IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2025] NZEmpC 198
EMPC 137/2024

IN THE MATTER OF	A challenge to a determination of the Employment Relations Authority
BETWEEN	RURAL PRACTICE LIMITED First Plaintiff
AND	REZA ABDUL-JABBAR Second Plaintiff
AND	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Defendant

Hearing:	5 June 2025 (Heard at Wellington)
Appearances:	M J Hammond, counsel for the plaintiffs A K Webster, counsel for the defendant
Judgment:	10 September 2025

JUDGMENT OF JUDGE J C HOLDEN

The plaintiffs challenged the level of penalties ordered by the Authority

[1] This judgment resolves a non-de novo challenge to a determination of the Employment Relations Authority.[1] The election relates to that part of the determination that imposed various penalties on the plaintiffs.[2] The plaintiffs' challenge was brought on the basis that the Authority made errors of law and fact

1 *A Labour Inspector v Rural Practice Ltd* [2024] NZERA 183 (the penalties determination).
2 At [126]–[154].

which resulted in the quantum of penalties imposed by the Authority being excessive. In their statement of claim, the plaintiffs sought a reduction.

[2] The claim as filed, and as addressed in submissions, was that the Authority erred as:

(a) the starting point of 85 per cent of the maxima for the breaches was too high;

(b) the 10 per cent reduction to the starting point to recognise the plaintiffs' limited financial capacity was inadequate;

(c) no further discount was given in recognition of the plaintiffs' extenuating and mitigating circumstances, namely their support to the employees (financial, immigration, accommodation) and internship programme, and that they had no history of non-compliance;

(d) the penalties imposed failed to take into consideration those claims where there was no actual financial loss to the employees; and

(e) the Authority overstated the vulnerability of the employees.

The plaintiffs raised recusal of the Authority member as an issue

[3] Shortly before the challenge was first due to be heard, the plaintiffs raised a concern that the Authority member who dealt with the matter had previously acted for the Labour Inspectorate.[3] The plaintiffs considered that the Authority member ought to have recused himself. Initially they applied to have the scope of the challenge expanded to include a ground of challenge that there was an apprehension of bias on behalf of the Authority member who determined the case. The Court declined to expand the challenge beyond what was in the pleadings and agreed to by the parties. It was, however, left open for the plaintiffs to make such submissions as they considered to be useful to the challenge as it was made, leaving it to the Court to

[3] The original hearing date was then vacated.

consider relevance and merit. It was said to be premature to assume that arguments about the apprehension of bias would be irrelevant to the issue about the quantum of penalties.[4]

[4] At the hearing, Mr Hammond, counsel for the plaintiffs, submitted that the apprehension of bias on the part of the Authority member who heard the case rendered the determination on penalties unsafe. The plaintiffs' submission was that the penalties determination should be set to one side in its entirety, meaning that no penalties are ordered against the plaintiffs.

[5] The Labour Inspector submitted that the issue of recusal was procedural in nature and s 179(5) of the Employment Relations Act 2000 would therefore have prevented the Court from hearing any challenge to a decision of the member not to recuse himself. Ms Webster, counsel for the Labour Inspector, submitted that the same principle applies here, where there is no indication that the Authority member considered the issue of recusal. Essentially, she submits that the issue of who deals with an investigation in the Authority, including how conflicts of interest are dealt with, is a matter of procedure, and is for the Authority, not the Court.

[6] Ms Webster submitted that the remedy for the plaintiffs, if they were unhappy because they considered there to be an apprehension of bias, would have been to file a de novo challenge to the first determination, which made the substantive findings.[5] This would have enabled the entire matter to have been considered by the Court.

[7] In respect of the principal basis for the challenge, the Labour Inspector submits that the factual findings of the Authority support the level of penalties imposed.

[8] The Labour Inspector submits further that, as this is a non-de novo challenge, the issue is whether there was any error of fact or law on the part of the Authority; if there was not then the challenge does not succeed. Ms Webster says that the framework adopted by the Authority member needs to be looked at in its entirety, rather than examined step by step.

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4 *Rural Practice Ltd v A Labour Inspector of Ministry of Business, Innovation and Employment* [2025] NZEmpC 65 at [12]–[13].

5 *A Labour Inspector v Rural Practice Ltd* [2024] NZERA 66 (the substantive determination).

[9] It is convenient to deal first with the issue of recusal.

Recusal is a matter of procedure

[10] I took from Mr Hammond's submissions that he accepted that, where an Authority member has considered the issue of recusal and declined to recuse themself, that is a matter of procedure and cannot be challenged in the Employment Court.[6] Mr Hammond attempted to distinguish the situation where the Authority member had turned their mind to recusal and declined to recuse themselves, from the situation here, where recusal does not appear to have been considered.

[11] The plaintiffs' acceptance that a decision on recusal was unable to be challenged reflected the Employment Court's findings in *Bowen v National Bank Ltd*.[7] The Court of Appeal recently declined an application for leave to appeal that judgment.[8] It was not persuaded that the argument that a recusal decision is jurisdictional and not procedural for the purposes of s 179(5) was sufficiently strong to warrant a grant of leave.[9] The Court of Appeal also noted that the regime established by the Act limited the right of challenge to the Employment Court in order to ensure that the focus of proceedings in the Authority was on the employment relationship problem that the parties had, rather than on how the various institutions have handled it. The Court of Appeal noted the right of a party dissatisfied with a decision of the Authority to challenge that decision on a de novo basis, so that they are not deprived of a remedy if the proceedings before the Authority have not been conducted in accordance with the principles of natural justice.[10]

[12] I do not accept the distinction the plaintiffs have argued for. The principal point remains that, even if the plaintiffs are right and the Authority member ought to have considered recusal, or indeed have recused himself, and did not do so, the plaintiffs were able to have the whole matter considered in the Employment Court by way of a de novo hearing. While I acknowledge the point made by Mr Hammond that a de novo hearing would have involved a lengthy hearing in the Employment Court

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6 Employment Relations Act 2000, s 179(5).
7 *Bowen v National Bank Ltd* [2024] NZEmpC 234, (2024) 21 NZELR 136.
8 *Bowen v National Australia Bank Ltd and Ors* [2025] NZCA 282.
9 At [16].
10 At [17].

(noting that the hearing in the Authority was 9 days with written submissions filed later) that does not detract from the matter of principle.

[13] Accordingly, by not challenging the substantive determination, which followed the Authority member's investigation and determined the issue of breaches, arrears and liability, the plaintiffs must be taken to have accepted the Authority's findings on those matters.

[14] The issue now for the Court is whether, in light of those findings, the Authority erred in fact or law in the penalties determination, resulting in excessive penalties.

The Authority found a number of breaches

[15] The proceedings in the Authority were in respect of three employees of Rural Practice Ltd.

[16] The Authority found that:

(a) Rural Practice Ltd was in breach of s 4 of the Wages Protection Act 1983, which requires an employer to pay a worker the entire amount of wages due to that worker without deduction. The breaches were in respect of all three employees.

(b) Rural Practice Ltd had failed to keep records required by the Holidays Act 2003 and the Employment Relations Act.[11]

(c) There was a shortfall in contractual wages and holiday pay paid to the employees.

(d) In respect of two of the employees, premiums were charged in breach of s 12A of the Wages Protection Act.

[11] Holidays Act 2003, s 81; and Employment Relations Act, ss 4B and 130.

[17] The Authority noted that during its investigation, Rural Practice Ltd paid $64,387.56 as arrears for contractual wages and holiday pay. In addition, $52,056.33 was ordered to be paid for holiday pay.

[18] The Authority found that there had been 27 breaches altogether.

[19] In setting penalties, the Authority adopted the four step methodology outlined by the Employment Court in *Borsboom v Preet PVT Ltd*,[12] and had regard to the relevant factors set out in s 133A of the Employment Relations Act and identified in *Labour Inspector v Daleson Investment Ltd*.[13]

[20] The Authority initially globalised the 27 breaches to 19, and then, after further refocussing, to 11 breaches.[14] It then turned to the severity of the breaches, considering both aggravating and mitigating features.

[21] The Authority considered an appropriate starting point was 85 per cent, recognising that while the breaches were serious, they were not the most egregious breaches, for which a starting point of 90 per cent was appropriate. That brought the total potential penalties to $187,000.[15]

[22] The Authority found that there were no mitigating factors, but allowed a reduction of 10 per cent to recognise Rural Practice Ltd's stretched financial position.[16]

[23] In the course of its findings, the Authority noted that there were multiple breaches that affected vulnerable employees and which were systematic and intentional.[17] It inferred that the reasons for the breaches were a disrespect by Rural Practice Ltd and Mr Abdul-Jabbar, as director and owner of Rural Practice Ltd, for employment and immigration statutory rules and regulations, and an indifference

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12 *Borsboom v Preet PVT Ltd* [2016] NZEmpC 143, [2016] ERNZ 514.
13 *Labour Inspector v Daleson Investment Ltd* [2019] NZEmpC 12, [2019] ERNZ 1 at [19].
14 The penalties determination, above n 1, at [127]–[128].
15 At [129]–[131].
16 At [132].
17 At [101].

to the sanctity of contract.[18] The Authority Member found that Mr Abdul-Jabbar, knowingly disregarded the law governing employment and took advantage of the employees because they were not from New Zealand, but from Indonesia where Mr Abdul-Jabbar also was from.[19]

[24] He acknowledged that Mr and Mrs Abdul-Jabbar showed benevolence, kindness, empathy and other virtues in their relations with the three employees, but noted that, at the same time they knowingly deprived them of statutory and contractual entitlements and wilfully deceived them.[20] The Authority said the power imbalance between Rural Practice Ltd and the employees was far reaching, exacerbated by Mr Abdul-Jabbar's control over the employees' accommodation, and integration into the community, and his position as an Imam in his and the employees' shared Muslim faith.[21]

[25] The Authority considered whether a discount was warranted based on Rural Practice Ltd's ability to pay, but on the information supplied to it considered there was no proper basis for granting further relief from potential penalties.[22]

[26] The Authority then turned to proportionality of outcome, and, to achieve consistency with other cases, reduced the final total penalties for Rural Practice Ltd to $145,000.[23]

[27] A similar calculation using the same factors for the penalties faced by Mr Abdul-Jabbar led to a figure of $84,150, which was reduced further to $70,000 in recognition of Mr Abdul-Jabbar's family responsibilities.[24]

[28] I turn now to the principal grounds for challenge, set out in [2] above.

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18 At [110].
19 At [111].
20 At [113].
21 At [118]–[119].
22 At [149].
23 At [150].
24 At [152]–[153].

The parties addressed the grounds of challenge

[29] The plaintiffs say, first, that the starting point of 85 per cent was too high; it is only just shy of the 90 per cent maximum. They refer to other cases where starting points ranged from 50 to 80 per cent of the maximum penalty.[25] The plaintiffs also say that the Authority was wrong to apply a blanket starting point of 85 per cent to all breaches with no assessment of the severity or category of each breach. They suggest that appropriate starting points would have been:

(a) record keeping breaches, 50 per cent;

(b) unlawful deduction breach, 60 per cent;

(c) Holidays Act breaches, 60 per cent; and

(d) premium repayment breaches, 30 per cent.

[30] The plaintiffs submit that a further deduction should have been made to account for the plaintiffs' financial circumstances. They point to material supplied to the Authority that explained their financial structure, and correspondence from Rabobank, initially advising that it was not prepared to extend any lending to the Rural Practice Trust (which is essentially a family trust and was established by Mr and Mrs Abdul-Jabbar and Rural Practice Ltd) but then agreeing to do so at least up until June 2025. In addition, Mr Abdul-Jabbar filed a declaration in which he said that he drew an annual salary of approximately $60,000 and did not own anything in his name.

[31] The plaintiffs also say that more should have been deducted for mitigating factors, particularly the support that was given to the employees when they arrived in New Zealand and throughout their time working for Rural Practice Ltd, which the Authority recognised, but made no reduction for. It was submitted that the support was of a high level and differentiated the circumstances of the breaches from typical exploitation cases.

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[25] Namely *Borsboom v Preet PVT Ltd,* above n 12; and *Labour Inspector v Parihar* [2019] NZEmpC 145, [2019] ERNZ 406.

[32] The plaintiffs submit that, although the Authority did not find that there was any attributable loss to the plaintiffs on certain aspects of the claims, it still ordered the same penalty as for other claims, which they say, seems extraordinary.

[33] Finally, when dealing with proportionality, the plaintiffs submit that the total penalty against both plaintiffs of $215,000, was not just in all the circumstances or proportionate to the amounts of the shortfalls in payment. They suggest that, in prior cases, penalties imposed have mostly been 1.2 to 1.3 times the amount withheld, whereas in this case the ratio was 1.8.

[34] Although Ms Webster says that the Court should be focussed on whether the penalties arrived at were appropriate, not on individual steps, she also submits that the starting point of 85 per cent was appropriate in the circumstances, given the breaches were all serious and sustained; the evidence did not demonstrate any lack of capacity to pay on the part of the plaintiffs; and the mitigating factors were carefully considered.

[35] I agree that it is the overall outcome that ultimately is most important. Penalty setting is not an exact science and Authority members and judges will approach their step-by-step analysis differently, with the final proportionality step operating as something of a check.[26] To that end, what the Court is principally concerned with is whether the penalties ultimately ordered are within the range of penalties that are appropriate for the found breaches.

[36] I am conscious too that the Authority member conducted a lengthy investigation of this matter and saw and heard the witnesses.[27] The challenge was a submission-only hearing. It is also relevant that this is a non-de novo challenge, so the Court is looking at whether there is any identified error of law or fact.[28]

[37] I now turn to the particular concerns raised by the plaintiffs, which include the question of whether the penalties were proportionate.

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26 *Borsboom v Preet PVT Ltd*, above n 12, at [147].
27 The substantive determination, above n 5, at [41]–[42].
28 Employment Relations Act, s 179(4).

The starting point was open to the Authority

[38] As noted, the plaintiffs made two key submissions in respect of the starting point. First, they submit that the starting point of 85 per cent is too high, noting that a starting point of 90 per cent is reserved for the most egregious cases. Second, they say that the Authority member erred in not considering each category of breach individually, simply applying the 85 per cent to all categories. The different categories in this case were, they say, of varying seriousness. The plaintiffs point to previous cases where a range of lower percentages were applied.

[39] In respect of the unlawful deductions and premiums charged, the plaintiffs say the starting point should be lower because the employees suffered no financial loss from some of the breaches. They point to the Authority's acceptance that it was likely some of the payments were repayments for advances.[29]

[40] In relation to record-keeping, the plaintiffs pointed to the farm's off season, in which it was accepted that fewer hours needed to be worked.[30] For the Holidays Act breaches the plaintiffs pointed to the rectification of the arrears prior to the Authority's first determination.

[41] As submitted by the Labour Inspector, the starting point cannot be seen in isolation, the Authority member's approach to globalisation is also relevant. In that regard, the approach of the Authority in this case was to globalise breaches covering all three employees, which differed from other cases. For example, in *Preet* the Court counted breaches in respect of each of the employees separately.

[42] Also relevant to the starting point, the Authority went beyond simply stating that the breaches were "serious"; it found the breaches were multiple, systematic and intentional. It also said that the deductions made, and prepared and intended to be made, involved deception and significant amounts.[31]

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29 The substantive determination, above n 5, at [326].
30 At [243].
31 The penalties determination, above n 1, at [78]; and the substantive determination at [130].

[43] While it was accepted that some of the amounts deducted or paid were likely repayments of advances, that does not diminish the nature of the breaches that occurred. I also agree with the Labour Inspector that charging a premium is inherently serious, and that it is relevant that the Labour Inspector's investigation of premiums was adversely impacted by the lack of documentation.

[44] The Authority said the record-keeping breaches were a "central failure" in this case.[32] The plaintiff's reference to the farm's off season is not helpful. Employees working varying hours does not lessen the need for record-keeping, or the serious effects that can flow from record-keeping deficiencies. To the contrary, the Authority's difficulties in establishing the extent of some of the breaches in this case reflect its importance.[33]

[45] I agree with the Labour Inspector that the Holidays Act breaches were not minor, they justified a starting point of 85 per cent, notwithstanding the late and partial performance of that statutory duty.

[46] In conclusion on the starting point, I find that looked at individually as well as having regard to the approach to globalisation, the figure of 85 per cent reached by the Authority for what were serious, but not the most egregious breaches, is not an error of law or fact.

Financial incapacity was not established

[47] Where a party is claiming financial incapacity, it is for that party to provide the evidence sufficient for that to be clear.[34] The evidence here falls short of showing incapacity.

[48] Although I accept some information about the finances of Rural Practice Ltd and associated entities (in particular the Rural Practice Trust) provided by the plaintiffs indicated the Rural Practice Trust had some financial pressures, the information provided to the Authority by the plaintiffs was not complete, and some of the

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32 The penalties determination, above n 1, at [125].
33 The substantive determination, above n 5, at [302] and [326].
34 *Borsboom v Preet PVT Ltd*, above n 12, at [186].

information painted a different picture. In particular, the Authority was provided with a list of properties owned by Rural Practice Ltd, Mr Abdul-Jabbar, and associated entities, which was compiled using search information, and rates information from the Southland District Council and the Queenstown Lakes District Council. On that list, one property is listed as owned by Mr Abdul-Jabbar and Mr Bignell, the Rural Practice Trust's accountant (presumably as trustees of the Rural Practice Trust). Others are listed as owned by Rural Practice Ltd, or by other associated companies. In total, the schedule listed properties to the value of $15,365,000. There were mortgages in place with respect to most of those properties, and Mr Bignell said the Rural Practice Trust was servicing a debt of over $8,500,000. However, no mortgages were said to be in place for properties which, together, were valued at $2,640,000.

[49] In summary, the evidence before the Authority showed that the financial structure adopted by the plaintiffs and their related entities, including the Rural Practice Trust, Rural Practice Ltd, other related companies, and Mr Abdul-Jabbar personally, is somewhat complex, and that the Rural Practice Trust was servicing a substantial debt. It did not, however, prove impecuniosity on the part of Rural Practice Ltd or Mr Abdul-Jabbar, as submitted by Mr Hammond.

[50] Further, although it has some relevance, financial incapacity is not a pivotal factor in penalty-setting.[35] Difficulty in making immediate payment also can be resolved through agreed arrangements.

[51] The material before the Authority does not support a deduction for financial incapacity of greater than the 10 per cent made by the Authority.

The support to employees is not a mitigating factor

[52] For something to be a mitigating factor there must be some connection between it and the breach it is said to mitigate. Examples given in *Preet* were cooperation with an investigating labour inspector and actions taken to rectify or compensate for the breach or breaches, and the point or points at which these may be undertaken before

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35 *Labour Inspector v Daleson Investment Ltd*, above n 13, at [45]–[46].

the hearing.[36] While the Authority Member acknowledged that in some respects the plaintiffs (and Mrs Abdul-Jabbar) supported their employees and showed them kindness, none of those matters fall into a similar category and, as a matter of principle, should not be considered to ameliorate the effects of denying employees their statutory entitlements.

[53] I accept, as did the Authority Member, that the plaintiffs had no history of being prosecuted for non-compliance. Against that, however, the breaches that were before the Authority had persisted across at least 4 years. In those circumstances, the plaintiffs' history of prosecutions is of limited relevance.

Breaches occurred even if remedied following the investigation meeting

[54] Although the plaintiffs remedied some breaches after the investigation meeting, little credit should be given for that. As submitted by the Labour Inspector, the late and partial performance of statutory duties does not justify a reduction in penalties, particularly after investigation into the breaches has ensued.[37]

The employees were vulnerable

[55] The plaintiffs submit that the vulnerability of the employees was overstated. Although that claim was not developed in submissions, in its substantive determination, the Authority found that there was a clear imbalance of power between the employees and Mr Abdul-Jabbar and the plaintiffs took advantage of the employees as new immigrants from Indonesia, who lacked knowledge of local law and employment requirements in New Zealand. The Authority also noted some other matters that disadvantaged the employees;[38] they were vulnerable workers.

Penalties overall are not out of proportion

[56] The plaintiffs point to the ratio between total penalties and the amount withheld pursuant to the breaches as an indicator of proportionality. That measure is of little relevance to the overall assessment of penalties. This is because each case will be

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36 *Borsboom v Preet v PVT Ltd*, above n 12, at [144].
37 Timing is relevant; *Borsboom v Preet v PVT Ltd*, above n 12, at [144].
38 The penalties determination, above n 1, at [52]–[54].

dependent on its own facts, which go beyond a simple calculation based on the amount of money involved. Therefore, a comparison between the present case and other cases would only provide the loosest possible cross-check.[39]

[57] In any event, a comparison between this case and recent cases heard by the Employment Court demonstrates that the ratio in this case is not out of line overall with the penalties ordered generally; it sits in the middle:

Case	**Arrears & premiums**	**Penalties**	**Ratio**
Rural Practice Ltd[40]	$116,444	$215,000	1:1.85
Preet[41]	$73,345	$100,000	1:1.36
Prabh[42]	$65,075	$132,000	1:2.03
Daleson[43]	$12,543	$40,000	1:3.19
Parihar[44]	$250,000	$200,000	1:0.8
NZ Fusion[45]	$80,000	$450,000	1:5.63
Matangi Berry Farm[46]	$42,976	$127,200	1:2.96
Shalini[47]	$96,542	$100,000	1:1.04

[39] *Labour Inspector v Daleson Investment Ltd*, above n 13, at [62].
[40] The penalties determination, above n 1.
[41] *Borsboom v Preet PVT Ltd*, above n 12.
[42] *A Labour Inspector v Prabh Ltd* [2018] NZEmpC 110, [2018] ERNZ 310.
[43] *A Labour Inspector v Daleson,* above n 13.
[44] *A Labour Inspector v Parihar,* above n 25.
[45] *A Labour Inspector v New Zealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525.
[46] *A Labour Inspector v Matangi Berry Farm Ltd* [2020] NZEmpC 43, [2020] ERNZ 67.
[47] *Shalini Ltd v A Labour Inspector* [2020] NZEmpC 89, [2020] ERNZ 238.

Chhoir[48]	$36,191	$70,000	1:1.93
Jeet[49]	$271,827.80	$308,000	1:1.33
Samra[50]	$516,378	$1,554,075	1:3.01
Shah[51]	$20,000	$28,800	1:1.44
Prisha[52]	$36,937	$197,500	1:5.35

[58] I find no error of law in the Authority's approach to proportionality. The level of penalties is proportionate having regard to the multiple, systemic, and intentional breaches found by the Authority, as well as the financial impact of those breaches.

The challenge is unsuccessful

[59] In summary, the plaintiffs have not established that the Authority Member made any error of fact or law in fixing penalties. Looked at overall, the penalties were within the range of penalties that were available to the Authority Member.

The Labour Inspector is entitled to costs

[60] The Labour Inspector is the successful party in these proceedings and is entitled to costs. The parties initially agreed to the proceeding provisionally being assigned category 2B for costs purposes under the Practice Directions Guidelines Scale.[53] This should mean they are able to agree on costs. If that is not possible, the Labour Inspector may apply for an order by way of a memorandum filed and served within 28 days of this judgment. The plaintiffs then must file and serve their memorandum setting out their response to the application within a further 21 days.

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48 *A Labour Inspector v Chhoir* [2020] NZEmpC 203, [2020] ERNZ 479.
49 *A Labour Inspector v Jeet Holdings Ltd* [2021] NZEmpC 84.
50 *A Labour Inspector v Samra Holdings Ltd* [2022] NZEmpC 234 [2022] ERNZ 1150.
51 *Shah Enterprise NZ Ltd v A Labour Inspector* [2022] NZEmpC 177, [2022] ERNZ 873.
52 *A Labour Inspector v Prisha's Hospitality (2017) Ltd (No 2)* [2023] NZEmpC 225, [2023] ERNZ 1005.
53 "Employment Court of New Zealand Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

Any reply by the Labour Inspector must be filed and served within seven days thereafter. The Court then proposes that it would deal with costs on the papers.

J C Holden
Judge

Judgment signed at 10.00 am on Wednesday 10 September 2025