

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 239
3175123

BETWEEN SIDDANTH PRASAD
Applicant

AND FIJI FOOD DISTRIBUTORS
LIMITED
First Respondent

AND AMEER ALI
Second Respondent

AND JANICE ALI
Third Respondent

3175124

BETWEEN NISHAL NIKESH LAL
Applicant

AND FIJI FOOD DISTRIBUTORS
LIMITED
First Respondent

AND AMEER ALI
Second Respondent

AND JANICE ALI
Third Respondent

3175125

BETWEEN AMIT VERMA
Applicant

AND FIJI FOOD DISTRIBUTORS
LIMITED
First Respondent

AND AMEER ALI
Second Respondent

AND JANICE ALI
Third Respondent

BETWEEN MUKESHWAR PRASAD
AND FIJI FOOD DISTRIBUTORS
LIMITED
First Respondent
AND AMEER ALI
Second Respondent
AND JANICE ALI
Third Respondent

Member of Authority: Peter van Keulen
Representatives: Rupert Ward counsel for the Applicants
Georgie Raymond counsel for the Respondents
Investigation Meeting: On the papers
Submissions Received: 17 November 2025, 22 December 2025 and 2 March 2026
from the Applicants
2 December 2025 from the Respondents
Date of Determination: 21 April 2026

SECOND DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 20 October 2025 I determined the applicants' various claims against Fiji Food Distributors Limited (FFDL), Ameer Ali and Janice Ali (the First Determination).¹

[2] In the First Determination at paragraph [57], I recorded that based on what was sought by the applicants and the breaches by FFDL that I determined had occurred, there was a basis for me to consider imposing a penalty against FFDL in respect of:

- (a) Four breaches of good faith.
- (b) One breach of the Wages Protection Act 1983 for the premium paid for Amit

¹ *Prasad Applicant in 3175123 and Ors v Fiji Foods Distributors Limited and Ors* [2025] NZERA 659.

Verma's employment.

- (c) Four global breaches of Holidays Act 2003 – that is one global for each applicant covering FFDL's failure to properly provide the applicants with annual leave entitlements, deal with the applicants working on public holidays correctly and provide the applicants with sick leave.

[3] The applicants now seek to have a penalty imposed against FFDL and I have received written submissions from the applicants and FFDL regarding the possible penalty.

[4] In addition, the applicants also seek an order that they can proceed to recover wage arrears ordered by me to be paid by FFDL in the First Determination, from Mr Ali as a person involved in the breaches of employment standards that gave rise to the arrears.

The Authority's investigation

[5] The employment relationship problem I investigated and this determination resolves is whether a penalty should be imposed against FFDL and if so, the quantum of the penalty. And I have considered the applicants' request to recover their wage arrears from Mr Ali.

[6] 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 dispose of the matter, and then I have specified the orders made as a result.

Penalty for breaches of the Holidays Act 2003

[7] Based on the written submissions from FFDL and Mr Ali's counsel I decided there was an issue with imposing the suggested penalty against FFDL relating to the time period in which the applicants commenced the action seeking a penalty. I sought further submissions from the applicants on this point.

[8] Based on the written submissions I am satisfied that I can proceed to consider imposing a penalty against FFDL only for the breaches of the Holidays Act 2003 – the other breaches were not pursued as a penalty, in the requisite time frame.

Quantum of penalties

[9] There are two aspects that inform the assessment of a penalty; 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*.²

[10] Adopting the approach used by Judge Corkill in *A Labour Inspector v Matangi Berry Farm Limited*,³ I will first consider the relevant 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*.

Relevant factors in s 133A of the Act

[11] *The object stated in s 3 of the Act* – one of the objects of the Act is to promote the effective enforcement of employment standards. One of the key mechanisms by which the Authority can achieve this is by imposing penalties for breaches of employment standards, as it is empowered to do.

[12] *The nature and extent of the breaches and the extent of any loss or damage suffered* – over a protracted period of time FFDL failed to properly provide to the applicants their annual leave, statutory holiday entitlements and sick leave – this included failing to pay when such leave should have applied and should have been taken as well as amounts due at the end of the applicants' employment. The breaches were ongoing and significant, resulting in substantial financial impact on the applicants.

[13] *Were the breaches intentional, inadvertent or negligent* – the breaches by FFDL were intentional.

Preet step 1 – nature and number of breaches

[14] There are four global breaches of Holidays Act 2003 – that is one global for each applicant covering FFDL's failure to properly provide the applicants with annual leave entitlements, deal with the applicants working on public holidays correctly and provide the applicants with sick leave.

² *Borsboom v Preet PVT Limited* [2016] NZEmpC 143.

³ *A Labour Inspector v Matangi Berry Farm Limited* [2020] NZEmpC 43.

[15] This means the maximum penalty amount for FFDL is \$80,000.

Preet step 2 – severity of breaches

[16] 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.

[17] The factors impacting the severity of the breaches include:

- (a) Given the purpose of the Act that I have referenced, a deterrent factor is necessary in setting a penalty.
- (b) I have assessed the nature and extent of the breaches and losses suffered as significant.
- (c) FFDL acted intentionally and its culpability is high.

[18] I conclude that based on the severity of breaches by FFDL and the need for deterrence a penalty set at 90% of the maximum amount is appropriate.

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

[19] There is limited information available on FFDL's ability to pay but I note the business it operated has been sold and there is evidence to suggest the company will be removed from the Companies register.

[20] I do not consider that a reduction for FFDL's limited means to pay any penalty should be significant – it seems almost immaterial as it appears FFDL will try to avoid paying any penalty. I will allow a further reduction of 10%.

Preet step 4 – proportionality

[21] Penalty amounts should be in proportion to the gravity of the breach i.e. proportionate to the amount of money not paid. And penalty amounts should also be consistent with other penalties imposed in similar circumstances.

[22] So that the penalty amount is proportionate I will reduce the amount from \$64,000 (after considering steps 1 – 3 above) to \$50,000.

Part payment of the penalty to the applicants

[23] Whilst penalties are ordinarily payable in full to the Crown I can order part of a penalty to be paid to a party impacted by the breaches (giving rise to the penalty). In this case I consider it appropriate to order that part of the penalty imposed against FFDL be paid to each applicant; I order that \$10,000 be paid to each applicant.

Persons involved in the breaches

[24] The applicants seek orders against Mr Ali as persons involved in breaches of employment standards pursuant to ss 142W and 142Y of the Act.

[25] Based on the evidence and submissions from the applicants on this point I am satisfied that leave should be granted to each applicant for them to pursue payment of the wage arrears owed to them, as determined in the First Determination, from Mr Ali pursuant to s 142Y of the Act.

Summary and orders

[26] Within 28 days of the date of this determination FFDL must pay a penalty of \$50,000; with \$10,000 paid to the Crown and \$10,000 paid to each applicant.

[27] Mr Ali is a person involved in breaches of employment standards by FFDL pursuant to s 142W of the Act. I grant leave for each applicant to recover any wage arrears owed by FFDL to them, as ordered in the First Determination, from Ameer Ali pursuant to s 142Y of the Act.

Costs

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

[29] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicants 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 the FFDL 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.

[30] 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.⁴

Peter van Keulen
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1