

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 40
3346500

BETWEEN A LABOUR INSPECTOR

AND HOT SPOT LIQUOR LIMITED
 First Respondent

AND INDERPREET SINGH
 Second Respondent

Member of Authority: Jeremy Lynch

Representatives: Rebecca Denmead and Owen Zheng, counsel for the
 Applicant
 Timothy Oldfield, counsel for the Respondents

Investigation Meeting: On the papers

Submissions Received: 25 September and 28 October 2025 from the Applicant
 20 October 2025 from the Respondents

Determination: 27 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] This is an application for penalties.
- [2] The first respondent, Hot Spot Liquor Limited (Hot Spot) is a limited liability company, which operated the Thirsty Liquor outlet in Mt Maunganui.
- [3] The second respondent, Inderpreet Singh, is the sole director and shareholder of Hot Spot.
- [4] The applicant is a Labour Inspector of the Ministry of Business, Innovation and Employment, designated under s 223 of the Employment Relations Act 2000 (the Act).

[5] Following an investigation subsequent to a complaint by employee Diwakar Pandey, the Labour Inspector sought that the Authority determine whether various breaches of employment standards had occurred. However, since the Labour Inspector's statement of problem was lodged in the Authority, Hot Spot and Mr Singh accepted the alleged breaches occurred, and took prompt steps to address the arrears owing to Mr Pandey.

[6] The parties attended mediation in March 2025, and reached a non-confidential settlement agreement.

Agreed statement of facts

[7] On 19 June 2025, the parties signed an agreed statement of facts (ASOF). In the ASOF the parties accept that the assessment of penalties is a discretionary remedy, and acknowledge that the imposition and quantum of penalties is at the Authority's sole discretion.

[8] In the ASOF, the parties agree that (inter alia):

- (a) The complainant Mr Pandey was a migrant worker who held a series of temporary visas. A condition of his employment was that he would only work as a store manager for Hot Spot. Despite this, on occasion, Mr Singh instructed Mr Pandey to work for another liquor outlet, operated by a different company also owned by him (the related company), in breach of his visa conditions.
- (b) On a number of occasions, Mr Pandey received no payment for the hours he worked at the related company.
- (c) The wages and time record provided to the Labour Inspector did not comply with s 130(1)(g) of the Act; and contained various time record keeping inaccuracies.
- (d) The holiday and leave record provided did not comply with s 81(2) of the Holidays Act 2003 (HA); timesheets provided showed that Mr Pandey was not at work for a period in February 2022, and was paid annual leave for this period. However, photographic evidence provided by Mr Pandey showed he was working during this period, and was in fact not on annual leave; various other HA breaches occurred, including as to record keeping, and in respect of public holiday pay inaccuracies.

- (e) Various Minimum Wage Act 1983 (MWA) breaches occurred, including that Mr Pandey was not paid for all the hours he worked, at not less than the applicable minimum wage rate.
- (f) As Mr Pandey was not paid for all the hours he worked, this resulted in a total sum of \$14,817.69 (gross) in minimum wage arrears.
- (g) Mr Pandey was not correctly paid for public holidays worked, including not being paid time-and-a-half where applicable, and not being provided with an alternative holiday as required under the HA.
- (h) Mr Pandey had public holiday arrears of \$6,875.885 (gross).
- (i) Various HA breaches meant Mr Pandey was not paid the correct amount of annual holiday pay on termination, resulting in annual holiday pay arrears of \$12,181.99 (gross).

[9] As the sole director and shareholder of Hot Spot, Mr Singh accepts that he is a person involved in the above breaches of employment standards.

[10] The parties agree that all the above arrears (totalling \$35,549.52) were paid by the respondents and the related company on 28 January 2025.

[11] Notably, Mr Pandey received an overpayment of \$1673.99 from the related company in respect of the Labour Inspector's claims, for which no recovery is sought.

[12] The Labour Inspector seeks that the Authority determine penalties. Hot Spot and Mr Singh do not oppose the imposition of penalties.

The Authority's investigation

[13] The parties agreed that this matter was suitable for an investigation on the papers.

[14] As a comprehensive ASOF had been prepared by the parties, it was agreed that no affidavit evidence would be lodged.

[15] Written submissions were lodged by the Labour Inspector, together with submissions in reply.

[16] In addition, Hot Spot and Mr Singh lodged to submissions in accordance with timetable directions.

[17] As permitted by s 174E of the Act, this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[18] The Authority has carefully considered all the material provided.

The issues

[19] The parties have agreed that the only matters outstanding are whether penalties should be imposed on the respondents in respect of their breaches, and if so, the quantum of penalties. Therefore the issues for determination in this application are:

- (a) whether Hot Spot should be required to pay a penalty for its breaches of the MWA, and quantum if awarded?
- (b) Whether Hot Spot should be required to pay a penalty for its breaches of the HA, and quantum if awarded?
- (c) Whether Hot Spot should be required to pay a penalty for its breach of S 130 of the Act, and quantum if awarded?
- (d) Whether Hot Spot should be required to pay a penalty for its breaches of the WPA, and quantum if awarded?
- (e) Whether Mr Singh as a person involved in the breaches, be required to pay a penalty in respect of his breaches of the MWA, HA, WPA, and the Act, and quantum if awarded?
- (f) Finally, the issue of costs and disbursements is to be determined.

Penalties – general principles

[20] Comprehensive legal principles apply when the Authority is required to determine an application for penalties. Those principles are set out at s 133A of the Act. In addition, the Employment Court has provided further guidance in recent decisions including *Labour Inspector v Preet Pvt Limited*,¹ *Labour Inspector v Prabh Limited*,² and *Labour Inspector v Daleson Investment Limited*.³ The Authority is also guided by the Court's judgment in *Labour Inspector v Samra Holdings Limited T/A Te*

¹ *Labour Inspector v Preet Pvt Limited* [2016] NZEmpC 143.

² *Labour Inspector v Prabh Limited* [2018] NZEmpC 110.

³ *Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

Puna Liquor Centre, where penalties for breaches of employment standards by employers and a person involved were considered.⁴

[21] The appropriate quantum of penalty is to be determined after considering the circumstances of each proven breach in light of the legal principles.

[22] A penalty may be awarded in any amount up to the maximum prescribed by s 135(2) of the Act, which for each breach or involvement in a breach is \$20,000 in the case of a company such as Hot Spot, and \$10,000 in the case of a natural person such as Mr Singh.

[23] If a penalty is ordered by the Authority, under s 136(2) of the Act, all or part of it may be awarded to any person (such as Mr Pandey), instead of being paid to the Crown. The Labour Inspector seeks that the Authority exercise its discretion to award part of any penalty ordered to Mr Pandey.

[24] The Employment Court, in the decisions referred to above, has considered the purpose of penalties.⁵ When ordering penalties the Authority should seek to:

- punish those who breach minimum employment standards;
- deter companies and individuals from committing employment breaches;
- compensate victims of such breaches;
- eliminate unfair competition.

[25] In *Preet*, the Court developed a four-step methodology to be followed by the Authority when fixing the quantum of penalties, so that consistency and transparency might better be achieved between cases:⁶

Step One: 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 four-step approach.

⁴ *Labour Inspector v Samra Holdings Limited T/A Te Puna Liquor Centre and Four Others* [2022] NZEmpC 234.

⁵ *Preet*, above n 1 at [49-63].

⁶ *Preet*, above n 1 at [139-147].

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

[26] Section 133A of the Act provides a list of matters the Authority must have regard to in determining the amount of any penalty awarded:

In determining an appropriate penalty for a breach referred to in s 133, the Authority or Court (as the case may be) must have regard to all relevant matters. Including –

- (a) the object stated in s 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.

[27] In addition, the Court in *Daleson Investment* summarised additional considerations (from the *Preet* judgment) which include:⁷

- deterrence
- culpability
- consistency of penalty awards in similar cases
- ability to pay
- proportionality of outcome

⁷ *Daleson Investment*, above n 3 at [19].

Consideration of penalties

Statutory consideration 1 – the object of the Act

[28] The object of the Act is set out at s 3. The stated objects include:

- promotion of good faith in all aspects of the employment environment and the employment relationship;
- to promote the effective enforcement of employment standards, in particular by Labour Inspectors; and
- to acknowledge and address the inherent inequality in employment relationships.

[29] The respondents accept they have failed to comply with employment standards. In addition, Mr Pandey was a migrant worker, dependent on his employment for immigration purposes. The failure to observe these obligations corroded the mutual trust and confidence underpinning the employment relationship.

[30] The record keeping obligations required by New Zealand employment legislation is designed to promote and administer the enforcement of employment standards. The failure to keep accurate records impedes the Labour Inspectorate in its regulatory function.

Statutory consideration 2 – the nature and extent of the breaches

[31] The breaches (accepted by Hot Spot and Mr Singh) are set out in the ASOF, and referred to above.

[32] The Labour Inspector has identified 13 separate breaches:

- one breach of s 6 of the MWA;
- five breaches of the HA relating to annual holidays, in respect of ss 16, 20, 22, and 23;
- five breaches of the HA relating to public holidays in respect of ss 50, 52, 56, 60, and 71;
- two record keeping breaches, comprising of a s 130 of the Act by failing to keep a compliant wages and time record, and a breach of s 81 of the HA by failing to keep a compliant holiday and leave record.

[33] Hot Spot and Mr Singh submit 11 separate breaches have occurred,

[34] All parties submit that globalisation should occur.

[35] I accept that some globalisation of penalties is appropriate to meet the interests of this case, and in accordance with the Court's approach to penalties as set out in *Preet* and *Daleson Investment*.

[36] The Labour Inspector submits that the breaches arise from a single period of employment involving a single employee, and cluster into four distinct categories that reflect the character of the conduct. The Labour Inspector submits that the breaches can appropriately be globalised into four penalties:

- (a) one penalty for the breach of the MWA obligations
- (b) one penalty for the breaches of annual holiday obligations under the HA
- (c) one penalty for the breaches of public holiday obligations under the HA
- (d) one penalty for the record keeping breaches under the HA, and the Act.

[37] The Labour Inspector's submission contains appropriate concessions, and is accepted.

[38] A refocus after globalisation brings the total number of breaches to four. The total maximum penalty against Hot Spot is therefore \$80,000.00, being \$20,000.00 per breach. The total maximum penalty available against Mr Singh is \$40,000.00, being \$10,000.00 per breach.

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

[39] The respondents' breaches were clearly intentional, and not inadvertent. As submitted by the Labour Inspector, the breaches reflect a sustained failure over a period of over three years by Hot Spot and Mr Singh to comply with their statutory obligations.

[40] These were not isolated or technical breaches. Rather, the Labour Inspector submits they indicate a disregard for minimum employment standards over the course of Mr Pandey's employment. Mr Singh was actively involved in the management of Mr Pandey's work, including setting his hours of work, and pay arrangements, and has accepted involvement in the breaches.

[41] The failure to pay the minimum wage for all hours worked is a significant breach. It is also significant that the wages and time records did not record all the hours worked by Mr Pandey, and the holiday and leave records did not comply with several mandatory provisions of the HA.

[42] Labour Inspector submits that Mr Singh is an experienced business operator, who has had ample opportunity to understand and comply with the obligations imposed by employment legislation, and breaches cannot be excused as the product of inexperience or administrative oversight. I accept these submissions.

Statutory consideration 4 – the nature and extent of any loss or damage

[43] The breaches resulted in unpaid arrears owing to Mr Pandey of \$35,549.52. Mr Pandey lost the use of this money to which he was entitled, at the time it became due.⁸ The Labour Inspector submits that notwithstanding Hot Spot and Mr Singh acknowledged and promptly paid the arrears, the breaches were still the cause of real and measurable loss to Mr Pandey. I accept this submission.

[44] The delay to Mr Pandey in receiving his entitlements was the cause of detriment, particularly given Mr Pandey was reliant on his earnings. The Labour Inspector submits that the breaches undermine the statutory protections designed to ensure timely and fair compensation for employees. I also accept this submission.

[45] The failure to keep and maintain proper wage and time records, and holiday and leave records, can only have been the cause of additional and unnecessary work for the Labour Inspectorate. The Labour Inspector submits that to this extent, the breaches caused harm to both Mr Pandey, as well as to the integrity of the system. I accept this submission.

[46] The Authority observes that in depriving Mr Pandey of his minimum entitlements, Hot Spot has reduced its costs and gained an unfair advantage over its competitors through retaining funds that would otherwise have been paid in wages and holiday pay.⁹

Statutory consideration 5 – steps taken to mitigate effects of the breach

[47] Hot Spot and Mr Singh submit that a key mitigating factor is that they paid the

⁸ *Daleson Investment*, above n 3 at [31].

⁹ *Daleson Investment*, above n 3 at [31].

arrears immediately, and once proceedings had been lodged, they immediately took responsibility for the breaches, even prior to a statement in reply have been lodged.

[48] Hot Spot and Mr Singh submit that as the Authority has not needed to conduct a substantive investigation into whether or not the breaches occurred, there is a strong argument to be made that a significant reduction can be made given liability was accepted at the first available opportunity.

[49] I accept this submission. Hot Spot and Mr Singh cooperated with the Labour Inspector's investigation. They signed an ASOF, and entered into a record of settlement, making a number of concessions.

[50] Labour Inspector submits that the engagement and cooperation of Hot Spot and Mr Singh followed enforcement steps, and therefore cannot be characterised as voluntary compliance. Although I accept this submission, it is noted that the steps taken by Hot Spot and Mr Singh by way of paying the arrears in full, promptly, resulted in reduced detriment to Mr Pandey.

[51] Applying a discount in circumstances where an employer has taken early responsibility, can incentivise a prompt resolution of a matter. This is in the interests of the affected employee, and also conserves the resources of both the Labour Inspectorate, and the Authority.

Statutory consideration 6 – circumstances of the breach and any vulnerability

[52] Mr Pandey was a vulnerable migrant worker. He was an Indian national who had come to New Zealand in search of employment opportunities. There was an inherent power imbalance in the employer/employee relationship, which was amplified by the fact Mr Pandey was relying on the support of his employer in respect of his immigration status. Throughout the course of Mr Pandey's employment, he was on an employer-specific work visa, to work only at Hot Spot, and claimed he faced threats of visa cancellation. The Labour Inspector submits that in the circumstances of this matter, Mr Pandey's vulnerability was increased. I accept this submission.

Statutory consideration 7 – previous conduct

[53] Neither Hot Spot nor Mr Singh have previously come to the attention of the Labour Inspectorate, or the Authority.

Additional consideration 1 – deterrence

[54] The breaches under this proceeding relate to minimum standards. As the Court held in *Daleson Investment*, there is a need to bring home to the respondents the employment standards they are required to meet. The Court also considered that it should be made plain to other employers that minimum entitlements are non-negotiable.¹⁰

[55] The Labour Inspector submits that the exploitation of migrant workers has no place in New Zealand society. Therefore, penalties should be imposed consistent with the objects of the Act, particularly those relevant to the upholding of principles of good faith, mutual trust and confidence. I accept this submission.

[56] The Labour Inspector submits that a message needs to be sent to employers, persons involved in breaches of employment standards, and any others who may be tempted to breach in a similar manner, that non-compliance will not be tolerated. I accept this submission.

Additional consideration 2 – culpability

[57] The Labour Inspector submits that the following are all aggravating factors:

- (a) the quantum of arrears arising from the breaches;
- (b) the length of Mr Pandey's employment;
- (c) the circumstances of the breaches (including the intentional conduct of the respondents for commercial gain, and the taking advantage of Mr Pandey's vulnerability as a migrant worker) are all aggravating factors.

[58] Whilst these are serious matters, they are not the most serious breaches, and therefore the provisional starting point for penalties for this matter (before deductions) will not be the maximum penalty.

[59] I accept the above submission. It also must be acknowledged that the respondents' initial cooperation and provision of information (including the ASOF) has obviated the need for an in-person investigation meeting.

¹⁰ *Daleson Investment*, above n 3 at [39].

Additional consideration 3 – consistency

[60] Breaches of MWA and HA obligations are serious matters. The Authority and the Court have imposed significant penalties for such breaches. In *Daleson Investment*, penalties of \$40,000.00 were ordered in respect of minimum wage arrears, holiday pay arrears, and the failure to provide a written employment agreement.

[61] In *Shah Enterprise NZ Ltd v A Labour Inspector*,¹¹ the court found breaches of minimum employment standards including a failure to pay the minimum wage, failure to pay holiday pay, together with a failure to keep compliant records. The breaches occurred over a period of approximately six months, and involved one employee with arrears of \$20,037.00. In that case, the court assessed penalties using a starting point of \$40,000.00 for the company, and \$20,000.00 for the director as a person involved.

[62] A penalty should reflect the totality of the breaches, and not just the monetary amounts involved.¹²

Additional consideration 4 – ability to pay

[63] In *Daleson Investment*, the Court observed that “... Parliament has set out an exhaustive list of considerations and the financial circumstances of the defaulting party is not one of them.”¹³

[64] Consistent with this approach, the respondents submit that there is no suggestion that they will be unable to meet any awards. The respondents do not seek a reduction under this step.

Additional consideration 12 – proportionality of outcome

[65] Penalties should not be reduced so as to create perverse incentives for employers, and inadvertently encourage non-payment.¹⁴ The Court in *Daleson Investment* cautioned that overly reduced penalties would likely undermine the objectives of the Act.¹⁵

[66] The Labour Inspector submits that having taken into account all of the relevant factors considered above, including the systemic and sustained nature of the breaches,

¹¹ *Shah Enterprise NZ Ltd v A Labour Inspector* [2022] NZEmpC 177.

¹² *A Labour Inspector v Pegasus Energy Limited & Anor* [2018] NZERA Wellington 26.

¹³ *Daleson Investment*, above n 3 at [45].

¹⁴ *Daleson Investment*, above n 3 at [44].

¹⁵ *Daleson Investment*, above n 3 at [47].

and the need for consistency with other cases of a similar nature, proportionality is achieved.

[67] The respondents accept that the setting of penalties is not an exact science, and note that when similar cases are compared, it is apparent that a range of penalties could be ordered in any given case.

Penalties ordered

[68] Hot Spot on analysis, and after globalisation as considered above, is liable for maximum penalties of \$80,000.00. Mr Singh is liable for a total maximum penalty of \$40,000.00. Having considered all matters, and the guidance provided by the Court in respect of penalties, The Authority makes the following orders.

[69] Hot Spot is to pay penalties as follows:

- (a) in respect of its breach of the MWA, I consider there needs to be a deterrent factor reflecting the egregious nature of such a practice. I consider the maximum penalty of \$20,000.00 should be reduced by 20 per cent to \$16,000.00;
- (b) in respect of its breaches of the HA in respect of annual holiday obligations, I consider the maximum penalty of \$20,000.00 should be reduced by 50 per cent to \$10,000.00;
- (c) in respect of its breaches of the HA in respect of public holiday obligations, I consider the maximum penalty of \$20,000.00 should be reduced by 50 per cent to \$10,000.00;
- (d) in respect of the record keeping breaches, I consider the maximum penalty of \$20,000.00 should be reduced by 90 per cent to \$2,000.00;
- (e) in respect of ameliorating factors, there should be a further discount of 35 per cent to reflect Hot Spot's early mitigation, the overpayment to Mr Pandey for which recovery is not being sought, and the fact that there has been no previous conduct. No discount is applied in respect of the financial circumstances of the company.

[70] Having considered proportionality, the total penalty Hot Spot Limited must pay is the sum of \$22,000.00

[71] Inderpreet Singh is to pay penalties as follows:

- (a) in respect of his involvement in the breach of the MWA, again I consider there needs to be a deterrent factor reflecting the egregious nature of such a practice. I consider the maximum penalty of \$10,000.00 should be reduced by 20 per cent to \$8,000.00;
- (b) in respect of his involvement in the breaches of the HA as to annual holiday obligations, I consider the maximum penalty of \$10,000.00 should be reduced by 50 per cent to \$5,000.00;
- (c) in respect of his involvement in the breaches of the HA as to public holiday obligations, I consider the maximum penalty of \$10,000.00 should be reduced by 50 per cent to \$5,000.00;
- (d) in respect of his involvement in the record keeping breaches, I consider the maximum penalty of \$10,000.00 should be reduced by 90 per cent to \$1,000.00;
- (e) in respect of ameliorating factors, there should be a further discount of 35 per cent to reflect the early mitigation, the overpayment to Mr Pandey for which recovery is not being sought, and the fact that there has been no previous conduct on the part of Mr Singh. No discount is applied in respect of Mr Singh's financial circumstances.

[72] Taking into account proportionality, the total penalty to be paid by Inderpreet Singh is the sum of \$11,000.00.

Part of the penalty recovered to be paid to the complainant employee

[73] Under s 136(2) of the Act, the Authority may order that the whole or part of any penalty recovered must be paid to any person.

[74] The Labour Inspector submits that it is appropriate that the Authority exercises its discretion under this section, and invites the Authority to award part of the penalties to Mr Pandey as the complainant employee. I am satisfied that it is appropriate to do so in the circumstances of this matter.

[75] Of the total penalties payable by Hot Spot Liquor Limited, a total of 25 per cent (being \$5,500.00) is to be paid to Mr Pandey, with the remainder to the Crown account.

[76] In respect of the total penalties payable by Inderpreet Singh, 25 per cent (\$2750.00) paid to Mr Pandey, with the remainder to the Crown account.

Summary of orders

[77] Within 28 days of the date of this determination:

- (a) Hot Spot Liquor Limited is ordered to pay total penalties in the sum of \$22,000.00, of which \$5,500.00 is to be paid to Diwakar Pandey, and the balance to the Crown account; and
- (b) Inderpreet Singh is ordered to pay total penalties in the sum of \$11,000.00, of which \$2,750.00 is to be paid to Diwakar Pandey, and the balance to the Crown account.

Costs

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

[79] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the Labour Inspector may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Hot Spot Liquor Limited and Inderpreet Singh 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.

[80] 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.¹⁶

Jeremy Lynch
Member of the Employment Relations Authority

¹⁶ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1