

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 392
3361423

BETWEEN	A LABOUR INSPECTOR Applicant
AND	THE INDIAN TASTE LIMITED First Respondent
	KRISHNA KHANDELWAL Second Respondent

Member of Authority: Matthew Piper

Representatives: Greg La Hood, counsel for the Applicant
No appearance for the First Respondent
No appearance for the Second Respondent

Investigation Meeting: 16 March 2026 in Auckland

Submissions received: 20 March 2026 from the Applicant

Determination: 19 June 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Between March and December 2024 the Labour Inspectorate received multiple complaints from employees of The Indian Taste Limited (The Indian Taste) alleging serious breaches of employment standards.

[2] Those complaints included allegations of breaches of the Minimum Wage Act 1983 (MWA), the Holidays Act 2003 (HA), the Wages Protection Act 1983 (WPA) and the Employment Relations Act 2000 (ER Act).

[3] The Labour Inspector commenced an investigation into The Indian Taste in March 2024. At the conclusion of her investigation, on 9 January 2025 the Inspector detailed her findings in an investigation report (Investigation Report).

[4] The Labour Inspector formed the view that The Indian Taste had breached various minimum standards, and that Krishna Khandelwal was a person involved in the breaches.

[5] The Indian Taste was sold to Mehakjeet Singh on 17 April 2024. Mr Singh was not involved with The Indian Taste during the period in which the events referred to in the Investigation Report transpired. On 30 September 2025 Mr Singh told the Authority he had sold the business back to Mr Khandelwal and was in the process of transferring the company back to him. As at the date of this determination the Companies Office register did not reflect a change of ownership back to Mr Khandelwal.

[6] The Inspector said Mr Khandelwal was a “person involved” in the breaches it found in the Investigation Report for the purposes of s 142Y of the ER Act and that he should be personally liable if The Indian Taste is unable to pay any amounts or penalties awarded against it.

[7] The Investigation Report concluded that The Indian Taste had breached the following minimum employment standards:

- (a) Section 65 of the ER Act - failure to include a description of the work to be performed by an employee in their individual employment agreement:
The description of the work to be performed by Pritam Halder did not reflect the reality. He was a kitchen manager, and his job description referred to a kitchen hand.
- (b) Section 130 of the ER Act - failure to keep accurate wages and time records:
The Indian Taste kept inaccurate or incomplete time and wage records, significantly underreporting the hours worked and failing to record overtime correctly.
- (c) Section 81 of the HA - failure to keep accurate holiday and leave records:
The Indian Taste failed to maintain accurate records of public holidays, alternative holidays, and final holiday pay amounts as required by the legislation.

- (d) Section 6 of the MWA - failure to pay minimum wage: Employees were not paid the adult minimum wage for all hours worked.
- (e) Section 4 of the WPA - unlawful deductions: Deductions were made from the wages of employees without their consent.
- (f) Sections 50, 56 and 60 of the HA - failure to pay for worked public holidays: Employees who worked on public holidays were not paid time and a half and did not receive corresponding alternative holiday entitlements when the worked public holiday was an otherwise working day.
- (g) Sections 23 and 27 of the HA - failure to pay correct final holiday pay and in a timely manner: Employees received their final holiday pay at a later date rather than when it was due, and it was an incorrect amount.
- (h) Section 12A of the WPA - unlawful premiums charged: Employees were required to pay premiums to Mr Khandelwal for securing jobs.

[8] The Labour Inspector sought orders against The Indian Taste to pay arrears relating to minimum wage breaches, unlawful deductions, premiums and failure to comply with obligations under the HA. Interest was also sought on the arrears claimed.

[9] Given Mr Khandelwal had been the sole director and shareholder of The Indian Taste at the time the breaches were found by the Investigation Report to have occurred, the Inspector also applied for him to pay all amounts owing to the affected employees pursuant to s 11AA of the MWA, s 77A of the HA and s 142Y of the ER Act.

[10] The Inspector also sought the imposition of penalties on Mr Khandelwal pursuant to s 142X of the ER Act. No penalties were sought in relation to The Indian Taste because the breaches identified in the Investigation Report were said to have occurred exclusively under Mr Khandelwal's direction.

[11] In his statement in reply, Mr Khandelwal denied liability for the arrears claimed by the Labour Inspector and contested the accuracy of the Investigation Report. Later, he offered to pay any amount due but has failed to make payment of any arrears found in the Investigation report.

The Authority's investigation

[12] The Authority's Investigation Meeting was set down for five days, commencing 16 March 2026. The first day was due to commence at midday.

[13] In the morning of 16 March 2026 Mr Khandelwal attended the Authority's premises. Approximately 25 minutes before the Authority's Investigation Meeting was due to commence, Mr Khandelwal emailed the Authority to say he had arrived at 10:00AM to discuss settlement, but that he was now not feeling well and would not attend the meeting. Mr Khandelwal went on to say he wished to be informed of the amount he was to pay so he could act upon it.

[14] The Authority Officer responded to Mr Khandelwal that the Authority's expectation was that all parties would be present at midday and that if Mr Khandelwal was not present the matter may proceed in his absence.

[15] Mr Khandelwal responded that he would not be attending the meeting because he was not feeling well and reiterated that he wished to know the amount he was required to pay to settle matters.

[16] The Authority was satisfied that Mr Khandelwal had sufficient opportunity to participate in its Investigation Meeting and proceeded by way of formal proof.

[17] For the Authority's investigation written witness statements were lodged from the Labour Inspector and three of the complainant employees being Ajay Kumar, Ajay Bhandari and Pushpinder Kumar. Each of these individuals answered questions from the Authority under oath or affirmation.

[18] Witness statements were also lodged from Amit Sharma, Sharad Khandelwal and Krishna Khandelwal. None of these witnesses appeared before the Authority to provide evidence despite being given the opportunity to do so. Accordingly, although their witness statements and accompanying documents were reviewed by the Authority, they have been given no weight on the basis they represent unsworn evidence.

[19] In the lead up to the Authority's investigation Mr Singh indicated that he did not know anything about the events in the Investigation Report because they pre-dated his involvement with The Indian Taste. He also said he did not wish to participate in the Authority's investigation given he had taken steps to sell The Indian Taste back to Mr Khandelwal.

[20] On 17 March the Authority set down a timetable for the lodgement of submissions, including giving each respondent the opportunity to lodge submissions. The applicant lodged submissions, but each respondent failed to do so.

[21] For completeness, I record Mr Khandelwal lodged a statement in reply in which he said he did not accept the findings of the Investigation Report. As noted above, Mr Khandelwal was given the opportunity to challenge the Investigation Report as part of the Authority's investigation process, but failed to do so.

[22] As permitted by s 174E of 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.

The Labour Inspector's evidence

[23] The Authority questioned the Labour Inspector regarding the investigative approach taken when completing the Investigation Report, including the approach she took to calculating arrears and engagement with Mr Khandelwal and The Indian Taste.

[24] The methodology used by the Labour Inspector when undertaking her investigation and compiling the Investigation Report was clear and thorough. Complainants were interviewed and significant documentary evidence from multiple sources was compiled. Mr Khandelwal was given the opportunity to comment during the Labour Inspector's investigation and before the Investigation Report was finalised. He did not provide credible rebuttals for the Labour Inspector's findings.

[25] Some adjustments were made to the Investigation Report's calculations in the Labour Inspector's witness statement to incorporate further facts identified after the completion of the report. These adjustments enhanced the reliability of the Labour Inspector's evidence.

[26] The Labour Inspector's evidence, including in relation to the Investigation Report is accepted by the Authority.

The Employment Standards breached by The Indian Taste

[27] The definition of Employment Standards found in s 5 of the ER Act and provides:

employment standards means any of the following:

- (a) the requirements of any of sections 64, 69Y, 69ZD, 69ZE, and 130;
- (b) the requirements of section 2AAC(a) and 2A of the Equal Pay Act 1972;
- (c) the minimum entitlements and payment for those under the Holidays Act 2003;
- (d) the requirements of sections 81 and 82 of the Holidays Act 2003;
- (e) the minimum entitlements under the Minimum Wage Act 1983;
- (f) the provisions of the Wages Protection Act 1983

[28] The following Employment Standards were found to have been breached by The Indian Taste in respect of the various complainants:

Wage arrears

[29] Evidence gathered by the Labour Inspector, including when weighed alongside evidence provided by Mr Khandelwal revealed non-compliance with the obligation in the MWA to pay at least applicable adult minimum wage. At the relevant time, the applicable minimum wage was \$22.70 per hour.

[30] Accordingly, the Labour Inspector calculated minimum wage arrears applicable to each complainant. The total amount of minimum wage arrears was \$82,522.83.

[31] After calculating the arrears owing under the MWA, the Labour Inspector calculated the difference between the amount paid to the complainants and the amount that would have been due had they been paid their contractual hourly rate of \$29.66.

[32] The Labour Inspector said that in addition to the MWA breaches there had been underpayment of contractual entitlements constituting a breach of s 4 of the WPA by virtue of being unlawful deductions. These unlawful deductions from the wages due under the various employment agreements totalled a further \$26,588.97

[33] In *Spotless Services (NZ) Ltd v Service and Food Workers Union Nga Ringa Tota Inc* the Court of Appeal noted its agreement with the proposition that wages payable under an employment agreement, if not paid, would be an unlawful deduction and recoverable in terms of ss 4 and 11 of the Wages Protection Act 1983.¹

¹ [2008] NZCA 580

Wages and Time Records

[34] Employers have a general obligation under s 4B of the ER Act to keep records in sufficient detail to demonstrate that the employer has complied with minimum entitlement provisions.

[35] Section 130 of the ER Act requires every employer, at all times to keep a “wage and time record”. The wage and time record must be written and show, among other matters: the number of hours worked each day in a pay period and the pay for those hours.

[36] The Indian Taste failed to keep accurate time and wage records for its employees, in breach of s130(4) of the ER Act. The Labour Inspector analysed the rosters that were provided and determined that they were not a reliable or an accurate record of the hours worked, as they were inconsistent with other evidence supporting the hours worked by the employees.

Holidays Act Breaches

[37] The Labour Inspector said that employees were not correctly paid for working on public holidays, including by not recognising work performed on public holidays and providing time-and-a-half payments and alternative holidays as required by the HA.

[38] There was a total of \$19,883.93 in public holidays arrears claimed for by the Labour Inspector.

[39] In addition, final holiday pay was incorrectly calculated leading to further arrears claims in this context totalling \$10,287.80.

Premiums

[40] Employers are not permitted to seek or receive a premium in respect of the employment of any person.

[41] The employees paid Mr Khandelwal what he asserted to be non-refundable immigration fees, and job security money which he stated would be returned after

working two years for his business. Mr Khandelwal requested these payments to be paid to various bank accounts.

[42] The individual circumstances of these payments, including where legal or immigration fees were paid on their behalf, were considered by the Labour Inspector and a total of \$60,245.63 were claimed by her under the category of unlawful premiums.

Findings in relation to each complainant

[43] The employees who made complaints each described a work environment involving long, undocumented hours, underpayment and pressure. In all cases, employees reported working 60 to 90 hours per week while being paid for 30 to 33 hours.

[44] Each complainant had been asked to pay significant amounts of money to secure or retain employment under the pretence that these payments were for immigration-related fees and job security reasons. Some described these requests as coercive. These payments were made indirectly to Mr Khandelwal and were not refunded.

[45] Complainant employees experienced severe mental stress and said Mr Khandelwal used this as a means of control. In some cases, this led to feelings of fear that Mr Khandelwal would retaliate if issues were raised and suicidal thoughts.

[46] All complainants were migrants dependent on visa sponsorship, which heightened their vulnerability. Several employees described experiencing physical intimidation, emotional manipulation and fear of deportation.

[47] In addition to the evidence provided by the Labour Inspector, Ajay Kumar, Ajay Bhandari and Pushpinder Kumar provided compelling evidence regarding the content of the report and impact events had on them. This included reference to the mental and emotional strain experienced because of the pressure they were placed under and their vulnerability as migrants.

[48] Mr Khandelwal's actions toward the complainant employees were serious, exploitative, and are deserving of denunciation.

[49] The following amounts are owed to each complainant:

Name/ Arrears	Ajay Kumar	Ajay Bhandari	Pushpinder Kumar	Pritam Halder	Anil Gairola	Deepak Singh	Arvind Bartwal	Grand totals
Minimum Wage	\$16,557.38	\$ 22,878.20	\$20,667.22	\$22,420.03	\$ -	\$ -	\$ -	\$82,522.83
Deductions	\$5,076.62	\$7,039.63	\$6,185.38	\$8,287.34	\$ -	\$ -	\$ -	\$26,588.97
Premium	\$15,819.76	\$11,365.87	\$6,885.00	\$ -	\$14,400.00	\$4,200.00	\$7,575.00	\$60,245.63
Worked Public Holiday	\$3,581.45	\$3,952.18	\$1,875.98	\$2,550.76	\$ -	\$ -	\$ -	\$11,960.37
Alternative Holiday	\$2,107.52	\$2,221.68	\$1,884.88	\$1,709.48	\$ -	\$ -	\$ -	\$7,923.56
Final Holiday Pay	\$2,275.72	\$2,812.45	\$2,439.38	\$2,760.24	\$ -	\$ -	\$ -	\$10,287.79
Total by employee	\$45,418.45	\$ 50,270.01	\$39,937.84	\$37,727.85	\$14,400.00	\$4,200.00	\$7,575.00	\$199,529.15

Should Mr Khandelwal be personally liable for arrears payments

[50] The Labour Inspector says that Mr Khandelwal should be named as a person involved in a breach of employment standards.

[51] Section 142W of the Act says that a person is involved in a breach of employment standards where they have been in any way, directly or indirectly, knowingly concerned in or party to the breach. It further says that where the breach is by a company, as was the case here, a person who is a director may be treated as a person involved in the breach.

[52] The breaches of employment standards that have been established occurred during a period when Mr Khandelwal was the sole director and shareholder of The Indian Taste. In addition, Mr Khandelwal was involved in recruitment, operations and the general business activities of The Indian Taste at the relevant time. He was also primarily responsible for the finance and administration of the business.

[53] Mr Khandelwal is, therefore, 'a person involved in the breaches of employment standards' that have occurred in respect of this matter for the purposes of s 142W of the ER Act.

[54] Accordingly, under s 142Y of the ER Act, I find Mr Khandelwal can be made liable for the outstanding arrears owing to the employees in the event that The Indian Taste is unable to pay.

Penalties

[55] The Labour Inspector did not seek the imposition of a penalty on The Indian Taste because she said that all identified breaches occurred exclusively under Mr Khandelwal's direction. The Inspector therefore sought, under s 142X of the ER Act, the imposition of penalties on Mr Khandelwal in relation to the facts set out in her statement of problem, her written and oral evidence and the evidence of the complainants who participated in the Authority's Investigation Meeting.

[56] Written submissions were lodged by counsel for the Labour Inspector addressing whether a penalty should be imposed and, if so, what the sum of the penalty should be. The Labour Inspector submitted a penalty of \$175,100.00 should be imposed on Mr Khandelwal.

[57] Multiple employment standards were breached and this is not a case where it would be appropriate for the Authority to exercise a discretion not to impose penalties despite breaches having occurred. Mr Khandelwal was in control of the actions of The Indian Taste during the relevant period and engaged in deliberate and exploitative behaviours which adversely affected multiple migrant workers.

[58] As the shareholder of The Indian Taste, Mr Khandelwal received a financial benefit for his actions by underpaying workers and in doing so also failed to compete fairly with other businesses providing similar products and who complied with the law.

[59] The Inspector's submissions on penalties referred to the guidance given by the Employment Court in cases involving the assessment of penalties, such as *Borsboom (Labour Inspector) v Preet PVT Ltd*,² *A Labour Inspector v Prabh Ltd*,³ and *A Labour Inspector v Daleson Investment Ltd*.⁴

² [2016] NZEmpC 143

³ [2018] NZEmpC 110

⁴ [2019] NZEmpC 12

Setting Penalties

[60] The starting point for considering the imposition of penalties is the ER Act, which sets out the breaches that can give rise to the imposition of a penalty.

[61] Having determined that the breaches alleged by the Labour Inspector have been established, I turn to s 133A of the ER Act to apply its mandatory considerations as part of considering the amount of penalty to impose. Section 133A provides as follows:

133A Matters Authority and court to have regard to in determining amount of penalty

In determining an appropriate penalty for a breach referred to in section 133, the Authority or court (as the case may be) must have regard to all relevant matters, including—

- (a) the object stated in section 3; and
- (b) the nature and extent of the breach or involvement in the breach; and
- (c) whether the breach was intentional, inadvertent, or negligent; and
- (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and
- (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and
- (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and
- (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.

[62] After considering each of these factors, I will turn to the additional considerations referred to by the Court in *Preet*, each of which are set out below.

[63] I further note that in the decisions cited above, the Court has identified the purposes of imposing penalties as being to punish those who breach minimum employment standards, deter similar behaviours, compensate victims and eliminate unfair competition.

[64] The Court, at para [151] of *Preet* summarised the steps to be followed by the Authority when fixing penalties. These are:

- Step 1: Identify the nature and number of statutory breaches.
Identify each one separately. Identify the maximum penalty available for each penalisable breach. Consider

whether global penalties should apply, whether at all or at some stages of the 4-step approach.

- Step 2: Assess the severity of the breach in each case to establish a provisional penalties starting point. Consider both aggravating and mitigating features.
- Step 3: Consider the means and ability of the person in breach to pay the provisional penalty arrived at in Step 2.
- Step 4: Apply the proportionality or totality test to ensure that the amount of each final penalty is just in all the circumstances.

Statutory Consideration 1 – The Object of the ER Act

[65] Section 3 of the ER Act states that its objects include to:

- (i) promote good faith in all aspects of the employment environment and the employment relationship;
- (ii) promote the effective enforcement of employment standards, in particular by Labour Inspectors and the Authority; and
- (iii) acknowledge and address the inherent inequality of power in employment relationships.

[66] Mr Khandelwal's conduct was inconsistent with the objects of the ER Act. He did not behave in a manner consistent with the good faith underpinnings of the ER Act and he facilitated material non-compliance with employment standards. It is likely he took advantage of the complainant employees' weaker bargaining position.

[67] The inequality of power in the relationship was used to extract labour on unlawful terms and means a meaningful penalty is appropriate to uphold the ER Act's protective purpose and to promote effective enforcement of employment standards.

Statutory Consideration 2 – The nature and extent of the breach

[68] The Labour Inspector submits that globalisation is not appropriate across all breaches in this case because each employee suffered distinct and individualised harm arising from the employer's conduct. I agree with this position.

[69] However, as submitted by the Labour Inspector, certain categories of breaches arising from a single continuous method of non-compliance can be properly globalised into grouped breach sets. These sets are:

- (i) Minimum wage and deduction breaches;
- (ii) Public holiday breaches;
- (iii) Record-keeping failures;
- (iv) Annual holiday breaches; and
- (v) Premium breaches.

[70] Accordingly, to the extent globalisation is appropriate in this case it is into these categories by affected employee.

Statutory Consideration 3 – whether the breach was intentional, inadvertent, or negligent

[71] The Authority accepts the Inspector's submission that the breaches in this case were persistent, systemic and deliberate. Mr Khandelwal was the person who caused the breaches with this nature. This includes because he received money from vulnerable employees, knew he was not paying employees for the hours they were working and because the non-compliance was not isolated but was designed to extract labour for an unlawful discount.

Statutory Consideration 4 – the Nature and Extent of any Loss or Damage

[72] The employees have lost the use of the money that they were entitled to at the time it became due. At the same time, the employer reduced its costs and gained an unfair advantage over other employers in the market.

[73] I accept the Labour Inspector's submission that the nature and extent of the loss in this case is significant and multifaceted, going well beyond the nearly \$200,000 in

arrears. Employees suffered regular underpayments for 60–80 hours of work while being paid for only 30, as well as 1–2 weeks of completely unpaid work at commencement. The financial harm was severe: they had to borrow money at high interest, take personal loans, and many were unable to support families overseas. The harm was exacerbated by late and incorrectly calculated final holiday pay, substandard living conditions, exhaustion, and coercive practices including visa-related threats, intimidation, and humiliation. One employee even resigned under pressure after the employer used their bank account to channel premium payments, demonstrating the profound and personal impact of Mr Khandelwal's conduct.

[74] In addition, the record keeping breaches hindered the Inspector's investigation and meant it was difficult to correctly identify all arrears.

Statutory Consideration 5 – Steps to Mitigate Effects of the Breach

[75] I accept the Labour Inspector's submission that there are no ameliorating factors in this case.

[76] Mr Khandelwal's apparent acceptance of some breaches was only on the basis that payment would be made if ordered by the Authority. Otherwise, he had denied responsibility and liability throughout.

Statutory Consideration 6 – Circumstances of the Breach and any vulnerability

[77] The employees were all recruited to work for The Indian Taste by Mr Khandelwal. They were sold on the chance of opportunity and better financial prospects. The employees trusted Mr Khandelwal. Each of their visas were linked to working for The Indian Taste.

[78] They were working in a controlled environment under CCTV and were living for a period of time with Mr Khandelwal. Each spoke very little English and had little to no understanding of New Zealand employment laws and norms.

[79] These factors made them vulnerable, and their vulnerability enabled the Mr Khandelwal to exploit them.

Statutory Consideration 7 – Previous Conduct

[80] The Indian Taste and Mr Khandelwal had not previously come to the attention of the Labour Inspectorate. There is therefore no evidence of previous conduct of a similar nature.

Additional Consideration 8 – Deterrence

[81] This case concerns breaches of minimum standards. As such, there is a need to “bring home” to the Respondents the standards they were required to meet, and that they are not to be met merely when it is financially convenient for the employer or when the employer is put under pressure by the Labour Inspector.

[82] Deterrence is a critical consideration in this case given and similar models of offending, particularly in the hospitality sector, should be strongly discouraged.

[83] Strong general deterrence is appropriate, particularly where the respondents sought to avoid accountability by selling the business once complaints arose, minimised responsibility, and attempted to shift blame onto employees. A meaningful penalty is required to make clear that deliberate exploitation, concealment, and avoidance behaviours will not be tolerated and to discourage both these respondents and others from similar conduct.

Additional Consideration 9 – Culpability

[84] Mr Khandelwal has culpability for his role in the harm visited on the employees by The Indian Taste’s non-compliance. He was intimately involved in the actions that generated the non-compliance. The quantum of arrears accrued is significant and each employee lost the use of that money despite being entitled to it when it became due.

Additional Consideration 10 – Consistency

[85] The Authority has imposed significant penalties in other cases involving similar types of breaches and numbers of employees involved.

[86] For example, in *A Labour Inspector & Ors v Pegasus Energy Limited and Anor* the Authority imposed penalties of \$120,000 against the company and \$24,000 against the sole director for the same breaches.⁵

[87] I have also had regard to the Employment Court's decision in *Rural Practice Ltd v Labour Inspector of and Ministry of Business, Innovation and Employment* commenting on the range of cases where penalties were imposed and making specific reference to the ratio between the relevant arrears and premiums.⁶

Additional Consideration 11 – Ability to Pay

[88] No up to date information was provided by Mr Khandelwal regarding his ability to pay any penalties imposed on him. Given the opportunity to participate in the Authority's investigative process was not taken up by Mr Khandelwal, the lack of information showing whether he can pay a penalty imposed on him is a neutral factor.

Additional Consideration 12 – Proportionality of Outcome

[89] The Labour Inspector submitted that the Authority should impose a meaningful and deterrent-focussed penalty in these circumstances and urged the Authority not to reduce penalties so as to create perverse incentives for employers.

[90] The penalty imposed should not be out of proportion with the nature of the non-compliance or the unlawfully withheld money.

[91] The Authority acknowledges the Labour Inspector's submission that a reduction of 15 percent from the available maximum after appropriate globalisation but, as set out below has reached a different conclusion in all the circumstances.

Outcome on penalties

[92] The Inspector has proposed adjustments of the final amounts of penalties sought to reflect what she regards as appropriate aggravating and ameliorating factors and seeks the imposition of a penalty of \$175,100. The Inspector's submissions in this

⁵ [2018] NZERA 26. See also *A Labour Inspector v Happytime BBQ Restaurant Limited and Anor* [2023] NZERA 20 and *A Labour Inspector v 2 Cheap Cars Limited* [2017] NZERA 270.

⁶ [2025] NZEmpC 198.

regard show the detail of the five-step approach the inspector took in reaching these amounts and the percentage of maxima that she submitted should be applied.

[93] The Labour Inspector withdrew one claim relating to a premium, but this was not reflected in its submissions. This has been corrected in the table set out in Appendix One which otherwise reflects the Labour Inspector's submissions.

[94] The Authority accepts the Labour Inspector's assessment of each element of the penalties proposed, with one exception. The Labour Inspector applied a reduction of 15 percent to reflect proportionality. In all the circumstances, given the quantum of unlawfully withheld wages and deplorable behaviour by Mr Khandelwal this reduction should be 10 percent.

[95] The penalty imposed by the Authority on Mr Khandelwal is therefore \$177,300.00. Of this amount, \$5,000 is to be paid to each of the listed complainants.

Summary and orders

[96] The following orders are made by the Authority:

- (i) Within 20 days of the date of this determination The Indian Taste Limited is ordered to make payment the following payments to the Labour Inspector to the use of each person listed below:
 - a. In respect of Ajay Kumar \$29,598.69 (gross) and \$15,819.76 as reimbursement of an unlawfully obtained premium;
 - b. In respect of Ajay Bhandari \$38,904.14 (gross) and \$11,365.87 as reimbursement of an unlawfully obtained premium;
 - c. In respect of Pushpinder Kumar \$33,052.84 (gross) and \$6,885.00 as reimbursement of an unlawfully obtained premium;
 - d. In respect of Priam Halder \$37,727.85 (gross);
 - e. In respect of Anil Gairola \$14,400.00 as reimbursement of an unlawfully obtained premium;
 - f. In respect of Deepak Singh \$4,200.00 as reimbursement of an unlawfully obtained premium;
 - g. In respect of Arvind Bartwal \$7,575.00 as reimbursement of an unlawfully obtained premium;

- (ii) Should The Indian Taste be unable to make the payments listed in paras [96](i)(a) through [96](i)(g) above, leave is granted for the Inspector to seek recovery from Mr Khandelwal personally under s 142Y of the Employment Relations Act 2000.

Interest

- (iii) The Indian Taste or Mr Khandelwal, as the case may be, is to pay to the applicant Labour Inspector to the use of the complainant employees, interest on \$199,529.15 from 3 March 2025, being the date the Inspector's statement of problem was lodged in the Authority, until the arrears are paid in full. The order is made pursuant to Schedule 2, clause 11 of the ER Act. The interest is to be calculated using the civil debt interest calculator found at www.justice.govt.nz/fines/civil-debt-interest-calculator.

Penalties

- (iv) The Authority has imposed penalties on Mr Khandelwal of \$177,300.00. In this regard, within 20 days of the date of this determination Mr Khandelwal is ordered to pay:
- a. \$142,300.00 to the Crown via the Ministry of Business Innovation and Employment; and
 - b. \$35,000 to the Labour Inspector to be divided equally between Ajay Kumar, Ajay Bhandari, Pushpinder Kumar, Pritam Halder, Anil Gairola, Deepak Singh and Arvind Bartwal.

Costs

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

[98] If they are not able to do so and an Authority determination on costs is needed the Labour Inspector may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum The Indian Taste and Mr Khandelwal would then have

14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[99] 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.⁷

Matthew Piper
Member of the Employment Relations Authority

⁷ See www.era.govt.nz/determinations/awarding-costs-remedies.

Appendix One – Krishna Khandelwal – Penalty Analysis

Step 1 – Nature and Number of Breaches – Potential Maximum Penalties		
Breach Category (max \$10,000 per breach)	Number of Breaches	Total
Minimum wage + deductions	5	\$50,000
Record-keeping (Wage/time + leave/holiday)	6	\$60,000
Premium breaches	6	\$60,000
Annual holiday breaches	5	\$50,000
Public holiday breaches	5	\$50,000
Subtotal		\$270,000

Step 2 – Aggravating Factors as a proportion of maxima in Step 1		
Breach Category	Severity %	Penalty After Aggravating Factors
Minimum wage + deductions	80%	\$40,000.00
Record-keeping (Wage/time + leave/holiday)	80%	\$48,000.00
Premium breaches	90%	\$54,000.00
Annual holiday breaches	40%	\$20,000.00
Public holiday breaches	70%	\$35,000.00
Subtotal		\$197,000.00

Step 3 – Ameliorating Factors (reducing aggravating factors subtotal)	
No discount	\$197,000.00

Step 4 Defendant's Financial Circumstances	
No discount	\$197,000.00

Step 5 – Proportionality	
Reduce by 15% to reflect proportionality	- \$29,550.00
Total	\$167,450.00