

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 39
3266939 & 3267419 &
3267420 & 3267439

BETWEEN ANAND SINGH
Applicant (3266939)

AND PARVEEN KUMAR
Applicant (3267419)

AND DEEPAK
Applicant (3267420)

AND JATIN SAROHA
Applicant (3267439)

AND DHARMA SERVICES
LIMITED
First Respondent

AND ANIL KUMAR LAKRA
Second Respondent

AND DEEPIKA LAKRA
Third Respondent

Member of Authority: Claire English

Representatives: Dhilum Nightingale and Jack Wass, counsel for the
Applicants
Kirsty Wallace, Hagen Neumegen and Lucy Costelloe,
counsel for the Respondents

Investigation Meeting: 28 April to 2 May and 7 - 8 July 2025 in Wellington and
by AVL

Submissions received: Up to 12 November 2025 from Applicants
29 August 2025 from Respondents

Determination: 27 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The first respondent, Dharma Services Limited (Dharma Services) is a restaurant business. The second respondent, Mr Anil Kumar Lakra, is the director of Dharma Services and its owner-operator. At the time of hearing, he owned three fast food restaurants in the Wellington region, and worked in them together with staff employed by the first respondent. The third respondent is Mrs Deepika Lakra. She is Mr Lakra's wife, and also works with him in the restaurants from time to time.

[2] There are four applicants in this matter, who all worked for Dharma Services at its restaurants over the same period of time. Broadly, they raise claims against Dharma Services as their employer seeking unpaid wages and associated entitlements, repayment of what are said to be unlawful premiums, penalties, and claims of unjustifiable dismissal. They seek penalties and the recovery of monies owed against Mr Lakra as a person involved in a breach of employment standards. They seek the recovery of what are said to be unlawful premiums against Mr Lakra in respect of Mr Kumar, Mr Deepak, and Mr Singh, and Mrs Lakra in respect of Mr Saroha.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Mr Deepak and his father, Mr Mahipal Singh, Mr Anand Singh; his brother Mr Ravinder Kumar; Mr Parveen Kumar; Mr Jatin Sarota and Ms Saroj Devi his mother; and Mr Reon Viles, a data expert.

[4] On behalf of the respondents witness statements were lodged by Mr Lakra, Mrs Lakra, Mr Arundeeep Singh (a co-worker); Mr Gourav Ahlawat (a co-worker); Mr Jyoti Chandri (a co-worker); Mr Abhijeet Phogat (a co-worker); Mr Rahul Deshwla (a co-worker); Mr Campbell McKenzie, a data expert, and Ms Parkashi and Mr Januj. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[5] As the four applicants had claims which were substantially similar, and there was a degree of overlap in their evidence as they had lived and worked together over a similar period of time with three of the four applicants leaving their employment with Dharma Services on 2 November 2023, all parties consented to having the matters heard together.

[6] 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

[7] The issues requiring investigation and determination were:

- (a) Should the applicants be reimbursed for illegal premium payments made to the first, second, or third respondents?
- (b) Are the applicants owed wage arrears (including further holiday pay) in relation to hours they say they worked but were not paid for?
- (c) Are the applicant's owed payments for working on certain identified public holidays (eg payment at the rate of time and a half, and payment for an alternative holiday)?
- (d) Should interest be awarded on any outstanding monies?
- (e) Did the applicants raise personal grievance claims for unjustified (constructive) dismissal, and if successful, are they (excluding Mr Saroha) entitled to lost remuneration from 3 November 2023 until they started new employment on 11 November 2023, and compensation for hurt, humiliation, and injury to feelings as a result?
- (f) If any remedies are awarded, should they be reduced under s124 of the Act by way of contributory conduct?
- (g) Should penalties be awarded against the first respondent and if so, should any of those penalties be paid to the applicants?
- (h) Are Mr Lakra and/or Mrs Lakra persons involved in a breach of employment standards, and if so should any orders be made against them for arrears to be recovered from them personally?
- (i) Should interest, costs, and disbursements be awarded to the applicants?

Background – Parveen Kumar

[8] Applicant 3267419, Mr Parveen Kumar, first met Mr Lakra when they were both in India on about 20 November 2022. He was working at a Pizza Hut in India, but was looking for opportunities for a better salary and lifestyle. He was put in touch with Mr Lakra by his area manager who was a friend of Mr Lakra's, and knew Mr Lakra was hiring staff for work in New Zealand.

[9] Mr Kumar was successful at the interview. He arrived in New Zealand on 2 February 2023, and says he started work in the restaurant the following day.

[10] He was provided with accommodation by Mr Lakra, at a multi-roomed flat close to the workplace in Lower Hutt. At that time, Mr Lakra was living in the flat, along with a man named Faran, and other workers. Later, when Mrs Lakra arrived from India, Mr Lakra moved out of the flat and into a family home with her.

[11] Mr Kumar's evidence is that after the first week, from 14 February 2023 onwards, he worked routinely from mid-morning until 10 or 11.00 pm each evening, amounting to 70-hour work weeks. He says for the first 2 months of his employment, he was not paid at all, and after this, he was only paid for 30 hours work each week.

[12] Mr Kumar relies on his Google location data on his phone, saying that this shows that he was at the restaurant for these hours, and I should find that the times when the Google location data showed his phone as being at or near the restaurant, I should deem these to be his hours worked, and award payment in respect of all such hours.

[13] In addition to this, he relies on a partial Google calendar where he himself manually recorded hours worked using his phone, and Whatsapp messages showing him messaging Mr Lakra about the purchase of ingredients for the restaurant.

[14] Mr Kumar says he worked on Waitangi Day, Good Friday, Easter Monday, ANZAC Day, Matariki, and Labour Day, but did not get paid properly for working on those days.

[15] Mr Kumar says that some days he did not receive breaks. He also says that on some occasions, he had to go to the restaurant at about midnight to put dough into the fridge. He says this did not happen all the time, but would happen some times when the restaurant was very busy.

[16] I note that Mr Kumar states that the rosters provided by Mr Lakra which tend to show him working 30 hours per week, have been fabricated, and his own records and Google location data are more accurate. This may be contrasted with Mr Lakra's position that the Google location data has been fabricated and/or should be considered wholly unreliable, and that the real records are in the rosters.

[17] Mr Kumar says that when he complained to Mr Lakra, Mr Lakra told him not to complain as he was earning more money than in India.

[18] In September or October, Mr Kumar says that he was encouraged by “a friend” to report Mr Lakra to the Ministry of Business, Innovation, and Employment, and to seek a migrant exploitation visa which would allow him to work for other employers. In his in-person evidence, Mr Kumar was clear that this friend was in fact his flatmate Faran, who had actively encouraged him and the other applicants to make such a report. I also note that Mr Lakra’s evidence was that Faran had been acting as his (that is, Mr Lakra’s) lawyer during this same time, but there had been a cooling of their relationship when Mr Lakra left the flat to live with his wife when she arrived from India.

[19] Mr Kumar received a migrant exploitation visa on 27 September 2023. However, he continued to work for Dharma Services. In October, his work colleague and flatmate Mr Sarota, resigned from Dharma Services to work at a large food supplier. He helped Mr Kumar and the two other applicants find work there as a picker-packer. Once he had secured this employment, Mr Kumar resigned from Dharma Services, by email on 2 November. The email was sent at approximately 11.00 pm, and Mr Kumar gave no notice.

Deepak

[20] Applicant 3267420, Mr Deepak, states that his aunt was Mr Lakra’s neighbour, and that he and Mr Lakra went to the same school. He says he came to New Zealand on 15 February 2023 and started work at the restaurant on 16 February 2023.

[21] Mr Deepak says that after arriving here, he worked for 60 or 70 hours each week, and was only paid for 30 hours, with his pay starting on 29 June 2023. Mr Deepak claims to have worked 10 to 12 hours each day, 6 to 7 days per week, from the day after he first arrived on 15 February 2023 to when he left his employment on 2 November 2023.

[22] He says that during the time he worked for Dharma Services, the business had about 10 employees who all worked at the restaurant.

[23] The respondents have provided payslips showing Mr Deepak being paid for 30 hours per week. They have also produced rosters which support those payslips. Mr Deepak says that he worked in excess of the recorded 30 hours per week, and this was

simply not recorded. He relies on data from the Google location tracker on his phone to show that he was at the restaurant considerably more than 30 hours each week, and says that any time the Google location tracker shows that his phone was at or near the restaurant address, I should find that he was working and should be paid for this time.

[24] Mr Deepak has claimed wages for a number of days when the location data appears to show that was at the restaurant around 4pm, being the start of the afternoon shift, and stayed at the location until close which was anywhere from approximately 9pm on slower days until 11pm on busier days. This shift length very broadly accords with the evidence put forward by the respondents, who say there was an early shift and a late shift each day, and that shifts were 5 or 6 hours long but could be as long as 8 hours on a busy night, although no longer.

[25] Mr Deepak has also claimed for a number of days where the location data shows he was at the restaurant for short periods of only a few minutes, up to approximately an hour, most often earlier in the day. He says that he was also working during these times. When asked what he was doing in such short periods, he variously said that: he had got a ride in with another colleague, and when there was no work for him, he left; he did a delivery to a nearby suburb and then went home; and he just worked for a short time doing some unspecified task. Mr Deepak also referred to delivering lunch to his colleagues, which he or others in the shared accommodation had cooked at home, and staying to eat with them. There was no way of distinguishing which happened on any given day for these short time periods.

[26] Mr Deepak also says that he had to go to the restaurant at midnight to put the dough in the fridge. He said this was a task that took only a few minutes. There were location tracking entries for a few minutes between midnight and 1.00 am on a handful of occasions. This was not a task that needed to be done every night.

[27] Mr Deepak applied for and received a migrant exploitation visa on 11 October 2023 allowing him to work for other employers. He explained that he remained working at the restaurant until Mr Saroha helped him find another job, and he then resigned on 2 November 2023. Despite this evidence, he denied that he had spoken with the other three applicants or arranged to leave at the same time they did.

[28] The respondents resist Mr Deepak's claims. They say that Mr Deepak was paid for all the hours he worked as recorded on his payslips. They say that prior to June

2023, he was not working, and he arrived in New Zealand “early” before the agreed date, and before there was a job available for him.

[29] Mrs Lakra resists the claims against her that she was involved in the taking of unlawful premiums. She says that her mother had a long-standing arrangement of making familial loans to Mr Deepak’s mother going back many years, and there was no connection with unlawful premium payments. Rather, in preparation for her wedding and the subsequent expense of her moving to New Zealand and setting up a new house with Mr Lakra, she and her family called in some personal loans and did what she could to regularise and conclude her affairs in India in preparation for her permanent move to New Zealand.

[30] I also note that Mr Deepak gave evidence about a separate loan agreed between himself and Mr Lakra. There does not appear to be any disagreement between the parties here. No deductions were made from wages and instead the loan was repaid by way of an automatic payment via bank accounts. No wage or employment issues arise.

[31] Mr Deepak’s father, Mr Manhipal Singh, also gave evidence. His evidence was that he had paid a significant sum of money to either Mr Lakra or to Mr Lakra’s parents to secure his son’s employment in New Zealand. He noted that these payments were in cash, which is a common form of payment, and left no bank records. However, Mr Singh had recorded the payments made, and the dates, in his handwritten diary, together with Mr Lakra’s name and the name of Mr Lakra’s village.

[32] Copies of Mr Singh’s diary notes were provided to the Authority, and he showed the original diary to the Authority when he gave his in-person evidence. He was adamant in his in-person evidence that the payments he made had been to Mr Lakra or to his parents as essentially nominees when Mr Lakra returned to New Zealand, and that the payments had been at Mr Lakra’s request to secure Mr Deepak’s job.

Anand Singh

[33] Applicant 3266939, Mr Anand Singh, was an experienced hospitality worker, but had lost his job in the aftermath of the covid pandemic. Accordingly, he was looking for a job. He was friends with Mr Deepak, who put him in touch with Mr Lakra, and after an interview, Mr Lakra offered him a job in New Zealand.

[34] Mr Singh says that Mr Lakra said he would need to pay 1,700,000 INR (approximately \$33,771 NZD) to have the job. He agreed to pay, as he believed he would be able to recoup this expense from his higher wages in New Zealand. As he did not have the money, his brother Mr Ravinder Singh, made payments for him to Mr Lakra's bank account in India. The bank statements provided show the reference "for New" which I am advised was "for New Zealand".

[35] Mr Singh also made payments in cash and a cheque to Mr Lakra's parents in India. His bank statement shows a cheque payment. There is no record of cash payments.

[36] Mr Singh arrived in New Zealand on 17 February 2023, and joined the flat with the other applicants. He says that over the first two weeks, he worked three days per week, and then Mr Lakra asked him not to come to work. Mr Singh recalls he had no money and nothing to do, so he went for long walks and cooked for the flat.

[37] In mid-March, Mr Lakra assisted Mr Singh to apply for his IRD number, and he was able to open a New Zealand bank account. Mr Singh resumed working from 24 March 2023. He recalls that he worked the evening shift, 28 – 30 hours each week, over three days each week. He says he was not paid. When he asked Mr Lakra for pay, Mr Lakra said he would pay him when the new shop opened.

[38] Mr Singh says he had no choice but to again wait at home. He began doing cleaning jobs for cash.

[39] He then began working for another restaurant, specialising in curries and rotis. Although Mr Singh at first resisted the suggestion that he was working for another employer, and said the restaurant owner was merely a supportive friend, he later accepted after questioning that he had been working in that restaurant and being paid for his work by the restaurant owner. Mr Singh's verbal evidence was that he did not intend to make a wages claim for this time period.

[40] Mr Lakra said he was not happy about this, as he was concerned it might impact on Mr Singh's visa. At the same time, Mr Lakra accepted he had no work for Mr Singh.

Jatin Saroha

[41] Applicant 3267439, Mr Jatin Saroha, was the last of the applicants to come to New Zealand on 24 May 2023, and he says he started work in the restaurant on 28 May 2023. He had completed his IELTS qualifications (demonstrating proficiency in the English language) to a high level at the end of 2022 and was seeking work. His mother knew Mrs Lakra's mother, and they arranged the job for him. Mr Saroha had a close relationship with Mrs Lakra who treated him as a younger brother and travelled to New Zealand in company with her brother Mr Gaurav Ahlawat.

[42] Mr Saroha says that he was required by Mrs Lakra to pay the sum of \$40,000 NZD to various bank accounts she sent him the numbers for. He was clear in his evidence that this money was payment for the job with Dharma Services in New Zealand. He has provided bank statements showing payments from his mother's bank account to bank accounts in Mrs Lakra's name. Mr Saroha says he also made cash payments while he was in India.

[43] Mr Saroha says he worked up to 65 hours per week. He said there were no rosters, and he would simply leave home with Mr Ahlawat, and would go to the restaurant with him. He would then do whatever jobs were available to be done, including cleaning, putting flyers in letterboxes, and accompanying the other applicants in the car on any deliveries. Mr Saroha openly admitted that he did this as a way to see more of Wellington, and there was no suggestion from any of the witnesses that there was a business need for him to accompany other workers on the occasional delivery tasks.

[44] Mr Saroha also says that he sometimes went with other workers to the restaurant at around midnight to put the dough into the fridge.

[45] He says all of these tasks were work, and he should be paid for them. Mr Saroha relies on his Google location data, and says that all of the times it shows his phone being at or near the restaurant were work, and he should be paid accordingly. He notes in his written evidence that he has not been able to locate "screenshots" of his phone data from 13 August to 26 August, and from 27 and 29 September 2023, but says that he is claiming for work done on these days because an un-named friend "took a log" of his data before it was lost. He also accepts turning off his location settings on his phone for undetermined periods of time.

[46] In September 2023, he applied for a migrant exploitation visa. This was granted on 3 October 2023 and he promptly resigned, with his last day of work being on 11 October 2023.

[47] As already mentioned, Mr Saroha went on to work for a large distribution company and helped the other applicants find work there.

[48] I note that although all applicants initially denied having ever spoken with each other about their resignation or their claims in the Authority, this was not borne out by their in-person evidence. It became clear that all of the applicants had been spoken to by their flatmate Faran, who had previously acted as Mr Lakra's lawyer. All applicants accept that Faran urged them to make claims against Dharma Services and Mr Lakra, to help them obtain more favourable visas and some sort of monetary payout.

[49] I was advised that Mr Lakra has made a complaint against Faran to the Law Society, but I am not in receipt of any details about this.

[50] It is clear that the applicants did discuss matters between themselves as shown by the way in which Mr Saroha obtained jobs for the other three applicants, and those three all resigned at the same time by email. Although the applicants said they felt Faran was "shady" or making promises that he could not keep, they nevertheless authorised him to prepare and file claims in the Authority on their behalf, seeking a large amount of money from Dharma Services (which the respondents have calculated as having a total value of in excess of \$800,000).

Respondents - Evidence of Anil Lakra

[51] Mr Lakra says that the circumstances surrounding all four applicants were similar. He explained that he was preparing to open a second restaurant in Otaki, and as the fitout was progressing well, he wanted to start hiring more staff. He had had difficulty hiring and retaining staff at his existing Waterloo restaurant, as he needed people who could drive and were prepared to work nights. As he was going to India in December 2022 for his wedding, he took the opportunity to recruit while he was there. He described all four applicants as having interviewed well, and that he was happy to hire people who had a family connection as he considered they were likely to be trustworthy and diligent.

[52] Mr Parveen Kumar was the first of the applicants to arrive in New Zealand, on or around 3 February. He left employment on 2 November. Mr Deepak and Mr Singh arrived next, traveling together and arrived on around 16 February. They also left employment on 2 November. Mr Saroha arrived last on about 28 May, and left work on 11 October 2023.

[53] Mr Lakra was expecting Mr Kumar to arrive at around the time he did, and was happy for him to take 3 or 4 weeks to acclimatise and complete his induction before starting work. Mr Lakra explained that he remembered being alone in a strange county when he first came to New Zealand. Because of this, he considered it his obligation to ensure that there was somewhere for his new staff to stay, and essential food for them to eat, in the first few weeks while they were doing their induction and arranging a bank account and IRD number, which would usually take 3 to 5 weeks. After this, they would start work and receive a salary. They would then pay a sum for rent and board, and could find their own accommodations if they preferred.

[54] The Otaki restaurant did not open as anticipated. Mr Kumar started working in the existing Waterloo restaurant instead. This was acceptable to Mr Lakra, who was able to absorb this extra labour, although he said he made sure staff were only working 30 hours per week at that time so as to share the available work around.

[55] From Mr Lakra's perspective, Mr Deepak and Mr Singh arrived early. He says he had asked them to come to New Zealand in late June or July, but they were determined to arrive early, as they and their families felt some anxiety about flight availability (in the wake of the cancelation of flights into New Zealand from India that had occurred as a result of Covid outbreaks), and they wanted to travel together as neither had flown long distance previously.

[56] When they arrived, Mr Lakra candidly agreed that he had too many staff given that the Otaki store was not open.

[57] He gave evidence that he told Mr Deepak and Mr Singh that he did not have any work for them apart from their induction. Mr Lakra maintains that all staff were paid for their induction hours, although he is unable to point to any indication on the payslips or rosters identifying when those training hours occurred, or when they were paid.

[58] Mr Lakra was aware that during June, July and August, Mr Singh was working at another restaurant. Mr Lakra was upset about this as he was concerned that this might result in a fine for Dharma Services as a breach of visa conditions. In late September, Mr Singh began working at the Otaki restaurant, and was paid at the rate of \$28 an hour, for 30 hours per week until he left on 2 November.

[59] Mr Saroha arrived in New Zealand on around 26 May 2023. Mr Lakra said this was also somewhat early, as he had no work for him as the Otaki restaurant was still not open. Mr Lakra says that Mr Saroha would often come to the Waterloo restaurant around mid to late afternoon, as he would sleep late. He would have a meal at the restaurant, and he sometimes saw Mr Saroha nap in the work car. He says Mr Saroha used to go on deliveries with whoever was the delivery driver, as he had nothing to do and was using this as a way to see the city.

[60] Mr Lakra says that the applicants' location tracking data from their phones is unreliable in its entirety. He says that although the location tracking data shows they were at the Waterloo restaurant, this does not show they were working in the restaurant but were only somewhere in the near vicinity, or if they were at the restaurant, they were there to chat and eat, not because they were working. Mr Lakra says the applicants did not start working until they received salary as shown in the dates on their payslips.

[61] Mr Lakra is also critical of Mr Kumar, Mr Deepak, and Mr Singh for resigning and immediately leaving on the same day, eg 2 November. He says this was late on a Thursday night around 11 pm and was intended by all three to cause maximum disruption going into the weekend which was a busy time at the restaurant. When I put it to him that the in-person evidence was that Mr Saroha had found jobs for the other three applicants, and they resigned once they had secured new employment, Mr Lakra did not accept this and maintained that this was done to cause him upset.

[62] Mr Lakra maintains that he did not take or seek any premium payments from any of the four applicants. He says that he charged the applicants for a visa processing fee of \$750, immigration advice from a New Zealand based firm at \$1,150, and in the case of three of the four applicants, for flights. He says that there were no charges in excess of this.

[63] For the reasons I have already set out above, Mrs Lakra also denies that there were any premiums taken.

Personal Grievance Claims for Unjustified Dismissal

[64] I will first consider whether the applicants have properly raised personal grievance claims, particularly a personal grievance claim of unjustified dismissal.

[65] The applicants rely on their statement of problem as the raising of personal grievances.

[66] Mr Kumar's statement of problem refers to "an illegal premium", that the respondents "failed to pay me" for hours worked, that he was not paid properly for work done on specified public holidays, that he was not "allowed" a sick day, and that the respondents have failed to maintain any register of hours worked. Although these claims clearly allege breaches of minimum employment standards, they do not amount to a personal grievance claim, and nor is there any reference in the statement of problem to the language of unjustified disadvantage or unjustified dismissal.

[67] Attached to Mr Kumar's statement of problem is a two-page document headed "Breached Statutes under which Remedy is Sought". This document does refer to personal grievances, as follows under the bold heading "Employment Relations Act":

- a. Section 103(1c) (Personal Grievance: Discrimination) Being discriminated by not being given any days off.
- b. Section 103(1b) (Personal Grievance: Unjustifiable Action) Being made to outside work hours in between 12am-3am in inspect pizza dough and place it in fridge.
- c. Section 103(1e) (Personal Grievance: Racially harassed) Being verbally harassed for belonging to low socio-economic status and told that not worth anything.
- d. Section 103(1j ii) (Personal Grievance: contravened s 92 of the Health and Safety at Work Act 2015 (which prohibits coercion or inducement)) Forced to work in middle of night out of work hours e.g., 12am-3am and forced to work months without any day off on the threat of being fired, send to home country, and not paid.
- e. Section 103(k) Personal Grievance : that the employer has retaliated, or threatened to retaliate, against the employee in breach of section 21 of the Protected Disclosures (Protection of Whistleblowers) Act 2022

(because the employee intends to make or has made a protected disclosure)) Having food reduced and being threatened by Anil with physical harm, and kidnapping if the Authorities are approached.

[68] In total, Mr Kumar identified 5 separate incidents that he described as personal grievances.

[69] Mr Saroha's statement of problem is similar to Mr Kumar's, and refers to the same types of issues. As with Mr Kumar there is no reference in the statement of problem to the language of unjustified disadvantage or unjustified dismissal.

[70] Attached to Mr Saroha's statement of problem is a two-page document headed "Breached Statutes under which Remedy is Sought". This document refers to four personal grievances, as follows under the bold heading "Employment Relations Act". They are the same as the personal grievances raised by Mr Kumar, with the exception that no personal grievance for discrimination has been raised.

[71] Mr Singh's statement of problem is similar to both Mr Kumar's and Mr Saroha's, and refers to the same types of issues. Again, there is no reference in the statement of problem to the language of unjustified disadvantage or unjustified dismissal.

[72] Attached to Mr Singh's statement of problem is a two-page document headed "Breached Statutes under which Remedy is Sought". This document refers to three personal grievances, as follows under the bold heading "Employment Relations Act". Like Mr Kumar and Mr Saroha, Mr Singh raises personal grievances relating to being racially harassed, a contravention of the Health and Safety at Work Act 2015, and a breach of the Protected Disclosures (Protection of Whistleblowers) Act 2022. No personal grievances relating to discrimination or unjustifiable action in relation to being required to attend work early in the morning to refrigerate the pizza dough were raised on his behalf.

[73] Mr Deepak's statement of problem is similar to the other three statements of problem, and refers to the same types of issues. As before, there is no reference in the statement of problem to the language of unjustified disadvantage or unjustified dismissal.

[74] Attached to Mr Deepak’s statement of problem is a two-page document headed “Breached Statutes under which Remedy is Sought”. This document is the same as the version attached to Mr Kumar’s statement of problem. It refers to the same five personal grievance claims of discrimination, unjustifiable action, racial harassment, contravention of the Health and Safety at Work Act 2015, and a breach of the Protected Disclosures (Protection of Whistleblowers) Act 2022.

Analysis

[75] All the applicants were assisted in the preparation of their statements of problem by their flatmate and Mr Lakra’s former lawyer. At a later stage, when represented by Community Law, the claims relating to discrimination, racial harassment, the Health and Safety at Work Act 2015, and alleged whistleblowing were withdrawn.

[76] Having considered the claims made by the applicants, I find that they did not raise a personal grievance claim of unjustified dismissal. Each statement of problem clearly raises a variety of claims relating to non-payment of wages, non-payment and non-provision of leave, long work hours, and claims that Mr Lakra, Mrs Lakra, and members of their families¹ were involved in these matters. The attachment lists out, with supporting details, between 14 and 17 different claims for which the applicants wanted redress, including up to 5 different personal grievance claims. There was no reference to dismissal, termination, or an unjustified dismissal claim.

[77] In light of the fact that the applicants were advised at the time, and considering the level of detail with which they specified their claims and the precise language used including reference to various statutes by name, section, and subsection, I am not prepared to “read in” to the statements of problem a personal grievance claim of unjustified dismissal for each applicant. I find none of the applicants ever raised such a claim, and I decline to consider it further.

Claims of Unpaid Wages

[78] I will now consider the claims made by the applicants that the respondent did not pay them properly for all the hours they actually worked.

¹ These claims have since been withdrawn.

[79] The differing positions taken by the parties can be summarised succinctly. All the applicants rely on information provided by the Google Location tracking on their mobile phones. They say that I should assume that any time their phones recorded being present at or near the restaurant, I should find that they were working, and order payment of wages accordingly.

[80] They say that the rosters and timesheets kept by the respondent were falsified, and I should not rely on these records in any way.

[81] The respondent objects to this premise on several grounds. First, it says that the Google location data is false/has been falsified. This concern is raised in part because of gaps in the data (which the applicants say is simply data that was lost without being able to explain why or how this occurred.)

[82] Substantively, the respondent says that other information such as photos of the applicants from social media and Google show that they were at non-work locations (for example, a beach, a lookout) during hours they claim to have been working. It also says that it cannot be safely assumed that the applicants had their phones with them at all times such that the location of the phone is a reliable proxy for their in-person location, or is accurate enough in its global positioning. Finally, it says that the phone location does not show if the applicants were working.

[83] I have considered the matter, with particular regard to the in-person evidence of the applicants about their work and their work patterns.

[84] First, I do not accept the applicants' core contention that the Google location data on their mobile phones demonstrates they were working. At best, this information can show the general location of the phone at a given time. It cannot show that the phone was with a person, or what the person was doing at the time.

[85] I also note that in their in-person evidence, the applicants made a variety of concessions, including that they did not always keep their mobile phones on their person at all times, that sometimes a phone might be left in a car or with another person, or Mr Saroha's evidence that he would often turn off his location services to play games on his phone. There were also gaps in the data. These concessions are not consistent with the underlying claim that all times when the phone location data showed the applicants were at or near the workplace should be deemed work hours and paid accordingly.

[86] Finally, there was other evidence that suggested that the applicants were not compelled to remain at the workplace (the restaurant) for considerable periods of time. Photos were produced showing the applicants at the beach, at a lookout, and at other non-work locations. The applicants accepted that they were not working at the restaurant on these occasions. There was a suggestion that on one occasion when photos were taken of them at a beach, they were delivering a fridge to the new Otaki restaurant, and therefore I should find the beach trip was work. Overall, these instances undermine the applicants' claims.

[87] Nevertheless, I have considered the times the applicants claim to have worked, as set out in spreadsheets prepared from their location data.

[88] Mr Kumar says he started work on 3 February 2023. He said that he routinely worked from approximately 11.00 am in the morning through to after 10.00 pm or 11 pm each night. That is, he claims to have worked 11 and 12 hour days consistently. The exception is that most Mondays he says he worked from approximately 3.00 pm to about 9.30 or 10.00 pm. Very few non-working days are claimed and these are irregular.

[89] This may be compared to the restaurant opening hours. The restaurant opens at 11.00 am, with a closing time of between 9.00 pm and 10.00 depending on the day of the week. Mondays are slightly different with an opening time of 3.00 pm.

[90] In other words, Mr Kumar claims that he was present and working at the restaurant all the times that it was open, and usually longer, without taking regular rostered days off. He reports his data was lost for unknown reasons from 21 September onwards, starting shortly before his new visa was granted on 27 September.

[91] Mr Deepak states that he started work on 16 February 2023, but his first data recorded is on 2 April 2023. His records record him starting work at erratic times between 2.00 to 5.00pm, and finishing any time between approximately 8.30 pm to 11.30 pm. The hours he claims to have worked in a day vary widely between 2 hours in a day to 6 or 7 hours, interspersed with occasional 11 hour days where he says he worked from approximately 11.00 am to 10.00 pm eg the entire time the restaurant was open.

[92] I note that Mr Lakra's evidence was that the restaurant had 2 shifts each day, a morning shift of 6 hours from 11 am to 5pm, and an evening shift from 5pm to close. Mr Deepak's hours do not accord with either shift, and do not suggest that he had any routine or predictable start time, finish time, or standard hours worked in a day.

[93] Mr Singh says that he started work on 18 February 2023. His hours broadly coincide with the afternoon shift of 5 or 6 hours in a day. There is a period of time from May 2023 through to the very end of August (some four months) when the data shows he was not working at all, and another 3-week gap in the middle of September. This is consistent with Mr Singh's in-person evidence that there was a considerable period of time when Mr Lakra did not schedule him for work, and so he worked as a cleaner and for another restaurant during this time.

[94] The records then show that Mr Singh began working consistently every day from 22 September 2023 to the end of his employment on 2 November 2023, with only 3 days off. This change occurred after he had applied for a new visa, which was granted on 3 October. The hours of work each day vary widely, from some 10-hour days, to days when he recorded working only 1, 2, or 3 hours in the middle of the afternoon. There is no discernible pattern to his start or finish times, or hours worked in a day.

[95] Mr Saroha says he started work on 28 May 2023. His hours also vary widely, with some days suggesting he worked the morning shift from 11am to 5 or 6pm, some days showing he arrived at approximately 11.00 am and finished at around 9.00 pm, and other days showing a start time of between 2.00 and 6.00 pm. His hours vary from 2 to 12 hours in a day, and are interspersed with many days when his data shows he was not at the restaurant at all. This is broadly consistent with both Mr Saroha's and Mr Lakra's evidence that Mr Saroha did not customarily arrive at the restaurant until sometime in the mid-afternoon, and he would often attend the restaurant with other staff to eat pizza or to accompany them on deliveries as a way of seeing the city.

[96] None of the applicants have truly consistent start and finish times, consistent number of hours in a day, or demonstrate a consistent pattern of work over a week or a month. Rather, the hours provided by their Google location data are more consistent with the evidence that the applicants would often come into the restaurant before their shift started, or even on days when they were not scheduled to work, in order to eat pizza (which Mr Lakra provided to his staff for free) and to keep each other company.

In particular, I refer to Mr Saroha's evidence that he would often come into the restaurant in the late afternoon, have a meal, and have a nap in the company car, which was parked in a quiet place out the back of the restaurant, and Mr Singh's evidence that he would often cook for his flatmates and bring the food into the restaurant for them in the afternoon lull. The location data provided by both supports this evidence.

[97] I have also considered the hours of work asserted by the applicants in comparison with the opening hours of the restaurant, and that all accept that Mr Lakra employed other staff over this time as well, who were working standard shifts of 30 hours per week. The number of hours the applicants claim to have been working in the restaurant exceeds its opening hours, and that by a fair margin when the employment of other staff and Mr Lakra is taken into account. Again, this suggests that they were not in fact working or required to work all the hours that they have claimed.

[98] Overall, I find that the applicants' location data does not support their claims that they were working excessive hours that they were not paid for. It supports Mr Lakra's claims that they were rostered and paid for fewer hours where patterns are discernible in the data. The data also supports the evidence that the applicants attended the restaurant or its near surrounds for non-work purposes during the working day.

[99] I find that none of the applicant's claims to have worked more hours than they were rostered and paid for is made out on the evidence. In fact, their own in-person evidence tends to support Mr Lakra's position. I find it more likely that they worked and were paid for their rostered hours as the respondent contends.

[100] The applicants' claims for unpaid hours of work fails for want of evidence. Accordingly, no orders are made.

Were the applicants required to attend work in the middle of the night?

[101] I will now consider the claims made by the applicants that they were each required to attend work in the middle of the night to refrigerate dough that had been left on the counter at the end of the day. The statements of problem filed by Mr Kumar, Mr Deepak, and Mr Saroha claim that they were "awakened in the middle of the night (between 12-3am) [and] made to check the dough at [the restaurant] and place it in the fridge". Mr Singh's statement of problem does not include this claim, and his in-person evidence was that he was not required to do this.

[102] The Google location shows that on a handful of occasions between February and November, Mr Kumar, Mr Deepak and Mr Saroha were recorded as being at the restaurant for short periods of time between 11.00 pm to 1.00 am. There is no consistency to how often these periods occurred. I note that at on two such occasion, Mr Kumar was shown at the restaurant between 12 and 1.00 am for much longer (26 minutes and 45 minutes). He could not recall why, as the evidence of all the applicants was that refrigerating the dough took only 5 minutes, maybe less.

[103] For completeness, I note that Mr Singh's location data records 4 instances when he says he was at the restaurant late at night for less than 10 minutes, and he has claimed wages for these instances despite not referring to this specifically in his statement of problem and his evidence that he was not required to do this and when he did so, it was to keep someone else company.

[104] Mr Lakra denies that he required or even asked the applicants to return to the restaurant late at night to put dough in the fridge. He says that if there was any dough remaining at the end of the night, it was to be placed in the fridge overnight ready to be used the next morning before staff left the restaurant for the night. He denied that there was any practice of leaving dough on the bench at the end of the day and then returning in the middle of the night to refrigerate it, and suggested that any such practice was unnecessary, unsanitary, and not good for safety or site security.

[105] Mr Lakra was aware of one instance where the applicants had returned to the restaurant late at night to refrigerate the dough. He says that they were using the work vehicle to go into the city clubbing, and stopped off at the restaurant on the way to check that the dough was in the fridge as one of them had forgotten or was unsure if it had been refrigerated at closing time. The applicants all recalled this and accepted this was an accurate account. In addition, the applicants all said that they would usually accompany each other to the restaurant when needed to check on the dough. This was to keep each other company and not because it was an onerous or lengthy task such that it might require two people.

[106] On balance, I do not accept that three of the applicants were required by Mr Lakra to return to the restaurant in the middle of the night to refrigerate dough. I prefer the evidence of Mr Lakra that his expectation was that the dough should be placed in the refrigerator at the end of the night and not left out on the bench for an undetermined

amount of time for both hygiene and security reasons. I am not persuaded by the suggestion that I should effectively award the applicants extra wages if they attended the restaurant of their own volition on their way to go clubbing, or to “keep each other company”. This is not work, nor was it required or authorised by the respondent. This claim is not made out. No orders are made.

Other Claims relating to payment

[107] For completeness, I record that the applicants initially raised certain claims as to non-payment of sick leave, bereavement leave, and for working on certain public holidays. My understanding is that the claims for sick leave and bereavement leave were withdrawn, and I record that in any case, none of the applicants provided supporting evidence that would suggest such claims should be granted. The respondent gave evidence that in two instances, its payroll provider did not correctly calculate and pay for two public holidays, but that after a review of the records, this had been rectified and payments made. Accordingly, it is my view that these various claims have been resolved and no further orders are necessary.

Premium Payments

[108] The applicants raise claims that Mr and Mrs Lakra sought and received unlawful premium payments from them to secure their jobs with Dharma Services.

Unlawful Premium – no claim by Mr Kumar

[109] Mr Kumar claimed in his statement of problem that he paid a premium of \$28,000 NZD. However, he later said that he was not charged for the job, and did not make such a payment. Mr Kumar says was charged for his visa (I understand this to be a fee of \$750 from Immigration New Zealand, as well as a fee of \$1,150 from a New Zealand-based immigration consultant), as well as for the cost of aeroplane tickets to New Zealand. Mr Lakra paid for these items, and Mr Kumar paid him back. He does not seek repayment, or to classify this arrangement as an unlawful premium.

[110] Accordingly, Mr Kumar’s claim for the repayment of an unlawful premium is not made out. No orders are made.

Unlawful Premium – claim for \$32,800 by Mr Deepak

[111] Mr Deepak seeks to recover an unlawful premium from Dharma Services and/or Mr Lakra. He seeks recovery of \$32,800 NZD. Mr Deepak says that his father Mr Mahipal Singh, made a cash payment of approximately \$2,000 NZD to Mr Lakra. This is confirmed by Mr Manipal Singh. Mr Mahipal Singh then says he made a payment of approximately \$33,000 NZD to Mr Lakra’s parents. Finally, Mr Singh says he paid a further 1 lakhs into Mr Deepak’s bank account.

[112] Mr Deepak accepts that the sums of \$3,050 NZD for his airfares, \$750 for his visa application fee, and \$1,150 for immigration consultancy) are properly repayable by him, and does not seek recovery of these monies.

[113] I am not persuaded that the sum paid by Mr Deepak’s father to him (the final payment of 1 lakhs) can or should properly be recoverable from Dharma Services or Mr Lakra. However, I must determine whether Mr Deepak can recover from Dharma Services and/or Mr Lakra the sum of \$32,800 that Mr Mahipal Singh says he paid in cash to Mr Lakra’s parents in India.

[114] Neither Mr Mahipal Singh nor Mr Lakra’s parents were parties to this matter. Mr Mahipal Singh gave evidence to the Authority by way of AVL, and provided a copy of his diary note for that day to the Authority where he had recorded these sums next to the name “Anil Jahri”, “Jahri” being the name of Mr Lakra’s village. Mr Lakra denies requesting any premiums. He says that he only requested reimbursement of the costs of the visa and flights, and has no knowledge of any payment made by Mr Singh to his parents.

[115] Counsel for the applicants says that the Authority has the ability to make orders for the repayment of this money, even though it occurred outside New Zealand and that I should not consider the case of *Mehta v Elliott*, which stated that “the demand for, and receipt of a premium for employment in India is beyond the reach of New Zealand employment legislation”². The submissions for the applicant essentially suggest that this is no longer good law in light of the changes to the Wages Protection Act 1983, which now extend the prohibition on premiums to “any person engaged on behalf of the employer”, from “any other person”.

² [2003] 1 ERNZ 451 at [72] and [73].

[116] Standing back and considering the matter as a whole, Mr Deepak is asking me to award a significant sum of money to him, based entirely on his own contested statement that Mr Lakra sought this money from him, and an undated hand-written note produced by his father, whose knowledge of Mr Lakra's premium request stems from Mr Deepak himself. No other records or evidence exist in support of this claim.

[117] I am not prepared to make such an order under these circumstances. The factual evidence is not sufficient to support a claim of such magnitude. I find that Mr Deepak's claim is not made out.

Unlawful Premium – claim for \$34,000 by Mr Singh

[118] Mr Singh has also claimed for the repayment of an unlawful premium. He seeks the repayment of \$30,900 NZD from Dharma Services and/or Mr Lakra. Mr Deepak's brother, Mr Ravinder Singh, gave evidence in support. He says that he attended Mr Singh's job interview with Mr Lakra as a support person, and that Mr Lakra asked for approximately \$34,000 NZD as payment for the job.

[119] Mr Ravinder Singh says that Mr Lakra requested the payment of INR 2,00,000 (or approximately \$4,000 NZD) immediately, as government fees. Mr Ravinder Singh has bank records showing he paid this sum to Mr Lakra's account in three payments on 20 December 2022, 21 December 2022, and 24 December 2022. He provided bank statements confirming these payments with the annotation "For New" on them, which he said was short for "For New Zealand".

[120] Mr Ravinder Singh says he made two substantial payments to Mr Lakra's parents in cash, of which there is no record. He says that he made a further payment to Mr Lakra's mother by cheque. He has a bank record to support this, although the documents do not go so far as to show that the bank account the cheque was paid into belonged to Mr Lakra's mother, or what the cheque was for.

[121] I am satisfied on the balance of probabilities that Mr Ravinder Singh paid the sum of approximately \$4,000 NZD to Mr Lakra on behalf of his brother Mr Deepak. However, I note that the sum in New Zealand dollars is approximately the amount that all witnesses said was required to cover aeroplane tickets, plus the visa application fee and immigration consultant's fee. I am not prepared to conclude that this money was an unlawful premium in all the circumstances, nor am I prepared to conclude that there

is sufficient evidence that an unlawful premium of \$30,000 which was a significantly greater amount but unrecorded for some reason, was taken and paid to or on behalf of Dharma Services and Mr Lakra. I find this claim is not made out.

Unlawful Premium – claim for \$38,100 by Mr Saroha

[122] Mr Saroha claims repayment of an unlawful premium from Dharma Services and/or Mr Lakra. Submissions on his behalf reference Mrs Lakra. Mr Saroha claims that Mrs Lakra asked him for an initial payment of approximately \$10,000 NZD in accordance with “government rules” and a further payment of approximately \$40,000 later, by way of WhatsApp messages. He was unable to produce copies of these messages to the Authority.

[123] Mr Saroha’s evidence is that he gave an initial unrecorded cash payment to Mrs Lakra. He then refers to 4 payments his mother made to other people, one of which was Mr Singh, one of which he says was related to Mr Deepak, and one of which was related to Mr Kumar. The fourth person was not related to any of the other parties. Mr Saroha says that these payments were unlawful premium payments. He says his mother deposited the sum of approximately \$5,000 NZD into a bank account in the name of Mr and Mrs Lakra on 24 May 2023, when Mrs Lakra said he should book flights to New Zealand (he arrived in New Zealand on 26 May 2023). A copy of a bank statement supporting this was provided.

[124] I am not persuaded that payments made by Mr Saroha’s mother to other persons connected to the other applicants (not the respondents) are unlawful premium payments made to the respondents. I note that the only payment that Mr Saroha can demonstrate was made by his mother to what appears to be a bank account in the name of Mr and Mrs Lakra was for a much smaller sum, and more consistent with the amount needed to cover an aeroplane fare and the costs of a visa application. Mrs Lakra in particular denied seeking or receiving any unlawful premiums, other than reimbursement of the cost of airfares and visa applications.

[125] She also described Jatin as her cousin, and that he was like a younger brother to her, regularly staying at her and Mr Lakra’s home and eating with them, and giving her access to his Google account. She says that her mother and Mr Saroha’s mother are also friends and relatives, with a long history of lending money to each other. Mrs Lakra was able to give specific details of this.

[126] In all the circumstances, I am not persuaded that Mr Saroha is in fact owed the sum of \$38,100 NZD or that there were any unlawful premiums sought or taken. This claim is not made out and no orders are made.

Penalties claimed against Dharma Services

[127] The applicants also seek a number of penalties against Dharma Services. I will consider these in turn:

- a. A penalty for seeking a premium. This breach has not been made out.
- b. A penalty for breach of good faith obligations, by requiring premium payments, and withholding wages. This breach has not been made out.
- c. Breaches of the employment agreement, including failure to pay wages and failure to provide a safe workplace. These claims are not made out. The claims of failure to provide a safe workplace appears to be based on the allegations previously withdrawn that Mr Lakra abused, discriminated against, or racially harassed the applicants. The claims that the employment agreement required minimum payments to the applicants, are new claims raised in submissions, are inconsistent with the pleadings in the statements of claim, and were not the focus of matters to be investigated which focused on the fundamentally different claim that the applicant had worked more hours than they had been paid for.
- d. Breaches of the Wages Protection Act 1983 and Minimum Wage Act 1983. These breaches have not been made out.
- e. Breaches of the statutory obligation to provide rest and meal breaks. This claim is not made out. The applicants gave evidence that they had time during the working day to rest and eat.
- f. Failing to provide wage and time records, and failing to pay accurate holiday entitlements. These claims are not made out. The applicants claimed that the payslips and rosters were not accurate records, and had been falsified. I have not accepted this claim. Dharma Services did keep

wage and time records through its payroll and roster systems. Although these records were not immaculate, they were kept, and inaccuracies mainly arose from the rosters being promulgated in advance with staff occasionally not turning up to rostered shifts, rather than there being any suggestion of systemic issues. The only issues with payment of holiday entitlements arose in relation to two identified public holidays, and have since been rectified. Even if I accepted that technical breaches occurred, I would not consider a penalty appropriate in these circumstances.

[128] Overall, I do not find that there are any claims which could support a penalty award against the first respondent.

[129] As I have found that no such breaches have been made out, it follows that the claims against Mr Lakra and Mrs Lakra as persons involved in a breach also cannot proceed.

Orders

[130] The claims made by Mr Parveen Kumar (file number 3267419) are not made out. No orders are made.

[131] The claims made by Mr Anand Singh (file number 3266939) are not made out. No orders are made.

[132] The claims made by Mr Deepak (file number 3267420) are not made out. No orders are made.

[133] The claims made by Mr Jatin Saroha (file number 3267439) are not made out. No orders are made.

Costs

[134] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. I note that the investigation meeting took place over 7 days. Accordingly my initial view is that the tariff for a 7-day meeting (or \$25,500) in favour of respondents would be the appropriate starting point.

[135] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondents may lodge, and then should serve, a memorandum on

costs within 28 days of the date of this determination. From the date of service of that memorandum, the applicants will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[136] 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.³

Claire English
Member of the Employment Relations Authority

³ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1