

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 397
3393865

	BETWEEN	JASPREET KAUR Applicant
	AND	PATEL CATERING LIMITED (In Liquidation) First Respondent
	AND	CHAITALI PATEL Second Respondent
	AND	NIKUNJ PATEL Third Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Susanne Lass, advocate/counsel for the Applicant No appearance for the Respondent	
Investigation Meeting:	2 and 5 June 2026 in Auckland	
Submissions and/or further evidence	2 June 2026 from the Applicant None from the Respondent	
Determination:	22 June 2026	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Jaspreet Kaur, claims that she is owed monies by the First Respondent, Patel Catering Limited (In Liquidation) (Patel Catering).

[2] Ms Kaur further claims that the Second and Third Respondents, Chaitali Patel and Nikunj Patel, aided and abetted the First Respondent in its breaches of minimum employment standards in respect of wages, sick leave entitlement, public holiday entitlement, and holiday pay.

The Authority's investigation

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Ms Kaur and from Ashok Patel.

[4] The Authority received no Statement in Reply from the Respondents. Chaitali Patel, the Second Respondent, attended a case management conference held on 10 February 2025, representing the Respondents.

[5] During that conference, the parties agreed that the matter would be heard on 2 June 2026, and a timetable for witness statements was also agreed.

[6] The Respondents did not provide witness statements. On 14 May 2026, Mr Patel requested an extension for the lodging of witness statements and an adjournment of at least two months for the investigation. This was declined given the late application and length of time the investigation had been set down. A further request was also declined on the same basis.

[7] Oral and written submissions were received from Ms Lass for the Applicant. A written copy of these was provided to the Respondent.

[8] Whilst I have not referred to all the submissions made by the Applicant; I have fully considered them.

[9] 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.

Issues

[10] The issues requiring investigation are whether or not: Ms Kaur is owed monies in respect of:

- An employment premium
- Wage arrears
- Sick leave entitlement
- Unpaid notice period
- Public holiday entitlement
- Holiday pay

Background

[11] Patel Catering operated a restaurant business in New Zealand. Chaitali Patel, the second respondent was the sole director and shareholder.

[12] Ms Kaur arrived in New Zealand on or about August 2023 on a visitor's visa.

[13] Despite being aware that subject to her visa conditions she was not allowed to engage in work in New Zealand, Ms Kaur applied for a job as a Kitchen Hand at a restaurant operated by Patel Catering Limited.

[14] The Respondents agreed to employ Ms Kaur and agreed to apply for a work visa on her behalf. Ms Kaur said that Ms Patel told her she would need to provide them with payment in order for them to do so. By WhatsApp message dated 7 December 2023 Ms Patel stated: “your expense will be \$25,000. This is not Veer’s fee, it’s a process fee.”

[15] Ms Kaur said she wanted to stay in New Zealand so agreed to pay the monies requested by the Respondents. She said that she made the requested payment to the Respondents in several ways:

- i. On or about 1 December 2023 she paid approximately \$5,000 in cash;
- ii. On or about 3 April 2024 she paid \$10,000 by bank transfer to an account in India;
- iii. On or about May 2024 she paid \$5,000 in cash;
- iv. On 20 June 2024 Ms Kaur claimed the Respondents used her visa credit card to make a purchase to the value of \$5,000; and
- v. On 27 November 2024 Ms Kaur claimed a further amount of \$3,527.65 was transferred from her visa credit card to the respondents.

[16] Mr Kumar said his son was the boyfriend of Ms Kaur. He said Ms Kaur had approached him in early April 2024 and asked if he would give her financial support for her trip to New Zealand. He said he provided a sum of equivalent to \$10,000.00 to Ms Kaur, paying it into her bank account.

[17] Ms Kaur said in total she paid approximately \$28,527.00 to the Respondents.

[18] Ms Kaur said her work visa was approved on 14 March 2024. The visa issued under the Accredited Employer Work Visa scheme, stated that Ms Kaur could work as a Kitchen Hand for Patel Catering Limited and that she must be paid at or above \$29.70 per hour. Ms Kaur was provided with an individual employment agreement which she signed on 22 January 2024 prior to receiving the work visa (the Employment Agreement).

[19] The Employment Agreement stated that Ms Kaur would start working when her work visa was approved and that she would be expected to work for 30 hours each week Monday to Saturday. The Employment Agreement stated that she would be required to work additional hours if the work load increased but that these would not exceed 40 hours per week. The

Employment Agreement also stated that Ms Kaur would be paid “a flat rate of \$29.70 an hour for the actual hours worked.”

[20] Ms Kaur said that during the first few months of her employment, the restaurant was busy and she worked approximately 78 – 80 hours per fortnight. However, after the first few months she was not scheduled to work as many hours because the restaurant was less busy.

[21] Ms Kaur said she was not provided with a formal roster, but her shifts were communicated to her by WhatsApp messages, telephone calls and verbally. Ms Kaur said she clocked in and out at the restaurant., however she had not been able to obtain the clocking in records from the Respondents.

[22] Ms Kaur said she was not paid \$29.70 per hours of all the hours she worked. She said her wages were often delayed, and at times she was not paid at all. In addition, in her first few weeks of employment, she was paid in cash.

[23] Ms Kaur provided WhatsApp messages in support of her claim that she was paid approximately \$540 on or about 21 March 2024 and approximately \$480.00 on or about 4 April 2024. However, Ms Kaur said she worked more hours than she was paid.

[24] Ms Kaur said she was told by the Respondents that they were calculating her wages using a lower hourly rate of \$23.15, then pay her for fewer hours at the higher rate stated in the Employment Agreement and treating the remaining difference as unpaid leave.

[25] During her first few weeks of work Ms Kaur said she should have been paid 135 hours as her contractual minimum entitlement, which at \$29.70 should have been a gross payment of \$4,009.50. However, she did not receive this amount in full.

[26] Ms Kaur said the Respondents recorded unpaid leave on a number of occasions even though she did not request or agree to take unpaid leave. Sometimes she was told this was because there was not enough work available. In addition she did work on days when it was claimed she was on ‘unpaid leave’.

[27] Ms Kaur said the Respondents told her to return part of her wages in cash to which she had not agreed.

[28] The periods of unpaid leave were recorded on the payslips issued to Ms Kaur although she said she was not paid for those periods even though she was available to work and did work on some of the days stated to be unpaid leave.

[29] On 19 February 2025 Ms Kaur was dismissed.

[30] On 21 July 2025 Patel Catering went into liquidation.

[31] Ms Kaur has provided the Authority with all available payslips, her IRD statement, bank statements.

What monies is Ms Kaur owed by the Respondents?

[32] Ms Kaur, with the assistance of Ms Lass, provided the Authority with a detailed wages calculation based on the hours worked and/or contractually payable, less the amounts recorded.

Wage Arrears

[33] The Employment Agreement States that Ms Kaur would be paid at the rate of \$29.70 per hour with a minimum of 30 hours per week guaranteed. Ms Kaur gave evidence to the effect that she was not paid for all the hours worked and some weeks was not paid her contractual minimum hours of 30 per week.

[34] Ms Kaur also stated that the Respondents calculated her wages using a lower hourly rate and effectively reduced her wages by recording some days as unpaid leave which she had either not requested or was present in the workplace.

[35] Ms Kaur is claiming a composite sum in monies owing of \$19,397.29 gross. This sum includes the unpaid wages, unpaid sick leave, notice pay, public holiday entitlements and holiday pay.

Sick Leave Entitlement

[36] Ms Kaur was absent from work due to illness from 27 January 2025 and she has provided medical evidence in support.

[37] Ms Kaur is claiming sick leave for 10 days Calculated as a contractual minimum entitlements of 30 hours per week at \$29.70 per hour, that equates to \$1,782.00 gross.

Unpaid Notice Period

[38] Pursuant to the Employment Agreement, Ms Kaur was entitled to a two weeks' notice, period, but that was not provided. The unpaid contractual notice equates to \$1,782.00.

Public Holiday Entitlement

[39] Ms Kaur said that she was paid \$14.85 per hour for Matariki which was less than her contractual hourly rate. Ms Kaur also said she worked one hour on 1 January 2025.

[40] Pursuant to the Holidays Act 2003, an employee who works on a public holiday is entitled to be paid at not less than time and a half for the time worked, and if the day worked would otherwise have been a working day, the employee is entitled to a day in lieu. Ms Kaur states that she was not paid according to this requirement.

[41] Ms Kaur is claiming \$114.35 in respect of public holiday entitlements together with a public holiday entitlement of \$178.20.

Holiday Pay

[42] Ms Kaur claims that, taking into account the wages and other employment entitlements that should have been paid during her employment, accrued holiday pay amounts to \$3,587.59 gross.

[43] No Statement in Reply was lodged by the Respondents. No wages and time records have been provided. In these circumstances s 132 of the Act gives the Authority discretion to draw inferences from that failure

[44] I determine that Ms Kaur is owed the sum of \$19,397.29 gross unpaid wages, unpaid sick leave, notice pay, public holiday entitlements and holiday pay.

Interest

[45] As stated above, employees are to be paid all wages owed to them as and when they fall due and to be paid any accrued annual leave entitlement at the date of termination.

[46] Patel Catering failed to make full payment of all the outstanding payments due to Ms Kaur.

[47] The purpose of interest is to reimburse someone for the loss of use of monies to which there is established entitlement as is the case with Ms Kaur.

[48] I consider it appropriate therefore to award Ms Kaur interest on the amounts owed to her from the date her employment with Patel Catering ended.

[49] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

Did the Respondents request and receive a premium payment from Ms Kaur?

[50] Under New Zealand employment law a payment to secure employment is not permitted. Section 12A of the WPA refers to employment premiums at s 12A which states:

12A No premium to be charged for employment

- (1) No employer or person engaged on behalf of the employer shall seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person.

[51] Ms Kaur's evidence was that she paid the Respondents a total sum of \$28,527.65 in return for their offer of employment and obtaining an Accredited Employer Work Visa for her.

[52] The WhatsApp text message sent on 7 December 2023 by Ms Patel confirms that she requested the sum of \$25,000.00 from Ms Kaur in relation to obtaining a work visa for her.

[53] I find that the Respondents breached s 12A(1) of the WPA by seeking a premium in respect of its agreement to employ Ms Kaur.

[54] Where an employer receives any amount of money in contravention of subsection (1), whether by way of deduction from wages or otherwise, then, irrespective of any penalty to which the employer thereby becomes liable, the person by whom the money was paid, may recover that amount from the employer as a debt due to the person.

[55] There is no evidence from the Respondents as to whether or not they received the monies. However, it is clear that \$25,000.00 was requested by Ms Patel in relation to the offer of employment with Patel Catering and Ms Kaur's evidence is that she provided \$20,000.00 in cash, and by bank transfer from India.

[56] Ms Kaur's evidence was that she provided two further payments via her visa card, one in the sum of \$5,000.00, and a further one of \$3,527.65. I accept that the credit card payment of \$5,000.00 was paid in respect of the requested sum of \$25,000.00, however there is no explanation and no evidence to support why a further credit card payment of \$3,527.65 was made.

[57] The WhatsApp message of 7 December 2023 supports the alleged premium payment of \$25,000.00. However, there is no such evidence in support of a further sum being demanded in exchange for the employment.

[58] I determine that the Respondents requested and received a premium payment of \$25,000.00 from Ms Kaur in exchange for employment.

Should Chaitali Patel and Nikunj Patel be liable to make any payments determined to be due to Ms Kaur in respect of breaches of minimum employment standards by Patel Catering if Patel Catering is unable to pay?

[59] Patel Catering has been found to have breached employment standards in respect of the employment premium, minimum wages, and holiday pay.

[60] Section 142W of the Act states:

142W Involvement in breaches

- (1) In this Act, a person is **involved in a breach** if the breach is a breach of employment standards and the person—
 - (a) has aided, abetted, counselled, or procured the breach; or
 - (b) has induced, whether by threats or promises or otherwise, the breach; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the breach; or

[61] Patel Catering is in liquidation. I find that Ms Patel, as the sole director and a shareholder of Patel Catering, was knowingly concerned in the breaches of minimum employment standards and in the failures to pay Ms Kaur her entitlements correctly.

[62] As such, she may be held liable to fulfil the remedies ordered to be paid to Ms Kaur pursuant to s 142Y(2)(b) of the Act: “to the extent that the employer’s employer is unable to pay the arrears in wages or other money” and with the prior leave of the Authority.

[63] Mr Patel, the third respondent was not a director and there is insufficient evidence that he was knowingly concerned in the breaches of minimum standards.

[64] I determine that Patel Catering and Ms Patel are both jointly and severally responsible for seeing this order is met in full. I determine that in the event that Patel Catering is unable to, and being in liquidation is unable to, pay Ms Kaur the sums awarded to her in respect of the breaches of minimum employment standards including the interest, Ms Patel is liable to pay the ordered payments.

Should a penalty be awarded against Patel Catering in respect of a breach of the Employment Agreement, and if so, in what quantum?

[65] I have found that Patel Catering has breached the following in respect of Ms Kaur:

- a) Failing to pay Ms Kaur the entire amount of wages due to her when they fell due to be paid;
- b) Failing to pay Ms Kaur the contractual minimum hours of work;
- c) Failing to pay Ms Kaur wages when due;
- d) Recording unpaid leave without Ms Kaur's agreement;
- e) Failing to pay Ms Kaur the contractual notice period or payment in lieu upon termination;
- f) Failing to provide wages and time records upon request.

[66] Ms Kaur is seeking for a penalty to be awarded against Ms Patel and/or Mr Patel for aiding and abetting Patel Catering in breaching minimum employment standards.

[67] In deciding whether to impose a penalty and if I decide to, deciding how much that penalty should be, I need to consider the factors in s 133A of the Act and the approach as set out by the Employment Court in *Boorsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*.¹

[68] The purpose of penalties is punitive. They are not imposed to remedy the applicant's loss, but to punish the person who has breached a duty under the Act and to condemn that behaviour.

[69] The Employment Agreement set out the agreed terms between the parties. Both parties were expected to adhere to them. Ms Kaur should have been paid correctly and on time for all the hours she worked, and to have leave and notice periods correctly treated. This did not occur and as a direct result Ms Kaur suffered stress and anxiety.

[70] As stated, Mr Patel was not a director and there is no evidence that he was involved in the breaches.

[71] I determine that Ms Patel was the person involved in all of the identified breaches of the Employment Agreement. She was the sole director of during Ms Kaur's employment and the person responsible for the operation of Patel Catering and for ensuring the terms of the

¹ *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*. [2016] NZEmpC 143

Employment Agreement were met. As such she was responsible for all the breaches which occurred and of which she was notified.

[72] I find that Ms Patel is personally liable for the breaches of Employment Agreement.

[73] I order that Ms Patel pay a penalty of \$4,000. The penalty is to be paid into a Crown Bank Account.

Should any part of the penalty be paid to Ms Kaur?

[74] Ms Kaur's losses have been recognised and orders made accordingly. The purpose of penalties is to deter, not to compensate.

Filing Fee

[75] I order Ms Patel to pay Ms Kaur the filing fee of \$71.55.

Costs

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

[77] If they are not able to do so and an Authority determination on costs is needed Ms Kaur 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 Ms Patel 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.

[78] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Orders

[79] I have made the following orders:

- **Patel Catering is ordered to pay Ms Kaur the sum of \$19397.29 in respect of:**
 - **Wage arrears**
 - **Sick leave entitlement**
 - **Unpaid notice period**
 - **Public holiday entitlement**
 - **Holiday pay**
- **Patel Catering ordered to pay Ms Kaur the sum of \$25,000.00 in respect of an employment premium pursuant to s12A WPA**

- **Patel Catering is to pay Ms Kaur interest on the amounts ordered to be paid to her from 19 February 2025, until they are paid in full.**
- **Patel Catering ordered to pay Ms Kaur the filing fee of \$71.55.**
- **To the extent that Patel Catering is unable to make the payments, Ms Patel ordered to make the payment.**
- **I order Ms Patel to pay the full penalty amount of \$4,000.00 to the Authority for transfer to a Crown Bank Account.**
- **All orders for payment are to be paid within 28 days of the date of this determination.**

Eleanor Robinson
Member of the Employment Relations Authority