

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 225  
EMPC 450/2019**

IN THE MATTER OF	minimum employment standards – applications for exercise of powers under Part 9A of the Employment Relations Act 2000
BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Plaintiff
AND	PRISHA’S HOSPITALITY (2017) LIMITED TRADING AS ROYAL CAMBRIDGE INDIAN RESTAURANT First Defendant
AND	AJAY SHARMA First Defendant
AND	KAVITA SHARMA Second Defendant

**EMPC 453/2019**

IN THE MATTER OF	minimum employment standards – applications for exercise of powers under Part 9A of the Employment Relations Act 2000
BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Plaintiff
AND	PRISHA’S HOSPITALITY LIMITED TRADING AS ROQUETTE RESTAURANT & BAR First Defendant
AND	AJAY SHARMA Second Defendant

AND

KAVITA SHARMA  
Third Defendant

Hearing: On the papers

Appearances: R Denmead and M L Brown as counsel for the plaintiff  
P Wicks KC as counsel for the defendants

Judgment: 8 December 2023

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**JUDGMENT (NO 2) OF JUDGE J C HOLDEN  
(COMPENSATION, PECUNIARY PENALTIES AND COSTS)**

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[1] In its judgment dated 16 June 2023, the Employment Court made declarations of breach against both Prisha's Hospitality (2017) Ltd (Prisha's Royal Cambridge) and Prisha's Hospitality Ltd (Prisha's Roquette).<sup>1</sup> It also found Ajay and Kavita Sharma were persons involved in the breaches.<sup>2</sup>

[2] This judgment addresses:

- (a) compensation orders to compensate the affected employees for non-pecuniary loss;
- (b) orders for pecuniary penalties; and
- (c) costs.

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<sup>1</sup> *Labour Inspector v Prisha's Hospitality (2017) Ltd* [2023] NZEmpC 89, [2023] ERNZ 349 at [180]–[183].

<sup>2</sup> At [184].

[3] In summary, the orders of the Court are:

- (a) Prisha's Royal Cambridge is required to pay the following compensation:
  - (i) \$17,000 to each of Mr Kalra, Mr Sachdeva, Mr Singh, Mr Ram and Mr Prasad;
  - (ii) \$500 to Ms Thakur.
- (b) Prisha's Roquette is required to pay compensation to Mr Chawla of \$19,000;
- (c) Pecuniary penalty orders are made against:
  - (i) Prisha's Royal Cambridge of \$100,000;
  - (ii) Prisha's Roquette of \$30,000;
  - (iii) Ajay Sharma of \$45,000; and
  - (iv) Kavita Sharma of \$22,500.
- (d) The defendants are to pay the Labour Inspector \$78,429.65 for costs and disbursements.

## **Declarations were made**

[4] The declarations of breach against Prisha's Royal Cambridge were in respect of:<sup>3</sup>

- (a) Section 6 of the Minimum Wage Act 1983 – in relation to Mr Kalra, Mr Sachdeva, Mr Ram, and Mr Prasad;
- (b) Sections 16, 24 and 25 of the Holidays Act 2003 – in relation to Mr Kalra;
- (c) Section 23 of the Holidays Act – in relation to Mr Sachdeva, Mr Singh, Mr Ram, Ms Thakur, and Mr Prasad;
- (d) Section 49 of the Holidays Act – in relation to Mr Ram;
- (e) Section 50 of the Holidays Act – in relation to Mr Kalra, Mr Sachdeva, Mr Singh, Mr Ram, and Mr Prasad;
- (f) Section 56 of the Holidays Act – in relation to Mr Kalra, Mr Singh, Mr Ram, Ms Thakur, and Mr Prasad;
- (g) Section 4 of the Wages Protection Act 1983 – in relation to Mr Singh and Mr Prasad; and
- (h) Sections 12 and 12A of the Wages Protection Act – in relation to Mr Singh.

[5] The declarations of breach against Prisha's Roquette were all in relation to Mr Chawla and comprised breaches of:<sup>4</sup>

- (a) Section 6 of the Minimum Wage Act;
- (b) Section 23 of the Holidays Act;
- (c) Section 49 of the Holidays Act;

- (d) Section 56 of the Holidays Act;
- (e) Section 63 of the Holidays Act; and
- (f) Section 12A of the Wages Protection Act.

[6] The sums payable and interest on those sums have now been paid and have been, or are in the process of being, disbursed to the affected employees. The total sum due from Prisha's Royal Cambridge was approximately \$28,000; the total due from Prisha's Roquette was approximately \$9,000.

### **Compensation is due to the affected employees**

[7] Compensation orders were sought in respect of non-pecuniary loss suffered by the affected employees.<sup>5</sup>

[8] The factors that are relevant to an assessment of such compensation include:<sup>6</sup>

- (a) the impact of the breaches on the individual concerned;
- (b) the extent to which the impact may have been lessened by remedial efforts made by the person in breach; and
- (c) the case law on compensation awards under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[9] Each of the employees gave credible evidence of the stress they felt while working for the defendants. Some described themselves as feeling 'caged' or 'like slaves'.<sup>7</sup> The issue in this judgment is the extent to which the breaches caused that distress and what the appropriate compensation is for that distress.

[10] Some of the distress caused to the employees were about the working conditions generally, without necessarily attributing them to the breaches. It is

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<sup>5</sup> Employment Relations Act 2000, s 142J.

<sup>6</sup> *Labour Inspector v Chhoir, (t/a Bakehouse Café)* [2020] NZEmpC 203, [2020] ERNZ 479 at [33].

<sup>7</sup> *Labour Inspector v Prisha's Hospitality (2017) Ltd*, above n 1, at [36].

somewhat difficult to separate out the factors that cause the distress, but certainly I accept that the shortfall in payment to the employees, and the demanding of premiums was a significant component of their distress.

[11] In some cases, it was aggravated by threats being made to the employees' visas, in the sense that they had no choice but to accept the treatment they were receiving from their employer.

[12] As accepted by the Labour Inspector, Ms Thakur is in a category of her own. Her loss was much more confined, including her non-pecuniary loss. I accept, however, she suffered some distress over the way in which she was treated, particularly at the end of her employment, and a nominal award is appropriate to recognise that. I make a compensation order in respect of Ms Thakur of \$500.

[13] In respect of the other employees of Prisha's Royal Cambridge, they suffered somewhat differently, but I find that they each had similar levels of distress. In my view, an award in the mid-range of compensation awards such as made under s 123(1)(c)(i) of the Act is appropriate.<sup>8</sup> In respect of each of those employees, Mr Kalra, Mr Sachdeva, Mr Singh, Mr Ram, and Mr Prasad, I make compensation orders of \$17,000.

[14] Mr Chawla gave compelling evidence of the distress caused to him when working for Prisha's Roquette. I consider a slightly higher award is due for what he went through. In respect of Mr Chawla, I make a compensation order of \$19,000.

[15] I direct that \$104,500 from the amount held by the Employment Court is to be distributed to the named employees in accordance with this judgment. The Registrar is directed to liaise with the Labour Inspector to effect payment.

### **Pecuniary penalties are due**

[16] The parties agree that pecuniary penalties are properly payable by the defendants, and there is a great deal of commonality in the approach that they say

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<sup>8</sup> *GF v Comptroller, New Zealand Customs Service* [2023] NZEmpC 101, [2023] ERNZ 409 at [162].

ought to be adopted. There is a vast difference in view, however, as to the appropriate level of penalties.<sup>9</sup>

[17] The purposes of penalties are:<sup>10</sup>

- (a) to punish those who breach minimum employment standards;
- (b) to deter companies and individuals from committing employment breaches;
- (c) to compensate victims of such breaches (who may be awarded the whole or any part of the penalty); and
- (d) to eliminate unfair competition.

[18] The relevant statutory criteria for determining an appropriate pecuniary penalty are set out in s 142F of the Act. That section provides that the Court must have regard to all relevant factors including:

- (a) the objects in s 3 of the Act;
- (b) the nature and extent of the breach or involvement in the breach;
- (c) whether the breach was intentional, inadvertent, or negligent;
- (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;
- (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

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<sup>9</sup> The Labour Inspector suggests penalties totalling \$455,000; the defendants suggest penalties totalling \$118,000.

<sup>10</sup> *Labour Inspector v Preet PVT Ltd* [2016] NZEmpC 143, [2016] ERNZ 514 at [61]–[64].

other steps to avoid or mitigate any actual or potential adverse effects of the breach;

- (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.

[19] The objects in s 3 of the Act that are relevant to the determination of penalties in this case include:

- (a) promoting good faith in all aspects of the employment environment and the employment relationship;
- (b) acknowledging and addressing the inherent inequality of power in employment relationships; and
- (c) promoting the effective enforcement of employment standards.

[20] The full Court in *Labour Inspector v Preet PVT Ltd* noted four additional factors for consideration:<sup>11</sup>

- (a) the need for particular and general deterrence;
- (b) the degree of culpability of the person in breach;
- (c) the general desire for consistency in decisions on penalties; and
- (d) proportionality.

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<sup>11</sup> *Labour Inspector v Preet PVT Ltd*, above n 10, at [68].



[21] It adopted a four-step process to fixing penalties:<sup>12</sup>

- (a) Step 1: identify the nature and number of breaches; identify the maximum penalties available; consider whether globalisation of penalties is appropriate;
- (b) Step 2: assess the severity of the breach; establish a provisional starting point for each penalty including adjustment for aggravating and mitigating factors in relation to each breach;
- (c) Step 3: consider the means and ability of the person in breach to pay the penalty reached under step 2; and
- (d) Step 4: stand back and consider the proportionality or totality of the outcome.

[22] Counsel helpfully compared the approach of the Employment Court to that of the High Court in dealing with penalties under the Financial Markets Conduct Act 2013, where there are notable similarities in the pecuniary penalty provisions.<sup>13</sup> Both counsel for the plaintiff and for the defendants agreed that the approaches were, in most respects, broadly consistent. In *Financial Markets Authority v ANZ Bank New Zealand Ltd*, the High Court adopted a three-stage test:<sup>14</sup>

- (a) Step 1: determine the maximum penalty;
- (b) Step 2: set a starting point having regard to the relevant statutory criteria; and
- (c) Step 3: adjust the starting point by applying an uplift or a discount based on circumstances personal to the individual defendant.

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<sup>12</sup> At [151].

<sup>13</sup> See Financial Markets Conduct Act 2013, ss 486–493

<sup>14</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [37].

[23] That test also was applied by the High Court in *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*.<sup>15</sup>

[24] In neither *ANZ* nor *Cigna Life* was proportionality considered separately; it essentially was part of setting a starting point. This is in marked contrast to the Labour Inspector's submissions in the present case, which propose the biggest adjustments when considering proportionality. The proportionality review should, however, operate simply as a final check on, and possible tweak of, the assessment.

[25] Both parties submitted that the Court could adopt a similar approach to the High Court, which would need something of an adjustment to Steps 2 and 3 as set out in *Preet*. Although Step 2 in the High Court is directed to consideration of some of the statutory criteria, it also incorporates in that assessment the need for general and individual deterrence and a comparison with other relevant cases.<sup>16</sup> Step 3 then would be directed to the circumstances personal to the defendant, incorporating the current Step 3 as in *Preet* as well as the means and ability of the person in breach to pay the penalty. Counsel for the Labour Inspector noted that the defendant's history and remorse also appropriately fitted under that step.

[26] One of the challenges in determining an appropriate approach, however, is to ensure duplication is avoided. As can be seen, the statutory criteria include matters that are specific to the breaches, and others which are specific to the persons responsible for them. One way to avoid duplication is to separate out the circumstances of the breach from the circumstances personal to the defendants. With that in mind, the approach I take in part reflects the *Preet* approach, but with some adjustments. First, at Step 2 I take account of where the breaches in this case sit in comparison to other cases when assessing the starting point. The second adjustment is to incorporate in Step 3 the approach of the High Court so that all the personal circumstances of the defendants are included in this step. Finally, having taken that

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<sup>15</sup> *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610.

<sup>16</sup> At [58]–[59].

approach to those steps, the fourth step, looking at proportionality or totality, is more of a last check of the appropriateness of the provisional penalties:

- (a) Step 1: determine the maximum penalty available;
- (b) Step 2: set a starting point, having regard to the objects in s 3 of the Act, the nature and extent of the breach or involvement in the breach, and the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee. The assessment at this step has regard to the extent to which the breaches should be globalised. At this step, the breaches are compared to those in other relevant cases;
- (c) Step 3: adjust the starting point by applying an uplift or discount based on circumstances personal to each defendant, including means and ability to pay. The defendants' history and remorse would be relevant at this stage, as would whether the relationship between the defendants warrants a reduction to avoid duplication; and
- (d) Step 4: step back and ensure the outcome is not disproportionate and unjust in all the circumstances.

### **Step 1: determining the maximum penalties**

[27] The plaintiff suggests that the maximum amount for penalties available against Prisha's Royal Cambridge is \$2,700,000; Prisha's Royal Cambridge says that is an overstatement and that the maximum is \$2,400,000.

[28] Having reviewed the breaches, the Court assesses the maximum penalties to be \$2,400,000, covering 24 breaches:<sup>17</sup>

- (a) Section 6 of the Minimum Wage Act in relation to Messrs Kalra, Sachdeva, Ram and Prasad – \$400,000;
- (b) Sections 16, 24 and 25 of the Holidays Act in relation to Mr Kalra (one breach) – \$100,000;
- (c) Section 23 of the Holidays Act in relation to Messrs Sachdeva, Singh, Ram and Prasad and Ms Thakur – \$500,000;
- (d) Section 49 of the Holidays Act in relation to Mr Ram – \$100,000;
- (e) Section 50 of the Holidays Act in relation to Messrs Kalra, Sachdeva, Singh, Ram and Prasad – \$500,000;
- (f) Section 56 of the Holidays Act in relation to Messrs Kalra, Singh, Ram and Prasad and Ms Thakur – \$500,000;
- (g) Section 4 of the Wages Protection Act in relation to Messrs Singh and Prasad – \$200,000; and
- (h) Sections 12 and 12A of the Wages Protection Act in relation to Mr Singh (one breach) – \$100,000.

[29] Both parties accept that the maximum amount of the penalties available against Prisha's Roquette is \$600,000, for six breaches.

[30] The maximum amount for penalties available against each of Ajay and Kavita Sharma is \$1,500,000, being for 30 breaches.<sup>18</sup>

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<sup>17</sup> Employment Relations Act, s142G(b)(i).

<sup>18</sup> Section 142G(a).

## Step 2 – setting a starting point

[31] Some globalisation of the breaches is appropriate. The Labour Inspector proposed, and the defendants accepted, that the breaches were appropriately globalised into failure to pay the minimum wage, failure to pay public holiday pay, failure to pay annual holiday pay, failure to pay for sick and bereavement leave, unlawful premiums, and deductions without the employees' consent. The globalised figures are:

<b>Prisha's Royal Cambridge</b>		
Failure to pay minimum wage, s 6 MWA <sup>19</sup>	4 x \$100,000	\$ 400,000
Failure to pay public holiday pay, ss 49, 50, 56 HA <sup>20</sup>	6 x \$100,000	\$ 600,000
Failure to pay annual holiday pay, ss 16, 23, 24, 25 HA	6 x \$100,000	\$ 600,000
Deductions without employee's consent, ss 4, 5 WPA <sup>21</sup>	2 x \$100,000	\$ 200,000
Unlawful premiums, ss 12, 12A WPA	1 x \$100,000	\$ 100,000
	<b>Total</b>	<b>\$1,900,000</b>
<b>Prisha's Roquette</b>		
Failure to pay minimum wage, s 6 MWA	1 x \$100,000	\$ 100,000
Failure to pay public holiday pay, ss 49, 56 HA	1 x \$100,000	\$ 100,000
Failure to pay annual holiday pay, s 23 HA	1 x \$100,000	\$ 100,000
Entitlement to sick and bereavement leave, s 63 HA	1 x \$100,000	\$ 100,000
Unlawful premiums, s 12A WPA	1 x \$100,000	\$ 100,000
	<b>Total</b>	<b>\$ 500,000</b>
<b>Ajay and Kavita Sharma (each)</b>		
Failure to pay minimum wage	5 x \$50,000	\$ 250,000
Failure to pay public holiday pay	7 x \$50,000	\$ 350,000
Failure to pay annual holiday pay	7 x \$50,000	\$ 350,000
Sick and bereavement leave	1 x \$50,000	\$ 50,000
Deductions without employee's consent	2 x \$50,000	\$ 100,000
Unlawful premiums	2 x \$50,000	\$ 100,000
	<b>Total</b>	<b>\$1,200,000</b>

[32] Recent relevant cases include:

- (a) *Labour Inspector v Samra Holdings Ltd*: 71 breaches of employment standards, including in relation to minimum wage and holiday pay breaches and premium payments, with \$516,378.87 owing to five

<sup>19</sup> Minimum Wage Act 1983.

<sup>20</sup> Holidays Act 2003.

<sup>21</sup> Wages Protection Act 1983.

employees.<sup>22</sup> There were other aggravating factors.<sup>23</sup> Penalties were issued against five defendants totalling \$1,554,075.08.<sup>24</sup>

- (b) *Labour Inspector v Jeet Holdings Ltd*: the defendants owed a total of \$264,327.80 to eight employees for unpaid minimum entitlements.<sup>25</sup> One of the employees also paid a premium of \$7,500.<sup>26</sup> After a starting point of \$1,032,000 was adopted, this was reduced for proportionality to total penalties of \$308,000 – \$195,200 for the companies and \$112,800 for the director.<sup>27</sup>
- (c) *Labour Inspector v Chhoir*: the employer owed \$36,191.11 to two employees.<sup>28</sup> The defendants were individuals; the Court issued penalties of \$50,000 against the first defendant and \$20,000 against the second.<sup>29</sup>
- (d) *Labour Inspector v Prabh Ltd*: the three employees were owed a total of \$65,075.32.<sup>30</sup> The globalised maximum penalties were \$381,225.96 for the company and \$50,000 for the two individual defendants. Depending on the nature of the breach, a starting point of between 40 to 80 per cent of those maximum penalties was adopted.<sup>31</sup> However, this was further reduced by 70 per cent as a result of mitigating factors and the defendants' ability to pay, leading to a result of \$100,000 in penalties against the company and \$16,000 each for the two individual defendants.<sup>32</sup>
- (e) *Labour Inspector v New Zealand Fusion International Ltd*: the employer company failed to pay approximately \$80,000 in wages and

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<sup>22</sup> *Labour Inspector v Samra Holdings Ltd* [2022] NZEmpC 234, [2022] ERNZ 1150 at [6] and [8].

<sup>23</sup> At [68]–[182].

<sup>24</sup> At [259].

<sup>25</sup> *Labour Inspector v Jeet Holdings Ltd* [2021] NZEmpC 84, [2021] ERNZ 336 at [56].

<sup>26</sup> At [32] and [56].

<sup>27</sup> At [111] and [130].

<sup>28</sup> *Labour Inspector v Chhoir, (t/a Bakehouse Café)* [2020] NZEmpC 203, [2020] ERNZ 479 at [3].

<sup>29</sup> At [65].

<sup>30</sup> *Labour Inspector v Prabh Ltd* [2018] NZEmpC 110, [2018] ERNZ 310 at [39].

<sup>31</sup> At [67]–[70].

<sup>32</sup> At [68], [70] and [84].

holiday pay to three employees.<sup>33</sup> Penalties of \$300,000 were ordered against the company along with further penalties totalling \$150,000 against its director.<sup>34</sup>

(f) *Labour Inspector v Parihar*: two individuals in partnership owed \$250,470.05 to six employees across a long period.<sup>35</sup> The largest breaches occurred prior to 1 April 2016 so were not subject to the pecuniary penalties regime.<sup>36</sup> After various reductions for mitigating circumstances and proportionality, a penalty of \$180,000 was ordered against one partner, with a penalty of \$20,000 ordered against the other.<sup>37</sup>

(g) *Labour Inspector v Matangi Berry Farm Ltd*: the employer company owed arrears of \$38,392.24 in holiday pay to approximately 207 workers.<sup>38</sup> \$4,583.80 was also owing for other breaches.<sup>39</sup> Penalties of \$86,400 were issued against the company and \$40,800 against its director.<sup>40</sup>

[33] In comparison with most of these cases, the amounts of the shortfalls here are modest. Although the inquiry is not solely focused on the amount of the default, but also on the defaulting behaviour, the amount of the default still must be reflected in the starting point, both in comparing the breaches with those in other cases, and in comparing the different breaches found against the defendants.

[34] The breaches undermined employment standards and deprived the employees of money they ought to have had for their own use. The defendants benefitted from the premiums and the shortfalls of payments made to the employees.

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<sup>33</sup> *Labour Inspector v New Zealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525 at [80].

<sup>34</sup> At [81].

<sup>35</sup> *Labour Inspector v Parihar* [2019] NZEmpC 145, [2019] ERNZ 406 at [5].

<sup>36</sup> At [5].

<sup>37</sup> At [44], [46] and [48].

<sup>38</sup> *Labour Inspector v Matangi Berry Farm Ltd* [2020] NZEmpC 43, [2020] ERNZ 67 at [7](c).

<sup>39</sup> At [7](a)–(b).

<sup>40</sup> At [83].

[35] The requirement for premium payments was intentional. The underpayments with respect to Prisha's Royal Cambridge also were intentional, with records being falsified over time. The shortfalls in payment for Prisha's Roquette were at least reckless, if not intentional.

[36] The breaches involved migrant employees, who were vulnerable. Those employees were isolated from family; several were young; most were visa-dependant. The inherent inequality of power in the employment relationship helped make the breaches possible.

[37] The lack of clear and accurate records made ascertaining the facts difficult and disadvantaged the employees.

[38] The Labour Inspector adopted an approach of allocating percentages to the maximum penalty for the various breaches, which the Labour Inspector says is the Labour Inspectorate's standard approach to calculating the starting point. That is a reasonable approach. Noting the reformulation of the approach I have adopted, however, the percentages I use are considerably lower, reflecting that I consider that the primary comparison with other cases is appropriately done at this stage, and as noted, the scale of the breaches is relatively modest. There also needs to be proportionality as between the different breaches:

*Prisha's Royal Cambridge*

- (a) failure to pay the minimum wage, four breaches: 10 per cent = \$40,000
- (b) failure to pay public holiday pay, six breaches: five per cent = \$30,000
- (c) failure to pay annual holiday pay, six breaches: 10 per cent = \$60,000
- (d) deductions without the employees' consent, two breaches: five per cent = \$10,000
- (e) unlawful premium, one breach: 15 per cent = \$15,000.



*Prisha's Roquette*

- (a) failure to pay the minimum wage: 10 per cent = \$10,000
- (b) failure to pay public holiday pay: five per cent = \$5,000
- (c) failure to pay annual holiday pay: 10 per cent = \$10,000
- (d) failure to provide sick and bereavement leave: five per cent = \$5,000
- (e) unlawful premiums: 18 per cent = \$18,000.

*Each of Ajay and Kavita Sharma*

- (a) failure to pay the minimum wage, five breaches: 10 per cent = \$25,000
- (b) failure to pay public holiday pay, seven breaches: five per cent = \$17,500
- (c) failure to pay annual holiday pay, seven breaches: 10 per cent = \$35,000
- (d) sick and bereavement leave, one breach: five per cent = \$2,500
- (e) deductions without the employees' consent, two breaches: five per cent = \$5,000
- (f) unlawful premiums, Prisha's Royal Cambridge, one breach: 15 per cent = \$7,500
- (g) unlawful premiums, Prisha's Roquette, one breach: 18 per cent = \$9,000.

[39] That leads to starting points:

- (a) Prisha's Royal Cambridge of \$155,000;
- (b) Prisha's Roquette of \$48,000;
- (c) Each of Ajay and Kavita Sharma of \$101,500.00 (\$77,500 in respect of Prisha's Royal Cambridge and \$24,000 in respect of Prisha's Roquette).

**Step 3: adjustment based on the circumstances personal to the defendants**

[40] None of the defendants have previously appeared before the Court or the Employment Relations Authority. They were cooperative in the Labour Inspector's investigation. They also made some termination payments after the Labour Inspector started investigating.

[41] However, there were aggravating factors. The defendants showed little remorse or contrition for the breaches, and falsified documents were produced by them to justify some of their behaviour.

[42] In terms of ability to pay, there are currently some funds still held in the Court's trust account. I have directed that payment of compensation is to be made out of that sum, leaving some money that can be applied towards the payment of penalties. Beyond that, neither Prisha's Royal Cambridge nor Prisha's Roquette is operating and neither generates any revenue.

[43] Mr Sharma says that, but for this case, the companies would have been deregistered as neither is in business or trading.

[44] I acknowledge the submission of Mr Wicks KC, for the defendants, that the first defendant in each proceeding is essentially the alter ego of the second and third defendants. That is, however, the way the defendants chose to operate their businesses, and consequences flow from that. Nevertheless, some adjustment is warranted. I also accept, as does the Labour Inspector, that Mrs Sharma has less culpability than her

husband; he was more involved in the business and in making the decisions that led to the breaches.

[45] At this point I assess the total payable in penalties, before finally considering proportionality, to be:

- (a) Prisha's Royal Cambridge of \$110,500;
- (b) Prisha's Roquette of \$35,500;
- (c) Ajay Sharma of \$50,000 (\$40,000 in respect of Prisha's Royal Cambridge and \$10,000 in respect of Prisha's Roquette); and
- (d) Kavita Sharma of \$25,000 (\$20,000 in respect of Prisha's Royal Cambridge and \$5,000 in respect of Prisha's Roquette).

#### **Step 4: proportionality**

[46] Having set those provisional figures, the Court again cross-checks them against other similar cases for consistency and stands back generally and considers the proportionality of the penalties.

[47] In doing that, I consider that some adjustment is appropriate. That leads me to impose final penalties, that reflect the seriousness of the breaches, and act as a real deterrent to the defendants and to employers and their officers who may be similarly placed to the defendants:

- (a) Prisha's Royal Cambridge of \$100,000;
- (b) Prisha's Roquette of \$30,000;
- (c) Ajay Sharma of \$45,000 (\$36,000 in respect of Prisha's Royal Cambridge and \$9,000 in respect of Prisha's Roquette); and

- (d) Kavita Sharma of \$22,500 (\$18,000 in respect of Prisha's Royal Cambridge and \$4,500 in respect of Prisha's Roquette).

### **Apportionment of penalties between the employees and the Crown**

[48] As the Court has made compensation orders for non-pecuniary loss, the employees have been compensated for the mental and emotional consequences they have suffered.

[49] In those circumstances, there is no basis for apportionment of the penalties to the employees.

### **Payment of penalties**

[50] I direct that the amounts currently held in the Court's trust account be applied towards the penalties payable under this judgment (after the compensation awards have been satisfied),<sup>41</sup> first in satisfaction of the amount due from Prisha's Roquette and then towards satisfaction of the amount due from Prisha's Royal Cambridge. The remaining amounts for penalties will need to be paid to the Labour Inspector by Wednesday, 31 January 2024.

### **Costs**

[51] The Labour Inspector claims \$72,656.00 for costs (including with respect to the application for a freezing order) and \$18,429.65 for disbursements. A schedule has been prepared using the Court's guideline scale, based on category 2 band B.<sup>42</sup> The defendants accept the costs calculation reflects the costs guideline scale. The defendants also accept that the disbursements set out by the Labour Inspector were reasonably incurred.

[52] There are two points on which the defendants challenge the costs application.

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<sup>41</sup> *A Labour Inspector of the Ministry of Business, Innovation and Employment v Prisha's Hospitality (2017) Ltd t/a Royal Cambridge Indian Restaurant* [2021] NZEmpC 176 at [4](b).

<sup>42</sup> "Employment Court of New Zealand Practice Directions" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

[53] First, they dispute that an award should be allowed for second counsel. They note that no approval of the Court was sought for second counsel in advance. That, however, is not uncommon.

[54] Second, the defendants submit that the costs award should take account of the measure of success they had in defending the claims, including as a result of pursuing non-party disclosure to obtain full and unredacted bank records. The defendants submit that the award of costs for attendance at the hearing be reduced by five days which, they say, is appropriate and addresses their measure of success.

[55] In response, the plaintiff submits that the hearing was sufficiently complex to justify the costs of two counsel, taking into account the length of the hearing, the number of witnesses involved, including some who resided outside of Auckland, and the significant amount of evidence that needed to be managed. The Labour Inspector says that she took a conservative approach to claiming costs and does not consider that any reduction should be applied to the original application.

[56] I accept that the proceedings merited two counsel for the Labour Inspector, given the issues noted.

[57] I acknowledge that there was some measure of success on the part of the defendants and that they were successful in their application for third party discovery, which proved to be important to their defence.

[58] On balance, I consider that the appropriate costs award is \$60,000. Adding the sum for disbursements brings the total costs and disbursements to \$78,429.65.

[59] The defendants are jointly and severally liable for that sum, which is to be paid to the Labour Inspector by the defendants by Wednesday, 31 January 2024.

J C Holden  
Judge

Judgment signed at 12.15 pm on 8 December 2023