

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 330  
3399384

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Applicant
AND	7 SOLUTIONS LIMITED First Respondent
AND	KAMAL JEET SINGH Second Respondent

Member of Authority:	Simon Greening
Representatives:	Alysia Gordon, counsel for the Applicant Kamal Jeet Singh for the Respondents
Investigation Meeting:	23, 24 April 2026 in Auckland
Submissions received:	6 May 2026 from the Applicant 20 May 2026 from the Respondents
Determination:	29 May 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] 7 Solutions Limited (7SL) is a limited liability company which operates a mowing and landscaping business, trading as Auckland City Lawns.

[2] Mr Kamal Jeet Singh (Mr Singh) is the sole director of 7SL.

[3] In February 2023 Mr Singh visited Mr Gurdeep Singh's village, in India.

[4] Mr Gurdeep Singh says that during the visit, Mr Singh told him he had connections in New Zealand and could arrange a job and work visa for him, and a partner visa for his wife.

[5] Mr Gurdeep Singh recalls Mr Singh telling him that he needed to pay money to obtain a job and work visa.

[6] Mr Gurdeep Singh says that Mr Singh told him that he was able to secure a job with a company called 7SL, and that he would be employed as a builder's labourer.

[7] During the same conversation, Mr Gurdeep Singh recalls Mr Singh telling him that he would need to pay the sum of approximately \$36,000 (NZD) in order to secure a job with 7SL, and a work visa.

[8] Following the Mr Singh's trip to India, Mr Gurdeep Singh and Mr Singh used WhatsApp to communicate and discuss the job opportunity with 7SL. This correspondence included Mr Singh sending Mr Gurdeep Singh the job advertisement for the role with 7SL.

[9] Mr Gurdeep Singh arrived in New Zealand on 24 August 2023 and was employed by 7SL from 25 September 2023 to 1 September 2024.

[10] Mr Gurdeep Singh was sponsored by 7SL and obtained an Accredited Employer Work Visa (AEWV) in order to work for 7SL as a builder's labourer.

[11] On 19 August 2024, MBIE received a complaint from Mr Gurdeep Singh.

[12] Mr Gurdeep Singh's complaint to MBIE raised a number of issues, however, the only issue before the Authority for determination is whether 7SL sought and received a premium from Mr Gurdeep Singh.

[13] Mr Singh was responsible for recruiting Mr Gurdeep Singh and arranging AEWV sponsorship for him.

[14] Mr Singh engaged Mr Teji Kaur, a licensed immigration advisor from Kaur Migrations, to assist him with the immigration process.

[15] Due to the serious nature of the issues raised in Mr Gurdeep Singh's complaint, the Labour Inspectorate commenced an investigation on 10 September 2024.

[16] Ms Tanzeel Yunus (the Inspector) was the primary investigator.

[17] The Inspector reviewed all evidence supplied by Mr Gurdeep Singh, 7SL, and Mr Singh. This included bank statements, WhatsApp communications relevant to the alleged premium payments, payroll and employment records, and visa-related documents.

[18] The Inspector conducted interviews with Mr Gurdeep Singh, Mr Singh and Ms Amandeep Kaur, to ascertain the validity of the evidence and assess the circumstances surrounding the alleged payments. Ms Amandeep Kaur is Mr Singh's wife.

[19] The key factual issue for determination is whether 7SL sought and received an unlawful premium from Mr Gurdeep Singh.

### **The key people**

[20] For context, the key people and their relationship to Mr Singh and Mr Gurdeep Singh, are set out below:

Gurdeep Singh	The complainant
Amandeep Kaur	Mr Singh's wife
Chamkaur Singh	Ms Kaur's uncle
Harchand Singh	Ms Kaur's father
Jarnail Singh	Gurdeep Singh's friend
Gurdhian Singh	Gurdeep Singh's brother's business partner
Paramjeet Singh	Mr Singh's brother
Birpal Kaur	Gurdeep Singh's wife
Rajinder Kaur	Gurdeep Singh's aunty

### **The Authority's investigation**

[21] For the Authority's investigation written witness statements and/or affidavits were lodged by Mr Gurdeep Singh, Mr Singh, Ms Kaur, Mr Chamkaur Singh, Mr Paramjeet Singh, Ms Rajinder Kaur, Mr Jarnail Singh, Mr Matthew Stansfield, Mr Harchand Singh, and the Inspector.

[22] The witnesses answered questions from me under oath or affirmation, questions from Mr Singh, and questions from counsel for the Inspector.

[23] 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**

[24] The issues requiring investigation and determination are:

- (a) Did 7SL breach s 12A of the Wages Protection Act 1983 (WPA) by seeking and/or receiving a premium from Gurdeep Singh?
- (b) If 7SL did breach the WPA, then should a penalty be issued pursuant to s 13(1)(b) of the WPA?
- (c) Is Mr Singh a person involved (as defined by s 142W of the Act), in a breach of employment standards?
- (d) If Mr Singh is a person involved in a breach of employment standards, then should a penalty be issued pursuant to s 13(1)(b) of the WPA against Mr Singh?
- (e) If the alleged premium was paid by Gurdeep Singh, and Mr Singh was a person involved in a breach of employment standards, and 7SL is unable pay the alleged premium monies back to Mr Gurdeep Singh, then should leave be granted to Mr Gurdeep Singh pursuant to s 142Y of the Act to recover this sum from Mr Singh?
- (f) Is either party entitled to an award of costs?

### **Did 7SL breach s 12A of the Wages Protection Act 1983 (WPA) by seeking and/or receiving a premium from Gurdeep Singh?**

[25] It is not in dispute between the parties that the following payments were made:

Payment no.	Date	Amount	From	To
First payment	3 May 2023	\$5,260	Jarnail Singh	Mr Singh
Second payment	21 June 2023	\$16,000	Gurdeep Singh	Paramjeet Singh
Third payment	22 June 2023	\$7,100	Gurdeep Singh	Paramjeet Singh
Fourth payment	26 June 2023	\$13,415	Chamkaur Singh	Ms Kaur
Fifth payment	28 June 2023	\$7,485	Jarnail Singh	Ms Kaur

- [26] Mr Singh makes the following key submissions:
- (a) 7SL did not seek or receive any premium from Gurdeep Singh.
  - (b) Mr Singh did not seek or receive any premium from Gurdeep Singh.
  - (c) The payments were made from Indian bank accounts.
  - (d) This raises the issue as to whether the Authority has jurisdiction to consider the payments as premiums pursuant to the provisions of the WPA.
  - (e) The payments received by Ms Kaur, relate to monies borrowed from family members.

*First payment – the sum of \$5,260 (NZD)*

[27] In his submissions, Mr Singh says the payment of \$5,260 (First Payment) was made by Jarnail Singh to Ms Kaur (Mr Singh's wife) because Mr Harchand Singh asked Mr Jarnail Singh to transfer this sum to Ms Kaur.

[28] Mr Singh further submits that Mr Jarnail Singh owed Mr Harchand Singh the sum of money that was transferred, and instead of Mr Jarnail Singh repaying Mr Harchand Singh directly, Mr Harchand Singh asked Mr Jarnail Singh to transfer this sum of money to Ms Kaur.

[29] As part of the Labour Inspectorate's investigation, Mr Jarnail Singh spoke with Mr Billy Saunders (a Labour Inspector) on 4 December 2024.

[30] During the telephone interview, Mr Singh told Mr Saunders that he went with Mr Gurdeep Singh to an Axis bank in the city of Nabha, and on the direction of Mr Gurdeep Singh he transferred the First Payment to Ms Kaur and Mr Singh.

[31] Mr Jarnail Singh told Mr Saunders that Mr Gurdeep Singh had asked him to transfer this sum of money to Ms Kaur and Ms Singh because he was wanting to obtain a visa in New Zealand.

[32] There was no documentary evidence before the Authority to support Mr Harchand Singh's contention that he transferred the First Payment to Mr Jarnail Singh, in order to provide a loan to Ms Kaur (his daughter).

[33] In contrast, Mr Gurdeep Singh provided the Authority with his bank account transaction history which showed the transfer of 270,000 rupees (\$5,260 NZD) to Mr Jarnail Singh.

[34] Mr Gurdeep Singh explained to the Authority that Mr Jarnail Singh had an Axis bank account which made it easier to process international transactions. This is the reason why Mr Gurdeep Singh transferred the First Payment to Mr Jarnail Singh.

[35] In addition, on 3 May 2023, Mr Singh sent Mr Gurdeep Singh a WhatsApp message requesting a payment of \$5,260.

[36] In the WhatsApp message, Mr Singh explained to Mr Gurdeep Singh that First Payment was the amount required to obtain a work visa and employment with 7SL.

[37] Mr Jarnail Singh provided two affidavits to the Authority. In his first affidavit, dated 14 May 2025, Mr Jarnail Singh writes:

The above said amount was sent by me for the visa purpose of Gurdeep Singh.

[38] In his second affidavit, dated 4 July 2025, Mr Jarnail Singh resiles from this position, and writes:

The payment was made by Mr Harchand Singh for his daughter, Amandeep Kaur, and it is important to note that it has no relation to Mr Gurdeep Singh.

This payment was made to the account of Mr Kamal Jeet Singh on behalf of Mr Harchand Singh.

[39] In the context of s 12A of the WPA, the concept of a “premium” includes money paid to acquire a job, specifically where a price is paid either by an employee, or potential employee, or is paid on that person’s behalf to secure employment.<sup>1</sup>

[40] The concept of a “premium” also extends to situations where an employer recoups, or attempts to recoup, recruitment-related costs or other expenses that would normally be borne by an employer.<sup>2</sup>

[41] The First Payment is the sum of \$5,260. The Labour Inspector submits the sum of \$750, which related to job advertising costs, and which is part of the First Payment, is a premium.

[42] The evidence in support of finding the sum of \$750 was a premium payment, outweighs the evidence in support of finding the First Payment was a loan from Mr Harchand Singh to his daughter.

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<sup>1</sup> *A Labour Inspector v Tech 5 Recruitment Limited* [2016] NZEmpC 167 at [54].

<sup>2</sup> Above n 1 at [54].

[43] The evidence in support of my finding includes the script of a telephone call between the Labour Inspector and Mr Jarnail Singh on 4 December 2024, Mr Jarnail Singh's first affidavit, and evidence provided by Mr Gurdeep Singh that he deposited this sum into Mr Jarnail Singh's account.

[44] The only evidence in support of an alternative finding, is the second affidavit provided by Mr Jarnail Singh.

[45] Furthermore, in a WhatsApp message, Mr Singh provided his bank account details to Mr Gurdeep Singh.

[46] Although the payment was made from an Indian bank account, in of itself this is not a jurisdictional impediment to the application of the WPA.

[47] This is because the payment was organised by Mr Gurdeep Singh in the context of being a person intending to work and then signing an employment agreement approximately one month later.<sup>3</sup> The individual employment agreement is governed by New Zealand employment law.<sup>4</sup>

[48] On the balance of probabilities, I find the sum of \$750, being part of the First Payment, for job advertising costs, is a premium which was sought and received by Mr Singh.

*The Second, Third, Fourth and Fifth, payments*

[49] Counsel for the Inspector makes the following key submissions:

- (a) The total sum of the Second, Third, Fourth, and Fifth payments is \$44,000.
- (b) The sum of \$44,000 was discussed during a phone-call between Mr Gurdeep Singh and Mr Singh on 12 June 2023 and then confirmed in a subsequent WhatsApp message by Mr Singh.
- (c) Following the call and WhatsApp message, Mr Gurdeep arranged for these payments to be made.
- (d) These payments were made between 21 and 28 June 2023.

[50] Further explanation of the Inspector's position follows.

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<sup>3</sup> Employment Relations Act 2000, s 6(1)(b)(ii).

<sup>4</sup> *Brown v New Zealand Basing Limited* [2017] NZSC 139 at [41].

[51] On or about 7 June 2023, Mr Gurdeep Singh sent Mr Singh a photo of the signed individual employment agreement.

[52] There was further communication on WhatsApp between Mr Singh and Mr Gurdeep Singh about what information Mr Gurdeep Singh needed to provide Immigration New Zealand (INZ) for his work visa application.

[53] On 10 June 2023, an accredited work visa application was submitted to INZ for Mr Gurdeep Singh.

[54] On 12 June 2023, Mr Gurdeep Singh spoke with Mr Singh through a WhatsApp phone call.

[55] After the phone call Mr Gurdeep Singh sent a message on WhatsApp to Mr Singh:

40,700  
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[56] Mr Singh wrote back:

44,700

[57] Mr Gurdeep Singh says that during the phone call, Mr Singh told him that he needed to make a further payment of approximately \$40,000. During the call Mr Gurdeep Singh says that Mr Singh explained this further payment was in connection with the job Mr Singh was arranging for him with 7SL in New Zealand.

[58] Following the call, Mr Gurdeep Singh sent a message on WhatsApp to Mr Singh: *40,700*, because he wanted to confirm the amount Mr Singh had discussed with him during the call.

[59] Mr Singh replied to this message with the number: *44,700*.

[60] Mr Gurdeep Singh understood from the phone call, and Mr Singh's subsequent message, that he was required to pay the sum of \$44,700 (NZD) in order for Mr Singh to arrange a job for him with 7SL in New Zealand.

[61] In his witness statement, Mr Singh says the sum of \$44,700 discussed in the WhatsApp communication with Mr Gurdeep Singh, is a reference to the salary that 7SL would pay Mr Gurdeep Singh.

[62] Mr Singh says that Mr Gurdeep Singh called him on 12 June 2023 in order to confirm his salary.

[63] Mr Singh says Mr Gurdeep's Singh's salary was based on the following calculation: according to the individual employment agreement, Mr Gurdeep Singh would be paid \$29.70 per hour, and work 30 hours per week, therefore his salary (based on a 50-week year, according to Mr Singh), would be \$44,550.

[64] Mr Singh says the four payments that followed this discussion with Mr Gurdeep Singh, all related to family loan arrangements, and not Mr Gurdeep Singh's subsequent employment with 7SL.

[65] In his witness statement, and oral evidence before the Authority, Mr Singh explained the four additional payments in the following way:

- (a) Mr Singh's brother, Mr Paramjeet Singh, did not receive the Second and Third Payments.
- (b) The Fourth payment was a loan from Mr Harchand Singh (Ms Kaur's father) which was deposited into Mr Jarnail Singh's account and then transferred to Ms Kaur.
- (c) The Fifth payment was a loan from Mr Chamkaur Singh to Ms Kaur, which was subsequently repaid by Ms Kaur.

[66] The standard of proof in a civil proceeding requires the Authority to weigh the evidence and reach a conclusion based on the balance of probabilities. Balance of probabilities simply means more probable than not.<sup>5</sup>

[67] I have considered the evidence and find on the balance of probabilities that the four payments were premiums arranged by Mr Gurdeep Singh for the purpose of securing employment with 7SL. My reasoning follows:

- (a) Mr Gurdeep Singh has provided evidence of payments to Mr Paramjeet Singh, and there is no evidence to support Mr Paramjeet Singh's claim that he did not receive this money.

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<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [102].

- (b) In his second affidavit Mr Jarnail Singh resiles from the position set out in first affidavit, by stating that First Payment was a loan from Mr Harchand Singh to Ms Kaur and was not related to Mr Gurdeep Singh's visa application.
- (c) However, I do not give any weight to Mr Jarnail Singh's second affidavit, because in the second affidavit he says he had not spoken to the Labour Inspectorate, however there was a transcript of the phone-call between Mr Saunders and Mr Jarnail Singh which was before the Authority.
- (d) In their affidavits, both Mr Chamkaur Singh and Ms Rajinder Kaur confirm that in regard to the Fourth Payment, Mr Gurdeep Singh asked Ms Rajinder Kaur to transfer the Fourth Payment to Mr Chamkaur Singh, who in turn transferred this sum to Ms Kaur.
- (e) In his interview with the Inspector on 3 July 2025, Mr Singh denied the WhatsApp messages (regarding the sum of \$44,700) were sent by him. In his witness statement Mr Singh provides a different explanation, confirming he did send the WhatsApp message in question; however, it related to a discussion with Mr Gurdeep Singh about his salary.
- (f) Mr Gurdeep Singh signed his employment agreement, which sets out the wage rate and hours of work, and makes no reference to salary, almost a week before his phone call with Mr Singh, where Mr Singh alleges Mr Gurdeep Singh asked him what the salary was for this position.
- (g) The sum of the Second, Third, Fourth, and Fifth payments is \$44,000, which (depending on the exchange rate at the time) is approximately the same amount discussed by Mr Singh and Mr Gurpreet Singh in WhatsApp messages and their phone-call on 12 June 2023.
- (h) The timing of the four payments, which were arranged by Mr Gurpreet Singh and paid in the two-week period following the phone-call on 12 June, which suggest the WhatsApp message was not a confirmation regarding salary, but the amount to be paid by Mr Gurdeep Singh.

- (i) Mr Gurpreet Singh signed his employment agreement approximately three weeks before the First Payment was made, and received his work visa on 19 June, which supports the conclusion that the timing of these payments was connected to his job offer and employment with 7SL.
- (j) The four payments were sought by Mr Singh on behalf of 7SL with respect to Mr Gurpreet Singh's employment with 7SL.

[68] I make the following findings:

- (a) Mr Singh sought the sum of \$750 (the First Payment), a premium, on 3 May 2023, from Mr Gurdeep Singh on behalf of 7SL.
- (b) Mr Singh sought the sum of \$44,700 (the subsequent four payments), a premium, on 12 June 2023, from Mr Gurdeep Singh on behalf of 7SL.

[69] I now turn to consider whether the five payments were received by 7SL.

[70] Section 12A(2) of the WPA states:

Where an employer receives any amount of money in contravention of subsection (1), whether by way of deduction from wages or otherwise...

[71] Mr Singh received the First Payment. Mr Paramjeet Singh received the Second and Third Payments. Ms Kaur received the Fourth and Fifth payments.

[72] The issue is whether, it is more likely than not, that 7SL received the payments.

[73] The ordinary meaning of the word "receive" is, "*to accept a person or thing*".<sup>6</sup>

[74] Therefore, on the face of it, various individuals received the payments, and 7SL did not receive the payments.

[75] However, the legal meaning of the word "receive" extends to constructive possession. This is a situation where a person (including a company) is considered in possession of an item or has "received" it because they have the legal right to that item, although they do not have physical possession of the item.

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<sup>6</sup> *Oxford English Dictionary* (online ed, Oxford University Press) s.v. "Receive".

[76] Therefore, when the payments were made to Mr Paramjeet Singh and Ms Kaur, I find that 7SL received these payments on the basis of constructive possession.

[77] This is because 7SL had the legal right to these payments.

[78] The company's legal right to these payments, turns on the knowledge of Mr Singh and his involvement in securing these payments. My reasoning follows:

- (a) Mr Singh sought the five payments on behalf of 7SL.
- (b) Mr Singh had knowledge of the payments.
- (c) It follows that Mr Singh knew Mr Paramjeet Singh and Mr Kaur had received the payments.
- (d) The payments were made in connection with Mr Gurdeep Singh obtaining employment with 7SL.
- (e) Mr Singh, being the sole director of 7SL, was the controlling mind of 7SL.

[79] In summary, this means 7SL received the payments within the meaning of s12(2) of the WPA.

[80] Therefore, I find that 7SL breached s 12A(1) and s 12A(2) of the WPA by seeking and receiving a premium in the sum of \$44,750.

**If 7SL did breach the WPA then should a penalty be issued pursuant to s 13(1)(b) of the WPA?**

[81] Section 133A of the Act sets out a number of factors the Authority must have regard to in determining an appropriate penalty. The full Court's judgement in *Preet* provides additional factors to consider when determining an application for a penalty.<sup>7</sup>

[82] The additional factors to be considered:

- (a) Deterrence, both particular and generally.
- (b) Culpability.
- (c) Consistence of awards in similar cases.
- (d) Ability to pay.
- (e) Proportionality of outcome to breach.

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<sup>7</sup> *Borsboom v Preet PVT* [2016] NZEmpC 143 at [141]-[148].

[83] In *Preet* the Court identified a four-step method for determining an appropriate penalty. I will consider the Inspector's application for penalties against 7SL and Mr Singh with regard to both the statutory factors, and additional factors discussed in *Preet*. I have then applied the four-step method to reach a conclusion regarding the penalties sought.

[84] In setting an appropriate penalty, the first statutory consideration is the object of the Act. A fundamental object of the Act is to promote the effective enforcement of employment standards by conferring powers on Labour Inspectors, the Employment Relations Authority, and the Court.<sup>8</sup>

[85] I have considered the importance of enforcing employment standards, as a key object of the Act, and concluded it is appropriate to impose a penalty in this case.

[86] The next consideration is the nature and extent of the breaches of the WPA.<sup>9</sup>

[87] There is possibly an argument that there are two individual breaches of the WPA, nevertheless the breaches arise in respect of the same Act and same set of facts, therefore globalisation of these two breaches into one breach for the purpose of setting a penalty is appropriate.

[88] Therefore, the maximum penalty available is \$20,000.

[89] The third statutory consideration is whether 7SL's breach of the WPA was intentional, inadvertent or negligent. I find that 7SL intentionally breached the WPA by requesting payments to be made by Mr Gurdeep Singh to various individuals. There was a significant amount of correspondence on WhatsApp between Mr Gurdeep Singh and Mr Singh regarding the information required to apply for a work visa in New Zealand, confirmation that Mr Gurdeep Singh had signed the employment agreement, and the money to be paid.

[90] The fourth statutory consideration is the nature and extent of any loss or damage suffered by Mr Gurdeep Singh or gains made or losses avoided by 7SL because of the breach or involvement in the breach.

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<sup>8</sup> *A Labour Inspector of the Ministry of Business, Innovation and Employment v Samra Holdings Limited* [2022] NZEmpC 234 at [68].

<sup>9</sup> *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [20].

[91] Mr Gurdeep Singh paid the sum of \$44,750 to 7SL, which is a significant sum of money. The Labour Inspector submits that this sum of money equates to approximately 12 months of wages. On this basis, according to the submission for the Inspector, 7SL received the benefit of free labour for a 12-month period.

[92] The company has not paid Mr Gurdeep Singh any amount of compensation, reparation, or restitution, and has not taken steps to avoid or mitigate any actual or potential adverse effect of the breach. There is no evidence of remorse or contrition.

[93] The Labour Inspector submits that the circumstances of the breach highlight the vulnerability of Mr Gurdeep Singh because he was a migrant worker who was dependent on his work visa.

[94] There is no evidence to suggest that 7SL has been found to have engaged in similar conduct in the past.

[95] Deterrence is an important consideration in a case like this because it involves a vulnerable employee having to pay significant sums of money in order to secure employment in New Zealand.

[96] As part of the penalty setting exercise, I have considered the degree of culpability in respect of 7SL and the factors already discussed that increased the company's culpability, which I have taken into account.

[97] No information has been provided by 7SL regarding its financial ability to pay a penalty.

[98] I now consider other cases involving penalties. In *Zhou v 6 Meter Homes Limited* a premium was sought but not received.<sup>10</sup> The penalty issued against the company was \$10,000. In *Lin v Zhou* a premium of \$11,000 was paid by the employee to the employer.<sup>11</sup> The penalty issued against the company was \$15,000. In *Tan v Yang* a premium of \$14,000 was sought and the sum of \$7,000 was paid by the employee to the employer.<sup>12</sup> The penalty issued against the company was \$6,000.

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<sup>10</sup> *Zhou v 6 Meter Homes Limited* [2025] NZERA 22.

<sup>11</sup> *Lin v Zhou* [2012] NZERA Auckland 43.

<sup>12</sup> *Tan v Yang* [2014] NZEmpC 65.

[99] Taking all of these factors into account, a starting point of 90% of the maximum penalty sum available, is appropriate.

[100] I have adopted this starting point because of the sum paid by Mr Gurdeep Singh was equivalent to wages for the period of one year. The company received the benefit of this premium being paid.

[101] There are no mitigating factors to consider.

[102] I now stand back and consider whether the penalty is proportionate to the breach. I have taken into account the fact that 7SL has not been subject to a Labour Inspectorate investigation previously. On the other side of the ledger, I have considered the sum paid by Mr Gurdeep Singh. I have considered who initially received the payments, which potentially goes to the issue of concealment. I have considered 7SL's narrative that the monies received related to inter-family loan arrangements, when the evidence in the form of bank statements, WhatsApp communications, affidavits from family members involved, and the timing of the payments, all overwhelmingly weigh in favour of a finding that the payments were premiums.

[103] Taking all of these factors into account, I discount the provisional starting point by 10% on the basis that this is the first occasion 7SL has been before the Authority in respect of a Labour Inspectorate investigation.

[104] Within 28 days of the date of this determination, I order 7SL to pay the sum of \$16,000 to the Crown.

**Is Mr Singh a person involved (as defined by s 142W of the Act), in a breach of employment standards?**

[105] According to s 142W of the Act, a person is "involved in a breach" if the breach is a breach of an employment standard and the person has aided, abetted, counselled, or procured the breach.<sup>13</sup>

[106] The knowledge required to establish liability of a person "involved in a breach" of employment standards under s 142W(1) of the Act, is knowledge of the essential facts that establish the contravention by the employer.<sup>14</sup>

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<sup>13</sup> Employment Relations Act 2000, s 142Y.

<sup>14</sup> *A Labour Inspector v Southern Taxis Limited* [2021] NZCA 705 at [59].

[107] At all relevant times, Mr Singh was the sole director and shareholder of 7SL and is therefore an officer of 7SL in accordance with s 142W(3)(a) of the Act.

[108] Mr Singh was involved in the day-to-day running of the business and was actively involved in all of the correspondence and decisions relating to the recruitment of Mr Gurdeep Singh.

[109] Mr Singh had knowledge of all the essential facts relating to the recruitment of Mr Gurdeep Singh and the payments which followed. Therefore, Mr Singh had knowledge of the essential facts that established the breaches of the WPA.

[110] I have undertaken the same penalty setting exercise as discussed and set out when determining the penalty for 7SL.

[111] I adopt the same starting point of 90% of the maximum penalty sum available. This is because Mr Singh is the sole director of 7SL and drove the recruitment process from beginning to end.

[112] Although not a case involving minimum entitlements, this case is analogous to *Nicholson v Ford* where the court issued a penalty against Mr Nicholson for aiding and abetting breaches of Mr Ford's employment agreement.<sup>15</sup>

[113] The court noted that Mr Nicholson was “*in the driver's seat as far as the breach was concerned*”, and by analogy I find that Mr Singh was in the “*driver's seat*” because from beginning to end he drove the recruitment process involving Mr Gurpreet Singh, his family members received the payments, and ultimately 7SL, which he is the sole director of, received the payments.<sup>16</sup>

[114] A penalty of \$7,500 was ordered against Mr Nicholson. This case involves employment standards, and taking into account that enforcing employment standards is a key object of the Act, my provisional starting point is higher, being 90% of the maximum penalty available against an individual.

[115] I now consider other cases involving penalties. In *Zhou v 6 Meter Homes Limited* a premium was sought but not received.<sup>17</sup> The penalty issued against the

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<sup>15</sup> *Nicholson v Ford* [2018] NZEmpC 132.

<sup>16</sup> Above n 15 at [28].

<sup>17</sup> *Zhou v 6 Meter Homes Limited* [2025] NZERA 22.

director was \$6,000. In *Lin v Zhou* a premium of \$11,000 was paid by the employee to the employer.<sup>18</sup> A penalty of \$7,000 was issued against the director.

[116] There are no mitigating factors to consider.

[117] I now stand back and consider whether the penalty is proportionate to the breach. 7SL is a separate legal personality to its director, Mr Singh. It is appropriate then, that both individuals are held accountable in a proportionate manner. The company received the benefit of the premium. Mr Singh orchestrated the payments and, in particular, was involved in each step of the recruitment process, which included telling Mr Gurdeep Singh about the job and promoting it to Mr Gurdeep Singh. Mr Singh would be the sole benefit of this arrangement; he is the sole shareholder of 7SL.

[118] Taking all of these factors into account, I discount the provisional starting point by 10% on the basis that this is the first occasion Mr Singh has been before the Authority in respect of a Labour Inspectorate investigation.

[119] This is a case where it is appropriate that the entire penalty be paid to Mr Gurdeep Singh.

[120] Within 28 days of the date of this determination, I order Mr Singh to pay \$8,000 to Mr Gurdeep Singh.

**Can the premium be recovered from 7SL and, if so, is leave required for the Labour Inspector to recover the premium from Mr Singh?**

[121] I have concluded that 7SL breached s 12A(1) and s 12A(2) of the WPA by seeking and receiving a premium from Mr Gurdeep Singh, being the sum of \$44,750.

[122] Therefore, this sum can be recovered as a debt due by the Labour Inspector on behalf of Mr Gurdeep Singh.<sup>19</sup>

[123] Within 28 days of the date of this determination I order 7SL to pay the Crown (Labour Inspectorate) the sum of \$44,750, for the benefit of Mr Gurdeep Singh.

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<sup>18</sup> *Lin v Zhou* [2012] NZERA Auckland 43.

<sup>19</sup> Wages Protection Act 1983, s 12A(2).

[124] Leave is not required under s 142Y of the Act in order for the Labour Inspector to recover the sum of \$44,750 from Mr Singh.<sup>20</sup>

[125] Therefore, if 7SL does not pay the sum of \$44,750 to the Crown (Labour Inspectorate) within 28 days of the date of this determination, then the Labour Inspector can recover the sum of \$44,750 from Mr Singh personally.

### **Summary and orders**

[126] I make the following orders:

- (a) within 28 days of the date of this determination I order 7SL to pay the Crown (Labour Inspectorate) the sum of \$44,750, for the benefit of Mr Gurdeep Singh; and
- (b) if 7SL does not pay the sum of \$44,750 to the Crown (Labour Inspectorate) within 28 days of the date of this determination, then the Inspector can recover the sum of \$44,750 from Mr Singh personally; and
- (c) within 28 days of the date of this determination, I order Mr Singh to pay \$8,000 to Mr Gurdeep Singh; and
- (d) within 28 days of the date of this determination, I order 7SL to pay the sum of \$16,000 to the Crown.

### **Costs**

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

[128] 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 14 days of the date of this determination. From the date of service of that memorandum, 7SL and Mr Singh 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.

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<sup>20</sup> *Kongbang v Lotus Touch Ltd* [2024] NZEmpC 224 at [21].

[129] 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.<sup>21</sup>

Simon Greening  
Member of the Employment Relations Authority

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<sup>21</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).