

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 232
334220

BETWEEN A LABOUR INSPECTOR
 Applicant

AND MOTHER’S THAI LIMITED
 First Respondent

 JANYA DUANGJAI
 Second Respondent

Member of Authority: Peter van Keulen

Representatives: Karen Sagaga, counsel for the Applicant
 Janya Duangjai for the Respondents

Investigation Meeting: On the papers

Submissions Received: 7 November 2025, 12 November 2025 and 27 January
 2026 from the Applicant
 7 November 2025 and 21 November 2025 from the
 Respondents

Date of Determination: 20 April 2026

SECOND DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mother’s Thai Limited operated a business known as Daimond Thai massage, offering Thai massage services in three locations in Christchurch.

[2] Janya Duangjai is the sole director and shareholder of Mother’s Thai and she managed the Daimond Thai business.

[3] The Labour Inspector investigated the operation of the Daimond Thai business,

particularly the compliance by Mother's Thai with employment standards. As a result of its investigation the Labour Inspector issued enforcement proceedings against Mother's Thai and Ms Duangjai seeking penalties and wage arrears for five employees.

[4] Mother's Thai and Ms Duangjai accepted many of the Labour Inspector's claims and an agreed statement of facts was lodged.

[5] This determination records the agreed wage arrears to be paid to five employees of Mother's Thai and deals with the penalties sought by the Labour Inspector. It also deals with the question of whether Ms Duangjai was a person involved in the breaches by Mother's Thai and, if so, the consequences for her.

The Authority's investigation

[6] Having reached agreement on the extent of the breaches of employment standards and the arrears to be paid to the employees, the parties agreed that the question of penalties should be determined on the papers – that is, based on the agreed statement of facts, documents provided by the parties and written submissions.

[7] As permitted by s 174E of the Employment Relations Act 2000 (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 finalise the question of penalties, and then I have specified the orders made as a result.

The breaches by Mother's Thai

[8] In connection with the breaches of employment standards Mother's Thai and Ms Duangjai accepted the following breaches:

- a. section 6 of the Minimum Wage Act 1983 by failing to pay minimum wage for all hours worked;
- b. section 4 of the Wages Protection Act 1983 by making unlawful deductions from employees' pay;
- c. section 12A of the Wages Protection Act 1983 by charging employees and unlawful premium for their employment;

- d. section 64 of the Act by failing to keep a copy of employees' employment agreements;
- e. sections 65 and 90 of the Act by having non-complaint employment agreements;
- f. sections 21, 22, 23, 24, 25, and 27 of the Holidays Act 2003 by failing to correctly provide and pay annual holidays during and on termination of employment;
- g. sections 49, 50, 56, and 60 of the Holidays Act 2003 by failing to pay correct public holiday entitlements, including time and a half, alternative holidays, and payment for public holidays not worked;
- h. section 71 of the Holidays Act 2003 by failing to pay correct sick leave entitlements;
- i. section 130 of the Act by failing to keep compliant wages and time records; and
- j. section 81 of the Holidays Act 2003 by failing to keep compliant holidays and leave records.

[9] In total there are 55 breaches of employment standards.

Wage Arrears

[10] Mother's Thai owes wage arrears, covering minimum wage payments, deductions, premiums and holiday pay entitlements including pay related to public holidays and annual leave entitlements to five employees as follows:

- a. Kamonwan Streeta – \$66,394.99.
- b. Paliyapat Sripirom – \$69,304.42.
- c. Duangdao Chaliaklang – \$74,119.92.
- d. Wissuta Petkaew – \$12,031.20.
- e. Parida Lippel – \$9,887.43.

[11] In total Mother's Thai owes wage arrears of \$231,737.96.

Person involved in the breach of minimum standards

[12] On my review of the agreed statement of facts and other documents I am satisfied that Ms Duangjai is a person involved in breaches of employment standards by Mother's Thai, pursuant to s 142W of the Act.

[13] To the extent that Mother's Thai is unable to pay the wage arrears owed to the employees, the Labour Inspector may recover payment of those arrears from Ms Duangjai pursuant to s 142Y of the Act.

[14] As a person involved in breaches of employment standards Ms Duangjai is also liable for a penalty pursuant to s 142X of the Act.

Analysis of penalties

[15] The starting point for any assessment of penalties is 55 breaches of employment standards by Mother's Thai. Given the number of breaches, the amounts of money involved and the extent of those breaches, penalties are entirely appropriate.

Quantum of penalties

[16] There are two key aspects that inform the quantification of penalties; the considerations set out in s 133A of the Act and the four step approach to fixing penalties set out in *Borsboom v Preet PVT Limited*.¹

[17] Adopting the approach used by Judge Corkill in *A Labour Inspector v Matangi Berry Farm Limited*,² I will first consider the statutory requirements in s 133A of the Act and then I will use that information to assess quantum based on the four steps in *Preet*.

The object stated in s 3 of the Act

[18] The objects of the Act include building productive employment relationships through the promotion of good faith and promoting effective enforcement of employment standards by Labour Inspectors. In my view this supports the imposition of penalties against employers that breach employment standards and against persons involved in those breaches.

¹ *Borsboom v Preet PVT Limited* [2016] NZEmpC 143.

² *A Labour Inspector v Matangi Berry Farm Limited* [2020] NZEmpC 43.

The nature and extent of the breaches and the loss suffered by employees

[19] The breaches by Mother's Thai were significant, impacting on five employees and amounting to those employees being deprived of \$231,737.96.

Were the breaches intentional, inadvertent or negligent?

[20] On balance I think most of the breaches were deliberate, but to a certain extent informed by an incorrect view of how remuneration and employee entitlements could be structured and paid. Notwithstanding this, Mother's Thai and Ms Duangjai's culpability is still relatively high.

What steps have been taken in mitigation?

[21] Mother's Thais has conceded that it breached the employment standards as alleged by the Labour Inspector. As a result, it has agreed the amounts owed to employees – however there is no evidence of any payment of these amounts. In fact, the evidence shows Mother's Thai has very few assets, was trading at a loss in the last financial year and has ceased operating its Thai massage business. On this basis appears Mother's Thai cannot and will not pay the arrears owed to its employees.

The circumstances of the breach and any vulnerability

[22] It appears that the employees of Mother's Thai were migrant workers with limited knowledge about their employment rights and little support in terms of questioning their pay and other entitlements.

[23] It appears that Mother's Thai, through Ms Duangjai, took advantage of the employee's vulnerability. Whilst she has described the steps she took as supporting the employees, I do not see it this way.

Previous conduct

[24] There is no evidence of previous employment standard breaches by Mother's Thai or Ms Duangjai.

Preet step 1 – nature and number of breaches

[25] The first step in *Preet* requires me to consider whether any of the breaches should be

globalised so that a single breach may reflect two or more of the breaches forming the Labour Inspector's claim. Globalisation is about reducing the number of breaches for penalty purposes so that the actionable breaches are representative of the overall conduct and the starting point for penalties is realistic.³

[26] In *A Labour Inspector v Matangi Berry Farm Limited*,⁴ Judge Corkill globalised failures across 207 employees and 118 employees down to a single breach for each type of default. This meant globalisation reduced 532 breaches (based on a count per employee affected) down to just three.

[27] Adopting the approach of Judge Corkill, I will globalise the breaches as one breach per type of breach of each statute. This means there are nine globalised breaches:

- a. Breach of the Minimum Wage Act 1983 for failing to pay minimum wage for all hours worked.
- b. Breach of the Wages Protection Act 1983 for unlawful deductions.
- c. Breach of the wages Protections Act for charging employees and unlawful premium.
- d. Breach of the Holidays Act 2003 by failing to correctly provide and pay annual holidays during and on termination of employment.
- e. Breach of the Holidays Act 2003 by failing to pay correct public holiday entitlements, including time and a half, alternative holidays, and payment for public holidays not worked.
- f. Breach of the Holidays Act 2003 by failing to pay correct sick leave entitlements.
- g. Breach of the Act by failing to have compliant employment agreements.
- h. Breach of the Act by failing to keep compliant wages and time records.
- i. Breach of the Holidays Act 2003 by failing to keep compliant holidays and leave records.

³ *A Labour Inspector v Parihar* [2019] NZEmpC 145.

⁴ *A Labour Inspector v Matangi Berry Farm Limited*, above n5.

[28] Based on this globalisation the starting point for assessing the quantum of penalties to be imposed against Mother's Thai is \$180,000 and Ms Duangjai is \$90,000.

Preet step 2 – severity of breaches

[29] In addition to weighing up my consideration of the factors in s 133A of the Act I must also consider the additional factors referred to in *Preet* of deterrence and culpability.

[30] Considering the aim of the Act, assessing the nature and extent of the breaches and losses suffered and accepting that payment of losses has not been made, reflecting on the fact that Mother's Thai and Ms Duangjai's culpability is high, and then adding in the need for deterrence, I conclude that 80% of the maximum penalty amount for each breach is an appropriate starting point.

Preet step 3 – means and ability of the respondent to pay

[31] I accept there is some financial difficulty for Mother's Thai in paying the wage arrears and any penalty amount. And likewise, Ms Duangjai may have difficulty in paying a penalty or any wage arrears as a person involved in the breaches, but I consider only a modest reduction is warranted for this factor – the reduction is therefore only a further 10%.

Preet step 4 – proportionality

[32] Given my assessment up to this point I am satisfied that a reduction of 30% from the starting point for penalties is appropriate. This leaves me with penalty amounts of \$126,000 for FWK and \$63,000 for Ms Duangjai.

[33] I must now ensure that the final amount of any penalty is proportional to the breaches and in line with other penalty amounts. Given the number of breaches, the nature of those breaches and the quantum of arrears payable to employees I consider an upward adjustment is appropriate giving penalty amounts of \$140,000 for Mother's Thai and \$70,000 for Ms Duangjai.

Payment to employees

[34] The Labour Inspector has submitted that some of the penalty imposed by me should be paid to the employees subject of the breaches of employment standards. I agree with this

submission; it is entirely appropriate in the circumstances.⁵ I order that, from the penalties paid, \$21,000 be paid to each of the five employees. If the full penalty amounts are not paid, then the Labour Inspector can transfer 10% of the total amounts paid to each employee.

Orders

[35] Mother's Thai owes wage arrears, to five employees as follows:

- a. Kamonwan Streeta – \$66,394.99.
- b. Paliyapat Sripirom – \$69,304.42.
- c. Duangdao Chaliaklang – \$74,119.92.
- d. Wissuta Petkaew – \$12,031.20.
- e. Parida Lippel – \$9,887.43.

[36] Ms Duangjai is a person involved in the breaches of employment standards, pursuant to s 142W of the Act.

[37] Within 28 days of the date of this determination:

- a. Mother's Thai must pay \$140,000 to the Labour Inspectorate as a penalty for the breaches of employment standards.
- b. Ms Duangjai must pay \$70,000 to the Labour Inspectorate as penalty for her involvement in the breaches of employment standards.

[38] Once the penalty amounts are received the Labour Inspectorate can transfer \$21,000 to each of the five employees. If the full penalty amounts are not paid, then the Labour Inspector can transfer 10% of the total amounts paid to each employee. After payments have been transferred to each employee the balance is to be transferred to a Crown bank account.

Peter van Keulen
Member of the Employment Relations Authority

⁵ *A Labour Inspector v Prabh Ltd* [2018] NZEmpC 110.