

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA315/2020  
[2020] NZCA 337**

BETWEEN	A LABOUR INSPECTOR Applicant
AND	SOUTHERN TAXIS LIMITED First Respondent
	MAUREEN VALERIE GRANT Second Respondent
	RONALD JAMES GRANT Third Respondent

Court: Brown and Collins JJ

Counsel: N Fong for Applicant  
No appearance for First Respondent  
L A Andersen QC for Second and Third Respondents

Judgment: 11 August 2020 at 10.00 am

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal the question of law posed is granted.**

**B The question of law is:**

**What is the level of knowledge required to establish liability for a person “involved in a breach” of employment standards under s 142W(1) of the Employment Relations Act 2000?**

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## REASONS OF THE COURT

(Given by Collins J)

### Introduction

[1] A labour inspector seeks leave to appeal a decision of the Employment Court.<sup>1</sup> Leave may be granted to appeal a question of law if the proposed appeal is “one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision”.<sup>2</sup>

### Background

[2] Southern Taxis Ltd (Southern Taxis) operated a taxi business in Dunedin. It engaged drivers who were paid a commission of 40 per cent of fares paid when driving vehicles owned by Southern Taxis.

[3] A labour inspector alleged that four commissioned drivers were actually employees of Southern Taxis and were accordingly entitled to be paid the minimum wage, holiday pay, sick leave and enjoy other entitlements associated with being an employee. The Employment Court found \$79,867.78 was owed to the drivers whose circumstances were the focus of the labour inspector’s case.

[4] Mr and Mrs Grant were directors of Southern Taxis. They sold the business. The labour inspector sought to hold them liable under s 142W of the Employment Relations Act 2000 (the Act), which provides:

#### **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

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<sup>1</sup> *Southern Taxis Ltd v A Labour Inspector* [2020] NZEmpC 63 [Employment Court decision].

<sup>2</sup> Employment Relations Act 2000, s 214(3).

- (d) has conspired with others to effect the breach.
- (2) However, if the breach is a breach by an entity such as a company, partnership, limited partnership, or sole trader, a person who occupies a position in the entity may be treated as a person involved in the breach only if that person is an officer of the entity.
- (3) For the purposes of subsection (2), the following persons are to be treated as officers of an entity:
  - (a) a person occupying the position of a director of a company if the entity is a company:
  - (b) a partner if the entity is a partnership:
  - (c) a general partner if the entity is a limited partnership:
  - (d) a person occupying a position comparable with that of a director of a company if the entity is not a company, partnership, or limited partnership:
  - (e) any other person occupying a position in the entity if the person is in a position to exercise significant influence over the management or administration of the entity.
- (4) This section does not apply to proceedings for offences.

[5] The Employment Relations Authority (the Authority) and the Employment Court determined the drivers were employees.<sup>3</sup> The Authority also held Mr and Mrs Grant were liable under s 142W of the Act.<sup>4</sup>

[6] On appeal, the Employment Court held Mr and Mrs Grant were not liable because the labour inspector was unable to establish “proof of intentional purposeful actions on the part of [Mr and Mrs Grant]”<sup>5</sup> and that Mr and Mrs Grant lacked the requisite “actual knowledge of the fact of a breach” required to establish liability of a director under s 142W of the Act.<sup>6</sup>

[7] A labour inspector poses the following question:

What is the level of knowledge required to establish liability for a person “involved in a breach” of employment standards under s 142W(1) of the [Act]?

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<sup>3</sup> Employment Court decision, above n 1, at [124]; and *A Labour Inspector v Southern Taxis Ltd* [2018] NZERA Christchurch 104 at [81].

<sup>4</sup> *A Labour Inspector v Southern Taxis Ltd* [2019] NZERA 291 at [47].

<sup>5</sup> Employment Court decision, above n 1, at [187].

<sup>6</sup> At [178] and [189].

[8] The application is opposed by Mr and Mrs Grant. The gravamen of their opposition is that the Employment Court correctly interpreted and applied the test for accessory liability under s 142W(1) of the Act.

### **Decision**

[9] The scope of accessory liability under s 142W of the Act has not been determined by this Court.

[10] There is no doubt the proposed question involves a question of law.

[11] We are also satisfied the question raises important issues concerning accessory liability of persons such as directors in the circumstances traversed in this case. The question posed has wide application to directors and other officers of companies and ought to be considered by this Court.

### **Result**

[12] The application for leave to appeal the question of law posed is granted.

[13] The question of law is:

What is the level of knowledge required to establish liability for a person “involved in a breach” of employment standards under s 142W(1) of the Employment Relations Act 2000?

Solicitors:  
Crown Law Office, Wellington for Applicant  
Gallaway Cook Allan, Dunedin for Second and Third Respondents