IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 374
3349220

BETWEEN	BOBBY MANASE & MARLEY MANASE Applicants
AND	TREVOR MARSHALL First Respondent
AND	PETER HALE Second Respondent
AND	ADAM JACQUES Third Respondent

Member of Authority:	Robin Arthur
Representatives:	Kim Ahern, advocate for the Applicants First respondent in person No attendance by Second Respondent Third respondent in person
Investigation Meeting:	19 March 2026 in Auckland and by audio-visual link
Submissions:	From the applicants on 27 March 2026 and 17 April 2026, from Mr Marshall on 14 April 2026 and from Mr Jacques on 15 April 2026.
Determination:	12 June 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Bobby Manase and Marley Manase, who are brothers, sought findings they were owed arrears for wages, notice and holiday leave when the company they worked for, Future Energy Solutions Limited (FES), closed its business in December 2024. Because FES had subsequently gone into liquidation, they sought orders requiring the directors to personally pay any amounts found to be owed as arrears. They also sought

an order for penalties to be imposed on the company's directors for aiding and abetting breaches of their terms of employment.

Earlier history of the proceedings

[2] These proceedings originally began as two separate applications involving five former FES employees which the Authority joined into a single investigation process. The five workers had each raised personal grievances for unjustified disadvantage and unjustified dismissal as well as the claims for unpaid wages and leave and penalties. After the company was placed in liquidation by court order on 17 July 2025 the applicants were prevented from continuing with their personal grievance claims against FES because the liquidator declined their request for permission to go ahead with those proceedings.[1]

[3] The applicants then amended their claim to seek remedies from FES's three directors at the time of their employment – Trevor Marshall, Peter Hale and Adam Jacques. In their amended statement of problem, lodged in August 2025, the applicants set out details of their allegations that Mr Marshall, Mr Hale and Mr Jacques were personally involved in breaches of employment standards. The applicants said those breaches occurred when FES failed to pay them wages and holiday pay owed at the end of their employment. If the directors were found to be involved in those breaches, the applicants sought leave to pursue Mr Marshall, Mr Hale and Mr Jacques for personal payment of any arrears FES, in liquidation, was unable to pay. The applicants also continued their claim for penalties to be imposed on Mr Marshall, Mr Hale and Mr Jacques for aiding and abetting breaches of their terms of employment.

[4] By the time the Authority investigation meeting was held, three applicants had withdrawn from the proceedings. The investigation continued in order to determine the claims from Bobby Manase and Marley Manase.

[5] The directors did not lodge statements in reply in the form required by the Authority's regulations but Mr Marshall and Mr Jacques provided some responses to the claim in correspondence to the Authority.[2]

[6] Mr Marshall denied any wages, holiday pay or notice were due and,

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[1] Companies Act 1999, s 248(1)(c).

[2] Employment Relations Authority Regulations 2000, r 8(2).

consequently, he said penalties were not applicable.

[7] Mr Jacques said he had ceased to be part of the company as an employee, shareholder or director at the time decisions were made not to pay money due to Bobby Manase and Marley Manase at the end of their employment with FES. He said he was "a mere messenger" when he "was instructed by Peter Hale to issue the effective termination notice".

[8] Mr Hale provided no written response and has not communicated with the Authority at any time in its investigation.

The Authority's investigation

[9] Under directions made in a case management conference on 1 October 2025 the parties were required to attend mediation and, if the matter was not resolved there, to prepare for an investigation meeting by lodging witness statements and relevant documents. Mr Marshall and Mr Jacques attended the case management conference, held by telephone, but Mr Hale did not.

[10] Mediation did not resolve the claims pursued by Bobby Manase and Marley Manase. Documents they then lodged for the Authority investigation included their witness statements, employment agreements, pay slips and emails exchanged with some of the directors.

[11] None of the respondents lodged witness statements in the form expected under the Authority's directions. Documents lodged by Mr Marshall, disputing the claims, and lodged by Mr Jacques, denying responsibility, have been referred to earlier. Mr Hale provided no witness statement or any other information.

[12] Bobby Manase and Marley Manase attended the investigation meeting in person. Mr Marshall (in Brisbane) and Mr Jacques (in Nelson) had requested and were granted leave to attend the investigation by audio-visual link only.

[13] Mr Hale did not attend at all. At the outset of the meeting Mr Marshall said he was authorised to represent Mr Hale but neither he nor Mr Hale had provided written confirmation of any such authorisation. Mr Marshall said Mr Hale was living in the Philippines, was unwell and had withdrawn from involvement in a business Mr Marshall and Mr Hale operated in Brisbane.

[14] Authority correspondence prior to the investigation meeting had advised all parties that the Authority could proceed to making binding orders on parties who, notified of the proceedings, did not attend or were not represented.[3] In this case, the parties were also advised in correspondence from the Authority that orders made in New Zealand could, if necessary, be subject to legislative provisions allowing for them to be enforced in Australia.[4]

[15] The Authority record confirms all parties, including Mr Hale, were advised of the proceedings, the opportunity to provide evidence and the opportunity to attend the investigation meeting, in this case either in person or by AVL.

[16] At the Authority investigation meeting Bobby Manase, Marley Manase, Mr Jacques and Mr Marshall each, under affirmation, answered questions from me. Each party present also had the opportunity to ask additional questions of other parties present. Arrangements were made for closing submissions to be submitted in writing after the meeting.

[17] As permitted by s 174E of the Employment Relations Act 2000 (the ER 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.

[18] Findings in an Authority investigation are reached on the balance of probabilities, that is from the member's assessment of available evidence to determine what, more likely than not, happened and why.

Admissibility of evidence

Records of phone calls with Mr Marshall and Mr Jacques

[19] Prior to the investigation meeting, and during it, I considered arguments about the admissibility of some evidence in the form of audio files and written transcripts of two telephone conversations recorded by a former FES employee, referred to in this determination as Mr A.

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[3] Minutes of the Authority, 2 October and 14 October 2025 and Employment Relations Act 2000, s 173(2) and Schedule 2 clause 12.
[4] Employment Relations Act 2000, s 141(1) and Trans-Tasman Proceedings Act 2010.

[20] Mr A spoke with Mr Jacques by telephone on 5 December 2024 and then, separately but on the same day, with Mr Marshall. He recorded both calls.

[21] Mr A was one of the five original applicants and was also a party to the amended statement of problem lodged after FES went into liquidation. On 12 January 2026, however, Mr A withdrew from the proceedings.

[22] The applicants initially only provided written transcripts of the recordings. Shortly before the investigation meeting, in response to an Authority query, their advocate also provided the digital audio recordings of the telephone calls.

[23] Mr Marshall objected to use of or reference to those conversations between him and Mr A. He did so on two grounds. Firstly, he said he was in Australia when he spoke to Mr A by telephone on 5 December and recording of the conversation, and use of it in evidence, would be illegal under Australian law, citing what he said was a provision in that country's criminal legislation. Secondly, he said Mr A breached his good faith obligations as an employee, under New Zealand law, by secretly recording that conversation.

[24] Mr Marshall also, repeatedly throughout the investigation meeting, said he would seek to initiate separate proceedings in Australia against Bobby Manase and Marley Manase in relation to those recordings.

[25] For the following reasons I declined Mr Marshall's request to exclude those recordings from the Authority's investigation.

[26] Firstly, the telephone conversations were initiated and heard in New Zealand. Our law does not forbid a person who is party to the call making a recording of it.[5]

[27] Secondly, even if unlawfully made, such recordings are not prohibited from disclosure as evidence in a civil proceeding, such as an Authority investigation.[6]

[28] Thirdly, there was no dispute as to the authenticity of the recordings of the two calls, the identity of the participants or the general accuracy of the transcripts of them.

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[5] Crimes Act 1961, s 216B(2).

[6] Crimes Act 1961, s 216C(2) (b)(iii) and Privacy Act 2020 section 22, Information privacy principle 10(1)(e)(iv).

[29] Fourthly, although Mr A's failure to disclose the fact he was recording the conversations was a breach of his duty of good faith as an employee of FES at the time, the content of those recordings was directly relevant and highly probative evidence to key points in contention in this case.[7] Their evidential value, for the Authority investigation, outweighed any doubt arising the recordings not being made in a good faith way.

[30] Fifthly, Bobby Manase and Marley Manase were not directly responsible for making those recordings or providing them as evidence in the Authority proceedings. They were provided by Mr A as part of what was then a joint application, from which Mr A subsequently withdrew. While he then ceased to be a party, Mr A could not remove evidence already before the Authority as part of the original application. At the Authority's volition this evidence remained part of its investigation. Even if Bobby Manase and Marley Manase, as the sole remaining applicants, had asked for those recordings to be removed, it was highly unlikely the Authority would have agreed to deprive itself of such probative and relevant evidence on what was said in conversations with Mr Marshall and Mr Jacques at that time to one of the workers about their employment and the payment of wages and leave owing to them. As one of the recordings showed, Mr Jacques referred to having had a similar telephone conversation with Marley Manase the same day and the questions asked by Mr A in those calls were not just about his personal situation but what was happening for all the workers.

[31] Incidentally, the fact that Mr A (not either of the Manase brothers) was responsible for making the recordings, and for then providing the transcripts of them as evidence in an application to the Authority, made it very unlikely that Bobby Manase and Marley Manase could be found to have acted illegally in relation use of those transcripts in the course of the Authority proceedings, in New Zealand or under Queensland state law.[8]

Solicitor's letter

[32] Another question of admissibility concerned a letter sent by a lawyer in Queensland, acting on instructions from Mr Marshall, to Bobby Manase and Marley Manase on 10 February 2026. Their advocate sought to produce a copy of that letter in

[7] Applying the principle codified in the Evidence Act 2006 s 7(3) that relevant evidence is admissible if it tends to prove or disprove anything of consequence to determination of the proceeding.
[8] Invasion of Privacy Act 1971 (Qld), s45(2)(b).

these proceedings as evidence of Mr Marshall threatening Bobby Manase and Marley Manese as a way of persuading them to abandon their claims in the Authority.

[33] The letter was headed "without prejudice save as to costs". The question of its admissibility was referred to another Authority member to assess. When the parties were given the opportunity to comment on this issue Mr Marshall responded by asking for the letter to be included as part of the information before the Authority and the member then confirmed the letter was to be admitted by consent.

[34] The letter said its author had instructions from Mr Marshall "to commence proceedings in regard to timesheet fraud and theft of company property". It alleged Bobby Manase and Marley Manase had "falsified" timesheets "in collusion with Adam Jacques" by claiming for hours they were travelling to or from work and, for some hours, when they were not at work. It also accused them of "unlawful removing" of company property including a vehicle and "petroleum-specific tools" and said those allegations would be substantiated by surveillance footage and witness statements.

[35] The letter said Mr Marshall had engaged "a prominent private investigation firm" to look into those concerns but he would agree not to pursue any criminal or civil complaints "if an amicable resolution can be made".

[36] The context in which that letter was written and sent, at a time when the Authority proceedings was the only litigation on foot, reasonably gave rise to the inference that its purpose was to press Bobby Manase and Marley Manase to drop those proceedings for fear of being subject to other litigation elsewhere.

[37] In oral evidence given at the Authority investigation meeting, however, Mr Marshall said he did not have any timesheets. He said his allegations about the hours claimed were made because the company's accountant has told him the information provided about those hours was "not accurate". There was no direct evidence from the accountant or anything else provided to corroborate his allegations.

[38] Mr Jacques and Bobby Manase, in their oral evidence, each confirmed they knew of an instance when unauthorised costs were reportedly charged to a company-provided fuel card. They said this happened after the card was stolen along with Mr Manase's vehicle keys and wallet, an event he had reported at the time to Mr Jacques and to the Police. Mr Jacques said he had then asked another employee to cancel the

card and did not know why this had not been done before charges were subsequently incurred on it.

[39] Bobby Manase also confirmed he had a company vehicle, for which he was allowed personal use during his employment, and he had kept possession of it for some weeks after his work for the company ended. He said this occurred because the company had not asked him to return it and there was some doubt about whether his employment had, in fact, ended or had only paused until further work was available. He said he had, however, returned the vehicle when asked to do so by the fleet lease company which had provided it.

[40] In correspondence with the Authority about the 10 February lawyer's letter Mr Marshall said the allegations made in it were "a completely separate matter" in which the Authority had no jurisdiction. This was an unlikely proposition given each allegation concerned arrangements or circumstances that were part of the employment relationship.[9] Those allegations were not, however, the subject of any properly raised or lodged counterclaim by FES so formed no part of the proceedings resolved in this determination. In any event, an action by the company on those allegations at this stage would require approval of its liquidator, rather than being at the personal suit of Mr Marshall. As noted in the liquidator's six-monthly report (28 April 2026), no such approval had been sought or granted.[10]

[41] No evidence reliably corroborated the allegations made by Mr Marshall, either through his lawyer's letter or in his own oral evidence or in his written submissions. And, even if established, those allegations did not negate the liability of the company or, potentially, its directors for arrears owed to Bobby Manase and Marley Manase or, for those directors, potential liability for penalties for aiding and abetting breaches of the terms of employment related to the payment of wages, holidays or other entitlements.

The issues

[42] The issues requiring determination were:

(a) When did the employment of each applicant, in fact and law, end?

[9] See Employment Relations Act 2000, s 162 and *FMV v TZB* [2021] NZSC 102, at [60], [61] and [72].
[10] See Companies Register: Future Energy Solutions Limited (8585867) in Liquidation.

(b) At that date, what salary, holiday pay and other entitlements were owed to each applicant, if anything?

(c) Did any established failure to pay salary and holiday pay breach employment standards (under the Wages Protection Act 1983 (the WPA) and the Holidays Act 2003 (the HA))?

(d) If so, were Mr Marshall and/or Mr Hale and/or Mr Jacques persons involved in those breaches (under s 142W of the ER Act)?

(e) If so, should the applicants be granted leave (under s 142Y of the ER Act) to recover any arrears directly from Mr Marshall and/or Mr Hale and/or Mr Jacques if FES (in liquidation) was unable to pay any arrears found owing to the applicants?

(f) Did Mr Marshall and/or Mr Hale and/or Mr Jacques aid and abet breaches of the employment agreements of the applicants (relating to the payment of salary and holiday pay) and, if so, should a penalty be imposed for that breach (under s 134(2) of the Act)?

(g) Should interest be awarded on any arrears found owing?

(h) Should any party be ordered to contribute to the costs of representation of any other party?

How the employment came to end

FES was a new business

[43] Mr Marshall and Mr Hale owned and ran a Queensland-based business, trading as TRL Engineering (TRL). Its specialised services included construction and installation of fuel storage tanks for companies providing retail fuel services.

[44] A major client, a large fuel retailing brand, offered them the opportunity to carry out this work for that client's New Zealand operations.

[45] Two companies were incorporated on the New Zealand Companies Office register to carry out this business.

[46] Tank Reline NZ Limited was established to construct and install tanks at the client's petrol stations or other sites. Mr Marshall and Mr Hale had both been shareholders and directors but, from November 2024, Mr Marshall became its sole shareholder and director. This company was placed in liquidation on 22 August 2025 on the application of the Commissioner of Inland Revenue.

[47] FES was established to carry out the pipe and other connection work for the new tanks. Mr Marshall, Mr Hale and Mr Jacques each had a thirty per cent shareholding. Another TRL manager owned the remaining 10 per cent. The order for liquidation of FES, made on 17 July 2025, was also made on the application of the Commissioner of Inland Revenue.

[48] Mr Jacques, already based in New Zealand, had been recruited to work for FES because he had prior experience working with installation and connection projects for the client. He was a director of the company from 12 April 2024. As an employee of FES his position was, formally, titled Operations Manager but he also used the title of managing director in some of his dealings on behalf of the company.

The employment of Marley Manase and Bobby Manase

[49] According to his written employment agreement FES employed Marley Manase in the position of "civils manager" from 5 June 2024. The agreement provided for an annual salary of $155,000, an out-of-town allowance of $85 per night, full private use of a company vehicle and to work for up to 48 hours a week, Monday to Saturday.

[50] Bobby Manase, according to his written employment agreement, was also employed from 5 June 2024 in the position of "civils operator". His agreement provided for an annual salary of $115,000 a year with the same provisions for an out-of-town allowance, vehicle use and working hours.

[51] Other relevant terms of their employment agreements provided for:

- Weekly payment of remuneration by direct credit to a nominated bank account;
- annual holidays and other leave in accordance with the Holidays Act 2003;
- at least one week's notice, in writing, if either party wished to terminate the employment;
- in the event of termination for redundancy, notice of at least one week, or notice paid in lieu; and
- no variation to the employment agreement to be effective unless in writing and signed by both parties.

[52] Marley Manase led a team of five, including himself and Bobby Manase, who worked on installation projects in Auckland and around the country. Mr Jacques and an "operations co-ordinator" carried out office-based work related to the projects.

[53] Working hours were reported remotely from their work locations through use of a software application. Mr Jacques was responsible for approving payment of the reported hours which were then referred to the company's Queenland-based financial controller, Sue-maree McEnearney, for payment through the company's payroll system.

Information about future work projects and employment

[54] In his oral evidence Mr Marshall said the fuel retail client told FES in the week of 11 November 2024 that it was halting its installation programme, ending the work FES had expected to carry out in coming months and through 2025.

[55] Two relevant events followed that meeting.

[56] Firstly, Mr Marshall said he discussed the situation with Mr Jacques who agreed to resign as a director. He said the paperwork for that change was done at that time but not lodged on the Companies Register until later. The register, on a form not lodged until 29 January 2025, shows Mr Jacques ceased to be a director on 6 December 2024.

[57] From those discussions Mr Marshall formed the view that Mr Jacques had run the New Zealand operation poorly but "it was worth trading out of", with prospects for gaining new contracts for work in the first quarter of 2025. In the phone call with Mr A on 5 December Mr Marshall said he was negotiating with Mr Jacques for complete control of the company and excepted it to "get back on track" in January or February 2025.

[58] Secondly, as Mr Marshall's evidence to the Authority investigation disclosed, he had talked with Mr Hale and Ms McEneraney after the November client meeting about what to do with the existing FES employees. Mr Marshall said he gave Mr Hale "an instruction" during that discussion to dismiss those workers and Ms McEarney was asked to send a message "to all staff in FES that we had no more work".

[59] In his oral evidence and written closing submissions Mr Marshall said Bobby Manase and Marley Manase were given notice of the termination of their employment

on 20 November and were paid up to 29 November. On that basis he said they were given more than the required one week's notice and were paid for it.

[60] Other evidence did not support that description of what happened.

[61] An email from Ms McEnearney dated 2 December 2024, addressed to another FES employee, was of particular importance in assessing the timing of whatever may have been communicated to FES staff and when. Her email, to an employee referred to in this determination only as Mr B, read:

> We're writing further to Adam [Jacques]'s advice to you on Monday 25 November 2024 of your termination.
>
> Please liaise with [the operations co-ordinator] in relation to the handover of company assets including motor vehicle, keys, fuel card etc.
>
> We wish you well in your future endeavours and will call you if a further opportunity to FES becomes available to you.
>
> Thank you and best wishes.

[62] Ms McEnearney's sign-off for her email, from a *trlengineering.com.au* address, described her position as:

> Financial Controller
> TRL Engineering Pty Ltd
> Tankreline NZ Ltd
> Future Energy Solutions Ltd

[63] Mr Marshall said Ms McEnearney later told him that she had sent the same message to all FES employees and he took her at her word. Asked why FES had not provided copies of those messages as evidence for the Authority's investigation, Mr Marshall said he no longer had access to the server from which they were sent.

[64] Mr Jacques' evidence gave a different description of communication with FES employees about the future of their employment.

[65] He agreed with the evidence of Marley Manase and Bobby Manase that he had told them in October (earlier than the November client meeting to which Mr Marshall referred) that the client was "stopping all work this side of Christmas" but that FES expected to win tenders for more work in 2025. He also accepted he had told them they would be paid through December and January. He said he gave that assurance because he "was given an instruction by Peter Hale to inform the lads they would be paid

through" until new work was available. Mr Jacques said he understood Mr Hale had not spoken to Mr Marshall before giving him that instruction about what to say to the FES workers.

[66] Mr Jacques said he had talked to Mr B on 25 November, as referred to in Ms McEnearney's 2 December email, after being asked to do so by the other directors. He said the decision to dismiss Mr B was made because "he was the last one on, so he was the first one off". Mr Jacques said he understood this was "the start of a process" but he was not, at that time, asked to talk to any other employee.

[67] The situation developed further in following days, as disclosed by the recording Mr A made of a phone call from Mr Jacques on 5 December. As shown in the following extract of the transcript of the call (bold emphasis added), Mr Jacques said he was asked to call *all* employees after discussions with Mr Marshall and Mr Hale in the previous week:

> [Mr Jacques]: … I've just spent the last f**king week trying to figure out things with Trevor [Marshall] and Peter [Hale] and that sort of carry on and they're as bad as they can be mate. The company has no money, owes creditors and stuff, And it'll be now that bad mate we can't pay. **We can't pay wages**. We're gonna be shutting down accounts and doing all sorts of shit mate. I'm so sorry but **you're gonna have to try and find work somewhere else mate**. I don't know how else to say it.
>
> [Mr A]: Have you told anyone else?
>
> [Mr Jacques]: I've spoken to Marley [Manase] just now ... I was saying the same mate. I've got to call everyone. I've been trying my absolute f**king best and I'm in the same boat. Well I actually owe money as well, cause I'm liable for the company as well. I don't have any other answers. I've been asking Peter [Hale] and Trevor [Marshall] to put money in or do things and see what we can do, what it might look like but the only thing they can come up with is leave without pay and wait till the work picks up starts again in January and start doing the job. … we've got no money so and **it's the same for everyone, so people have to find jobs**. Thanks very much but it's the time of the year and I'm, no one trusts us any more.
>
> [Mr A]: How is there no money?
>
> [Mr Jacques]: I don't know. I've been asking Trevor [Marshall], Peter [Hale] and Sue Marie [McEnearney]. You know I can't comment because I simply don't know. I simply don't know what they've been doing.
>
> [Mr A]: So we've got holiday pay so how does that work? Cause that's supposed to be another kitty somewhere.
>
> [Mr Jacques]: It's simply not there, mate
>
> [Mr A]: Cool

> [Mr Jacques]: … I simply don't have access to anything mate. They kicked me out of everything. They don't want me seeing and looking at things and that sort of stuff, so okay and that's why I'm trying to communicate with them as best I can and try and figure everything out there and we've just had the conversation now with Trevor [Marshall] and Peter [Hale] … They said hey look it's up to you. You have to call these people so here I am. I am so sorry for what I did mate. I know it won't be worth a goddamn thing to you but I gotta say it.

[68] As apparent from the parts of that extract marked with bold emphasis, Mr Jacques' message in his calls to Mr A and Marley Manase that day, was that the company could not pay wages or holiday pay, that the workers were expected to "find work somewhere else" and "find jobs" and he was communicating that message on behalf of the three directors of the company, including himself. It was advice of the termination of their employment, albeit with a suggestion that FES might be able to employ them again if the company got new work in 2025.

[69] In an email Mr Jacques sent later that day to Marley Manase and other employees, copied to Mr Marshall and Mr Hale, he wrote that he was unable to provide any further information as "all things business will be run out of the Aussie office" and Mr Marshall was taking over his shares in the business.

[70] According to Mr Jacques' oral evidence he was hospitalised the following day, 6 December, due to personal health issues arising from the pressures of what had happened with the business and what it meant for his own future.

[71] Although he said he was not involved in subsequent dealings with the employees, Mr Jacques did send a message to the applicants' advocate on 16 December again referring any queries to Mr Hale and Mr Marshall as he no longer worked for FES and was no longer a director or owner.

Differing account from the applicants

[72] The account of events by Bobby Manase and Marley Manase differed from that of Mr Marshall and Mr Jacques on some key points regarding what they had been told, and when.

[73] Both adamantly denied receiving any email message from Ms McEnearney of the type she sent to Mr B on 2 December, referring to Mr Jacques dismissing him on 25 November.

[74] Marley Manase recalled a discussion with Mr Jacques which he said took place in October while his team were working on a project in Hamilton. He said Mr Jacques told him and other employees that there would be no work in December or January but the company was "working on jobs for late January". He said Mr Jacques had "explicitly assured me that my salary would continue during this period".

[75] His understanding was changed substantially by Mr Jacques' telephone call to him on 5 December. Marley Manase confirmed what Mr Jacques said to him in that call was the same as what the transcript of Mr Jacques' subsequent call to Mr A showed he told Mr A on the same date.

[76] Marley Manase referred to what he had been told in the following email message he sent to Mr Marshall, Mr Hale and Mr Jacques later on 5 December (bold emphasis added):

> Dear Trevor, Adam & Peter
>
> I hope this message finds you well. I am writing to express my concerns regarding the recent changes to the work schedule for the FES ground team.
>
> As you are aware, I was initially informed that our pay checks would continue through the months of December and January, despite the lack of work. However, I have **now been informed that this decision has been revoked**, which places my family and me in a difficult financial position.
>
> Given this situation, I respectfully request that my accumulated annual leave be paid out during this period, preferably as a lump sum.
>
> Alternatively, I am open to receiving weekly payments if that would be more convenient. I would appreciate it if my annual leave could be paid out until it is fully cleared. Additionally, I kindly request clarification regarding the expected date of our return to work, as well as the specific role or project we will be resuming. This information will allow me to better plan and ensure that I can manage this extended break without an income.
>
> Thank you for your attention to this matter. I look forward to your response.
>
> Kind regards,
> Marley Manase
> Construction Manager

[77] Mr Jacques responded to that query with an email again directing any queries to Mr Marshall and Mr Hale. Neither Mr Marshall or Mr Hale replied to Marley Manese's email on 5 December or a follow-up request for "an urgent update" he sent to them the next day.

The date of termination of employment

[78] Assessed on the balance of probabilities FES terminated the employment of Bobby Marley and Marley Manase on 5 December 2024 through the message delivered by Mr Jacques by telephone that day.

[79] Although Mr Marshall said he had directed Mr Hale and Ms McEnearney on two earlier dates to communicate that decision to the workers, the evidence overall does not support a conclusion that message reached Marley Manase and Bobby Manase any earlier than 5 December. They said Mr B told them about the email he was sent on 2 December, dismissing him, but there was no evidence any such message was addressed directly to or received by them.

[80] Mr Jacques' evidence supported the conclusion that 5 December was the date of termination. It was his calls to Marley Manase and Mr A that day that "revoked" the earlier oral assurance of ongoing pay through December and January by telling them there would be no work and no pay during at least that period.

[81] Even if there was the prospect that the workers might be contacted in future months about returning to paid employment for FES, the decision communicated to them on 5 December was a termination of employment. Although it was carried out in a way that was, arguably, an unjustified dismissal for redundancy, FES had clearly communicated the employment was at an end from that date. The hope expressed by Mr Jacques in October, about ongoing pay, was not an agreed variation recorded in writing and did not prevent FES from reassessing its prospects and making a different decision in light of the circumstances as they were by November and early December.

[82] Alternative submissions made by the applicants about constructive dismissal and promissory estoppel have been considered but do not change this conclusion. The doctrine of constructive dismissal does not apply because there was no act of resignation by Bobby Manase and Marley Manase. They were dismissed by the actions of their employer on 5 December. Similarly, the doctrine of promissory estoppel does not apply because the evidence did not support a conclusion that what Mr Jacques told the workers in October about the prospects of being paid in months when there was no work to do was a clear promise which overrode the provisions of their written employment agreements requiring variations to be in writing and which allowed for the employment to be terminated by redundancy. What FES may have hoped for in

October was changed substantially by the intervening circumstance of learning in the week of 11 November that its client was halting its installation programme, removing work FES had expected to carry out in coming months and through 2025.

[83] The allegation that FES had then acted unjustifiably in making and communicating its decisions, as a result of that change of plans and work flow, was part of the personal grievances that Bobby Manase and Marley Manase had sought to pursue but were denied permission by the liquidator. Consequently, no findings or award of remedies in respect of those grievances could be made in this determination. The finding of fact regarding the termination of employment, however, remained relevant to determining their claims for arrears of wages and other remedies regarding penalties and whether liability for those arrears now fell on the directors of FES.

Arrears of wages, holiday pay and other entitlements due

[84] Under the statutory protections for employment standards Bobby Manase and Marley Manase were entitled to payment of wages, with associated holiday pay and KiwiSaver contributions, up to the date of the termination of their employment on 5 December and the end of their notice period on 12 December.

Last week's wages and notice

[85] They each produced the pay slip provided to them by FES for the pay period from 25 November to 1 December. Their employment was terminated on 5 December and they both said they had worked in that week, that is during the pay period for 2 to 6 December. They were entitled to be paid for the four working days up to and including 5 December because they had either worked those days or had been available to work if required.

[86] And, for two related reasons, they were also entitled to pay for the subsequent five working days as notice for the period from 6 December to 12 December.

[87] Firstly, their employment agreements required one week's notice for the termination of employment, which they were not given.

[88] Secondly, the end of their employment is properly described as being on the grounds of redundancy. This was because, as described in the redundancy term in their agreement, their positions were "no longer needed by the employer", at least for the

foreseen period. The agreement provided for the week's notice to be paid in lieu where no arrangement for working out the notice period was made.

[89] The evidence of Bobby Manase and Marley Manase is preferred on these points because FES failed to provide its wage and time records or any other relevant employment records to negate their claim.[11]

[90] Mr Marshall gave contradictory information on whether or not it was possible to provide such records. In the Authority investigation meeting he said the company's records were held on a server to which he no longer had access. In an earlier written statement, dated 23 February 2026, Mr Marshall wrote that "all [FES] records are in the hands of the liquidators". In a letter to the applicants' advocate dated 1 September 2025, however, the liquidators said they held no employee records for the applicants and the directors had "not complied with our requests for company records". The liquidator's six-monthly report on 28 April 2026 said the directors had failed to respond to requests for company information.

[91] In those circumstances Mr Marshall lacked evidence in support of his propositions that no payable work had occurred in the week of 2-6 December and the notice period was covered by pay Bobby Manase and Marley Manase had received for the week ending 1 December.

[92] The amounts due as arrears for wages for the last week of work and for the week of notice are set out in the table further below in this determination. The evidence did not establish whether work done in the last week was out of Auckland, so the calculation does not include any payment for an out-of-town allowance for those days.

[93] The amount due as arrears of wages are also subject to additional amounts for what would have been due as holiday pay, of eight percent, and for KiwiSaver contributions, of three per cent, if the wages had been paid correctly and in full at the time they were first due. Calculations for those additional amounts are included in the table further below in this determination.

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[11] Employment Relations Act 2000, s 132.

Holiday pay

[94] The final pay slip Bobby Manase and Marley Manase received showed they each had an accrued annual leave entitlement of 96 hours. They claimed payment for those hours.

[95] Mr Marshall, however, said the tally for annual leave entitlement was not accurately recorded due to administrative error.

[96] Assessed objectively, there was good reason to doubt the recorded figure was accurate.

[97] The employment ran for a period of six months – from the 5 June starting date recorded in the employment agreements to the termination date of 5 December. For that six-month period the accruing annual leave entitlement was a maximum of 10 days, that is half the annual entitlement of 20 days. Converted to hours at the rate of eight hours a day, the total for that period was 80 hours so the recorded figure of 96 hours was too high.

[98] From the more likely accurate entitlement of 80 hours, deductions needed to be made for leave Bobby Manase and Marley Manase said they had taken. Marley Manase said he had taken four days leave to go to Australia. Bobby Manase said he had taken leave on three occasions to attend to some legal matters. Three days are deducted from his entitlement to account for that leave.

[99] After allowing for those adjustments to the total of accrued annual leave entitlements shown on their last pay slips, the total hours of holiday pay owed were 48 hours for Marley Manase and 56 hours for Bobby Manase.

Summary of arrears due

[100] The following table summarises the arrears of wages, holiday pay and KiwiSaver entitlements due to Marley Manase and Bobby Manase.

	Marley Manase	**Bobby Manase**
Start date	5 June 2024	5 June 2024
Salary (gross)	$155,000.00	$115,000.00
Hours/week	40	40
Hourly rate	$74.52	$55.29
Pay due for 2-5 December		
Wages (four days)	$2,384.64	$1,769.28

Holiday pay (8 per cent)	$190.77	$141.54
KiwiSaver (3 per cent)	$71.54	$53.08
Pay for notice period		
Wages (five days)	$2,980.80	$2,211.60
Holiday pay	$238.46	$176.93
KiwiSaver	$89.42	$66.35
Holiday pay outstanding (as at 1 December 2024)		
Hours accrued	80	80
Hours used (estimate)	32	24
Unpaid entitlement	48	56
Holiday pay	$3,576.96	$3,096.24
Total due	**$9,532.59**	**$7,515.02**

The failures to pay were breaches of employment standards

[101] FES breached employment standards by failing to pay wages, notice and holiday pay due to Bobby Manase and Marley Manase at the end of their employment.

[102] Under sections 23 and 27 of the HA Bobby Manase and Marley Manase were entitled to get their annual holiday pay entitlements paid in full with the pay for their last week, which in this case should have been their pay for the week-long notice period, which they also did not receive.

[103] Under s 4 of the WPA the company was required to pay them the entire amount of their wages, including allowances and any KiwiSaver contribution, at the time it fell due. In this case the payments missed were for the last week of work and for the notice period in the following week.

Respondents were persons involved in breaches of employment standards

[104] Bobby Manase and Marley Manase asked for a finding to be made under s 142W of the ER Act that Mr Marshall, Mr Hale and Mr Jacques were each "a person involved" in those breaches of employment standards by FES.

[105] Section 142W allows for such a finding to be made where a person "has aided, abetted, counselled or procured the breach" or "has been in any way, directly or indirectly, knowingly concerned in, or party to the breach". Where the breaches are made by a company, only officers of that entity may be treated as involved in that breach. Officers of a company include its directors and any other person in a position in the entity to exert significant influence over its management or administration.

[106] As confirmed by the Court of Appeal in *Labour Inspector v Southern Taxis Ltd* a director or influential manager who knows the essential or primary facts of the situation that establish an employer's contravention of employment standards has the level of knowledge necessary to be deemed a person involved in a breach of employment standards:[12]

> Sections 142W and 142Y allocate, as between directors and other officers on the one hand, and employees on the other hand, the risk that a company will be unable to meet its minimum obligations under employment legislation. The effect of these provisions is to impose the risk of non-performance of those obligations by the company on a director who knows all the primary facts relevant to the company's breach, unless the director reasonably relied on information (for example, legal advice) provided by a third party, or has taken all reasonable and proper steps to ensure the company complied with the relevant provisions. A director cannot escape liability on the basis that they did not turn their mind to the legal consequences of what they knew.

[107] In the relevant period Mr Marshall, Mr Hale and Mr Jacques were each within the category of people who could be treated as a person involved in the breaches committed by the company. The breaches of employment standards in this case, regarding wages and holiday pay, comprised the effects or 'legal consequences' of actions or decisions they decided on and carried out.

[108] The relevant period is the time between the week of 11 November, when FES learned of a substantial loss of work from its sole client, and 5 December, when unequivocal information was conveyed to the employees ending their employment.

[109] The essential facts in that situation and during that period were, firstly, Bobby Manase and Marley Manase were employees of FES and the company owed them any wages and holiday pay due under their employment agreements and any applicable laws and, secondly, the decision to terminate their employment, along with the other employees, on December 5 was made because FES no longer had the actual or projected income to pay them. All three directors knew those essential facts.

[110] In their evidence and submissions Mr Marshall and Mr Jacques each sought to shift responsibility for those decisions, and their consequences, to the other person. Neither made a compelling argument. Rather, their own evidence, assessed objectively, established that both of them, along with Mr Hale, were directly involved in making

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[12] [2021] NZCA 705, at [50].

the decisions to dismiss the employees and knew the essential facts that this involved FES failing to meet its obligation to pay outstanding wage and holiday pay entitlements.

Mr Marshall

[111] In his telephone call with Mr A on 5 December Mr Marshall said he did not have control of the company at that time and referred any queries to Mr Jacques. The following extracts from the transcript of the call show how Mr Marshall described the situation:

> [Mr Marshall]: … [A]t the end of the day Adam [Jacques]'s the guy that you need to deal with at this point in time.
>
> … And the reason is, the reason is he's the managing director and he's been running the show so I can't really say much at this point in time without undermining him other than the company's not in good shape and I'm still leaving it to Adam at the end of the day. So yeah. You're just going to have to have a chat to Adam. … I can't do a great deal.
>
> … Adam tried to take over the show and that's left the company where it is at the moment. I'm looking at getting the shares so then, it then comes back to me managing the company in the future. I'm negotiating that out now with Adam [Jacques] and Peter [Hale]. We've already negotiated with each other. I've been negotiating for a while.
>
> … The company has basically been milked and it hasn't been managed very well and I can see that it's affected everyone and hopefully, hopefully these sorted as soon as possible and we can move forward with, at this point in time. I don't have any control.
>
> … You know it's basically in Adam's court. Obviously when things get tough he's throwing it over back to me and you can't have a bloody both ways at the end of the day you know.

[112] Mr Marshall's disavowal in that call of any direct involvement in or influence on events up to 5 December was inconsistent with his oral evidence, given under affirmation, at the Authority investigation meeting. According to Mr Marshall, Mr Jacques had agreed to resign as a director in November with "all paperwork done" but this was not lodged until later in the Companies Office register. The register showed Mr Jacques ceased to be a director on 6 December 2024 on a form lodged in January 2025.

[113] Mr Marshall said he saw there was "no money" after Mr Jacques had resigned, verbally, as a director in November. He said he was involved in discussions about laying off staff after getting out of FES's meeting with its client in the week of 11 November. Asked about the "termination" email sent by Ms McEnearney to Mr B on

2 December, Mr Marshall said he had given “an instruction to Mr Hale” for all staff to be dismissed and Ms McEnearney was present at the time he gave that instruction. He said he understood Ms McEnearney had carried out that instruction because she later told him that she had done so.

[114] Bobby Manase and Marley Manase said they had not received any such message from Ms McEnearney or anyone else acting on behalf of FES. The import of Mr Marshall’s evidence on that point, however, was that he said he was giving “instructions” to end the employment of staff some days before his phone conversation with Mr A on 5 December during which Mr Marshall said he did not have “any control”.

[115] Mr Marshall’s oral evidence to the Authority, given under affirmation, is accepted as more likely reflecting the reality of what was said and done at that time. It confirmed he was involved in the decision to dismiss Bobby Manase and Marley Manese, knowing this was being done without payment of their wages and holiday pay.

Mr Jacques

[116] Mr Jacques sought a finding that he was not a person involved in that breach of employment standards because he had agreed to resign as a director earlier in November. He said he was “a mere messenger” in communicating decisions about employment and did not have any authority to make and did not make any decisions after 6 December.

[117] Mr Jacques was, however, involved in decisions made before 6 December. As he disclosed in his phone call to Mr A on 5 December he spent time in the previous week “trying to figure out things” with Mr Marshall and Mr Hale. As he told Mr A Mr Jacques knew the company had no money, could not pay wages and he was liable for funds that the company could not meet. He also said he had asked Mr Marshall and Mr Hale “to put money in” but they had not agreed to do so.

[118] On his own evidence Mr Jacques knew the workers were being dismissed without being paid their entitlements as a time when he officially remained a director of the company and, even if not regarding himself as acting as in the capacity of a director at the time, was nevertheless a person of significant influence in the company, even if he did not succeed in persuading Mr Marshall and Mr Hale to fund the shortfall owed for wages and holiday pay.

Mr Hale

[119] Mr Hale cannot avoid a finding on whether he was a person involved in a breach of employment standards by virtue of not having taken part in the Authority investigation process. Adequate steps were taken to provide him with the opportunity to provide relevant information. Neither is responsibility avoided by no longer being involved in the business that ran the FES operation from Queensland or any subsequent ill-health.

[120] In the absence of better or different information from Mr Hale directly, the assessment of his involvement is made from the evidence of Mr Marshall and Mr Jacques. Mr Marshall's evidence confirmed Mr Hale knew of the setback to the FES business, which they learned of in the meeting with the client in the week of 11 November, and was involved in subsequent discussion over what to do about the company's employees in New Zealand. It also confirmed Mr Hale was involved in the steps taken to dismiss those employees.

[121] Mr Jacques' evidence confirmed that Mr Hale was aware the company did not have enough money to pay wages and in the week before 5 December, along with Mr Marshall, had not agreed "to put money in" to meet the company's obligations.

[122] In those circumstances, as a director of the company during the relevant period, Mr Hale was also a person involved in the consequent breaches of employment standards because he was part of making those decisions and knew FES was not able to meet its obligations to pay wages and holiday pay.

Finding on persons involved

[123] For the reasons given Mr Marshall, Mr Hale and Mr Jacques were each a person involved in the breaches of employment standards in respect of the employment of Bobby Manase and Marley Manase.[13]

Leave to recover arrears directly from respondents

[124] In light of the finding that the respondents were persons involved in breaches of employment standards, leave is granted to Bobby Manase and Marley Manase under s 142Y of the ER Act to recover from Mr Marshall, Mr Hale and Mr Jacques personally

[13] Employment Relations Act 2000, s 142W.

the arrears of wages, KiwiSaver contributions and holiday pay owed to them by FES. The evidence has confirmed the s 124Y(1) requirements of a default due to breaches of employment standards and Mr Marshall, Mr Hale and Mr Jacques being persons involved in those breaches.

[125] A further condition for recovery has also been met. Arrears may be recovered to the extent that FES, as the former employing entity, is unable to pay them. The liquidator's six months report identified FES debts as including claims from four other former employees totalling more than $69,000, from IRD for more than $366,000 and from unsecured creditors for more than $100,000. Asset values were also yet to be determined, with the liquidator investigating asset transfers made prior to liquidation. In those circumstances there is no realistic prospect of the arrears owed to Bobby Manase and Marley Manase being able to be paid from liquidated funds from FES.

[126] Accordingly, Bobby Manase and Marley Manase now have leave to recover the sums due directly from Mr Marshall, Mr Hale and Mr Jacques under s 142Y of the ER Act. The liability for payment of those arrears is joint and several.

Interest is due on arrears owed

[127] Because Bobby Manase and Marley Manase were denied use of the arrears due to them from 12 December 2024, an order for payment of interest on those arrears is appropriate from that date until the date of payment of the full amount.[14] The amount due as interest is to be calculated by use of the Civil Debt interest calculator at the time of payment.[15]

Penalties due to aiding and abetting breaches of employment agreements

[128] Bobby Manase and Marley Manase asked for a penalty to be imposed on Mr Marshall, Mr Hale and Mr Jacques under s 134(2) of the ER Act for aiding and abetting FES's breaches of their terms of employment by not paying their wages and holiday pay when those amounts were due.

[129] A penalty serves a different role from the order made for payment of arrears. The arrears order, with interest, seeks to put the applicants back into the position they would have been if the breaches had not occurred. In that respect is it a neutral act of

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[14] Employment Relations Act 2000, Schedule 2, clause 11.
[15] www.justice.govt.nz/fines/about-civil-debt/civil-debt-interest-calculator.

restoration. A penalty, by contrast, seeks to impose some positive consequence for the actions or inactions of each director which resulted in the breaches occurring. Imposing a penalty is an act of punishment, sending a message both to a person on whom it is imposed and to other people so they are discouraged from acting in a similar way.

[130] For reasons already given, the evidence established that what Mr Marshall, Mr Hale and Mr Jacques each did in the relevant period resulted in FES breaching the terms of employment which said wages would be direct credited weekly and holidays would be paid according to requirements of the Holidays Act 2003.

[131] Mr Marshall, Mr Hale and Mr Jacques were each liable to a penalty for aiding and abetting those breaches by the decisions they made at that time.

[132] The factors for determining an appropriate penalty are listed in s 133A of the ER Act. In this case a penalty of $4,000 was an appropriate amount to impose on each respondent because it:

(a) gives effect to the object of the ER Act to promote effective enforcement of employment standards;
(b) recognises the breach was caused by intentional decisions rather than occurring inadvertently;
(c) recognises the seriousness of the extended period for which the applicants were denied use of money they entitled to have and use at the end of their employment more than a year ago;
(d) is an amount likely sufficient to discourage the respondents or other employers from engaging in such behaviour; and
(e) is proportionate to the amounts of arrears involved; is consistent with the range of penalties imposed in similar cases; and is a relatively modest amount.

[133] Under s 136(2) of the ER Act the respondents are ordered to each pay one half of the penalty imposed on them directly to Bobby Manase and Marley Manase, with the other half to be paid to the Authority for transfer to a Crown account.

Summary and orders

[134] For the reasons given the following findings and orders are made:

(a) The employment of Bobby Manase and Marley Manase ended by dismissal on 5 December 2024.

(b) Including a notice period which ended on 12 December 2024, they were entitled to payment of wages, KiwiSaver contributions and holiday pay to that date, not the later date of 31 January 2025 which they had claimed.

(c) Arrears owed to Marley Manase total $9,532.59, plus interest to be calculated from 12 December 2024 to the date of payment.

(d) Arrears owed to Bobby Manase total $7,515.02, plus interest to be calculated from 12 December 2024 to the date of payment.

(e) FES breached employment standards by not paying those amounts to Bobby Manase and Marley Manase.

(f) Mr Marshall, Mr Hale and Mr Jacques were persons involved in those breaches.

(g) Bobby Manase and Marley Manase have leave to recover the arrears due personally from Mr Marshall, Mr Hale and Mr Jacques.

(h) On a joint and several basis Mr Marshall, Mr Hale and Mr Jacques must pay the arrears due, with interest, by no later than 28 days from the date of this determination.

(i) Mr Marshall, Mr Hale and Mr Jacques must also each individually pay a penalty of $4,000 for aiding and abetting breaches of the terms of employment of Bobby Manase and Marley Manase.

(j) Mr Marshall, Mr Hale and Mr Jacques must each pay $2,000 of their penalty directly to Bobby Manase and Marley Manase and must pay the remaining $2,000 to the Authority for transfer to a Crown account.

(k) The penalties must also be paid within 28 days of the date of this determination.

Costs

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

[136] If unable to do so, and an Authority determination on costs is needed, Bobby Manase and Marley Manase 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, Mr Marshall, Mr Hale and Mr Jacques would then have 14 days to lodge

any reply memoranda. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

[137] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.[16]

Robin Arthur
Member of the Employment Relations Authority

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[16] See www.era.govt.nz/determinations/awarding-costs-remedies.