

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 192
3150201

BETWEEN JACOB ALEXANDER
Applicant

AND ANDREW THORN
Respondent

Member of Authority: Nicola Craig

Representatives: Paul Brown, counsel for the applicant
The respondent in person

Investigation meeting: On the papers

Submissions and further information received: 20 and 29 July 2022, 2 and 7 February 2023 from the applicant
25 July 2022, 7 and 25 January, 9 and 27 February and 10 March 2023 from the respondent

Date of determination: 18 April 2023

SECOND DETERMINATION OF THE AUTHORITY

How has the Authority investigated?

[1] Jacob Alexander sold products for The Safety Warehouse (TSW). He lodged a claim in the Authority regarding his alleged employment with Greenback Ecommerce Limited (now in liquidation) (Greenback or the company).

[2] Greenback asserted that Mr Alexander was an independent contractor having signed an agreement to that effect and that there were proceedings in the District Court involving a statutory demand by the company against Mr Alexander. The company was represented in its dealings with the Authority by its sole director Andrew Thorn.

[3] Shortly after the Authority directed the parties to mediation, Greenback went into liquidation. In the first determination of the Authority in this matter Mr Thorn was joined as a party to the proceeding and Greenback struck out in the absence of any consent from the liquidator for the proceeding against the company to continue.¹

[4] An amended statement of problem was lodged. Mr Alexander's primary argument is now that Mr Thorn was effectively his employer. Mr Alexander seeks to pursue claims regarding the absence of an employment agreement and records, breach of good faith, outstanding minimum wages and holiday pay and an unjustifiable dismissal personal grievance.

[5] Mr Alexander's alternative claim is that if Mr Thorn was not his employer, he was a person involved in breaches under s 142W of the Employment Relations Act 2000 (the Act) and orders should be made against him on that basis.

[6] Mr Thorn asserts that Mr Alexander was an independent contractor. If he was not, then that his employer was Greenback.

[7] The Authority decided, with the parties' agreement, that preliminary questions could be decided on the papers. Affidavits and submissions were received from both parties. It took some time to receive complete sworn affidavits from the parties. Also, some time after submissions were provided Mr Thorn sought a non-publication order and Mr Alexander was given an opportunity to respond.

[8] 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.

What are the issues?

[9] The issues for investigation at this stage are:

- (a) Should a non-publication order be made?
- (b) Was Mr Alexander an employee?
- (c) If so, was Mr Thorn his employer?

¹ *Jacob Alexander v Greenback Ecommerce Limited (in liq)* [2022] NZERA 160.

- (d) If Mr Alexander's claim against Mr Thorn can proceed, did he raise an unjustified dismissal personal grievance claim in time under s 114 of the Act?
- (e) If Mr Thorn was not the employer, should Mr Alexander be able to proceed against Mr Thorn as a person involved in any relevant breach?

Non-publication application

[10] Mr Thorn's first approach was to seek that the Authority's upcoming determination only be sent to the parties pending any appeal with judicial review and immediate interim injunctive relief also mentioned. Mr Thorn referred to defamation, trade secrets and commercial sensitivity. He also indicated that he would comment publicly on Mr Alexander.

[11] The Authority in response informed Mr Thorn that its determinations were available to the public subject to any non-publication order. This included in situations where a party indicates an intent to challenge a determination. Mr Thorn was given the opportunity to apply for a non-publication order, identifying the grounds and providing any other supporting material.

[12] Mr Thorn then applied for a permanent non-publication order, seemingly of the whole determination, on 16 identified grounds. I have combined these grounds where they overlap and outlined them with some comment below.

Confidential information and trade secrets

[13] There is said to be confidential information specific to the contractor (Mr Alexander) and the business, such as trade secrets or proprietary information. This information is now apparently owned by another (unidentified) entity. Release is said to breach commercial agreements of such intellectual property.

[14] Protection of confidential information is a ground to found a non-publication order. However, here the nature or type of the material said to be commercially sensitive was not identified nor was the name of the entity said to own it. No commercial agreements regarding intellectual property were provided.

Harm to Mr Thorn and the business

[15] It is argued that the reputation of Mr Thorn and his other businesses could be harmed by “toxic” allegations made by Mr Alexander or the fact that he may be a disgruntled contractor.

[16] A number of cases in the Authority could be said to be brought by a disgruntled employee or employer, but that of itself is not sufficient.

[17] The business/es Mr Thorn is referring to have not been specified by him although I accept he owns other companies. There is no indication in the latest liquidator’s report in the Companies Register that Greenback is still trading.² Rather the date the company ceased trading is identified as 1 April 2021.

Mr Alexander’s and others’ privacy

[18] This was raised by Mr Thorn. Mr Alexander’s views were sought - he requested the application for non-publication be declined. Other than Mr Thorn and Mr Alexander there are no other individuals named in this determination.

Ensuring fair legal proceedings

[19] The dissemination of information is said to have the possibility of prejudicing the outcome of this and future cases. Reference is made to future judges or jurors. No other specific proceedings were identified. It was also suggested that there are not established legal precedents for matters involved in this case and an immediate appeal therefore likely.

Conclusion

[20] The Authority has the power to make non-publication orders.³ The starting point is the principle of open justice with sound reasons “generally involving specific adverse consequences”, needed to depart from that principle.⁴

[21] There is already a preliminary determination in this matter which publicly identifies Greenback, Mr Alexander and Mr Thorn.⁵ No non-publication order was sought at that stage. The Authority’s determinations are usually public, including

² Liquidator’s Six Monthly Report for the period 29th April 2022 to 29th October 2022.

³ The Act, Sch 2, cl 10.

⁴ *Chief of New Zealand Defence Force v Darnley* [2021] NZEmpC 40 at [2].

⁵ Above, at n 1.

preliminary determinations where further determinations of the Authority are likely. The prospect of a subsequent challenge or judicial review is not of itself sufficient.

[22] I conclude that Mr Thorn has not identified specific adverse consequences sufficient to justify the granting of a non-publication order.

What are the parties' positions on the employee/contractor issue?

[23] Mr Alexander's initial claim was brought against Greenback as his employer. However, he now regards himself as having been employed by Mr Thorn personally with an independent contracting document being seen as a sham as he was an employee.

[24] For Mr Alexander, it is argued there was an undisclosed principal point. I took this as meaning Mr Thorn should be seen as the employer if he was agent for an undisclosed principal, namely Greenback. Mr Alexander also argues that he thought he was working for TSW but as there is no company with that name, Mr Thorn should be held to be the employer.

[25] Mr Thorn is unimpressed by Mr Alexander's change of position regarding the identity of his employer. He regards it as arising after Greenback went into liquidation, meaning Mr Alexander could not pursue the claim against the company further. Mr Thorn suggest Mr Alexander is motivated by the Greenback District Court claim seeking recompense of the retainer. Mr Thorn's position is that Mr Alexander was an independent contractor to Greenback.

What is the test?

[26] Employees are people employed to do any work for hire or reward under a contract of service.⁶ The crucial question in deciding whether a person is an employee or an independent contractor is the real nature of the relationship between the parties.⁷ This requires a consideration of all relevant matters including those which indicate the intention of the parties, but with statements about the nature of the relationship not being determinative.⁸

⁶ The Act, s 6(1).

⁷ The Act, s 6(2).

⁸ The Act, s 6(3).

[27] A broad nuanced assessment is needed, including examination of the control exercised, whether the person was integrated in the organisation and whether they were really operating a business on their own account.

What did the parties intend their relationship to be?

[28] It is accepted and even emphasised for Mr Alexander, that Mr Thorn (whether on his own or his company's behalf) wanted Mr Alexander to be an independent contractor. This is evidenced by the contractor agreement referred to in more detail below.

[29] Mr Alexander was looking for a job and wanted to further his career in sales. He does not indicate being particularly concerned about having an employment relationship but his experience seems to have been as an employee.

How was the relationship established?

[30] The role was advertised on Seek. Seek describes itself as an "online employment marketplace", although it also facilitates business and franchise sales and volunteer opportunities.⁹ The advertisement was for "Sales Star – Own your Future – Work from home", followed by mention of TSW.

[31] The Advertisement does refer twice to "pay check", although in association with the sales star writing their own. "Employee" and "employment" are not mentioned.

[32] Other references include:

- the possibility of the successful person, once trained and set up, being able to work in the office or "remotely if you wish".
- "Manage your own business within our business: With all the support and systems you need".
- "Make your own fortune on both first and then ongoing sales".
- "This can truly be your own business."

⁹ <https://www.seek.co.nz/about/>.

- The organisation was suggested to be currently paying individuals \$50,000+ a month.

[33] The contact person, whom I identify by the randomly selected initial R, had a TSW email address.

[34] Mr Alexander was interviewed by R, whom he says made no mention of Greenback, instead referring to Mr Thorn as the boss. He thought R was an employee of Mr Thorn, although the only basis raised was R referring to “our boss Andrew”.

[35] Mr Alexander says R emphasised how well off and successful former sales staff were but was hesitant to answer “contract particulars”. This contrasts with contemporaneous messages from R to Mr Thorn about applicants including Mr Alexander, which suggest applicants knew details of the payment arrangements.

What about the written agreement?

[36] A written agreement was offered to Mr Alexander, seemingly in early/mid September 2020.

[37] I set out the agreement in some detail as Mr Alexander downplays seeing references to Greenback E-Commerce Limited in the time he was involved with the company.

[38] The agreement is dated 8 September 2020 and headed “Greenback | Capital” and “The Safety Warehouse Online Mega Store”. The document is entitled:

Engagement Agreement
Sales Consultant
Independent Contractor – Jacob Alexander

[39] The first clause of the agreement refers to the document confirming that Mr Alexander “has been engaged by Greenback Ecommerce Limited (the “Company”) as its Sales Consultant”. Other clauses also refer to the company by name.

[40] The agreement specifies a retainer and sales commission arrangement, with some retainer payments being repaid via commission. The arrangement, as Mr Thorn describes it, is that if Mr Alexander achieved the sales target he could repay his retainer and was then not required to work further.

[41] There are two references to Mr Alexander “or one of his associated entities”. A later clause mentions Mr Alexander and “his associated entities”. No such entities are specified and there was no evidence of Mr Alexander owning any entities.

[42] Clause 7 specifies that Mr Alexander shall act as an independent contractor, not as a “full-time Employee”. Greenback is said not to be responsible for any expenses incurred by Mr Alexander but then “[c]ertain expenses may be incurred/shared by the company but must be pre-approved in advance and in writing”.

[43] Other features include:

- (a) the possibility of Greenback supplying a laptop;
- (b) the agreement lasting for a year but terminable by either party on 30 days’ written notice;
- (c) a conclusion of “Very truly Yours, Greenback Ecommerce Ltd”; and
- (d) The signature provisions include “Greenback Ecommerce Ltd Representative; Andrew Thorn”.

[44] There is some lack of clarity about when Mr Alexander signed the agreement. He says he had some concerns about it. However, when R messaged on 1 October asking him to print out and sign the contract he responded as follows:

Will do after I’ve called J... 😊¹⁰

[45] Mr Alexander does accept that he ultimately signed the agreement but sometime after he started at TSW and only when pushed by Mr Thorn.

What happened after Mr Alexander commenced?

[46] Mr Alexander says that from the beginning of the work relationship he genuinely believed that Mr Thorn was his employer. At some point Mr Alexander became aware that Mr Thorn owned a large number of companies. His identification of Mr Thorn as his employer appears to be based on Mr Alexander’s understanding that he worked for TSW. With TSW not being a limited liability company name Mr Alexander assumed Mr Thorn personally was trading as TSW.

¹⁰ J... is a person, not seemingly related to the agreement.

[47] R was initially the person Mr Alexander reported to. After they left Mr Thorn took over.

[48] Mr Alexander's evidence was that he never saw mention of Greenback after beginning work and none of his payslips mentioned that company. The payslips are discussed in more detail below. Mr Alexander does acknowledge seeing correspondence referring to "Greenback & Greenback Ecommerce" but thought it related to Mr Thorn's Greenback Capital firm.

[49] By contrast Mr Thorn refers to:

- (a) Mr Alexander's email signature referring to TSW as a "Greenback Capital Company" and providing a Greenback website; and
- (b) Mr Alexander's creation of quotes and invoices for TSW goods. Mr Thorn provides a quote document which refers in the top right corner to "Greenback Ecommerce Limited t/a The Safety Warehouse". He indicates that this came up on the screen. Plus, on the basis of a system count, Mr Alexander would have created over 300 quotes and over 50 invoices. The tax invoice includes the same reference at the top and the payment advice at the bottom refers to "Greenback Ecommerce Limited T/A The Safety Warehouse".

[50] Mr Alexander refers to being able to open a template to complete an invoice and attach it to an email without seeing mention of Greenback or the contents of the invoice. I still think it unlikely that he never looked at an invoice.

What level of control was Mr Alexander under?

[51] Mr Alexander describes himself as under a high level of control in day to day activities. He recalls Mr Thorn telling him time and time again that Mr Thorn was his boss, was paying his bills (which Mr Alexander took to refer to wages) and providing the company vehicle. Further, his attendance was initially required at the office from 8am to 5pm, later changing to a 7am start. This conflicts with Mr Thorn's evidence that Mr Alexander was able to work his own hours and to work remotely.

[52] Messages filed support Mr Alexander's evidence. A message exchange between the two show Mr Alexander reporting that he might be slightly later than 8am

and Mr Thorn questioning why. Mr Alexander explains, then says he will be starting at 8 but remotely. Mr Thorn replies:

Or you could just plan your day better and not just take the piss. Remote is a privilege and a company car with free gas to sit on the road outside your house is a joke.

[53] On another occasion Mr Thorn messaged about whether Mr Alexander was in the office and asked him to come and have a chat when Mr Thorn arrived at the office.

[54] Another message from Mr Thorn to Mr Alexander identifies an expectation of 50 outgoing calls and 50 outgoing emails a day and:

If you turn up to work with plenty of time to set up, get yourself ready to call then you have the ability to make a coffee & prepare. Each time you're late, you are losing out on not just important client engagement time but also you're not meeting your agreement with the business.

As you can appreciate, we are watching very closely now on reports & no one has reasons to miss minor requirements of contracts - we understand some deals will not be successful but the KPIs still must be met.

[55] A further text shows Mr Alexander seeking a response on an issue that has arisen with Mr Thorn providing advice to be cautious. Mr Alexander says he is having a mental health day, with Mr Thorn responding that he is not employed "nor do mental health days exist".

[56] Mr Thorn describes a phone log showing only 22 calls between the two in a 10 month period with the majority lasting less than a minute. Mr Alexander describes this as being because they were in the same office.

[57] On the evidence I have, Mr Thorn held regular meetings with Mr Alexander, discussing upcoming work, sales, current clients with quotes and new ideas. Mr Thorn reviewed Mr Alexander's sales calls and provided feedback on them.

Was Mr Alexander integrated in the TSW operation?

[58] Mr Thorn acknowledges that a few days of training were initially provided to Mr Alexander, although solely on Greenback's CRM system.¹¹

¹¹ CRM – customer relationship management software.

[59] Mr Alexander was provided with some equipment. He was given a work laptop although Mr Thorn suggests this was only until his own was fixed. Once his own car was not available, Mr Alexander was also given a company car with petrol paid by the business, which he could take home. Mr Thorn's position is that the vehicle was on loan and others could, and did, use it to see clients. However, the use of a company vehicle with petrol and without charge, even if others could use it, suggests an employment relationship.

[60] Mr Alexander was not provided with a company cell phone although he describes not needing one as calls were made using the laptop and Greenback's CRM system. He was not supplied with a company uniform although sales people not selling from a shop would often not wear a uniform.

[61] Mr Alexander refers to attending general workplace meetings, along with workplace drinks and lunch outings.

[62] Mr Alexander regards himself as directed to attend various work events such as the 'Auckland cash-drop event', so was integrated in the business. Mr Thorn's position is that Mr Alexander, along with others, volunteered in relation to that event, which occurred on a Saturday.

What about the economics of the relationship?

[63] Mr Alexander could create sales and generate commission, so was not on a fixed income. He would receive commission for repeat purchases.

[64] Mr Alexander did not provide invoices for his work. He was paid a weekly retainer and given payslips. Mr Thorn refers to these as "sales totals" but that is not how they appear. They are payslips in a common Xero accounting payslip format. Mr Thorn suggests these were automatically generated. They refer to "Paid by The Safety Warehouse" and to "Employment Details" including weekly pay and an IRD number.

[65] Mr Alexander received the payslips from a Xero address, with replies to go to a Greenback finance email address. There was also a regular message about the payslip being ready, which refers to TSW.

[66] The payslip lists a "WT" (withholding tax) tax code but "PAYE" is referred to as being deducted. Mr Thorn describes Xero deducting for the WT code at the 15% withholding tax rate.

[67] Mr Thorn refers to schedular payments. These are deducted from money owing to contractors doing certain activities working in certain industries and can include salespeople paid commission. There is no reference to schedular payments in the independent contractor agreement.

[68] Mr Alexander's bank statements refer to the retainer payments with the notation "Thorn AJ TSW retainer". Mr Thorn's evidence is that payments were made from the trustee service of Greenback Trustees Limited, with funds pooled and distributed. No supporting documents were provided.

[69] Mr Alexander did not risk his own capital in the sense of injecting his own money in the operation. However, the contract provided for him to have to pay back some retainer if he did not generate sufficient sales.

[70] It was not evident that Mr Alexander had the ability to sub-contract his work or delegate it to others. Mr Thorn refers to the possibility of sub-contracting albeit accepting that the subject had not been discussed. The level of control evidenced does not sit comfortably with Mr Alexander being able to sub-contract.

[71] Was Mr Alexander building his own business? Mr Thorn describes Mr Alexander as able to procure his own customers outside of the lead pool and doing so. However, the customers were buying TSW products.

[72] Mr Alexander traded cryptocurrency in his own time but this was not established to be in a business capacity. Mr Thorn arranged some work for Mr Alexander with one or more of his businesses with payment seemingly received from the same account as his TSW payments.

What other factors are there?

[73] Mr Thorn says it is industry practice to have those on retainer and commission structures as independent contractors although other than this assertion there is little to back it up. Mr Alexander refers to the standard practice for salespeople being employment with a base payment plus commission arrangement. I accept that salespeople are sometimes independent contractors but some are employees.

[74] After the arrangement finished Mr Alexander emailed the liquidator of Greenback, setting out what he believed was his claim against the company.

[75] There is also the grievance letter referring to Greenback as the employer and the original identification of solely Greenback as the respondent employer party in this proceeding.

[76] Mr Thorn relies on the District Court decision which ordered Mr Alexander to repay his retainer on the basis that Mr Alexander was a contractor. I give this some weight but note that it was an oral judgment on a summary judgment application. It appears to have relied on the contractor agreement without fully examining the question of whether there was an employment relationship, given there was no appearance on Mr Alexander's behalf.

[77] Mr Alexander's representative advises that the District Court decision is now stayed pending the Authority's determination. Material from Mr Thorn suggests that the matter is to be re-heard.

Was Mr Alexander an employee?

[78] The plan from Greenback's and Mr Thorn's point of view was clearly that Mr Alexander would be an independent contractor. The advertisement generally does not support there being an employment relationship envisaged. Mr Alexander found the large sum of money mentioned in the advertisement enticing. The contractor agreement explicitly identifies him as one and describes an arrangement in keeping with that status.

[79] The way the parties describe their relationship does not determine the real nature of the relationship.

[80] The operation of the arrangement in practice presents a different picture. I conclude that there was a high level of control over, and integration into, the TSW business of Mr Alexander. I am influenced by:

- the objective evidence of the messages between Mr Thorn and Mr Alexander showing Mr Alexander having to report if he was starting after a set time and Mr Thorn enquiring into the reasons for it with comment on what Mr Alexander should do instead;
- despite the terms of the contractor agreement, Mr Alexander being told that working away from the office (remotely) was a privilege;
- the unacceptability of having a (mental health) day off;

- the text about the arrangements Mr Alexander should make at the start of the day, that reports were being watched very closely and that key performance indicators must be met;
- Mr Thorn calling Mr Alexander into meetings;
- the provision of a company laptop and company car to Mr Alexander, even if this was due to difficulties with his own computer and car; and
- expectations of a set number of outgoing calls and emails a day.

[81] I do not see Mr Alexander as an adjunct to the business. He was in the office, being directed and undertaking the selling of products which was Greenback's business.

[82] Although there was potential for Mr Alexander to make more money, it is hard to see that he was really in business on his own account. He did not put in any capital except in the extent that he could be said to have to repay retainers under certain circumstances. His ability to accrue goodwill to himself or his own business was not significant.

[83] The evidence regarding Mr Alexander's work for the other entities was not compelling on the employment status question as they were entities controlled by Mr Thorn. I do not accept the suggestion that Mr Alexander did other work as he saw fit.

[84] I conclude that Mr Alexander was in an employment relationship.

Who was the relationship with?

[85] I have considered *Vince Roberts Electrical Limited v Carroll* where the Employment Court identified that:¹²

- (a) the onus is on the employee, on the balance of probabilities, to establish who the employer was;
- (b) the real nature of the relationship must be assessed;
- (c) a party's view as to who the employer was is not conclusive; and

¹² *Vince Roberts Electrical Limited v Carroll* [2015] NZEmpC 112.

- (d) what is needed is an objective observation of the employment relationship at its outset with knowledge of all relevant communications between the parties at that point.

[86] In terms of an undisclosed principal, where an agent who has authority to contract on behalf of another, enters into a contract in their own name, without identifying themselves as a representative for a principal, they risk being taken as the party to the contract.

[87] Much of the evidence has been covered above. Mr Alexander says that he did not know who his employer was. He refers to assuming after beginning work that it was Mr Thorn trading as TSW. The Seek advertisement referred to TSW and there was evidence that TSW was Greenback's trading name.

[88] Mr Thorn did not deal directly with Mr Alexander in any way before the employment started. Rather R did. Mr Alexander thought she worked for Mr Thorn on the basis of her calling Mr Thorn "our boss". However, the reference to a boss is often not to the owner of the business but to a manager.

[89] Sometime before he started, Mr Alexander was provided with the contractor agreement. Greenback, sometimes with its full company name, is mentioned about half a dozen times in it. Other than in the signature provision, where he is referred to as Greenback Ecommerce Ltd's representative, Mr Thorn is not mentioned in the agreement.

[90] The company was identified in writing prior to Mr Alexander starting as the entity he was contracting with.

[91] Standing back and looking at all the evidence, I do not accept on the balance of probabilities that Mr Thorn, either directly or due to Greenback being an undisclosed principal, was Mr Alexander's employer.

[92] As Mr Thorn has not been found to be Mr Alexander's employer I do not need to examine whether a grievance claim was raised with him.

What about the alternative claim?

[93] Mr Alexander argues that if Mr Thorn was not his employer, then Mr Thorn should be seen as having personal liability for the actions of Greenback as the principal responsible for that company's actions.

[94] Reference is made to s 142Y(c) of the Act. That section allows recovery of "wages or other money payable to an employee", for defaults in breach of employment standards, from persons involved in a breach.

[95] The 142W definition of a person involved in a breach is broad. It includes those aiding, abetting, counselling or procuring a breach, inducing a breach and being directly or indirectly knowingly concerned in a breach.¹³ With a breach by a company such as Greenback officers, namely directors, may be persons involved.¹⁴

[96] Mr Thorn refers to s 142B(1) of the Act which stipulates that only a Labour Inspector can apply to the court for a declaration of a breach. Mr Alexander is not seeking such a declaration, which it is accepted is solely a matter for the Employment Court.

[97] There is no bar to an order being made on the basis of s 142Y of the Act because Greenback is in liquidation. The Court in *Lawton v Steel Pencil Holdings Limited (in liq)* concluded that a s 142Y application could proceed despite there being no finding against the employer, a company in liquidation.¹⁵

[98] I do not accept Mr Thorn's argument that he did not have the level of knowledge required to be a person involved.

[99] Mr Thorn was sole director of Greenback and after an initial period was the person Mr Alexander reported to. He had awareness of Mr Alexander's work. Mr Thorn messaged Mr Alexander about start times for example. He had reports of the daily number of outgoing calls and emails. In terms of the payments Mr Alexander received, these were shown as coming from Mr Thorn, even if there was a more complex arrangement in play behind the scenes.

¹³ The Act, s 142W(1).

¹⁴ The Act, s 142W(2) and (3).

¹⁵ *Lawton v Steel Pencil Holdings Limited (in liq)* [2021] NZEmpC 199.

[100] Mr Thorn's proposition that he has a defence under ss 142ZC or 142ZD of the Act can be considered at the next stage of this proceeding.

[101] I conclude that Mr Alexander was a person involved in any breach regarding non-payment of the minimum wage and holidays to Mr Alexander. These are employment standards.¹⁶ Leave is granted for this matter to proceed regarding Mr Thorn.

[102] The unjustified dismissal claim cannot be pursued against Mr Thorn as that is not a default of an employment standard nor an action for wages or other money owing. Likewise the penalties sought for good faith breaches can only be pursued against a party to an employment relationship under s 4A of the Act so they cannot be claimed against Mr Thorn.

Next steps

[103] An Authority officer will be in touch with the parties to arrange a case management call to discuss the next steps in this matter.

Nicola Craig
Member of the Employment Relations Authority

¹⁶ The Act, s 5.