely used to register these businesses and they had no connection to the director of these companies or its legal/business advisor Mr Haggar.

[11] KCR was granted 14 days to reply to the Authority. If there was no communication within that period, the matter would be determined on the papers. No response or submissions were received from KCR.

[12] As permitted by s 174E of the 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.

The issues

[13] The issues requiring investigation and determination were:

a. Did the Labour Inspector have reasonable grounds under s 223D(1) of the Act to issue the IN?
b. If so, was the IN worded in accordance with s 223D(2) and (3) of the Act and in such a way as to be capable of compliance?
c. If so, did KCR fail to comply with the Improvement Notice issued by the Labour Inspector under s 223D of the ERA 2000, specifically:
    i. The payment of $156.03 (gross) minimum wage arrears to Employee C;
    ii. The payment of $1321.84 (gross) annual holiday pay owed upon termination arrears to Employee E;

iii. The calculation and payment of minimum wage arrears for all former and current employees from 05 July 2022;
iv. The calculation and payment of annual holiday pay arrears for all former and current employees from 05 July 2022; and
v. The retaining and maintenance of accurate and compliant wages and time records, and holiday and leave records, for all current employees.

d. And, if so:
    i. Whether a compliance order should be issued under s 137(1)(a)(iiib) of the ERA 2000;
    ii. Whether KCR should be required to pay a penalty for failure to comply with the Improvement Notice under s 223F of the ERA 2000;
    iii. Whether KCR should be required to pay interest on all arrears owed to employees from the date the Improvement Notice was due to be complied with; and
e. Whether either party should contribute to the cost of representation of the other party.

Background

[14] Based on the New Zealand Companies Office Register, Katherine Courtenay-Roe (also known as Kate McLaren) is the director of KCR. The address registered to KCR on the register is an empty lot. Ms Courtenay-Roe operates a number of other legal entities, including Simply Girls Painters and Decorators Ltd.

[15] On 29 September 2022, the Labour Inspectorate received a complaint from the complainant alleging non-payment of annual holiday pay owed upon termination of the complainant's employment.

[16] On 17 February 2023, the applicant emailed the respondent advising the commencement of an investigation and attached a request for employee details. KCR was non-responsive to attempts to contact it.

[17] On 17 March 2023, a notice requiring supply of employment records for the past six years was sent to KCR. Further on 23 March 2023, the Labour Inspectorate

requested wage and time records, holiday and leave records and employment agreements for the period 5 July 2022 to 23 March 2023 for five employees.

[18] On 28 March 2023, KCR provided the following written information:

a. For Employee A – a casual employment agreement with KCR, signed 11 December 2022 at $25 per hour. Two payslips showed that 103 hours were paid plus holiday pay at eight percent between 12 December 2022 and 8 January 2023.

b. For Employee B – a casual employment agreement with KCR, signed 22 November 2022 at $21.20 per hour. Four payslips showed 95.75 hours were paid plus holiday pay at eight percent between 3 October 2022 and 8 January 2023.

c. For Employee C – a casual employment agreement with KCR, signed 17 August 2022 at $21.20 per hour. Four payslips showed 123.5 hours were paid plus holiday pay at eight percent between 8 August 2022 and 2 October 2022. Calculation of wages owed by the Labour Inspector show that C is owed minimum wage arrears of $156.03.

d. Employee D – a casual employment agreement with KCR, signed 7 August 2022 at $21.20 per hour. Eight payslips showed 303.25 hours were paid plus holiday pay at eight percent between 8 August 2022 and 11 December 2022.

e. Employee E had a permanent full time employment agreement with SGD from 20 May 2021 at $20 per hour. Hours were not specified in the agreement but are interpreted as 40 hours per week. The Labour Inspectorate claimed that the director moved Employee E from permanent employment over to a casual employment agreement with KCR from 08 August 2022 without the complainant's knowledge. I could not locate evidence of this as the casual employment agreement with KCR, was signed by both parties on 7 August 2022 at $21.20 per hour though Employee E does not recall signing this agreement. Three payslips showed 139.25 hours were paid plus holiday pay at eight percent between 8 August 2022 and 18 September 2022. Calculation of wages owed show that Employee E is owed holiday pay of $1,321.84.

[19] On 11 August 2023, the Labour Inspector emailed the draft investigation report to KCR who was invited to read the report and provide comments. No responses to this or the subsequent final report were received.

Analysis

Did the Labour Inspector have reasonable grounds to issue the IN?

[20] The Act provides that a Labour Inspector who believes on reasonable grounds that any employer is failing, or has failed, to comply with any provision of the relevant Acts may issue the employer with an improvement notice that requires the employer to comply with the provision.[1]

[21] Without the benefit of KCR's submission, I have relied heavily on the investigation report and corroborating evidence provided.

[22] There were four alleged breaches of employment standards identified by the Labour Inspectorate in the IN (and corresponding 11 August 2023 investigation report):

a. Insufficient wage and time records in breach of s 130 (b),(c) and (g) of the Act;
b. In some instances, including Employee C, a failure to pay employees payment for work at not less than the minimum rate in breach of s 6 of the Minimum Wage Act 1983 (MWA);
c. Payment of holiday pay to Employee E upon termination of her employment in breach of s 23 of the Holidays Act 2003 (HA); and
d. Failure to keep a holiday and leave record showing the number of hours worked each day in a pay period and the pay for those hours as required by s 81(2)(c) of the HA.

[23] The two examples contained within the investigation report specifically calculate that Employee C was underpaid for the hours worked when compared to the hours discussed in the text messaging. This resulted in payment below the minimum wage. For Employee E, she signed a permanent employment agreement in 2021 and that would have entitled KCR to accrue her leave entitlements and make payment on termination for any outstanding leave entitlements.

[1] Employment Relations Act 2000, s 223D(1).

[24] In correspondence with the Labour Inspectorate, KCR said that it withheld the final pay as Employee E did not give the required notice period. Even if that was the case (and it is disputed by the Labour Inspectorate), Employee E signed a casual employment agreement. This required the eight percent holiday pay to be paid with each period of employment. The payslips provided for Employee E show she was not paid her holiday pay with each pay.

[25] Various text messages between KCR and each of the employees above, show that the hours paid to the employee did not always match the hours worked that were discussed in the text messages with them. As examples, a text message from Employee B on 22 October 2024 says that they worked 20 hours on Monday, Tuesday, Wednesday and Friday. The corresponding payslip shows that they were paid for 10.75 hours.

[26] The second example for Employee B shows a text message that says they worked for 50.5 hours yet were paid for 46.5 hours. KCR may have deducted hours for meal breaks but there was no evidence to show meal breaks were taken.

[27] For the period ended 4 September 2022, Employee C worked 46 hours across six days and was paid for 33 hours. Even deducting breaks, this still results in a wage shortfall.

[28] There are multiple other examples provided by the Labour Inspector where the hours worked as texted at the time to KCR do not match the hours paid.

[29] From the evidence presented to the Authority, there is monetary loss by at least two employees. I consider that, based on the errors in the sampled employees pay, the text indications that show hours paid did not always match with hours worked in the spreadsheet provided and shows a lack of systematic recording of days and hours of work. I consider that the Labour Inspectorate had reasonable grounds to believe there was an issue of non-compliance in relation to multiple relevant Acts and this warranted an improvement notice.

Was the IN worded in accordance with the Act and in such a way as to be capable of compliance?

[30] There is no prescribed form for an IN under the Act. INs should contain only lawful provisions. The terms should be reasonable and not unduly onerous, as well as being proportionate and formulated to ensure breaches will be rectified.[2]

[31] Applying those legislative requirements to the IN issued on 17 November 2023, the IN clearly outlines, under separate headings, the failings, the reasonable grounds for those conclusions, the nature and extent of those failings and loss and the steps to comply. Dates for compliance are clearly set out as required by the Act.

[32] In limited correspondence with the Labour Inspectorate, KCR advised that it could not comply with the IN because:

a. It now has no employees.
b. In an email of 8 January 2024, KCR indicated that the records were held on MYOB and that it no longer has access to the information.
c. Compliance would require an accountant.

[33] I consider each of these points raised but do not accept that these are sufficient to make it unreasonable to order compliance, particularly:

a. Having no employees make it easier to comply as there will be no recent records to review.
b. The wage records are held for six years and KCR is asked to go back to 5 July 2022. That is not an onerous timeframe.
c. Even if MYOB hold the records, KCR can seek access to those records for the purposes of an IN.
d. Requiring an accountant is not sufficient reason to conclude the IN is not capable of compliance. Ms Courtenay-Roe has already demonstrated through the large number of companies registered and operating under her directorship that she understands basic company business requirements. Additionally, in an email of 3 February 2024 to the Labour Inspectorate, Ms Kate McLaren (previously Katherine Courtney-Roe) refers to her legal / business advisor Al Haggar. If he manages Ms McLaren's legal and business affairs, it follows that he would have the ability to meet the compliance requirements.

[2] *A Labour Inspector v Friends Cuisine of India Limited* [2025] NZERA 326 at [48].

e. There is no indication that KCR has attempted to contact at least the two named employees.

[34] Based on the evidence before the Authority, I conclude the IN was worded in accordance with s 223D(2) and (3) of the Act and in such a way as to be capable of compliance.

Did KCR fail to comply with the IN?

[35] The following requirements in the IN are no longer applicable or required:

a. requirement to maintain wage and time records and holiday and leave records; and
b. the retention of accurate and compliant wages and time records, and holiday and leave records, for all current employees.

[36] There is no information in front of the Authority showing compliance with the IN. In the email of 8 January 2024 from Ms McLaren, she refers to KCR being only used for payroll purposes. If this is the case, then full payroll records should be easily obtainable. For all the reasons given above, I find that the Labour Inspector had reasonable grounds under s 223D(1) of the Act to issue the IN to KCR.

[37] KCR had the opportunity to object to the IN. It was advised of its ability to do so, was given the opportunity to do so, and did not do so.

Compliance order to be issued

[38] The Authority can order compliance with an improvement notice if a person has not complied that notice and its enforcement is enforceable by compliance order.[3] I am satisfied that it is appropriate to do so.

Order

[39] KCR is ordered to comply with the Improvement Notice issued by the Labour Inspector on 17 November 2023, by providing the Labour Inspector with information and documentation as follows:

a. Payment of $156.03 (gross) minimum wage arrears to Employee C; and
b. Payment of $1321.84 (gross) annual holiday pay to Employee E;

[3] Employment Relations Act 2000, s 137(1)(iiib) and in accordance with s 223D(6) of the Act.

c. Undertake the review, calculation and payment of minimum wage arrears for all former and current employees from 05 July 2022, ensure all employees were paid at least the relevant minimum wage rate for each hour worked and provide this to the Labour Inspector; and

d. Undertake the review, calculation and payment of annual holiday pay arrears for all former and current employees from 05 July 2022, ensure all entitlements were paid and provide this to the Labour Inspector;

e. Record attempts to contact past employees.

[40] The timeframe for compliance with this order is within two months from the date of this determination. Payment to Employees C and E can be made to the Labour Inspectorate directly.

Penalties

[41] The Authority has full and exclusive jurisdiction to deal with actions for the recovery of penalties.[4] The relevant penalty relates to failure to comply with an improvement notice issued under s 223D of the Act, pursuant to s 223F(1) of the Act.

[42] The Labour Inspector seeks award of a penalty because KCR has not attempted to comply with the IN.

[43] The imposition of a penalty is discretionary and is generally imposed for the purpose of punishment as well as deterrence. In deciding whether to impose a penalty, and if so, the quantum of that penalty I need to consider the well-established factors in s 133A of the Act and case law.[5]

[44] Applying those factors, I consider the following points relevant:

a. It may well be that there is no breach however KCR failed to undertake the checks required by the IN, therefore failing to assure the Labour Inspectorate that it was compliant. If KCR did not consider it breached the IN requirements, it should have provided the information requested, paid the two amounts owing and complied with the IN;

[4] Employment Relations Act 2000, s 133.
[5] As set out by the Full Court in *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 178.

b. KCR intentionally ignored attempts to communicate with it unless absolutely necessary. The IN was issued after multiple attempts to engage following a legitimate complaint. It failed to do so and its actions show an attempt to ignore rather than work with the Labour Inspectorate.
c. The nature and extent of any loss or damage is not likely to be significant given the small number of employees;
d. The Authority is unaware of any attempts to contact the employees, or repay the two outstanding amounts owed;
e. The employees involved were young employees under the age of 20 years and on minimum wage;
f. A previous employment relationship problem was before the Authority in 2022 with Simply Girls Painters under the directorship of Ms Courtenay-Roe. This related in part to unpaid wage and holiday pay entitlements.[6]
g. KCR says that the company has not been trading since approximately September 2022 and is insolvent. The registrar of companies has initiated action to remove the company from the register. At present the company remains registered.

[45] Public confidence in Labour Inspectorate practice will be undermined if it is perceived that parties can choose not to comply with INs. Employers have a duty to comply with the requirements of an IN, and to comply with minimum employment standards.[7]

[46] On that basis and looking at similar cases, I consider a penalty of $3,000 is appropriate. This is to be paid to the Authority for forwarding to the Crown account.

Interest

[47] Given the comparatively small amounts owed to these employees, the amounts paid and the current financial situation of KCR, no interest on these amounts is awarded.

[6] *Rosser v Simply Girls Painters and Decorators Ltd & Katherine Courtenay-Roe* [2022] NZERA 376.
[7] Above at n 4.

Inclusion of controlling third party

[48] The investigation report of 11 August 2023 concluded that Ms Courtenay-Roe was a person involved in each of the breaches of employment standards as required by s 142W of the Act. However, the Labour Inspector did not name Ms Courtenay-Roe as a controlling third party under s 142Y of the Act therefore she is not included as a respondent in this determination. If the Labour Inspector wishes to seek to recover wages or money owed to one or more employees under s 142Y of the Act then a separate application needs to be made naming Ms Courtenay-Roe (Ms McLaren) personally as a person involved in a breach under s 142W of the Act. Ms Courtenay-Roe must then be given an opportunity to respond to any claims against her.

Costs

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

[50] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the Labour Inspector 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, KCR 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.

[51] 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.[8]

Helen van Druten
Member of the Employment Relations Authority

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