

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 203
3377963

BETWEEN SUKHDEV SINGH KULAR
Applicant

AND THE ARMIER LIMITED
First Respondent

TARWINDER SINGH MANN
Second Respondent

Member of Authority: Marija Urlich

Representatives: Susanne Lass, advocate for the Applicant
Tarwinder Singh Mann, in person

Investigation Meeting: 3 March 2026

Submissions and information received: At the investigation meeting and 6 March 2026, from the Applicant
6 March 2026, from the Respondent

Determination: 2 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Sukhdev Singh Kular was employed by The Armier Limited (TAL) as a security officer from 16 September 2024 until 17 April 2025. He seeks orders for arrears of wages and holiday pay, interest on any award of arrears and penalties. Mr Kular seeks orders against Tarwinder Singh Mann, the sole director and shareholder of TAL in the event TAL is unable to pay wages or other money due.¹ Mr Kular also seeks a contribution to costs.

¹ Employment Relations Act 2000, s 142Y.

[2] TAL operates a security business. It accepts, as confirmed by Mr Mann at the investigation meeting, that it owes Mr Kular wage and holiday pay arrears totalling \$6,577.20 (gross).² TAL seeks instalment payments of those arrears due to the financial position of TAL and says neither interest nor penalties should be ordered.

The Authority's investigation

[3] The Authority has received evidence from Mr Kular and Mr Mann. At the end of the investigation meeting closing submissions were made on behalf of Mr Kular on the substantive issues for determination and in support of a costs award in Mr Kular's favour. A timetable was set for TAL and Mr Mann to file closing submissions in response and provide information to support the order sought for instalment payments. A timetable was also set for Mr Kular to file supporting information for the costs order sought and to respond to the information provided for the instalment order TAL seeks. TAL filed information in support of the instalment order and Mr Kular has filed information and submissions as timetabled.

[4] As permitted by s 174E of the Employment Relations Act 2000 (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. In determining this matter, the Authority has carefully considered all the material before it, including all information received from the parties and the submissions of their representatives.

Issues

[5] The issues identified for investigation and determination are:

- i. Are arrears of wages and holiday pay due and owing?
- ii. Should the payment of interest be awarded on any order of arrears?
- iii. Whether The Armier Ltd has breached the parties' employment agreement by failing to pay wages as agreed for which a penalty should be ordered a portion of which paid to Mr Kular?

² Arrears of \$3,990 (gross) wages and \$2,587.20 (gross) holiday pay.

- iv. Whether Mr Mann was involved in breach of the employment agreement and if so whether a penalty should be ordered a portion of which paid to Mr Kular?
- v. Should leave be granted under s 142Y of the Act to recover any default in minimum entitlements from Mr Mann as a person involved?
- vi. Is payment by instalments of any order required?
- vii. Is either party entitled to costs and/or disbursements?

Discussion

Arrears of wages

[6] TAL accepts it owes Mr Kular arrears of \$3,990 (gross) wages and \$2,587.20 (gross) holiday pay. Mr Mann said the wages were not paid when due because Mr Kular had not provided timesheets and Mr Kular's holiday pay had not been paid when his employment ended because of a discrepancy with payroll.

[7] I am satisfied Mr Kular is due the arrears as claimed under the terms of the parties written individual employment agreement (the IEA) and the relevant statutory provisions and, that these sums remain unpaid.³ TAL is to pay Mr Kular arrears of \$6,577.20 (gross) within 21 days of the date of determination.

Interest

[8] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement. Mr Kular is entitled to an award of interest on the orders of arrears. TAL is ordered to pay interest, using the civil debt interest calculator, within 21 days of this determination, as follows:⁴

- (i) interest on the sum of \$6,577.20 (gross) from 17 April 2025 until the date payment is made in full.

³ Parties IEA dated 8 July 2024, clause 9 remuneration and clause 24.

⁴ www.justice.govt.nz/fines/civil-debt-interest-calculator

Is The Armier Limited liable for a penalty?

[9] Penalties are sought against TAL for breach of the IEA to pay the agreed weekly payment of 35 hours at \$30 per hour.⁵ This breach has been established. TAL has been on notice since the date Mr Kular's statement of problem was lodged that penalties were sought for the above breach.

[10] The maximum penalty against a company is \$20,000.⁶ In considering whether a penalty is warranted and, if so, at what level, regard is had to the factors set out in s 133A of the Act, as well as the Employment Court decisions in *Nicholson v Ford* and *A Labour Inspector v Daleson Investment Ltd*.⁷

[11] Mr Kular has been put to considerable inconvenience and used significant resources to enforce arrears owed to him under the terms of the IEA. He has given evidence that he has suffered as a consequence of not receiving his wages and holiday pay including experiencing stress and financial distress as a consequence of the breaches. As a migrant he is in a recognised category of vulnerable workers. This vulnerability was known or very likely to have been known to TAL.

[12] TAL says the following factors are relevant to the Authority's assessment if whether a penalty is warranted – it understood and had hoped the parties could resolve the arrears issue through a mutual friend, Mr Kular was too quick to engage an advocate, TAL has attended mediation and genuinely tried to resolve the employment relationship problem. While it is accepted TAL have engaged in dispute resolution processes it has not taken steps to mitigate the breaches including making any payment towards the outstanding arrears.

[13] On the information before the Authority the subject failures were intentional actions in breach of obligations owed by TAL to Mr Kular to pay wage arrears and holiday pay when due and owing. TAL's actions must be seen as intentional and its culpability high. A search of the relevant databases has not revealed previous proceedings for similar breaches involving TAL. There is information before the Authority that TAL is in a difficult financial situation, has downsized its business in

⁵ Employment Relations Act 2000, s 134.

⁶ Employment Relations Act 2000, s 135.

⁷ *Nicholson v Ford* [2018] NZEmpC 132 and *Labour Inspector v Daleson Investment Ltd* [2019].

response to challenging commercial circumstances. I accept TAL's may face financial difficulty in paying any penalty.

[14] Standing back and taking all the relevant factors into account TAL is liable for a penalty of \$1,000, which is within the range of penalties currently imposed for breaches of this type and is proportionate to the seriousness of the breach and harm caused. TAL is ordered to pay half the penalty to Mr Kular to compensate him for the inconvenience and resources expended in pursuing the payment of arrears owed to him under the IEA. The penalty is to be paid within 21 days of the date of this determination.

Is Mr Mann liable for a penalty?

[15] A penalty is sought against Mr Mann for his involvement in the found breaches. He is responsible for the breaches because he owns the business and directed day to day operations including payroll. The TAL business is not large and is facing financial difficulties. Those difficulties are in effect Mr Mann's to bear. In the circumstances it is not appropriate to award a further penalty.

Leave to recover against Mr Mann

[16] Leave to recover wages and other moneys payable under s 142Y against Mr Mann is declined. There is insufficient evidence before the Authority at this stage that a qualifying default has occurred.

Payment by instalments

[17] Sections 131(1A) and 135(4A) of the Act provides the Authority may order arrears and penalties are paid by instalment to the employee if the employer's financial position so requires.

[18] TAL has provided information regarding its financial position and a letter from its tax agent 5 March 2026 in which they attach a statement of profitability and cashflow. It seeks instalments of \$1,000 per month. Mr Kular opposes payment instalment as proposed.

[19] There are two issues for consideration – first whether the financial position of TAL requires an order for instalment, the second, whether an order should be made that the order of arrears and penalty should be paid by instalment.

[20] The information before the Authority indicates TAL is facing difficult financial circumstances. It is accepted the financial position of TAL requires an order for instalment payments however, it is not clear on the face of the information provided how \$1,000 per month is an affordable instalment payment for TAL to make. The orders made in Mr Kular's favour include wage and holiday pay arrears, which remain unpaid in total and are a category of payment described in statute as minimum entitlement provisions.⁸ At the proposed rate it will take TAL nearly 7 months to pay Mr Kular arrears which have been outstanding for almost a year. Having considered all the relevant factors, I am not persuaded the instalment payment order sought from the Authority is justified.

[21] In the circumstances the order sought by TAL to repay Mr Kular in instalments is declined.

Summary

[22] Within 21 days of the date of determination The Armier Limited is ordered to:

- i) pay Sukhdev Singh Kular \$6,577.20 (gross) in arrears of wages and holiday pay;
- ii) calculate and pay Sukhdev Singh Kular interest on wage arrears, holiday pay as ordered in paragraph [8] above total; and
- iii) pay penalties of \$1,000 half of which is to be paid to the Crown and half to Sukhdev Singh Kular.

Costs of representation and reimbursement of filing fee

[23] Mr Kular seeks a contribution to the costs of professional representation he has incurred in this matter. He has provided invoices in support of these costs. Excluding

⁸ Employment Relations Act 2000, s 5.

costs associated with mediation and those incurred before lodgement of the statement of problem, I am satisfied Mr Kular has incurred total costs of representation in relation to Authority proceedings of \$5,937.50 and disbursements of \$57.00 for printing.

[24] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner.⁹ Mr Kular was the successful party. This matter was able to be investigated in half a day of usual investigation meeting time. Taking the relevant factors into account, it is fair that TAL pay costs of \$2,250 to Mr Kular, being half the first day notional investigation meeting tariff rate of \$4,500. This is a reasonable contribution to the costs of professional representation Mr Kular has incurred and he is also entitled to recover disbursements of printing and the Authority filing fee.

[25] The Armier Limited is to pay Sukhdev Singh Kular \$2,250 in costs, disbursements of \$57.00 and the filing fee of \$71.56 within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority

⁹ Refer Authority practice direction 1 February 2024, pg 5 Costs in the Authority.