

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2017] NZERA Christchurch 77  
3000106

BETWEEN

A LABOUR INSPECTOR OF  
THE MINISTRY OF  
BUSINESS, INNOVATION  
AND EMPLOYMENT,  
VIKRAM LAKHERA  
Applicant

AND

CURRY POT ON LINCOLN  
LIMITED  
Respondent

Member of Authority: Christine Hickey

Representatives: Jodi Ongley, Counsel for the Applicant  
Natu Rama, Harpal Singh and Lachhi Teli for the  
Respondent

Determination: 16 May 2017

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**INTERIM DETERMINATION OF THE AUTHORITY**

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- A. Curry Pot On Lincoln Limited is to supply, to the Authority and Ms Ongley, proof of the amounts and timing of payments made under Patel v Curry Pot on Lincoln Limited [2016] NZERA Christchurch 137 by 4 p.m., Friday, 19 May 2017.**
- B. Curry Pot On Lincoln Limited is to supply its accounts for the tax years ending 31 March 2016 and 31 March 2017 to the Authority and to Ms Ongley within six weeks of the date of this determination.**
- C. The Labour Inspector will then have a further week to make final submissions strictly on matters arising from the supply of the further documents.**

## **Employment relationship problem**

[1] On 23 August 2016, Member Doyle made a determination that Curry Pot on Lincoln Limited (Curry Pot) breached s 12A of the Wages Protection Act 1983 (WPA). Member Doyle also found that Curry Pot had not paid Mrs Patel time and a half for statutory holidays worked, had not paid her final annual holiday pay and owed her a significant amount of unpaid wages.

[2] On 16 November 2016, the Labour Inspector lodged a claim in the Authority for penalties to be imposed on Curry Pot for its breach of:

- s 12A of the WPA;
- s 50 of the Holidays Act 2003 – failure to pay time and a half for working on public holidays;
- s 27 of the Holidays Act 2003 – failure to pay annual holiday pay; and
- s 6 of the Minimum Wage Act 1983.

[3] I held an investigation meeting and heard from Ms Ongley and the three men who attended on behalf of Curry Pot. Mr Rama is a former director and now shareholder, Mr Teli is the sole director and is a shareholder and Mr Singh is a shareholder.

[4] I have heard submissions from both parties. Mr Rama and his colleagues tell me the company is in severe financial straits. I need good factual evidence of that so I can take it into account in making my determination.

[5] I have ordered Curry Pot to provide me and Ms Ongley with proof of how much was paid to Mrs Patel under Member Doyle's determination and when those payments were made. Mr Singh has undertaken to get me that evidence by 19 May 2017.

[6] Curry Pot's accounts for the last few tax years are waiting to be completed by Curry Pot's accountant. It is essential that I have the completed accounts of financial statements at least for the years to 31 March 2016 and 31 March 2017 in front of me before I make my determination. If they support what Mr Rama, Mr Singh and Mr Teli have told me they will assist the company in reducing the amount of any potential penalty I may impose.

[7] I note, for Curry Pot's accountant's information, that the total maximum of the penalties that could be imposed is \$80,000. The Labour Inspectorate is suggesting a total penalty of \$52,000 is reasonable without having seen any financial information. That is why the timely supply of the Curry Pot's financial statements or accounts is essential.

[8] I consider I have supplied a generous amount of time to Curry Pot to provide the information and I will proceed to make my determination after the above dates have elapsed, whether or not I receive the documents I have directed to be supplied.

Christine Hickey  
Member of the Employment Relations Authority