

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 317
3152588

BETWEEN MOHAZAM NAHID JAMAL
Applicant

AND A IFRAZ INVESTMENTS
LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Ruth Pettengell, advocate for the Applicant
Abdul Ifraz, director of the Respondent

Investigation Meeting: 20 March 2023 in Auckland

Determination: 19 June 2023

DETERMINATION OF THE AUTHORITY

- A. A Ifraz Investments Limited (AAIL) unjustifiably disadvantaged and unjustifiably dismissed Mohazam Nahid Jamal.**
- B. Within 28 days of the date of this determination AAIL must pay:**
- (i) \$12,000 to Mr Jamal as compensation for humiliation, loss of dignity and injury to his feelings;**
 - (ii) \$2,573.48 to Mr Jamal as arrears of wages and holiday pay, and also pay interest on that sum, to be calculated from 9 January 2021 to the date of payment; and**
 - (iii) \$3,000 to the Authority as a penalty for breaches of employment standards, with the penalty to then be paid to the Crown Account.**
- C. Costs are reserved, with a timetable set if an Authority determination of costs is needed.**

Employment relationship problem

[1] Mohazam Nahid Jamal began working for A Ifraz Investments Limited (AAIL) in August 2020. AAIL's director Abdul Ifraz gave him a signed employment agreement saying Mr Jamal was to start work in the permanent and full-time role of diesel mechanic on 24 August 2020. When and if the terms of that agreement came into effect was part of the controversy in an application Mr Jamal lodged in the Authority.

[2] Mr Jamal's application said he was dismissed in early November 2020 after being off work for several weeks due to an injury suffered in an accident while working for AAIL. He claimed he was repeatedly underpaid during his 11 weeks of employment and was unfairly treated when Mr Ifraz denied Mr Jamal was injured at work. Mr Jamal sought orders for lost wages and distress compensation and for arrears of wages he said were short paid. He also sought penalties for AAIL not paying wages due, not providing wage and time records when requested and for not paying his leave entitlements.

[3] AAIL denied there were any grounds for finding Mr Jamal had a personal grievance or was due any arrears. It said Mr Jamal was paid for the time he had worked along with additional cash payments and loans he had requested from Mr Ifraz. AAIL also alleged Mr Jamal's account of suffering injuries at work were fabricated.

The Authority's investigation

[4] For the Authority's investigation the following witnesses provided written statements: Mr Jamal, his partner Juliea Robinson, Mr Ifraz and Kelly Reti. Mr Reti is an AAIL employee working in the company's equipment hire business.

[5] At the investigation meeting each witness took an affirmation and answered questions from me and, where asked, the parties' representatives. The representatives also had an opportunity to make oral closing submissions on the issues for resolution.

[6] 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.

The issues

[7] The issues requiring investigation and determination were:

- (a) Did actions of AAIL, concerning an accident suffered Mr Jamal and how he was treated following it, unjustifiably disadvantage Mr Jamal during his employment?
- (b) was Mr Jamal dismissed on 10 November 2020?
- (c) If he was, was the dismissal what a fair and reasonable employer could have done in all the circumstances at the time as prescribed by the test of justification set out at section 103A of the Act?
- (d) if AAIL is found to have acted unjustifiably (by disadvantaging and/or dismissing Mr Jamal) should he be awarded remedies of:
 - (i) reimbursement of lost wages; and/or
 - (ii) compensation under s123(i)(c)(i) of the Act?
- (e) is Mr Jamal entitled to recover arrears of wages?
- (f) should a penalty be imposed on AAIL for:
 - (i) default in payment of wages under section 10 of the Minimum Wages Act 1983?
 - (ii) failing to provide minimum entitlements to annual leave under sections 23 and 27 of the Holidays Act 2003?
 - (iii) failing to produce wage and time record when requested under section 130(4) of the Act?
- (g) should either party contribute to the costs of representation of the other party?

Mr Jamal's work, pay and the accident

[8] Mr Jamal is a citizen of Fiji. He has worked in New Zealand as a diesel mechanic and truck driver under a series of work visas since 2006. He said he lost a job in Tauranga in 2020 due to the economic effects of Covid-19 emergency restrictions in place at the time. He knew Mr Ifraz from primary school days in Fiji and occasionally visited him in Auckland during weekends to work, on a casual basis, repairing vehicles AAIL used in its hire business.

A written agreement

[9] Mr Jamal and Ms Robinson moved to Auckland in late July 2020 after Mr Ifraz offered him a job with AAIL. He initially did what he called "odd jobs" for Mr Ifraz but Mr Jamal said he was worked full-time for AAIL from 24 August 2020 under the terms of the written employment agreement Mr Ifraz gave him. The agreement provided for

normal work hours of 40 a week but Mr Jamal said he worked Monday to Saturday and sometimes Sunday. Mr Jamal said he “always” worked ten hours on each of the days he did work.

[10] The copy of that agreement Mr Jamal provided with his application to the Authority was dated 31 August 2020 and bore the signatures of Mr Jamal and Mr Ifraz.

[11] A more complicated account of the formation and operation of the employment relationship emerged in the evidence of Mr Ifraz. He accepted the agreement given to Mr Jamal bore both their signatures but Mr Ifraz said the original he had signed and provided a copy of to Mr Jamal had no date on it. In his oral evidence to the Authority investigation meeting Mr Ifraz said he considered the agreement was not effective without a date.

[12] Mr Ifraz said he did not know Mr Jamal was in New Zealand on a work visa at the time he gave him the written agreement in August. He said he only learned of this in September when Mr Jamal’s immigration consultant contacted Mr Ifraz and arranged for him to sign a job offer letter. The letter, along with a copy of the employment agreement, was needed to arrange a variation of Mr Jamal’s work visa. The visa variation was approved on 15 October 2020. It allowed Mr Jamal to work over as a diesel mechanic in Auckland for AAIL.

[13] The job offer letter Mr Ifraz had, in his view belatedly, signed said Mr Jamal would receive “a salary rate of \$30 per hour for 40 hours per week commencing upon approval for work visa for A Ifraz Investments Ltd t/a Tigers Equipment Hire and Sales”.

Payments made

[14] For the Authority investigation Mr Ifraz had prepared a week-by-week breakdown setting out the hours that he said Mr Jamal had worked and had been paid for. Mr Ifraz’s account showed Mr Jamal had worked two days in the week commencing 17 August and three or four days in each of the following six weeks. All those weeks were before the visa variation approval came through on 15 October.

[15] Mr Jamal’s bank statement showed he had received eight payments from AAIL between 12 August and 30 October 2020. The payments, for varying amounts, totalled \$4,235.22.

[16] In his oral evidence Mr Jamal said he also received two other cash payments from AAIL – one of \$400 and another of \$650.

[17] Mr Ifraz's own week-by-week breakdown of the payments he said were made to Mr Jamal showed further cash payments of \$400, \$850 and \$580 on top of the amounts shown as paid directly to Mr Jamal's bank account. On his tally, Mr Ifraz paid \$780 more in cash than Mr Jamal reckoned.

[18] In his oral evidence Mr Reti confirmed Mr Ifraz had given him cash to deliver to Mr Jamal at a work site.

The accident

[19] On 14 October 2020 Mr Jamal suffered an accident. He did not work for AAIL after that date. Again, the accounts he and Mr Ifraz gave of what happened, and how it happened, differed markedly.

[20] Mr Jamal said he was sent on that day to help another AAIL employee remove trees from a residential property. He said Mr Ifraz knew Mr Jamal's father was a logger in Fiji and that Mr Jamal had some experience in felling trees. Mr Jamal said he initially refused to do the work but Mr Ifraz pressed him to do it. Mr Jamal said, after being provided with some safety gear and a chain saw, he did work on felling trees on the property that day.

[21] According to Mr Jamal, Mr Ifraz and a digger driver were on the site. He said Mr Ifraz had directed the digger driver to use the machine to pull the tree at the same time as Mr Jamal was using the chain saw on it. Mr Jamal said this resulted in him being knocked off a retaining wall. He said he was knocked out in the fall and when regained consciousness he had searing pain in his hip and back, his hip and thigh were bleeding and his clothes were torn. He said Mr Ifraz then drove him and the other worker to Mr Ifraz's home. Mr Ifraz then drove Mr Jamal to a private accident and emergency centre where, according to Mr Jamal, Mr Ifraz told centre staff that the accident had occurred at Mr Ifraz's house, not at work.

[22] Mr Ifraz emphatically denied Mr Jamal was working for AAIL clearing trees that day. Instead, he said Mr Jamal was at Mr Ifraz's own home on that day. He said that, without being asked to do so by Mr Ifraz, Mr Jamal was cutting the lawns with a

lawnmower. AAIL's statement in reply said the two men had a close personal relationship and were often at one another's house. It said Mr Jamal was at Mr Ifraz's house "in a personal capacity" and "was simply assisting Mr Ifraz with a personal favour".

[23] In his oral evidence during the Authority investigation meeting Mr Ifraz said he understood Mr Jamal has slipped off a low retaining wall while cutting the lawns. He said Mr Jamal complained of a sore leg and Mr Ifraz had offered to take him to the doctor. He said he had not gone into the medical centre with Mr Jamal and denied speaking to any staff there about what had happened.

[24] Mr Jamal provided no health records made that day. His evidence included a medical certificate issued to him by a general practitioner on 28 October. It described him as unfit for work from 26 October to 8 November 2020. It said his injuries were an "open wound hip and thigh", an ankle sprain and a lumbar sprain. It reported this description of the accident: "Slipped off a retaining wall with leg in front of him. Injured right hip to heel".

[25] Following the accident Mr Jamal had some difficulty getting ACC cover for his injury and qualifying for earnings related compensation while he recovered. He said this was because of false information Mr Ifraz gave the medical centre staff and ACC about the cause of his injury and whether it had happened in a work context.

[26] Mr Jamal had provided ACC with a copy of his employment agreement, job offer letter and his bank statement showing payments from AAIL. However, in an email message dated 30 November 2020, an ACC official advised Mr Jamal that IRD had no record of Mr Jamal getting any earnings from AAIL. The email said an ACC representative had spoken to Mr Ifraz on 13 November and he "advised us that he has not offered you employment but that the money was a loan to help you out". Questioned during the Authority investigation meeting Mr Ifraz said he could not recall what he had told the ACC representative.

[27] Mr Jamal said his injuries prevented him returning to work through late October and early November 2020. He said Mr Ifraz refused to provide information he needed to get support from ACC. However, in his oral evidence, Mr Jamal said ACC eventually accepted his injury had occurred as a result of a workplace accident. He

subsequently received earnings related compensation backdated to the period when he stopped working after the accident.

IRD and pay records

[28] During the Authority investigation meeting Mr Ifraz referred to correspondence he had received from IRD on 30 October 2020 about Mr Jamal's earnings. He said this resulted in him contacting IRD and making what he described as a "full disclosure". As part of accounting to IRD for PAYE deductions due on payments made to Mr Jamal, Mr Ifraz generated pay records which closely matched the net payments he had made to Mr Jamal's bank account between August and October. The amounts calculated for PAYE were paid to IRD.

[29] In discussing that information during the Authority investigation meeting Mr Ifraz accepted he gave different accounts to IRD and ACC about Mr Jamal's employment status at that time. On the one hand he was arranging backdated pay records to give to IRD about payments he had made to Mr Jamal, including the deduction of PAYE, while on the other hand, also telling ACC Mr Jamal was not an employee of AIL.

[30] The AIL pay records belatedly prepared to give to IRD showed payments totalling \$4,235.22 were made to Mr Jamal's bank account between 12 August 2020 and 30 October 2020. Mr Ifraz said he also made a number of additional cash payments, either as gifts or loans, in response to pleas from Mr Jamal for amounts to cover food and other household expenses. He also said Mr Jamal frequently did not attend work, would not provide adequate reports of time that he said he did work and had worked considerably less than the 40 hours or more that he claimed to have worked during those weeks.

[31] Mr Jamal said his employment agreement provided for him to be paid a minimum of \$957.56 net for a 40-hour week. Taken over the 11 weeks he said the employment had lasted, he said he was owed \$10,533.16. Deducting the amount of \$4,235.22 shown in his bank records as paid to him by AIL, Mr Jamal claimed the difference of \$6,297.84. He accepted he had been paid some amounts in cash but said those amounts were for shortfalls in payments due to him.

[32] AAIL pay records show no amounts paid for annual leave and public holidays so Mr Jamal also claimed arrears for those statutory entitlements.

End of the employment

[33] On 6 November 2020 Mr Jamal asked Mr Ifraz, by text message, to pay him \$500 “as all my APs goin out tonite”. Mr Ifraz replied that he had assisted Mr Jamal “to the best of my capabilities” but declined the request. On 11 November Mr Ifraz sent this message by text to Mr Jamal:

Nahid no intention in making enemies think ethically and I can't and will not get involved anymore and please move on without any bitter feelings and issues.

[34] Mr Ifraz did not answer the text message that Mr Jamal sent in response: “So literally you are saying that I dnt have a job in ur company once I get better???”.

[35] By letter on 9 January 2021 Mr Jamal’s representative raised a personal grievance for unjustified disadvantage and unjustified dismissal. It described the “move on” text message as having “effectively ended the employment relationship and constitutes an unjustified dismissal without cause or process”.

[36] In a letter responding to the grievance being raised, Mr Ifraz accepted he offered Mr Jamal a job but said Mr Jamal could not start work without a valid work visa. Mr Ifraz said he helped Mr Jamal by paying the cost of his legal fees for his work visa application. He said they were friends and Mr Jamal “would always turn up at my house to catchup and always knew about my work and jobs and was always willing to assist as he was unemployed at that time”.

Employment status

[37] From the evidence set out about it was clear Mr Jamal was an employee of AAIL from at least 17 August 2020 when he was recorded, by Mr Ifraz, as having worked for six hours. The employment was intended and agreed to be ongoing as evidenced, on Mr Ifraz’s account, by the hours Mr Jamal then worked in each of the following weeks up to the week commencing 5 October. On Mr Jamal’s account he was also working for AAIL in the following week when he suffered the accident on 14 October.

[38] It was also clear that they had intended and agreed that this employment was to be governed by the terms set out in the written employment agreement Mr Ifraz gave

to Mr Jamal in August 2020. Although Mr Ifraz said he was not aware until some weeks later that Mr Jamal did not have a work visa that entitled him to work for AILL, this did not diminish or negate Mr Jamal's rights as a worker to be paid for his work and to have any problems about his work or conduct to be dealt with fairly and reasonably by his employer.

[39] Those terms of employment included payment for 40 hours a week at the rate of \$30 an hour. Payment for those hours was described in the agreement as a "salary" and "normal hours", with reasonable notice to be given for any additional hours. Termination of that employment without notice was allowed for only "as permitted by law". This meant any move by AILL to end Mr Jamal's employment was required to meet the obligation under s 103A of the Act for the employer to act fairly and reasonably in making any such decision.

Disadvantage

[40] Mr Jamal claimed he was unjustifiably disadvantaged by being required to do the work he was doing when he suffered an accident on 14 October and by how Mr Ifraz treated him following the accident.

[41] Ultimately it was not necessary for the Authority to resolve the conflict between the evidence of Mr Jamal and Mr Ifraz about where and how the accident occurred. If Mr Ifraz's account was accepted, the issue was solely whether Mr Jamal was in fact working at the time. It was more likely that not, that is on the civil standard of evidence, that Mr Jamal was carrying out work as an employee if he was mowing the lawns at Mr Ifraz's house at the time of the accident. Given Mr Jamal's wish to earn as much income as he could, it was unlikely that he would be mowing the lawns during working hours at the house of the director of the company he worked for without expecting to be paid for that work.

[42] In light of the misleading information that Mr Ifraz admitted giving an ACC representative about Mr Jamal's employment status, it was also more likely than not that he gave similarly misleading information to medical staff when he took Mr Jamal to the emergency medical centre.

[43] From Mr Ifraz's own admission, it was clear his actions caused disadvantage to Mr Jamal at the time of the accident, and subsequently in his dealings with ACC, in a

way that affected Mr Jamal's rights as an employee. As a result, Mr Jamal had established a personal grievance of unjustified disadvantage on that account.

Dismissal

[44] It was also clear Mr Ifraz's text message of 10 November telling Mr Jamal to "please move on" amounted to a 'sending away', that is a dismissal. It did not meet the substantive and procedural requirements of s 103A of the Act.

[45] Mr Ifraz had become impatient with repeated requests from Mr Jamal to be paid while he was recovering from his accident. His 10 November text to "move on" was sent in response to a request from Mr Jamal on 6 November to be paid \$500 "as all my APs going out tonight". However, Mr Jamal was not given specific notice of AAIL's concerns or of the prospect of dismissal and was not given a reasonable opportunity to respond to whatever those concerns were before Mr Ifraz made the decision to end Mr Jamal's employment.

[46] There were concerns Mr Ifraz could have legitimately addressed with Mr Jamal about the arrangements for and continuation of his employment. These included the number of hours Mr Jamal considered he should be paid for work in previous weeks, whether Mr Jamal has properly disclosed his visa status when they agreed his employment with AAIL and whether Mr Jamal should receive any pay from AAIL while he recovered from his injury. Mr Ifraz could have met with Mr Jamal to discuss those concerns and to give him a fair opportunity to address them. He did not. These were not minor defects in the process that a fair and reasonable employer is expected by the law to follow. The decision to tell Mr Jamal to "move on", in the way that Mr Ifraz had done, was not what a fair and reasonable employer could have done in all the circumstances at the time. Mr Jamal was treated unfairly and had established a personal grievance for unjustified dismissal.

Remedies

Lost wages

[47] As part of the remedies for his personal grievance for unjustified dismissal Mr Jamal sought an order for lost wages from the date of his dismissal, taken as 10 November 2020, until he was "fully rehabilitated from his accident and able to work again".

[48] By the time of the Authority investigation meeting, more than two years later, Mr Jamal had not resumed paid employment. His evidence was that he had been rehabilitating throughout that entire period. After some initial difficulty he had gained approval for and received earnings-related weekly compensation from ACC, that is payment at 80 per cent of his weekly earnings immediately before his incapacity. He said ACC later back paid the weekly compensation to the date of his injury. He was participating in some ACC-directed retraining and said payments to him had recently stopped after he had not attended a class in his course.

[49] Mr Jamal suggested AAIL should be ordered to pay him for the 20 per cent difference between the weekly compensation paid by ACC and what he, notionally, would have earned if he had continued to work for AAIL. There were two hurdles to making such an order. Firstly, accepting he was entitled to the weekly compensation because his injury prevented him from working, Mr Jamal would not have been working for AAIL during the weeks and months after the accident. Secondly, his employment agreement did not provide for a 'top up' of 20 per cent to his usual wage in the event that he was off work for an injury and receiving ACC weekly compensation. He was not, therefore, losing wages at the level that he claimed.

[50] No order for lost wages is made.

Compensation for humiliation, loss of dignity and injury to feelings

[51] Mr Jamal was entitled to an assessment of compensation for distress caused by how he was treated over the accident and the subsequent decision, around four weeks later, to summarily terminate his employment.

[52] Compensation under this heading is not for the injury caused by the accident and the effects of that injury on him. The distress and effects of the accident and injury themselves is addressed by provisions of the ACC legislation which, in Mr Jamal's case, has included the payment to him of weekly earnings compensation over an extended period. Rather, the compensation considered here is solely related to the effects on Mr Jamal of how his employer treated him at the time of the accident and subsequently, that is the subject matter of his disadvantage and dismissal grievances.¹

¹ Accident Compensation Act 2001, s 317.

[53] Mr Jamal's evidence established that he was distressed by Mr Ifraz's actions in denying the accident was a workplace event, with the effect that had on him in seeking and eventually confirming ACC cover, including by the anxiety that arose from his resulting financial insecurity. This was made worse when AAIL summarily terminated Mr Jamal's employment on 10 November in response to a request for financial assistance from Mr Ifraz. The consequences of his employment ending in that way included Mr Jamal and Ms Robinson having to move out of their flat when they could not pay the rent, staying with family, seeking assistance from WINZ and the Salvation Army and being accommodated in emergency housing until they could find a permanent rental.

[54] The sum of \$16,000 is an appropriate award of compensation for the effects on Mr Jamal of how AAIL treated him. This amount addresses both his disadvantage and dismissal grievances which concerned an associated string of events. It is an amount appropriate for the particular circumstances of the injury to Mr Jamal's feelings and his dignity and is consistent with the range of awards in similar cases.

Reduction of remedy for contributory behaviour

[55] Under s 124 the Authority must consider whether any blameworthy conduct by the worker contributed to the situation giving rise to their grievance and, if so, whether remedies that would otherwise be awarded should be reduced. In this case, a reduction is apt.

[56] Mr Jamal had worked in New Zealand as a driver and a diesel mechanic under various work visas since 2006. He knew of the requirements for obtaining and varying a work visa. Despite knowing variation of the visa was needed, he entered a new agreement and began working for the company. He said Mr Ifraz wanted him to start work without waiting for the variation but Mr Jamal's evidence suggested he was pressing for work to do so he could, understandably, get paid. Mr Jamal's expectation that Mr Ifraz would fund the variation application and provide other necessary documentation was an early source of tension. In a text sent on 18 September Mr Ifraz told Mr Jamal he "had no idea about all this immigration thing" until he got an email message from Mr Ifraz's immigration adviser seeking payment for the variation application.

[57] Text exchanges between the two men showed Mr Ifraz had concerns about Mr Jamal not turning up for work and not providing an adequate record of hours he had worked. Although Mr Jamal accepted, in his oral evidence, that he knew from his previous jobs as a diesel mechanic of the expectation to keep a record of hours worked, he resisted Mr Ifraz's requests that he do so in his work for AILL. This in turn contributed to disputes about what hours were, in fact, worked and should be paid for. Their text exchanges showed Mr Ifraz had responded promptly to queries from Mr Jamal about his pay, saying he would clear up any shortfalls "without any hesitation".

[58] Assessed overall, the evidence of both men showed a fractious approach taken by Mr Jamal had contributed to tension in their communication over work matters. Mr Ifraz had attempted to address that difficulty, including by organising a face-to-face meeting on 19 September.

[59] An appropriate adjustment of remedies to recognise the extent to which Mr Jamal's conduct had contributed to the situation giving rise to his grievance was a reduction of one quarter, that is reducing the compensation amount to \$12,000.

Wages arrears

[60] Mr Jamal's evidence did not reliably establish his claim that he had worked ten hours a day or worked more than the 40 'normal hours' provided for in his employment agreement. There were some days, for example, he claimed were worked but other evidence showed he was absent for some reason, such as being sick or, one occasion, walking off the job over an argument with Mr Ifraz.

[61] Assessment of Mr Jamal's wage arrears claim did not sit easily within the statutory provision allowing the Authority to prefer an employee's account of hours worked and wages paid if the employer had failed to keep proper records.²

[62] Mr Jamal said he had a notebook with some information about his hours of work but lost it when his car was stolen.

[63] AILL did produce records of what was paid and for what hours. However, as already explained, those comprised timesheets Mr Ifraz had drawn up for the Authority investigation and the pay records he had created after November 2020 to satisfy IRD

² Employment Relations Act 2000, s 132.

requirements. They were largely created to match what had actually been paid to Mr Jamal, reflecting bank statements and text messages about hours worked. This information did not necessarily show what should have been paid.

[64] Against that background, a practical assessment of wage arrears is made on the basis of the difference in wages actually paid and what the employment agreement showed was the contractual term of 40 hours pay for the weeks Mr Jamal actually worked. This is from the agreed starting date of 24 August 2020 until and including his last actual day of work, 14 October. This period comprises seven weeks and three days. The period beyond then, starting after 14 October, is covered by his ACC payments.

[65] The employment agreement stated Mr Jamal would receive a net payment (after deduction of PAYE and the ACC levy) of \$957.55 for each 40-hour week. For the seven weeks and three days he worked, this was a total of \$7,277.50 net.

Shortfall due

[66] Mr Jamal's evidence accepted he had received net payments of \$4,235.22 to his bank account and a further \$1,050 in cash payments. Accepting his evidence of receiving total payments of \$5,285.22 from AAIL, the shortfall from his contractual entitlement was \$1,991.28. This is the net amount AAIL must now pay Mr Jamal as wages arrears.

Annual holiday pay

[67] AAIL did not pay Mr Jamal his annual holiday pay although a leave entitlement was recorded on the pay slips Mr Ifraz had created for IRD in November 2020.

[68] Taking the net figure of \$7,277.50 as the total pay Mr Jamal was due, AAIL also owed him arrears of \$582.20 net as holiday pay.³

[69] No public holidays fell within the period for which Mr Jamal was entitled to be paid by AAIL.

³ Holidays Act 2000, s 23.

Interest to be paid on arrears due

[70] Mr Jamal is entitled to an award of interest on the arrears of wages and holiday pay due to him totalling \$2,573.48. Interest must be calculated using the civil debt interest calculator for the period from 9 January 2021, when his arrears claim was first raised by his representative, until the date of payment.⁴

Penalties

[71] Mr Jamal sought orders for penalties against AAIL for failing to meet the statutory standards for paying wages in full and on time, paying holiday pay and providing wage records when requested by a worker or a worker's representative.⁵ He asked that a portion of any penalty received from AAIL be paid to him.

[72] The failures by AAIL were established in respect of each alleged breach. AAIL was a relatively new business at the time. It subsequently addressed some of those problems, including setting up a pay system but now, according to Mr Ifraz, employs only one person. Considering the matters set by s 133A of the Act, breaching fundamental statutory requirements on any employer, new or long-established, is appropriately marked by a penalty of \$1,000 for each employment standard breached, that is a total penalty of \$3,000.

[73] AAIL must pay the penalty of \$3,000 to the Authority within 28 days of the date of this determination. The Authority must pay the penalty, when recovered, to the Crown Account. No part of the penalty is to be paid to Mr Jamal as the wrong done to him has been addressed by the other orders made in this determination.

Costs

[74] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[75] If they are not able to do so and an Authority determination on costs is needed Mr Jamal may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum

⁴ Employment Relations Act 2000, Schedule 2 clause 11(1) and www.justice.govt.nz/fines/civil-debt-interest-calculator.

⁵ Minimum Wages Act 1983, s 10; Holidays Act 2003, s 23 and s 27 and Employment Relations Act 2000, s 130(4).

AIII would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[76] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate of \$4,500 unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁶

Robin Arthur
Member of the Employment Relations Authority

⁶ See www.era.govt.nz/determinations/awarding-costs-remedies.