

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 310
3357843

BETWEEN	A LABOUR INSPECTOR Applicant
AND	HARIOM HORTICULTURE LIMITED (in liquidation) First Respondent
AND	TARUN GAUTAM Second Respondent

Member of Authority:	Claire English
Representatives:	Martin Denyer, counsel for the Applicant No appearance for the Respondents
Investigation Meeting:	21 October 2025 in Tauranga
Submissions received:	Up to 20 January 2026 from Applicant Up to 25 February 2026 from Respondent
Determination:	20 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant is a duly warranted Labour Inspector from the Ministry of Business, Innovation, and Employment. The Labour Inspector raises claims on behalf of five employees of the first respondent: Jai Shiva; Vinayak Chopra; Raman Shekhar; Jagmeet Singh; and Phoolmeet Kaur. The claims made are that the respondents failed to provide minimum employment standards to the five named employees, including failures to keep wage and time, and holiday and leave records; failure to pay holiday pay, failure to pay minimum wage rates, and a claim that an unlawful premium was

required of Mr Jagmeet Singh in breach of the Wages Protection Act 1983. It is further claimed that the second respondent, Mr Tarun Gautam, was a person involved in a breach of employment standards and should bear some personal liability accordingly.

The Authority's investigation

[2] This has been a relatively lengthy investigation process. The first respondent company and former employer of the five named employees is now in liquidation. In light of this, the Labour Inspector withdrew certain claims and continued with others with the consent of the liquidator. This determination reflects those updated claims.

[3] The claims against the second respondent continue and are that he be declared to be a person involved in a breach of employment standards, and that penalties are ordered against him. This determination resolves those claims.

[4] The respondents filed a statement in reply and supporting documents. In the statement in reply, the respondents accepted that they had not paid holiday pay to the named employees on the ending of their employment, and that these sums plus interest were owing. They further said that Ms Kaur was delegated the responsibility for maintaining all record-keeping, for calculating and paying wages, and for calculating and paying holiday pay. They said that Ms Kaur was paid holiday pay.

[5] A case management conference (CMC) was held, to set timetabling directions and to set a hearing date. At that CMC, both the Labour Inspector and the respondents were represented by counsel. The parties were directed to attend mediation, which I understand occurred but was not successful.

[6] The applicant's witness statements were filed as timetabled at the end of August 2025. Shortly thereafter, the Authority was advised that counsel for the respondents was no longer acting. Correspondence thereafter was with Mr Gautam for the respondents. He was advised of the timeframes to file witness statements and the agreed date of the investigation meeting, and that an interpreter would be available.

[7] Mr Gautam then phoned the Authority. He was advised by the Authority Officer that witness statements for the respondents were due. He advised that he "had them" and would provide them to the Authority. However, no witness statements were provided.

[8] On the day of the investigation meeting, there was no appearance for the respondents. I instructed the Authority Officer to telephone Mr Gautam. She phoned him twice, however on both occasions, the call went to voicemail.

[9] I took the view that it was appropriate for the investigation meeting to proceed, as Mr Gautam had, through counsel, consented to the date of the investigation meeting, and had engaged with the Authority and been advised of the process after the respondents ceased being represented.

[10] Accordingly, at the conclusion of the applicant's evidence, I made directions that the Labour Inspector was to provide updated spreadsheets and a short description of any changes made, that Mr Gautam was to have time to respond to this. I also directed that counsel for the Labour Inspector was to provide full written legal submissions by a certain date, Mr Gautam was to have time to respond to this, and counsel for the Labour Inspector was to have time for the filing of any submissions in reply. These directions and dates were confirmed to both parties in writing on 21 October 2025.

[11] Some eight days later, on 29 October 2025 Mr Gautam emailed the Authority. He advised he had not been able to attend the investigation meeting due to health issues and said he had provided a medical certificate the day before. The Authority had not received any contact or a medical certificate. Mr Gautam provided that certificate on 29 October. It stated: "I recommend a postponement of any legal proceedings for 4 months" but gave no diagnosis.

[12] Nevertheless, the Authority wrote to Mr Gautam asking him to provide more information and proposing an extended timetable in light of the medical certificate. Despite being asked to respond and comment, Mr Gautam did not do so. However, I confirmed the extended timetable, as I considered it fair to do so to allow Mr Gautam extra time to both respond to the applicant's claims and/or provide further information on his health if he wished to do so in light of the timeframe given in the medical certificate.

[13] In the end, Mr Gautam did not provide further correspondence, and I have proceeded to consider the matter and issue this determination as I previously indicated.

[14] For the Authority's investigation written witness statements were lodged from Labour Inspector Hall and Mr Jagmeet Singh. All witnesses answered questions under affirmation. The representative also gave closing submissions.

[15] 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.

The issues

[16] The issues requiring investigation and determination were:

- a. has there been a failure to keep and maintain accurate wage and time records – 130 of the Employment Relations Act 2000.
- b. has there been a failure to keep holiday and leave records – s 81 of the Holidays Act 2003.
- c. has there been a failure to calculate and pay annual leave when employment ends within 12 months – s 23 of the Holidays Act 2003.
- d. has there been a failure to calculate and pay annual leave after 12 months and before 2 yrs – s 25 of the Holidays Act 2003.
- e. has there been a failure to calculate and pay annual leave on the ending of employment s 27 of the Holidays Act 2003.
- f. has there been a failure to pay minimum wage – s 6 Minimum Wage Act 1983; and
- g. was a premium required from Jagmeet SINGH OF \$23,324.00 net in breach of s 12(1) of the Wages Protection Act 1983.
- h. was the second respondent as the sole director and shareholder of the first respondent is person involved in the above breaches, and should be liable for penalties personally.

Background & Analysis of Breaches

[17] Labour Inspector Robert Hall gave evidence about the investigation process he had undertaken and why he had concluded that the respondents had breached the Act, the Holidays Act 2003, the Minimum Wage Act 1983, and the Wages Protection Act 1983. I will consider the claims made in turn.

Did Hariom fail to keep accurate wage and time records in accordance with s130 of the Act?

[18] Inspector Hall's evidence was that this claim was made because although Mr Gautam representing both respondents did produce some wage and time records, particularly payslips, the records he produced did not contain all of the required information, namely, they were consistently missing details of the hours worked in each day. For a number of pay periods, the records also failed to include the start and end dates of the pay period, and on some occasions, the hourly rate of pay. This in turn means that some other potential entitlements could not be calculated.

[19] Mr Gautam discussed this issue with Inspector Hall during the Inspector's investigation process. He said that daily time sheets containing details of the start and finish times and hours worked each day were completed by employees and were the basis of the payslips. However, he had lost those timesheets in a house move, and/or they had fallen out the back of his Ute during transport, and/or the keeping and provision of these records was the responsibility of Ms Kaur and not the respondents.

[20] No timesheets, or any other details of the number of hours worked in a day were ever produced.

[21] I discount Mr Gautam's statement that this was Ms Kaur's responsibility. Ms Kaur was an employee, and the Act makes it clear that the responsibility for keeping accurate wage and time records rests with the employer, that is, Hariom, or more practically, Mr Gautam as the director of Hariom and its owner-operator.

[22] In addition, Mr Gautam in his interview with Inspector Hall on 6 September 2024 stated that he would attend the workplace and would take the daily timesheets to Ms Kaur for processing, and those timesheets would be saved in boxes "in the office". This does not sit easily with his later statements that they were kept at his home, that they were kept at Ms Kaur's home, and that they were lost in transit.

[23] Hariom's obligation under s 130 of the Act was to keep wage and time records that met the requirements of that section, including the number of hours worked each day in a pay period and the pay for those hours, and the start and end dates of the pay period/s. Hariom has not been able to demonstrate, to either the Labour Inspector or before the Authority, that it met these recording obligations. Mr Gautam's explanations

on the subject were changing and conflicting, but fall short of demonstrating that the records were kept as required.

[24] On balance, I find that Hariom failed to keep wage and time records as required, in respect of five named employees, in breach of s 130 of the Act.

Did Hariom fail to keep accurate holiday and leave records in accordance with s 81 of the Holidays Act 2003?

[25] The Labour Inspector's review of the information that was provided by Mr Gautam on behalf of himself and Hariom identified that Hariom's holiday and leave records failed to record four types of information required by s 81 of the Holidays Act 2003, namely: the number of hours worked each day in a pay period; each employee's current entitlement to sick leave; the date of termination for each employee who left employment; and the amount paid as holiday pay when each employee left employment.

[26] For the reasons set out above, I have found that Hariom has not been able to produce any satisfactory evidence that it kept a record of the number of hours worked each day in a pay period. From the perspective of entitlements under the Holidays Act 2003, this means it is not possible for the Labour Inspector to accurately assess whether employees have been appropriately paid for work done on statutory holidays, been provided with alternative holidays, or provided with sick leave.

[27] In addition, the Labour Inspector notes that the records do not accurately record annual holidays taken by employees, which impacts on his ability to accurately assess whether they have been provided with sufficient annual leave entitlements.

[28] Payslips and some pay records from Hariom's payroll system were provided by Mr Gautam to the Labour Inspector and were in evidence. The evidence that was provided did not include the details that the Inspector complains of. The respondents provided no explanation as to why sick leave entitlements were not recorded, why the date of termination of employment was not recorded for departed employees, or when and how annual leave taken was recorded. Mr Gautam has accepted, by way of the statement in reply, that the reason no payment of annual leave on termination of employment was recorded, was because such payments did not occur.

[29] Although Ms Kaur did receive payment for her holiday pay, this only occurred some three months after the ending of her employment and after the Labour Inspector began investigating the matter. Originally, the position in respect of her was the same as the position of the other employees, in that no payment for holiday pay was made to her on the termination of employment, with neither the date her employment ended, nor any payment made to her being recorded.

[30] The evidence shows that Hariom did not comply with its obligations to keep holiday and leave records as required by s 81 of the Holidays Act 2003. I find that Hariom failed to keep holiday and leave records as required, in respect of 5 named employees in breach of s 81 of the Holidays Act 2003.

Did Hariom fail to pay annual leave due on termination of employment in accordance with s 23, 25, and 27 of the Holidays Act 2003?

[31] In short, when an employee ends their employment, Hariom is required to pay to each departing employee all annual leave entitlements that have not yet been taken as paid holidays. The overarching requirement to make such a payment in the pay that relates to the employee's final period of employment is found at s 27 of the Holidays Act 2003. Sections 23 and 25 of the Act set out how that payment must be calculated depending on how long the employee has been employed.

[32] In the statement in reply, the respondents admitted at paragraph 2(d) that they had not made payment of annual holidays when employment ended. They further stated at paragraph 3(b) that they "agree to making final payment of holiday pay and interest on the arrears owing". This is a sensible concession given that Hariom's own payroll reports as well as employee payslips that are in evidence show that no such payments were made.

[33] Although the respondents point out again that Ms Kaur did belatedly receive her holiday pay, this was not paid out in the pay that related to her final period of employment but was only paid out some three months later. Accordingly, this means that arrears of annual leave are no longer payable to Ms Kaur, however, a breach of the relevant sections still occurred in respect of her.

[34] The evidence shows, and it is not disputed, that Hariom did not comply with its obligations to pay annual leave due on termination of employment in accordance with

s 23, 25, and 27 of the Holidays Act 2003. I find that Hariom breached s 23, 25, and 27 of the Holidays Act 2003, in respect of three named employees. I record that arrears and interest remain payable to two of these employees, namely Raman Shekhar in the sum of \$1,814.56 gross, and Jagmeet Singh in the sum of \$3,240.00 gross.

Did Hariom fail to pay at least minimum wages for all hours worked in accordance with s 6 Minimum Wage Act 1983?

[35] Labour Inspector Hall gave evidence that he reviewed the records and payslips provided by the respondents and formed the view that Hariom did not pay Mr Raman Shekhar, Mr Jagmeet Singh, and Mr Jai Shiva at least the rate of minimum wage for all hours worked.

[36] He explained in evidence that he had based his calculations of hours worked and money paid on the records of hours and pay provided by Hariom rather than the employees and only took into account periods where Hariom's records clearly established the employees were working. Inspector Hall explained that he cross-referenced data from Hariom's payroll and payslips, with data from Hariom's bank statements showing what the employees were actually paid. Even based on Hariom's own records, three employees were paid less than the minimum wage.

[37] Mr Jagmeet Singh gave evidence on his own behalf. Mr Singh's evidence was that he knew Mr Gautam before he accepted a job with Hariom. He had contracted to work and be paid for 30 hours per week, plus food and accommodation. In any event, he worked between 30 and 40 hours per week but was paid a standard 30 hours each week regardless of the number of hours actually worked.

[38] Based on Hariom's own records, Inspector Hall calculated that to ensure payment for hours worked was made at least the rate of the minimum wage:

- a. Mr Shekhar is owed: \$1,362.00 gross in wage arrears;
- b. Mr Singh is owed: \$2,742.90 gross in wage arrears; and
- c. Mr Jai Shiva is owed: \$4,099.50 gross in wage arrears.

[39] In addition, I note that at interview with Inspector Hall, Mr Gautam accepted that there were occasions when employees were not paid, or were not paid on time. His explanation for this at a high level was that he would not consistently pay employees

when there were late payments or shortfalls in payments, he and/or Hariom expected to receive. This tends to suggest that arrears of wages did occur.

[40] Given the evidence of both Inspector Hall and Mr Singh as to what occurred in practice and how these arrears were calculated in reliance on employer-provided records, I accept this evidence. Hariom breached s 6 of the Minimum Wage Act 1983 in respect of three named employees. I record that arrears remain payable to the three employees in the sums set out at paragraph [38] above, as well as interest on these sums.

Did the respondents require an unlawful premium from Jagmeet Singh of \$23,324.00 net in breach of s 12(1) of the Wages Protection Act 1983?

[41] Mr Singh gave evidence that he was asked by Mr Gautam to make payments to secure his employment. Mr Singh started working for Hariom in New Zealand in the first week of May 2023. His employment ended on 25 July 2024.

[42] Inspector Hall and Mr Singh gave evidence that he made a total of 5 payments to Mr Gautam, as follows:

- a. A payment on 26 December 2022 in Indian Rupees, to an account in the name of Tarun Gautam;
- b. A payment on 26 December 2022 in Indian Rupees to an account in the name of Arun Bala, who was said to be Mr Gautam's mother.
- c. Three payments on 2 January 2023 in Indian Rupees to an account in the name of Tarun Gautam.
- d. Two payments on 13 January 2023 to an account in the name of Tarun Gautam.
- e. A payment on 30 March 2023, in NZ Dollars, into a New Zealand bank account in the name of Tarun Gautam.

[43] In addition, Mr Singh stated that his wife, Ms Kuldeep Kaur made a further payment to Mr Gautam on 17 April in Indian Rupees, but that the relevant bank statement does not show that the funds were sent to Mr Gautam.

[44] Mr Gautam spoke with the Labour Inspector about these payments. He acknowledged they were made to him but said that the payments were made in respect

of a loan that Mr Singh's father had taken from Mr Gautam's father. Mr Singh denies that this was the case and says that the two fathers never had any financial dealings. Instead, he made the payments from his bank accounts in India and New Zealand to Mr Gautam to Mr Gautam's accounts in India and New Zealand. These payments were to secure his employment in New Zealand with Hariom.

[45] Mr Gautam's response to these payments is that they were made by and in respect of two other people. However, this does not explain why the payments were actually made by Mr Singh to Mr Gautam. I prefer Mr Singh's evidence on the matter, which is consistent with the documents he provided. I consider that the four payments he has identified to Mr Gautam (excluding the payment made to Arun Bala) are unlawful premiums, and are in breach of s 12A of the Wages Protection Act 1983.

[46] Having said this, I consider that I am constrained by the provisions of s 12A of the Wages Protection Act 1983, and the judgement of the court in *Mehta v Elliot (Labour Inspector)*¹, which found that a premium paid by an Indian national in India to an Indian partnership in Indian currency, although it related to immigration to and employment in New Zealand, was beyond the reach of New Zealand employment legislation, as such transactions were not within the jurisdiction of the New Zealand statute. Accordingly, my view is that I am only able to order the reimbursement to Mr Singh of the payment made on 30 March 2023, which was for the sum in New Zealand dollars of \$11,276.00. I record that this amount remains payable to Mr Singh accordingly.

Is Mr Gautam, as the sole director and shareholder of Hariom, a person involved in breaches of employment standards?

[47] The Labour Inspector requests that Mr Gautam be named as a person involved in a breach of employment standards as defined in s 142W of the Act, and that penalties are awarded against him in his personal capacity under s 142X of the Act.

[48] Section 142W of the Act defines who is a person involved in a breach. The breach must be a breach of employment standards. Employment standards are defined in s 5 of the Act. They include: the requirement to keep wage and time records in accordance with s 130 of the Act, the minimum entitlements and pay for these under

¹ [2003] 1 ERNZ 451 (EmpC), at [72] and [73].

the Holidays Act 2003, the provisions of the Wages Protection Act 1983, and minimum entitlements under the Minimum Wage Act 1983. As set out above, I am satisfied that Hariom has breached these various requirements. It follows that the breaches in this matter are breaches of employment standards.

[49] Where the employer is an entity such as a company, a person involved in a breach must be an officer of the entity. In the case of a company, an officer is a director of the company. Mr Gautam is the sole director of Hariom, and thus satisfies this requirement of s 142W.

[50] Finally, I must be satisfied that Mr Gautam has aided, abetted, counselled, or procured the breach/es, or has been in any way, directly or indirectly, knowingly concerned in or party to the breach. I find that Mr Gautam was knowingly concerned in the breaches. In the statement in reply, he accepted that no payment was made to employees for annual holiday pay, and he has taken no steps in the months since to resolve these outstanding arrears. Mr Gautam in his interviews with the Labour Inspector also stated that he would direct the employees as to where to work, attend the workplace, collect daily timesheets for processing, and would check and oversee the payments of wages that were processed by Ms Kaur. By virtue of his position in the company and the work he performed in the business and overseeing hours of work and payments made, he had direct knowledge of the employee's terms and conditions, their hours of work, and the arrangements for their pay. He also freely admitted that there were occasions when he would direct that payment not be made, or be made late, to employees for his own convenience. He had the requisite level of knowledge and control to be considered a person involved in a breach.

[51] For the above reasons, I am satisfied that Mr Gautam was a person involved in a breach as defined in s 142W of the Act.

Should Mr Gautam be found liable to penalties in accordance with s 142X of the Act?

[52] Having found that Mr Gautam is a person involved in a breach, I now consider whether penalties should be awarded against Mr Gautam personally as provided for in s 142X of the Act. The law in respect to quantification is well established given the content of s 133A of the Act and cases such as *Borsboom (Labour Inspector) v Preet*

PVT Limited and Warrington Discount Tobacco Limited,² *A Labour Inspector v Prabh*³ and *A Labour Inspector v Daleson Investment*.⁴

[53] The purpose of awarding penalties is:

- a. To punish those who breach minimum employment standards;
- b. To deter companies and individuals from committing such breaches;
- c. To compensate the victims of such breaches; and
- d. To eliminate unfair competition.

[54] I consider that all these aspects apply here.

[55] The considerations in regard to penalties⁵ are as follows:

- a. The object of the Act – the objects of the Act are particularly relevant in penalty matters involving migrant employees, as is the case here. All of the affected employees were employment under work visas that required them to work for Hariom, thus making them dependant, and increasing their vulnerability. The objects of the Act that are particularly engaged in this matter are acknowledging and addressing the inherent inequality of power in employment relationships, and promoting the effective enforcement of employment standards. This is a matter where the clearly apparent imbalance of power has allowed an experienced local businessman to employ multiple vulnerable immigrants without providing them with minimum employment entitlements. The objects of the Act suggest penalties are appropriate.
- b. The nature and extent of the breach – the breaches are systemic, affecting all aspects of the payment of wages, and the payment of holiday entitlements. That they affected all employees sampled by the Labour Inspector during his investigation also suggests the breaches were deliberate and widespread, rather than sporadic or inadvertent. This factor suggests penalties are appropriate.

² *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143

³ *A Labour Inspector v Prabh Limited* [2018] NZEmpC 110

⁴ *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12

⁵ *Nicholson v Ford*, [2018] NZEmpC 132.

- c. Whether the breach was intentional, inadvertent, or negligent – the breach was more than inadvertent, in that the employer did not take the necessary care to comply with minimum employment standards. Hariom also held GRASP (Global Risk Assessment on Social Practice) and GAP (Good Agricultural Practice) certifications⁶ indicating knowledge of employment standards. The nature and extent of the breaches, and their consistent repetition in fact suggests that the breaches were intentional. Given Mr Gautam’s personal involvement in requiring Mr Singh pay an unlawful premium directly to him, my view is that the breach of the Wages Protection Act in relation to premiums was intentional.
- d. The nature and extent of any loss or damage – all named employees suffered monetary loss of wages, holiday entitlements, and other monies that were not available to them to use. Conversely, Hariom and Mr Gautam personally had use of monies which they should not have. In addition, I consider that the employees also suffered loss of amenity in that they were not able to benefit from minimum entitlements to paid holidays in due course.
- e. Compensation or other steps in mitigation – it was accepted that certain breaches of minimum standards occurred, but no steps were taken to put these breaches right by paying the arrears both Hariom and Mr Gautam acknowledge are owed.
- f. The circumstances of the breach, including the applicant’s vulnerability – I have already set out above that the affected employees were vulnerable by way of their visa situation, dependence on Hariom for lawful employment and residence in New Zealand, and consequent language barriers. This vulnerability may be contrasted with the financial benefit the respondents obtained by failing to provide minimum employment standards.

⁶ I was advised these certifications have since been suspended.

- g. Any similar conduct – both Hariom and Mr Gautam are before the Authority in other proceedings where underpayment of migrant workers in breach of minimum employment standards are alleged.
- h. Deterrence – there is a need for deterrence on a general basis, especially given the potential for competitive advantage that arises from failing to pay employees in accordance with minimum standards, and that the types of record keeping breaches at issue in this matter impact on the ability of the Labour Inspector and the employees themselves to accurately calculate all minimum entitlements. There is also a need for specific deterrence given that multiple employees have been affected.
- i. Degree of culpability – Mr Gautam was personally involved in the recruiting of the affected employees, arranging for their visas which bound them to work only for Hariom, and authorising their pay or lack thereof.
- j. Consistency – the court has repeatedly found that these types of breaches involving vulnerable migrant workers are matters where meaningful penalties are warranted;
- k. Ability to pay – there is no information before the Authority about Mr Gautam’s ability to pay a penalty, although his and Hariom’s acceptance of the need to pay holiday pay arrears suggests at least some ability to do so.
- l. Proportionality – the amounts involved, being the equivalent of several weeks’ wages outstanding to the affected employees, and considerably more in the case of Mr Singh, again suggest that a meaningful penalty is warranted.

[56] Taking the above factors into account, I am satisfied that it is appropriate to impose penalties on Mr Gautam personally.

[57] I must now consider the number and type of breaches for which penalties may be awarded. There are breaches of 4 statutes, being the Employment Relations Act 200,

the Holidays Act 2003, the Minimum Wage Act 1983, and the Wages Protection Act 1983.

[58] I consider it appropriate to categorise the failures to keep wage and time records and the failures to keep holiday and leave records as a single type of record-keeping breach.

[59] I also consider it appropriate to categorise the failure to pay holiday pay due on the ending of employment in breach of sections 23, 25, and 27 of the Act as a single failure as it stemmed from a single action/failure.

[60] Accordingly, I identify the number of breaches for the purposes of penalty analysis as follows:

- a. Five breaches of record-keeping requirements;
- b. Three breaches of failing to pay holiday pay on termination of employment;
- c. Three breaches of failing to pay the minimum wage; and
- d. One breach of seeking and receiving an unlawful premium.

[61] This means that there are 12 breaches for which penalties may be claimed. As the maximum amount of a penalty is \$10,000 for an individual as set out in s 135 of the Act, this means that Mr Gautam is subject to a total maximum penalty amount of \$120,000. I do not consider it appropriate to further globalise these breaches, as they are all of distinct types, and of separate statutes.

[62] I must then consider aggravating factors and ameliorating factors. The court and Authority have previously found that record-keeping type breaches should be assessed at the rate of 60%. This reduces the total penalty amount to \$72,000. I must then consider whether further reductions should be applied, and I consider that a general discount reflecting that this is a single owner-operator, and that Hariom has been placed into liquidation of somewhat shy of 50% is appropriate. This reduces the penalty amount to \$40,000.

[63] I consider this reasonable taking into account the number of breaches and the number of affected employees. I also consider this reasonable when compared to recent penalties awarded in the Authority against individuals which are around this level⁷.

[64] Accordingly, Mr Gautam is ordered to pay penalties in the sum of \$40,000.00.

[65] The question then becomes to whom should the penalties be paid? The Labour Inspector has appropriately taken the position that it is within the Authority's discretion to award part of any penalty to the affected employees.

[66] In this case I consider it appropriate that I do so. The employees have not yet received the monies owing to them. It is also appropriate to recognise the non-financial impacts of the negative employment situation on the employees, especially given that they are seeking nothing more than minimum entitlements, and that record-keeping failures have rendered it difficult to be sure that all entitlements have been identified.

[67] Accordingly, I order that each of the five affected employees is to be paid the sum of \$5,000.000 as a penalty amount. I order that Mr Singh is to receive an additional \$5,000 in penalties in recognition of the unlawful premium paid. The remainder of the penalties are to be paid to the Crown account.

[68] The Labour Inspector has also claimed for reimbursement of the filing fee of \$71.56. As the Inspector has been successful in his claims, this amount is also to be paid by Mr Gautam to the Inspector.

Orders

[69] Mr Tarum Gautam make penalty payments within 28 days of the date of this determination as follows:

- a. The sum of \$5,000.00 to Jai Shiva; and
- b. The sum of \$5,000.00 to Vinayak Chopra; and
- c. The sum of \$5,000.00 to Raman Shekhar; and
- d. The sum of \$10,000 to Jagmeet Singh; and
- e. The sum of \$5,000 to Phoolmeet Kaur; and

⁷ *A Labour Inspector v Sail City Venture Limited* [2020] NZERA Auckland 268; *A Labour Inspector v Buenaventura* [2023] NZERA 474; *A Labour Inspector v Shen Yuan* [2024] NZERA 189.

- f. The sum \$10,071.56 (being penalties plus the filing fee) to the Crown Account.

Costs

[70] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, and I note that the investigation meeting in this matter ran for one day.

[71] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicant 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 respondent/s 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.

[72] 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

Claire English
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