

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 569
3319160

BETWEEN

SUKHJINDER GILL
Applicant

AND

GB LOGISTICS LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Susanne Lass, advocate for the Applicant
Harjit Singh representing the Respondent

Investigation Meeting: 15 August 2025 in Auckland

Submissions and/or further
evidence 1 September 2025 from the Applicant
25 August 2025 from the Respondent

Determination: 15 September 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Sukhjinder Gill, claims that he was unjustifiably dismissed and unjustifiably disadvantaged by the Respondent, GB Logistics Limited (GBLL).

[2] Mr Gill also claims that GBLL breached the employment agreement between them by failing to pay his wages when they fell due and payable.

The Authority's investigation

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Gill.

[4] The Authority received oral evidence from Amandeep Singh, Director, and Harjit Singh, former Director of GBLL.

[5] The Authority was assisted at the Investigation Meeting by the services of a Punjabi interpreter.

[6] Written submissions were received from Ms Lass for the Applicant and from Mr Harjit Singh for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[8] The issues requiring investigation are whether or not Mr Gill was:

- Unjustifiably dismissed by GBLL
- Unjustifiably disadvantaged in his employment with GBLL by not being paid regularly and on time
- Owed monies by GBLL
- GBLL breached the employment agreement with Mr Gill.

Background

[9] GBLL provides a road freight transport service. There are two directors and shareholders, Amandeep Singh and Gurjit Singh. Harjit Singh was a director during Mr Gill's employment, from 15 December 2021 until 24 January 2025.

[10] GBLL had 9 Class 5 trucks which transported containers, three class 4 trucks which transported timber, and one Class 5 truck and trailer.

[11] Mr Gill commenced employment with GBLL on 3 June 2022 as a Truck Driver/Operator. He was qualified to drive a Class 4 truck. and worked full time. He was provided with an individual employment agreement which included a termination notice period of two weeks in the event of termination or resignation. (the Employment Agreement).

[12] The Employment Agreement also stated at a clause headed 'Remuneration and Benefits' that Mr Gill would be paid weekly into his bank account.

[13] During his employment Mr Gill had a good working relationship with the management team, describing it as a family type of relationship, stating that during the employment: "we stayed like brothers".

[14] Until November 2023 there were no issues in the employment and Mr Gill was paid regularly and on time, being provided with payslips. However, he started to experience issues with the payment of his wages on the due date each week from November 2023.

[15] Mr Gill said that during his employment there were several occasions when he did not receive his wages in a timely manner.

[16] On 22 February 2024 he sent an email to GBLL in which he stated:

Good afternoon Team,
I got my wages for period 5/2/2024 to 11/2/2024.
I did not get my wages for last week. Can you please pay me last week's salary and send me both payslips.

[17] On 24 April 2024 Mr Gill emailed GBLL again because he had not received payment for the previous two weeks. In the email he stated:

Hi Team,
I didn't receive my salary last week and this week. Can you please pay my wages on time and send me payslips? I have a doubt that one of my salary is missing so send me all payslips from November 2023. I want to apply for home loan. I need my wages and salary on time. Let me know from next week on which day I will get my salary and payslips.

[18] On 3 July 2024 Mr Gill sent a third email to GBLL raising serious concerns about his unpaid wages. He stated:

Hi Team,
I want to talk regarding my wages. I didn't receive my salary from last 3 weeks. I requested you many times but you didn't listen. I already asked you for payslips but you never sent me from few months. Last time I asked for pay slips because I have doubt my one pay is missed you didn't answer anything. Can you send me details of annual leave? So I can plan for holidays. I applied for visa cards it didn't approved because of my salary is not on time. Can you please tell me which bank can hold mortgage instalment if employer does not pay salary on time? Can you clarify me which law says you can work for employer and for salary request them every time like beggars.

[19] In addition, Mr Gill said he had sent multiple text messages to both Amandeep and Harjit Singh via WhatsApp chat during May, June and July 2024 to request his salary. Supporting documentation of these requests was provided to the Authority.

[20] Harjit Singh said that GBLL started to experience a downturn in business during late 2023 and early 2024. This downturn in business included the loss of timber delivery contracts. This in turn directly affected the work available for the Class 4 truck drivers including Mr Gill. However, despite there not being sufficient work for five days, Mr Gill was paid the full contractual 40 hours weekly.

[21] Harjit Singh confirmed that the wages owed to Mr Gill were sometimes not paid regularly towards the latter part of Mr Gill's employment and said that to assist him one or other

of the directors would make a personal loan to Mr Gill to cover the late payment of his wages until GBLL could make the wages payment. When Mr Gill was paid by GBLL, he would repay the loan from the director.

Other work offered to Mr Gill

[22] Harjit Singh said during the days when there was no Class 4 driving work for Mr Gill, he was offered work in the GBLL yard, cleaning trucks. Mr Gill declined the truck cleaning work.

[23] Harjit Singh said that in 2024 GBLL managed to secure a new contract which involved regular pallet jack deliveries, however Mr Gill refused to do pallet work. Mr Gill agreed that he had refused the pallet work on the basis that the pallets were too heavy to manoeuvre. Harjit Singh said there was no necessity for Mr Gill to lift heavy pallets because there was equipment provided to lift the pallets.

[24] Harjit Singh said that GBLL had also secured work for the Class 5 trucks. He offered to train Mr Gill so he could qualify for a Class 5 licence, but Mr Gill refused the work because the hours, which involved a different start and finish time to the Class 4 truck work, did not accommodate his domestic commitments. Mr Gill agreed that he had refused the Class 5 truck work.

[25] Mr Gill said that GBLL was employing drivers on visas which caused there to be less work available for him. Harjit Singh disagreed and said that the drivers employed on visas were driving the Class 5 trucks, which work Mr Gill had refused.

[26] Despite there being not sufficient work to keep Mr Gill employed on a full-time basis, GBLL nonetheless continued to pay him for a 40-hour week even though Mr Gill was frequently at home with no active duties.

[27] There was no evidence that GBLL put pressure on Mr Gill because he refused the alternative work offered.

[28] Mr Gill agreed that there was no shortfall in the wages to which he was entitled. The concern was that the payments were not made regularly each week, and he had to request loans to cover the intervening period until payment was made in order to meet his outgoing financial commitments.

[29] During the period from May to July 2024 Mr Gill said he was informed by GBLL that it wanted him to take annual leave because there had been a decrease in the work available. Mr Gill declined to use his annual leave, and said that if he wanted to take annual leave, he would

rather it was in a set period of one or two weeks, rather than on an ad-hoc basis to cover shortfalls in work.

[30] Harjit Singh confirmed that on certain days Mr Gill had taken sick leave and that GBLL had subsequently discovered that on these days Mr Gill had travelled to Tauranga in a lorry owned by a friend. Mr Gill confirmed that he had done so, but that he had not been working on his own account, but accompanying a friend.

[31] Mr Gill also said he had taken sick leave on one day in relation to his own sickness, and on another day because his daughter had been ill.

Discussion about ongoing work

[32] On or about 15 July 2024 there was a discussion between Mr Gill, Harjit and Amandeep Singh. Mr Gill said Harjit Singh told him he should look for another job. He said he refused to look for other work, and asked to be given notice of termination by GBLL in order that he could make a claim for financial assistance from Work and Income New Zealand (WINZ).

[33] Harjit Singh agreed that he had told Mr Gill he should look for other work because GBLL could not provide him with five days' work each week; however, he also told Mr Gill that he would remain employed on full pay until such time as he found other employment.

[34] Harjit Singh said that GBLL agreed to provide Mr Gill with the requested letter of termination in order that he could provide it to WINZ and make a claim for assistance.

[35] On 22 July 2024 Mr Gill said he received the requested email from GBLL informing him that his employment was being terminated due to redundancy. The email dated 22 July 2024 stated:

Hello Sukhjinder,
As we discussed with you last Monday that the FCL (Class 4 truck) work is very very slow. We can not afford FCL (Class 4 truck) full time driver so we are giving you 4 week notice which is going to start from today 22 July 2024 and your last date on work will be 18 August 2024.

[36] Harjit Singh said that during the notice period when Mr Gill was not working each day, GBLL had become aware that he was driving the taxi he owned and taking work driving a truck.

[37] Mr Gill said he had only driven his taxi at the weekends when working for GBLL, and after he applied to WINZ for financial assistance, he had closed the taxi business. He confirmed that once his employment at GBLL had ended, he did casual driving contracts.

[38] Mr Gill said he engaged Mr Sehgal of Migrants Advocate to represent him. On 22 July 2024 Mr Sehgal sent an email to GBLL advising it that he had been appointed to represent Mr

Gill and requesting payment of Mr Gill's unpaid wages for the five weeks preceding the termination of his employment by 23 July 2024. Mr Sehgal also warned GBLI it might be liable to a penalty if it was necessary to take legal action.

[39] The following day Mr Sehgal emailed Mr Gurjit Singh, a director of GBLI, stating in the email:

As discussed on the phone, you assured me that the payment to Sukhjinder will be made this week, before Friday.

Though I appreciate that you mentioned the business is expecting some payment from a client, my client, Sukhjinder, is struggling to pay his rent and bills.

[40] Mr Sehgal emailed GBLI on 27 July 2024 requesting Mr Gills's wages and time records in accordance with s 130(2) of the Act and his complete personnel file. The information was requested by 9 August 2024.

[41] On 8 August 2024 a reminder email was sent to GBLI. No wages and time records were received.

[42] On 14 August 2024, before the termination date of 18 August 2024, Mr Gill received an email from Harjit Singh offering him employment. The email stated:

Hello Sukhjinder,

It is pleased to inform you that we are having a new work contract and would like you to continue the job with us. Please let me know your decision as soon as possible.

[43] Mr Sehgal responded to GBLI on 16 August 2024, reminding it that he had been appointed as Mr Gill's representative pursuant to s 236 of the Act. In the email Mr Sehgal proposed mediation as a means to resolving the issues.

[44] Despite the reminder from Mr Sehgal about his representation of Mr Gill, GBLI emailed Mr Gill directly again on 16 August 2024 asking for an update on its offer of new employment and suggesting he could attend the GBLI offices to discuss his decision. The email stated:

We have sent you the job offer but still we did not get any response from your side, if you want to continue can you please update us.

If you do not want to continue can you please come to the office so we will explain about your holiday pay and will make payment as soon as possible.

[45] On 20 August 2024 GBLI emailed Mr Gill a second time stating:

We have sent you emails but we did not get any response from you. Can you please update us something within 48 hours or you can come to the office and have a chat with us face to face and update us about your decisions. You can bring a support person with you if you want.

If there are any concerns please feel free to contact us.

[46] Harjit Singh said GBLL had secured more work for the Class 4 truck so Mr Gill was approached before they offered the work to another driver.

[47] Mr Gill said GBLL did not agree to attend mediation and therefore a Statement of Problem was lodged with the Authority on 21 August 2024. An Amended Statement of Problem was lodged on 30 April 2024.

Was Mr Gill unjustifiably dismissed by GBLL?

[48] Justification for dismissal is set out at s 103A of the Act. The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair.

[49] An employer must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[50] GBLL advised Mr Gill that he might like to consider alternative employment opportunities because it could not provide him with sufficient work to occupy his contractual hours, but it said in evidence that it would continue employing Mr Gill until he did find alternative employment.

[51] This evidence was not disputed by Mr Gill who confirmed he asked for a letter of termination. GBLL complied with his request.

[52] It is submitted by Ms Laas that the dismissal was procedurally and substantively unfair.

[53] GBLL provided Mr Gill with a letter advising him that it was terminating his employment. However, I find that this is not conclusive that Mr Gill was dismissed in the context of the circumstances of this case.

[54] The evidence was that GBLL had been facing difficulties regarding securing work for the Class 4 truck Mr Gill drove for some time. Mr Gill had been advised by GBLL on a number of occasions to try to find alternative employment, however no steps had been taken to end his employment, and he was paid his wages in full.

[55] This situation was repeated in mid July 2024 when Harjit Singh advised Mr Gill of the ongoing nature of the work situation at GBLL and that he might want to find alternative employment.

[56] GBLL offered Mr Gill alternative work during this period, but he declined it.

[57] The evidence of Mr Harjit Singh was that there was no pressure placed on Mr Gill to leave, but that GBLL would continue to pay him his full salary. It was Mr Gill who requested that he be issued with a letter of termination so he could make an application to WINZ.

[58] I find it credible that no pressure was placed on Mr Gill to leave GBLL. Despite GBLL having insufficient Class 4 Truck driving work to offer Mr Gill, and his having turned down its offers of alternative work, it continued to pay him for 40 hours a week despite him often not working the 40 hours.

[59] Mr Gill confirmed that the letter of termination was provided at his request.

[60] In this situation I determine that while Mr Gill was provided with a notice of termination at his express request and thereby dismissed, it was not unjustifiable.

Was Mr Gill unjustifiably disadvantaged in his employment by BGLL?

[61] Section 103 (1)(b) of the Act is applicable to disadvantage grievances and states:

That the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer;

[62] The elements of s103 (1) (b) are twofold:

- a. An unjustifiable action by the employer, which
- b. Affected the employee's terms and conditions of employment, and this was to the employee's disadvantage.

[63] Mr Gill must therefore establish that there was an unjustifiable act by GBLL which adversely affected his terms and conditions of employment.

[64] It is undisputed that GBLL frequently failed to pay Mr Gill his wages on time after November 2023. Although the directors would make him repayable personal loans to cover the shortfall until his wages were paid, I find this was not only a breach of the Employment Agreement and good faith, it was an embarrassing and humiliating situation in which to place for Mr Gill.

[65] I find that Mr Gill was unjustifiably disadvantaged in his employment by the unjustifiable actions of GBLL in failing to pay his wages weekly in accordance with the terms of the Employment Agreement.

[66] I determine that Mr Gill was unjustifiably disadvantaged and order GBLL to pay him the sum of \$10,000.00 pursuant to s 123(1)(c) of the Act.

Is Mr Gill owed monies in respect of unpaid wages and holiday pay?

[67] Although wages and time records were requested from GBLL none were provided. This situation prevented Mr Gill making an accurate claim. Pursuant to s 132 (2) of the Act the Authority may accept as proved the claims made by the employee.

[68] Mr Gill has provided supporting evidence for his claims to unpaid wages and holiday entitlements which I find to be reasonable.

Unpaid entitlements

[69] I determine that Mr Gill is owed monies in respect of wages in arrears and unpaid annual leave entitlement by GBLL.

[70] I order that GBLL is to pay Mr Gill the sum of \$705.07 as wages in arrears.

[71] I order that GBLL is to pay Mr Gill the sum of \$2,464.00 as outstanding annual leave.

[72] I order that GBLL is to pay Mr Gill the sum of \$1120.56 as holiday pay.

Interest

[73] Mr Gill has been deprived of the use of monies to which he was entitled.

[74] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act.

[75] The purpose of interest is to reimburse someone for the loss of use of monies to which there is established entitlement as is the case with Mr Gill.

[76] I consider it appropriate therefore to award Mr Gill interest on the amounts awarded

[77] GBLL are ordered to calculate and pay interest to Mr Gill within 28 days of the date of this determination on the sums for which payment has been ordered until they are paid in full.

Did GBLL breach the Employment Agreement with Mr Gill by failing to pay his wages when they fell due and payable?

[78] The Employment Agreement stated that Mr Gill would be paid weekly into his bank account.

[79] I find the GBLL breached that provision on a number of occasions.

[80] GBLL also failed to pay Mr Gill's final pay on termination.

[81] This failure to pay wages on time not only breached the Employment Agreement, but s 4 of the Wages Protection Act 1983 (WPA).

[82] Penalties for breaches render a company liable to penalties up to a maximum amount of \$20,000.00 per breach.

[83] In deciding whether to impose a penalty and if I decide to, deciding how much that penalty should be, I need to consider the factors in s 133A of the Act and the approach as set out by the Employment Court in *Boorsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*.¹

[84] The purpose of penalties is punitive. They are not imposed to remedy the applicant's loss, but to punish the person who has breached a duty under the Act and to condemn that behaviour.

[85] One of the objects of the ERA is to promote the effective enforcement of employment standards. An employee is entitled to be properly recompensed throughout the period of their employment. GBLL failed to pay his wages as required by both the Employment Agreement and s 4 of the WPA.

[86] Failure to fulfil these requirements represents a failure to employment standards, and caused financial difficulties in addition to embarrassment to Mr Gill.

[87] In addition, GBLL failed to provide the wages and time records on request pursuant to s 133 of the Act. There is a duty to maintain wage and time records and provide these on request, and GBLL failed to do so.

Identify the nature and number of statutory breaches

¹ *Boorsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*. [2016] NZEmpC 143.

[88] I consider that the breach of the WPA and the Employment Agreement in respect of the failure to pay Mr Gill's wages on time should be regarded as one breach. This reduces the overall liability to a potential total penalty of \$20,000.00.

Step Two- assess the severity of the breaches

[89] The aggravating factors include the fact that Mr Gill had repeatedly to request his wages from November 2023. He was entitled to be paid properly and on time both by the Employment Agreement and s 4 WPA.

[90] An ameliorating factor on the part of GBLL is that it did pay Mr Gill his full entitlement to wages, albeit late and by a circuitous route, despite his not working on a full-time basis and turning down the alternative work offered to him.

[91] I consider that the penalty amount should be reduced to 50% of the total amount due in respect of the breaches.

The Respondent's financial circumstances

[92] No financial information has been provided by GBLL

The nature and extent of any loss or damage

[93] Mr Gill was paid his wages, although not on time, but his final payment was much delayed and had to be claimed.

Previous Conduct

[94] There is no evidence before the Authority regarding previous conduct by GBLL.

Deterrence

[95] I consider that there is a need to enforce to employers the employment standards which include the payment of wages to employees on time.

Proportionality

[96] Having had regard to the level of penalties arrived at in similar cases, I am satisfied that the level of penalty is in accordance with that level.

Penalties

[97] I order GBLL to pay a penalty of \$4,000.00 in respect of the breach of the Employment Agreement to pay wages on time and s4 WPA.

[98] I order GBLL to pay a penalty of \$1,500.00 for the failure to provide wages and time records on request in breach of s 132 of the Act.

Should any part of the penalties be paid to Mr Gill?

[99] Mr Gill has been compensated for all his losses. The purpose of penalties is to deter, not to compensate. The penalties imposed are to bring home to GBLL the importance of maintain the employment standards in New Zealand which should be well known to all employers given the length of time they have been in place.

[100] However, I acknowledge that the failure to pay his wages on time caused some stress to Mr Gill.

[101] I order GBLL to pay a penalty of \$5,500.00 of which \$550.00 (10 percent) is to be paid to Mr Gill. The penalty is to be paid into a Crown Bank Account, and the Crown will transfer the proportion awarded to him to Mr Gill.

Costs

[102] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a one-day investigation meeting as the starting point.

[103] Accordingly, GBLL is ordered to pay Mr Gill the sum of \$4,500.00 towards his legal costs, pursuant to clause 15 of Schedule 2 of the Act.

Filing Fee

[104] I order GBLL to pay Mr Gill the filing fee of \$71.56.

Orders

[105] I have made the following orders:

- **GBLL is ordered to pay Mr Gill the sum of \$10,000.00 in respect of an unjustifiable disadvantage pursuant to s 123(1)(c) of the Act.**
- **GBLL is ordered to pay Mr Gill the sum of \$705.07 as wages in arrears**
- **GBLL is ordered to pay Mr Gill the sum of \$2,464.00 as outstanding annual leave.**
- **GBLL is ordered to pay Mr Gill the sum of \$1120.56 as holiday pay.**

- **GBLL is ordered to calculate and pay interest to Mr Gill within 28 days of the date of this determination on the sums for which payment has been ordered until they are paid in full.**
- **GBLL are ordered to pay a penalty of \$5,500.00 in respect of the breaches of the Employment Agreement and s 4 of WPA of which \$550.00 is to be paid to Mr Gill. The penalty is to be paid into a Crown Bank Account, and the Crown will transfer the proportion awarded to him to Mr Gill.**
- **GBLL is ordered to pay Mr Gill the sum of \$4,500.00 towards his legal costs, pursuant to clause 15 of Schedule 2 of the Act.**
- **GBLL is ordered to pay Mr Gill the filing fee of \$71.56.**
- **All orders for payment are to be paid within 28 days of the date of this determination.**

**Eleanor Robinson
Member of the Employment Relations Authority**