

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 56
5560967

BETWEEN A LABOUR INSPECTOR OF
 THE MINISTRY OF BUSINESS
 INNOVATION AND
 EMPLOYMENT
 (DOUGLAS
 HIXON/LAURENCE NORTON)
 Applicant

A N D PRECISE CONTRACTING
 LIMITED
 Respondent

Member of Authority: Christine Hickey

Representatives: Ella Tait and Claire English, Counsel for Applicant
 Rhonda Burridge, Advocate for Respondent

Investigation Meeting: 3, 4 and 5 August 2016 at Blenheim

Submissions Received: At the investigation meeting
 Further information and submissions provided by both
 parties on 2 September 2016, 19 and 22 December 2016,
 and 4 January 2017, with the last information received
 from the Respondent on 7 February 2017

Date of Determination: 21 April 2017

RESERVED DETERMINATION OF THE AUTHORITY

- A. Precise Contracting Limited has breached provisions of the Minimum Wage Act 1983 and the Holidays Act 2003.**
- B. Precise Contracting Limited must pay the Labour Inspector, on behalf of, and for the benefit of, the persons named in Schedule A, a total of \$33,081.70 gross, in minimum wages and holiday pay. This amount is to be paid in monthly instalments of \$5,000**

beginning on 15 May 2017, and every month thereafter, with the final amount of \$3,081.70 to be paid on 15 November 2017. If any amount is short-paid, or paid late, the full balance owing becomes immediately due and payable.

C. Precise Contracting Limited must pay the Employment Relations Authority, for payment into a Crown Bank Account, \$40,000 in penalties. The penalty payment must be paid by monthly instalments of \$5,000 beginning on 15 May 2017. If any amount is short-paid, or paid late, the full balance owing becomes immediately due and payable.

Background to the proceedings

[1] The respondent company (Precise) is a business that undertakes vineyard contracting work. Precise engages its employees for relatively short periods because the work is seasonal. Most employees are paid on a piece rate basis. Rhonda Burridge, Precise's sole director, represents the company.

[2] These proceedings had their genesis in complaints made by two former employees of Precise in January 2014. Mr Hixon's evidence is that since 2008 the Labour Inspectorate (the Inspectorate) had received approximately 15 complaints about Precise, including claims of Precise failing to pay minimum wage and averaging out payments over more than one pay period.

[3] On 26 February 2014, the Inspectorate began an investigation into the recent complaints, and on 28 February 2014 Douglas Hixon, Labour Inspector, made an initial request for records.

[4] In July 2014, the Inspectorate received three further complaints from four ex-employees.

[5] On 17 July 2014, Mr Hixon issued an Improvement Notice stating that he believed Precise had failed to or was failing to:

- Provide employment agreements;
- Pay minimum wage;

- Pay holiday pay.

[6] Mr Hixon served the Improvement Notice on Ms Burridge on 17 July 2014. It required Precise to:

- remedy the three defects,
- to provide evidence of payment to the two employees who complained in January 2014, and
- to produce for inspection wages and time records for all employees employed in 2014.

[7] Mr Hixon wrote in the Improvement Notice that the purpose of the supply of the records was to allow him to undertake an audit in September 2014.

[8] Ms Burridge supplied some records to Mr Hixon in September 2014.

[9] On 1 April 2015, Mr Hixon issued his findings about record keeping and his minimum wage assessment. He found that there were possible breaches of s 8A of the Minimum Wage Act 1983, for failure to keep compliant records¹, and failures to pay employees the minimum wage as required by s 6 of the Minimum Wage Act 1983. He identified some missing records and made another request for any missing records to be supplied by 15 April 2015.

[10] Ms Burridge supplied further records to Mr Hixon on 14 April and 8 May 2015.

The proceedings

[11] On 9 June 2015, Mr Hixon lodged an application, being the first Statement of Problem, with the Authority.

[12] Precise lodged its Statement in Reply on 8 July 2015 and attached a number of further documents. After that Ms Burridge sent numerous emails to the Authority explaining her view of how Mr Hixon had come to incorrect conclusions.

[13] The parties attended mediation on 28 September 2015.

¹ As it was then. This section was repealed on 1 April 2016. However, these claims relate to the period that s 8A was in force.

[14] On 16 December 2015, pursuant to a direction I made on 11 December 2015, Mr Hixon met with an accountant engaged by Precise and attempted to narrow the issues in dispute between the parties. That was not a successful exercise.

[15] On 22 February 2016, Precise sent Mr Hixon a document prepared by an accountant, Simon Halliday, which reached conclusions about a number of employees, which were at odds with a number of Mr Hixon's conclusions.

[16] On 1 March 2016, Mr Hixon lodged an amended Statement of Problem along with a Memorandum of Counsel. He had recalculated the amounts of wages arrears and holiday pay outstanding after taking into account Precise's objections to his conclusions and the documents it supplied since June 2015.

[17] On 21 March 2016, I received a witness statement from Mr Hixon with a number of explanatory documents appended.

[18] On 31 July 2016, I received an email from Ms Burrridge with mail from Sara Bugler, a former employee, appended. The email says Ms Bugler was a former supervisor for Precise during the 2014 pruning season.

[19] Mr Halliday appended changes he had made to the spreadsheets provided by Mr Hixon.

The investigation meeting and after it

[20] I held the investigation meeting in Blenheim on 3, 4 and 5 August 2016. At the investigation meeting Ms Burrridge and Thomas Riwaka, who assisted Ms Burrridge to present Precise's case, provided numerous documents over the three days, many of which Ms Burrridge had not provided previously to the Labour Inspector or to me.

[21] I heard sworn or affirmed evidence from Mr Hixon and his successor, Laurie Norton, Ms Burrridge, Mr Riwaka and Sarah Bugler.

[22] After the investigation meeting Ms Burrridge provided some more evidence and the Labour Inspectorate recalculated the amounts it claims Precise owes, based on that evidence and that presented at the investigation meeting.

[23] After the investigation meeting I set a timetable for provision of further evidence and for supplementary submissions from both parties in relation to the further evidence.

[24] Precise was unable to provide the evidence it had indicated it could supply; being a book listing what tools were issued to employees and information on cash advances.

[25] The last day for final submissions, which were to be from Ms Tait, was to be 26 August 2016. However, Ms Tait was hospitalised and unable to meet that deadline. I granted her an extension until 2 September 2016.

[26] On 2 September 2016 and again after that date, Ms Burrridge sent further emails to which further evidence was appended. I directed the Authority officer to send a reply email stating that I would consider any evidence if there were new timesheets, but I was not accepting any further evidence (such as the letter from a former employee) or any other submissions supplied after 2 September 2016.

[27] On 9 September 2016, I received an updated wage analysis completed by the Labour Inspector, having taken into account Ms Burrridge's further evidence.

[28] Before I was able to issue my determination the Employment Court issued its decision in *A Labour Inspector (Jeanie May Borsboom) v Preet PVT Ltd and Warrington Discount Tobacco Ltd*². This case set out how to make decisions on whether to penalise and how to fix the quantum of penalties. I gave both parties the opportunity to make further submissions specifically on the matters raised in the *Preet* decision. They have done so, and Precise and Ms Burrridge have also supplied the financial records that I requested.

The claims

[29] The Labour Inspector now claims Precise failed to:

- (a) Pay the minimum wage, and outstanding wages arrears of \$27,539.85³ need to be paid; and
- (b) Pay holiday pay, and holiday pay arrears of \$5,541.85⁴ need to be paid.

² [2016] NZEmpC 143

³ This is the latest recalculated amount.

[30] He also claims penalties, under s.135 of the Employment Relations Act (the Act), of up to \$20,000 per breach for failures to:

- (i) Keep proper time and wages records as required under s 8A of the Minimum Wage Act (MWA) 1983;
- (ii) Pay the minimum wage as required under s 6 of the MWA;
- (iii) Keep proper holiday and leave records as required under s 81 of the Holidays Act 2003 (HA);
- (iv) Provide access to holiday and leave records as required under s 83 of the HA;
- (v) Pay final holiday pay as required under ss 23 and 28 of the HA.

[31] These proceedings are about matters in 2014. Therefore, I need to consider the issue of failure to keep compliant wages and time records under s 8A of the MWA as it was before 1 April 2016.

[32] Precise considers that it has paid all employees what it owed them and had legitimate reasons for withholding some payments, namely a lack of notice, disagreement with the employee's timesheets, and/or the retention of tools supplied by Precise. However, if the Authority decides money is owed Ms Burrige has requested the ability to make payments over time.

The issues

[33] On 1 March 2016, Ms Tait filed a Memorandum of Counsel that outlined issues it considered remained in dispute between the parties:

- (a) The amounts of wages and holiday pay outstanding;
- (b) Off-setting wages earned in one week against those earned in another week, or averaging wages out;
- (c) The significance of the loss of the block sheets;
- (d) Withholding payments on termination of employment;

⁴ This is also the latest recalculated amount.

- (e) Partners sharing rows;
- (f) Payment for training;
- (g) Lunch breaks.

[34] The issues I need to determine include issues (a) to (f) above and:

- (h) Whether the claimed breaches of legislation have been made out;
- (i) If so, whether penalties should be imposed, and if so;
- (j) How much the penalties should be; and
- (k) Costs.

[35] The Labour Inspector's most recent calculations (post-investigation meeting) have taken account of the days Precise claims were pre-employment training days and is not now seeking minimum wage payments for those days, so long as the employee signed their employment agreement after the training. Therefore, (g) is no longer an issue to be resolved for some employees. That was an appropriate concession for MBIE to make in the circumstances.

How the business operated and what records were kept

[36] This is a necessarily brief outline of how I understand Precise to have operated at the relevant time. Precise takes on contracts for pruning and/or other work on vineyards.

[37] Precise is paid for each 'block' it completes within a vineyard. It is paid a set price depending on the contract agreed between it and the vineyard owners. Precise pays its employees on a piece rate. Employees who are efficient workers work quickly enough to earn more on piece rates than the minimum wage per hour.

[38] New and slower employees may not earn as much from piece rates as the minimum wage per hour for every hour worked in a pay period.

[39] The pruning season lasts from about June until at the latest, into September.

[40] Some Precise employees are locals, who work every year. The majority of workers are recruited from backpacker accommodation around Blenheim and are travellers with temporary work visas.

[41] The issue about the payment of the minimum wage for each hour worked only comes into focus when an employee earns, on piece rates, less than the minimum wage for each hour worked.

[42] The correct legal position is that every week every employee is entitled to be paid for each hour of work at, *at least*, minimum wage rates. That is why it is called the *minimum* wage.

[43] Precise, and some other contracting companies, run a training and vineyard experience course for which potential employees are charged \$30 for the day. The trainer demonstrates the kind of work the participants would be required to do, if they choose to take up the work. In some cases, the participants practice pruning a vine. The course also teaches participants more generally about the winemaking industry in New Zealand. Mr Riwaka leads a number of these courses. He also works as a supervisor for Precise.

[44] The types of records that were kept in 2014 from which Precise assessed how many hours each employee worked, what they should be paid, and what they were paid were:

- Individual time sheets completed by each employee for the whole week,
- Supervisor's timesheets recording the time worked each day,
- Block sheets which recorded which blocks and rows have been worked on and/or completed on a daily basis,
- MYOB records, and
- Bank account statements showing payments made to employees.

[45] In summary, Ms Burridge's evidence is that:

- Precise paid employees weekly.

- She did not rely solely on an employee's individual timesheet. If the supervisor's timesheet conflicted with that of an individual she preferred the supervisor's timesheet, especially if it recorded the employee having worked fewer hours. She did not double-check with the employees about their recorded hours.
- A number of employees did not record their unpaid lunch break and therefore, she took off about 45 minutes per day for the lunch break. She sometimes did that even if an employee had recorded a lower amount of time, e.g. 30 minutes, for their lunchbreak. She did not check back with the employees about how long they took for their lunch break.
- She relied on the block sheets to be able to pay out at piece rates. If a row had not been completed by the time the pay week ended, she did not pay any amount for that row until it was completed, usually the following week. She did not necessarily pay the minimum wage for that week for every hour worked. She was satisfied that it would work out when she averaged the amounts paid out in that week and the following week. This is one example of the Labour Inspector's concern that employees were not always getting paid the minimum wage for all hours worked in the pay period.
- If a row had been worked on by two people as partners, one employee on each side, she paid them each half the piece rate. That sometimes meant that Precise did not pay one or both partners the minimum wage for each hour of work in that pay period. It was also possible that the type of averaging out explained in the point above was practiced in this case too. The Labour Inspector's position is that both partners should have been paid the minimum wage for each hour worked in the pay period.
- Some block sheets were stolen over a three to four week period by an ex-employee and that meant it was not possible to provide adequate wages and time records for that period. Some employees were underpaid over that period but probably not paid under the minimum wage, just less than what they had earned on a piece rate.

- Some people who subsequently became employees recorded time on a timesheet for the training day. She did not pay them for that time, as she did not consider the employees were working that day.
- Some employees failed to account for their travel time and tried to claim pay for that time, which she did not allow.
- Precise could not afford to employ sufficient supervisors to oversee the work times of all employees.
- Precise withheld money from the final pay of employees who failed to return tools provided by Precise, which Ms Burrige valued at \$250 per employee.
- Employees had money withheld from their final pay if they failed to give at least one week's notice. Usually the employees who gave inadequate notice were the same ones who failed to return the tools.
- Precise paid some employees cash advances on their wages. Not all of the cash advances were recorded in one place. Precise recorded some cash advances in a document it no longer has access to. If someone had been given a cash advance, they would be paid less than the minimum wage for every hour worked the following week, because Precise deducted the cash advance.
- The amounts actually paid out to employees were demonstrated in Precise's bank account records.

Claims – one by one

Failure to keep adequate wages and time records

[46] Section 8A of the MWA provides that:

- (1) Every employer who employs any worker whose wages or rates of wages are prescribed or paid pursuant to this Act shall keep a record (called the wages and time record) showing, in the case of each such worker -
 - (a) the name of the worker:
 - (b) the worker's age, if under 20 years of age:
 - (c) the worker's postal address:
 - (d) the kind of work on which the worker is usually employed:
 - (e) the contract of service under which the worker is employed:
 - (f) the classification or designation of the worker according to which the worker is paid:

- (g) the hours between which the worker is employed on each day, and the days of the worker's employment during each week:
- (h) the wages paid to the worker each week and the method of calculation:
- (i) such other particulars as are prescribed.

[47] Ms Tait submitted that it is evident that Precise did not keep compliant adequate wages and time records for every employee and, specifically, there was no reliable record kept of the hours worked each day, and, in particular, no record kept of the method of calculation of the weekly wages paid to each employee.

[48] Precise's view as expressed in the statement in reply is:

Adequate wage records have been kept

[49] Along with the statement in reply Ms Burrige provide the following documents to prove that precise had kept adequate wages and time records:

cop(ies) of time sheets, spread sheets, personal time sheets, block sheet which workers write on and supervisors monitor min. wage

cop(ies) of wage records to see holiday pay is pd regular ...

[50] At the investigation meeting, Ms Burrige and Mr Riwaka continued to insist that adequate wages and time (and holiday and leave) records had been kept because every document provided, when taken together, allowed the Labour Inspector to work out what the pay for each employee should have been and what was paid.

[51] The Labour Inspector accepts, and so do I, that Precise kept a partial record of the hours and days worked by the employees in the form of timesheets. However, not all timesheets are there and Precise itself contends that not all timesheets are accurate.

[52] Precise provided documents to the Labour Inspector and to the Authority in a piecemeal way over several months, on each day of the three-day investigation meeting and subsequently. This leads naturally to the conclusion that the records that were kept in 2014 were wholly inadequate in terms of s 8A of the MWA.

[53] One simple example of the failure to keep adequate records relates to the obligation to record each employee's name in a wages and time record. Some employees were known by more than one name. For example, they went by their given personal name from their home country as well as a personally chosen name they were known by in New Zealand. For a large number of those employees there

were entries apparently referring to them by either or both names with no clear record kept that assured that Precise and the Labour Inspector knew from the records that the two names referred to the same person.

[54] Another significant failing is that Precise failed to record the method of calculation for each employee for each pay-period week. On numerous occasions, Precise made decisions not to pay the employee for the hours they had recorded in their own timesheet, but relied on supervisor's timesheets instead. In addition, Precise sometimes reduced pay because of a cash advance made earlier. That decision to pay an employee less because of a cash advance was not necessarily recorded in writing. Therefore, employees, and the Labour Inspector, were not able to work out whether individuals had been paid appropriately.

[55] Although Ms Burridge says there was a record of the method of wage calculation maintained she has not supplied evidence of that. The MYOB weekly pay information is insufficient.

[56] There are a number of gaps in information that extend beyond the four-week period over which block sheets went missing. Ms Burridge relies heavily on that theft as the explanation for the 2014 season being a difficult one. However, the lack of those sheets need not have and should not have affected the ability to keep accurate time records, although the wages may have needed to be topped up, above the minimum wage based on piece rates, at a later date.

[57] I am satisfied that there was a significant breach of Precise's obligation to keep a wages and time record that complied with s 8A of the MWA during the 2014 pruning season.

[58] The lack of an adequate and accurate wages and time record has made the task of calculating whether minimum entitlements were met very difficult for the Labour Inspectorate and for the Authority.

[59] Keeping accurate and adequate records is a requirement that protects both employees and employers.

[60] Ms Burridge assured me that she now kept records in a spreadsheet. She believes that Precise now complies with its record keeping obligations.

[61] I know that Precise also uses MYOB software which will automatically calculate annual leave owed, for example. However, spreadsheets and MYOB and other payroll programmes are dependent on an employer's good understanding of their obligation to keep adequate records and the sufficiency of data entered into them.

Failure to keep adequate holiday and leave records

[62] Section 81 of the HA provides that an employer must:

at all times keep a holiday and leave record showing, in the case of each employee employed by the employer, the following information:

(a) the name of the employee:

(b) the date on which the employee's employment commenced:

(c) the number of hours worked each day in a pay period and the pay for those hours:

(d) the employee's current entitlement to annual holidays:

(e) the date on which the employee last became entitled to annual holidays:

(f) the employee's current entitlement to sick leave:

(g) the dates on which any annual holiday, sick leave, or bereavement leave has been taken:

(h) the amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken:

(ha) the portion of any annual holidays that have been paid out in each entitlement year (if applicable):

(hb) the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable):

(i) the dates of, and payments for, any public holiday on which the employee worked:

(j) the number of hours that the employee worked on any public holiday:

(ja) the day or part of any public holiday specified in section 44(1) agreed to be transferred under section 44A or 44B and the calendar day or period of 24 hours to which it has been transferred (if applicable):

(k) the date on which the employee became entitled to any alternative holiday:

(l) the details of the dates of, and payments for, any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to holiday pay:

(m) the cash value of any board or lodgings, as agreed or determined under section 10:

(n) the details of any payment to which the employee is entitled under section 61(3) (which relates to payment in exchange for an alternative holiday):

(o) the date of the termination of the employee's employment (if applicable):

(p) the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable):

(q) any other particulars that may be prescribed.

(3) The holiday and leave record must be kept—

(a) in written form; or

(b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.

[63] I accept Ms Burridge's evidence that the majority of the relevant employees worked for less than six months and consequently were not eligible to take paid annual holidays.

[64] In her submissions, Ms Burridge denied that Precise failed to keep holiday and leave records:

as I use a MYOB program that records and calculates annual holiday pay. ... therefore no one work(s) a whole year. The MYOB program calculates the 8% holiday pay. It shows separate on each pay slip. ...

I do keep all the records they are in the MYOB program.

[65] However, Precise was obliged to keep records that were compliant with all the requirements that applied to its workforce. That would have at very least needed to meet the requirements in s 81(2)(a)-(d), and (o) and (p).

[66] I have seen a MYOB printout of the programme that is used to calculate weekly payroll. It does calculate 8% annual pay but it is not otherwise fully compliant with the requirements of s 81 of the Holidays Act. I am satisfied that Precise did not keep a compliant holiday and leave record as required under s 81 of the HA.

Did Precise fail to provide access to holiday and leave records?

[67] In submissions, counsel for the Labour Inspector claimed that Precise committed a breach of s 82 of the HA, by failing to provide access to holiday and leave records. I note that it is self-evident that if an employer did not keep such records they could not provide access to them. However, the Labour Inspector did not request access to the holiday and leave records of all staff in the Improvement Notice.

[68] There are no grounds to make a separate finding that Precise failed to provide access to holiday and leave records.

Payment of minimum wage arrears and holiday pay

[69] The arrears have been calculated by the Labour Inspector from the timesheets provided and any bank records provided. They are set out in a spreadsheet. The Labour Inspector amended his calculations taking into account all information and documents provided on behalf of Precise.

[70] Ms Burridge submits that the amounts claimed have been wrongly calculated by Mr Hixon and that Precise cannot owe as much as is claimed.

[71] Most of the evidence Precise provided related to the claims for payment of minimum wage and payment of sufficient holiday pay.

[72] In Precise's statement in reply Ms Burridge wrote

The applicant's calculations are totally incorrect with significant errors in the facts and calculations and that minimum wage and holiday pay has been paid regularly.

[73] She included her own spreadsheet, based on the applicant's spreadsheet, and provided:

Copies of time sheets, spread sheets, personal time sheets, block sheet which workers write on and supervisor's monitor min wage.
Copies of wage records to see holiday pay is paid regular ...

What records can I rely on?

[74] Section 228(1) of the Employment Relations Act 2000 (the ER Act) allows a Labour Inspector to bring an action on behalf of an employee, or employees, to recover any wages or holiday pay payable to the employee under the MWA or the HA.

[75] Sections 131 and 132 of the ER Act apply to actions commenced under s 228(1).

[76] Section 131 applies to any action to recover a default in wages or other money payable to the employee by the employer. The claims to recover minimum wage and holiday pay payments fall under s 131 of the ER Act.

[77] Section 132 applies when the employer has failed to keep a compliant wages and time record as required under the ER Act.

[78] Ms Tait submitted that Precise's failure to keep adequate records under s 8A of the MWA is so similar to a failure to keep adequate wages and time records under s 130 of the ER Act, that I should adopt an analogous position to that set out under s 132 of the ER Act.

[79] Section 132 of the ER Act allows the Authority to accept all claims made by the employee in respect of hours, days and time worked by the employee and the wages actually paid to the employee if the employer has not kept compliant records and that failure prejudices the employee's ability to make an accurate claim.

[80] The Labour Inspector claims that the lack of adequate wages and time and holiday and leave records masked underpayments and made it very difficult to assess what was owed, what was paid, and what may still be owed to individual employees. I accept that submission.

[81] However, the employer can displace the presumption of the reliability of the employee's evidence if they can prove the claims are incorrect.

[82] In reaching a decision about the amounts of wages and holiday pay outstanding, I need to resolve a number of issues on which Ms Burrige disagrees with the Labour Inspector's decisions about what hours were worked by certain employees, and with his calculations. That will let me decide whether to favour the Labour Inspector's method of calculation, or Precise's view of mistakes in the calculations.

Off-setting/averaging wages

[83] The practice of averaging out wages earned over more than one pay period is not legal. Throughout the investigation meeting, it was apparent that no matter how

many times and how many ways this was explained to Ms Burridge, and Mr Riwaka, they remained certain that the way Precise had done things was necessary in their industry.

[84] How an employer makes its money and how it agrees with employees they will be paid is immaterial for the purposes of my enquiry so long as each employee is paid *at least* the minimum wage for every hour worked in the relevant pay period.

[85] It is not acceptable to carry-over payment for time worked until the next pay period on the basis that a row had not been completed or that a block sheet was missing.

[86] The missing block sheets should only have affected Precise's ability to work out what piece-rates were due to employees *over and above the hourly minimum rate* that Precise had to pay them for the week just worked.

[87] I am satisfied that every employee should have been paid at least the minimum wage, of \$14.25 per hour at the time, for every hour worked in each pay period. Precise did not always pay its staff the minimum wage for each hour worked each week that way. Therefore, there are a number of breaches.

[88] What Precise calls the Labour Inspector's incorrect calculations are based on Precise's incorrect understanding and application of the law. The Labour Inspector has taken the correct approach to his calculations, taking account of the minimum wage requirements.

Partners sharing rows, and rows not completed within one pay period

[89] The issues of unfinished rows and partners sharing rows only have an impact on what an employee is owed through the piece-rate system. They are not relevant to the simple fact that each employee (even on a shared row) needs to be paid at least the minimum wage for every hour worked in a pay period.

[90] It is not acceptable to pay less than the minimum wage per hour per week when people partnered up to work on rows, or did not finish a row in a particular pay week.

[91] What Precise calls the Labour Inspector's incorrect calculations are based on Precise's incorrect understanding and application of the law. The Labour Inspector

has taken the correct approach to his calculations, taking account of the minimum wage requirements.

Loss of the block sheets

[92] For at least a four-week period within the 2014 pruning season, a misguided ex-employee removed the block sheets from the ends of rows during the working day. I accept that had a negative impact on how Precise could calculate the exact number of vines and rows that each employee had completed. This made it difficult for Precise and for employees who had earned over the minimum wage by virtue of the number of vines/rows they had pruned to have their exact earnings fairly calculated.

[93] Precise had to go through a difficult and labourious process to re-create the block sheets and I accept it took a number of weeks to sort out properly. However, this should have only affected employees' piece rate pay over and above the minimum wage.

[94] Every employee over the time affected by the missing block sheets had the right to be paid at least the minimum wage for every hour worked in the relevant pay period. Not every employee was paid the minimum wage in those weeks.

[95] What Precise calls the Labour Inspector's incorrect calculations are based on Precise's incorrect understanding and application of the law. The Labour Inspector has taken the correct approach to his calculations, taking account of the minimum wage requirements.

Withholding pay on termination of employment

Pruning tools

[96] Ms Burridge's evidence was that if an employee left without notice and/or left without returning the pruning tools⁵ allocated to them by Precise at the start of the season she made a decision to withhold their last week's pay owed, and/or their holiday pay, and/or the piece rates over and above the minimum wage.

[97] The amount withheld varied employee by employee because some employees were only owed a few hours or days of wages, and their annual pay was calculated at 8% of their earnings so if they had not earned much the holiday pay was not much.

⁵ Loppers, secateurs and a bag that ties around the waist.

[98] Ms Burridge valued the pruning tools at \$250 per employee, although there is no objective evidence of their purchase value or which sets of tools were issued brand new, or were previously used. Ms Burridge says that they were usually brand new or had new blades fitted.

[99] Sections 4 and 5 of the Wages Protection Act 1983 (the WPA) provide that unless an employer has written permission from an employee to withhold wages it cannot do so and must pay wages owed in full. That applies to annual holiday entitlement pay at the end of the employment relationship. Precise did not have written permission from employees to withhold pay of any kind if the tools were not returned. There were no legal grounds for Precise to withhold pay if a former employee did not return tools. Withholding pay in those circumstances was in contravention of the WPA. However, Precise is fortunate the Labour Inspector has not made a claim about this and no penalty is claimed.

[100] What Precise calls the Labour Inspector's incorrect calculations are based on Precise's incorrect understanding and application of the law. The Labour Inspector has taken the correct approach to his calculations, taking account of the minimum wage requirements.

No notice given

[101] Ms Burridge's evidence was that it was frustrating and difficult when employees left without notice. It was her practice to withhold pay, which included any holiday pay owed, from employee's who gave no notice. Or it was her practice to pay the piece rates earned in the previous week, but to withhold the top up to the minimum wage.

[102] The employment agreement used in 2014 required employees to give one week's notice. There was no written provision in those documents that proposed that money would be withheld if an employee failed to give notice. Therefore, the employees did not give their written permission to any amount being withheld if they failed to give notice.

[103] The provisions of the WPA apply to make Precise's withholding of an employee's wages/holiday pay unlawful.

[104] During the Labour Inspector's investigation into Precise Ms Burr ridge seemed to understand that he had told her that Precise was not entitled to withhold pay from employees who did not give correct, or any, notice.

[105] This led to Precise updating its standard employment agreement and providing the Labour Inspector and the Authority with an updated copy of an individual employment agreement, which was headed "Fixed Term Individual Employment Agreement".

[106] Ms Burr ridge handwrote at the top of the first page:

Our new contract. Hopefully nobody will fail to give us week notice (sic) and having them sign will stop them trying to challenge it.

[107] As part of clause 12 of the agreement, the following is included:

The Employee is required to give one week's notice. If the employee fails to give one week's notice you will not receive last week's pay. Please I am not kidding on this one please do not challenge it just give us one week's notice.
Thank you
I understand and agree to give Precise contracting one weeks' notice or I will pay a penalty of losing my last week's wage.

[108] Ms Burr ridge's evidence was that if an employee did not give notice it was not clear, if they did not show up for work one day, whether they were ill or had some other reason not to come to work just for that day. It was only when several days had passed without the employee coming to work that she assumed the employee had resigned.

[109] She found it annoying and inefficient. If she had been told immediately that the employee did not intend to return she would have been able to recruit another employee.

[110] However, her evidence was that Precise had no problems recruiting staff as they had arrangements or understandings with one or two backpackers' residences in Marlborough. They also recruited workers who had done the vineyard experience/training days, many of which were run by Mr Riwaka.

[111] The relevant 2014 employment agreements did not have clause 12.1 and I do not have to decide anything about clause 12.1, I mention it here because Ms

Burrige's written submissions rely to an extent on the importance of the notice period.

[112] It is usual for an employer to require an employee to give notice. However, even an expressed intention to withhold pay for lack of notice agreed to by an employee in writing may be unenforceable and illegal, opening an employer to the imposition of a penalty. Precise should be very clearly aware of that now as since my investigation meeting, and prior to the written submissions from counsel for the Labour Inspector and from Ms Burrige in relation to penalties, another Authority Member, Member van Keulen, issued a determination finding that clause 12.1 of Precise's individual employment agreement was a penalty clause, and was not enforceable.

[113] I hope that is very clear in Ms Burrige's mind now.

Payment for training days or courses

[114] The Labour Inspector is not pursuing wages claims relating to any people who completed training days if Precise can establish that the training took place before the parties entered into an employment relationship, and the participants were not paid and did not expect to be paid for undertaking the training.

[115] However, the Labour Inspector's counsel submits there is very little evidence to establish that the workers were attending training, as opposed to working, and doing on-the-job training on the dates Precise has identified.

[116] Also, there is evidence that at least prior to 2014 Precise entered into special conditions with employees that they would not be paid the minimum wage for the first week of work, as it was considered a training period.

[117] However, I note the one example of the special condition supplied by the Applicant was dated 2012. Ms Burrige's written submissions suggest that special condition no longer applied in 2014, and I accept that.

Lunchbreaks

[118] Ms Burrige's evidence is that even if an employee wrote on their timesheet that they took no lunch break, or that their lunch break was 30 minutes, she took 45

minutes off as unpaid time. Ms Burrige did not believe employees could have a lunch break shorter than 45 minutes.

[119] This was an ex-post facto explanation. Because there is no record of a method of calculation kept it is unclear when, and for what reason or reasons⁶, Ms Burrige made a downward adjustment to the number of hours recorded by the employee.

[120] The Labour Inspector's counsel points out that clause 5.1 of the employment agreement provides an employee must work for 8 hours per day "between the core hours of 7.30am til 4pm." This is a period of 8.5 hours per day. She submits that strongly supports the Labour Inspector's view that lunch breaks were more likely to have been only 30 minutes long.

[121] I agree. Insofar as the Labour Inspector's calculations of wages arrears are based on taking a 30-minute unpaid lunchbreak as written on an employee's timesheet into account, they are more correct than Precise's calculations of the minimum wage owed. In addition, insofar as the Labour Inspector has calculated that an employee needs to be paid for the time that they worked when they did not take a lunchbreak those calculations are more correct than Precise's calculations.

Simon Halliday's evidence

[122] In preparation for the investigation meeting, Ms Burrige took professional accounting advice from Simon Halliday. Mr Halliday is not Precise's accountant in an ongoing sense, for example, he has not done its annual accounts. Mr Halliday did not do an audit of wages and holiday pay in the way the Labour Inspector had.

[123] Instead, he and Ms Burrige went through the Labour Inspector's spreadsheets and Mr Holliday asked for Ms Burrige's reasons for disagreeing with the Labour Inspector's calculations, employee by employee.

[124] After hearing his evidence at the investigation meeting, my impression of Mr Halliday's approach was that he accepted unconditionally Ms Burrige's explanation for why wages and/or holiday pay had been withheld from employees, or why Precise paid employees for fewer hours than they had written on their timesheets. For example, in relation to some employees he stated they were paid the minimum wage

⁶ Another reason given was that the supervisor's timesheets were more reliable.

in a later pay period. However, he had not seen any written evidence of this, and certainly did not provide any written evidence to support his conclusions.

[125] In relation to his conclusions about a number of employees that counsel and I questioned him on, Mr Halliday had simply accepted Ms Burridge's explanations despite not knowing whether her approach was legal or not. In other words, I do not consider in most cases that he made any useful financial analysis to challenge the Labour Inspector's findings but rather helped Ms Burridge to articulate and give reasons for what she had done. Unfortunately, that somehow allowed Ms Burridge to continue to believe she was entitled to act in the way that she had.

[126] Unfortunately, Mr Halliday was not able to add anything to my investigation by way of his professional accountancy expertise.

Payment in kind and being told to keep holiday pay

[127] Ms Burridge also presented evidence of a couple of occasions that she reached individual agreements with people who worked for Precise but were her personal friends. In one case, she and the former employee reached an amicable agreement that instead of being paid the employee would accept a saddle from Ms Burridge.

[128] Despite that arrangement being a mutually agreed one it was not in line with the law. Section 7 of the WPA provides that wages must be paid in money only. It is not legal to pay wages in any other way. Therefore, the Labour Inspector has calculated that this amount should be paid in money, and I agree.

[129] In another case, the employee asked Ms Burridge not pay her out her annual holiday entitlement at the end of the season but to hold onto it until the following season. However, this is in breach of s 27 of the HA which requires annual holiday pay to be paid out in the employee's final pay. Ms Burridge may have made arrangements to pay this amount already. If so, she should provide proof of that payment to the Labour Inspector.

[130] The Labour Inspector must deduct any payments made since the last assessment of wages and holiday pay owed.

Penalties

[131] Penalties are quasi-criminal and are imposed to punish the wrongdoer and deter others, rather than to compensate the party that has been wronged.

[132] Section 135 of the Employment Relations Act 2000 gives the Authority jurisdiction to deal with actions for recovery of penalties. Section 135 provides that a company is liable to penalty not exceeding \$20,000, for each breach.

[133] The factors I need to consider when determining whether to impose penalties have been usefully summarised in the recent Employment Court case of *Lumsden v SkyCity Management Limited*⁷

Section 133A⁸ sets out a number of factors which the Court must have regard to in determining an appropriate penalty. It is a non-exhaustive list and was not in force at the time the breaches in this case occurred. However, as a full Court has recently confirmed, the provision essentially confirms earlier case law and may be applied as a useful guide in the present case. The factors are:

- The object stated in s 3;
- the nature and extent of the breach or involvement in the breach;
- whether the breach was intentional, inadvertent, or negligent;
- the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach;
- whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach;
- the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee;
- whether the person in breach, or involved in the breach, has previously been found to have engaged in similar conduct.

⁷ [2017] NZEmpC 30.

⁸ Of the Employment Relations Act 2000.

As I have said, the above list is not exhaustive. In the present case I consider that two other matters are relevantly considered in terms of assessing the appropriateness of a penalty, and its quantum. The first is the need for general and particular deterrence. The second is the desirability of broad consistency with other penalties imposed in similar cases.⁹

[134] In addition, the Full Court of the Employment Court's decision in *Borsboom v Preet PVT Ltd and Warrington Discount Tobacco Limited*¹⁰ sets out a four-step method for assessing how to set penalties at the appropriate level.

[135] Penalties are being sought for breaches of:

- ss 6 and 8A of the MWA - those breaches have been proved;
- s 81 of the HA – failing to keep compliant holiday and leave records - that breach has been proved;
- ss 23 and 28 of the HA - a number of those breaches are proved because holiday pay of 8% was not paid to some employees with their wages.

[136] I consider that all the breaches of the minimum standards claimed to be proved. It is reasonable and just that I impose penalties in this case, as it involves a large number of breaches of minimum standards. Those breaches involved New Zealanders and migrant workers who were in New Zealand on temporary work visas. There is a need for general deterrence, particularly in industries such as viticulture that operate on piece rates, so that other employers know that breaching minimum standards will be taken seriously and will have negative consequences for them.

[137] There are no previous decided cases of the Authority or the Employment Court in which Precise has been found to have engaged in similar conduct, although there have been about 15 complaints to the Labour Inspectorate about minimum wage and holiday pay issues.

Assessing the quantum of the penalty

Step 1 - what is the nature and number of breaches

[138] The Labour Inspector is seeking penalties for:

⁹ At paragraphs [53] – [55].

¹⁰ [2016] NZEmpC 143 at [137]-[148].

- a. Failure to keep compliant wages and time records for 46 identified employees - s 8A MWA; and
- b. Non-payment of minimum wages to 68 employees – s 6 MWA;
- c. Non-payment and/or incorrect payment of annual holiday pay for 79 identified employees – ss 23 and 28 of the HA;
- d. Failure to keep compliant holiday and leave records for 83 employees– s 81 HA.

[139] There were 83 employees in the 2014 pruning season. The maximum quantum of penalties that could be imposed are \$5,520,000 made up of:

- a. $46 \times \$20,000 = \$ 920,000$
- b. $68 \times \$20,000 = \$1,360,000$
- c. $79 \times \$20,000 = \$1,580,000$
- d. $83 \times \$20,000 = \$1,660,000$

[140] One of the discretionary decisions I need to make in determining penalties is whether to globalise penalties for some breaches, or treat them as part of a single course of conduct.¹¹

[141] In *Preet* the Court said that:

... if, for example, there are multiple and very similar breaches ... it may be an appropriate case for the imposition of a global penalty for these. This may include cases where the breaches are part of a consistent pattern of breach of a particular statutory requirement. The Authority ... should be careful to ensure the globalisation of a penalty does not diminish the significance of a repeated and/or long-running series of breaches.¹²

[142] **Section 8A of the MWA** - in relation to the failure to keep compliant wages and time records over the whole season, I consider that rather than imposing a separate penalty in relation to every affected employee a global penalty is appropriate. That is because the lack of the correct type of system, although it went on for a

¹¹ *Preet* at paragraph [139].

¹² *Ibid*, paragraph [141]

number of weeks, is essentially one breach, although an on-going one. The maximum penalty for this breach is \$20,000.

[143] **Section 6 of the MWA** - in relation to 68 employees identified as not being paid the minimum wage for at least one pay period, I consider that it is not appropriate to globalise the penalties. That is because each employee was personally negatively affected by the fact that their hours of work were not paid for at least the legal minimum wage. I agree with counsel for the Labour Inspector, that the starting point for the penalty for this is $68 \times \$20,000 = \$1,360,000$.¹³

[144] **Sections 23 and 28 of the HA** - the failures to properly pay holiday pay affected each employee negatively and for this reason it is not appropriate to impose a globalised penalty. I agree with counsel for the Labour Inspector, that the starting point for the penalty for this $79 \times \$20,000 = \$1,580,000$.¹⁴

[145] **Section 81 of the HA** - the failure to keep compliant holiday and leave records is also a breach for which a globalised penalty is appropriate. That is because the lack of the correct type of system, although it went on for a number of weeks, is essentially one breach, although an on-going one. The maximum penalty for this breach is \$20,000.

Step 2 – aggravating and mitigating factors

[146] **Section 8A of the MWA** – the failure to keep compliant wages and time records is serious but not as serious as the failure to pay the minimum wage to affected employees. That brings me to an assessment of the severity of the breach as at 50% of the maximum.

[147] I cannot identify any mitigating factors other than Precise's attempt to comply with the Improvement Notice. However, ultimately, given that it did not keep adequate records it never could have properly complied. I do not consider this was a deliberate failure to comply, but simply a deeply ingrained and persistent misunderstanding that such requirements did not apply if employees were paid by piece rates.

[148] Therefore, I reduce the severity of the breach by 40%.

¹³ This is in line with the Employment Court's approach in *Preet* at paragraph [151].

¹⁴ This is in line with the Employment Court's approach in *Preet* at paragraph [151].

[149] **Section 6 of the MWA** – this is a much more serious breach that affected all underpaid staff.

[150] Aggravating factors include:

- The majority of the affected employees were foreign workers temporarily in New Zealand with very little knowledge of their rights. They were relatively vulnerable.
- The large number of affected employees.
- Continual attempts to justify underpayments despite being repeatedly told that the reasons Precise gave for withholding pay were unlawful.

[151] I assess the severity of the failure to pay minimum wage entitlements as 80%.

[152] Again, I do not find that the numerous breaches were deliberate in that they were made with knowledge of wrongdoing. However, ignorance of the law cannot excuse breaches of the law. The only other mitigating factor that I can identify is that Precise made a small number of payments as a result of these proceedings.

[153] That reduces the severity of the breach by 20%.

[154] **Sections 23 and 27 HA** – the failures to pay holiday pay are serious breaches, but not as serious as the failures to pay the minimum wage because of the lower amounts involved.

[155] Aggravating factors include:

- The majority of the affected employees were foreign workers temporarily in New Zealand with very little knowledge of their rights. They were relatively vulnerable.
- The large number of affected employees.
- Continual attempts to justify underpayments despite being repeatedly told that the reasons Precise gave for withholding pay were unlawful.

[156] I assess the severity of the failure to pay holiday entitlements as 60%.

[157] If some holiday payments have been made since the proceedings began that is a minor mitigating factor. Again, I take into account that Ms Burridge was firmly convinced right was on her side when she decided to withhold some holiday pay. I consider these factors reduce the severity of the failure by 20%.

[158] **Section 81 of the HA** – this is a less serious breach than the failure to pay holiday pay. I assess it as slightly less serious than the failure to keep compliant wages and time records. The severity of the breach in relation to the penalty is 50%.

[159] I cannot identify any mitigating factors other than Precise's attempt to comply with the Improvement Notice. However, ultimately, given that it did not keep adequate records it never could have properly complied. I do not consider this was a deliberate failure to comply, but simply a deeply ingrained and persistent misunderstanding that such requirements did not apply if employees were not going to work for a whole 12 months.

[160] Therefore, I reduce the severity of the breach by 40%.

[161] The total provisional penalty at the end of this Step is \$1,640,800.

Step 3 - Precise's financial circumstances

[162] This step requires me to consider the means and ability of the party in breach to pay the provisional penalty.

[163] Precise supplied financial reports to the end of March 2016, and Ms Burridge's tax summary to the end of March 2016. I asked for Ms Burridge's accounts as she is the sole director and shareholder of the company. She made representations at the investigation meeting that monetary orders might mean the company was unable to pay and might have to go out of business.

[164] I consider the accounts show that the company is a small operation and is not in a strong financial position. I disagree with counsel for the Labour Inspector that a reduction on this basis should only be small. I consider that the reduction needs to be 70%. Penalties remain at a significant amount for a small company with no cash reserves, even with this deduction.

Step 4 – proportionality of outcome, or totality test

[165] The requires assessing the outcome against similar cases decided since the *Preet* case, and:

... assessing the final provisional penalties by reference to all the relevant circumstances together, to determine whether they are justly proportionate to the seriousness of the breaches and the harm done by them. Potentially, this discretionary final consideration may result in an increase to that provisional figure, a decrease to it or an affirmation of its appropriateness in all the circumstances.

[166] I have concluded that it is just to reduce the penalties reached after the application of the first three steps.

[167] The first reason is that the penalties I impose should be in proportion to the amounts of money unlawfully withheld from Precise's employees because of Precise's breaches. The amounts in total are \$33,081.71, or slightly less, if some payments have been made since the investigation meeting. The provisional penalties are disproportionately larger than those sums that will be paid for the benefit of the employees.

[168] Secondly, I need to assess whether the level of penalties are such that Precise cannot pay them. According to *Preet*:

As a matter of principle, the [Authority] should not award penalties (or indeed make other orders) in respect of which there is little real prospect of compliance through genuine impecuniosity...

Another element of this final discretionary step is to bear in mind that if penalties are set at an unrealistically high level, defendants may not pay them at all and attempt to rearrange their corporate structure and financial affairs accordingly.¹⁵

[169] Next, I must assess the optimum deterrent effect of the penalties, both as they apply to Precise and more generally. This is a serious case and employers in like businesses need to be deterred.

[170] I have also looked at similar cases decided since the *Preet* decision.

[171] Given Precise's poor financial position, and the fact that it is important that it pay the amounts owed to the employees, I consider that the appropriate amount of penalties, taking all the circumstances into account, is \$40,000.

¹⁵ *Ibid*, paragraphs [191] and [192]

Costs

[172] Precise must pay the Labour Inspector \$71.56 for the cost of lodging these proceedings. I reserve any other costs.

[173] The Labour Inspector may apply for costs, if necessary.

Christine Hickey
Member of the Employment Relations Authority

Schedule A

**List of known employees of the respondent in alphabetical order
With Minimum Wages and Holiday Pay Owed**

| | Last Name | First Name | Minimum Wages Owed Gross | Holiday Pay Owed Gross | Total Gross Owed |
|------------|------------------|-------------------|---------------------------------|-------------------------------|-------------------------|
| 1. | Aruz | Jessica | 207.32 | 33.17 | 240.49 |
| 2. | Backman | Nick | 0.00 | 0.00 | 0.00 |
| 3. | Barrett | George | 0.00 | 299.67 | 299.67 |
| 4. | Bates | Pat | -97.00 | 144.94 | 47.94 |
| 5. | Bates | John JW | 915.56 | 192.61 | 1108.17 |
| 6. | Behns | Lena | 1091.56 | 137.50 | 1229.06 |
| 7. | Blaha | Petr | 26.18 | 80.00 | 106.18 |
| 8. | Brunton | Kelvin | 945.44 | 99.35 | 1044.79 |
| 9. | Bugler | Sara | 961.88 | 153.90 | 1115.78 |
| 10. | Burlot | Gaitan | 0.00 | 0.04 | 0.04 |
| 11. | Cabrera | Leandro | 738.20 | 89.67 | 827.87 |
| 12. | Caha | Lukas | 149.63 | 38.31 | 187.93 |
| 13. | Chek | Koh Chung | 375.97 | 126.66 | 502.62 |
| 14. | Cheng/Chang | Tew Tiong | 673.98 | 98.71 | 772.69 |
| 15. | Chiang | Wei Wei | 104.47 | 13.83 | 118.29 |
| 16. | Clayton | James | 00.00 | 0.00 | 0.00 |
| 17. | Corra | Diego | 68.73 | 11.00 | 79.73 |
| 18. | De Santo | Victoria Maria | 51.87 | 110.08 | 161.95 |
| 19. | Deer | Trina | 0.00 | 202.96 | 202.96 |
| 20. | Deitrich | Sonja | 5.20 | 0.84 | 6.04 |
| 21. | Denneau | Matt | 449.18 | 132.26 | 581.44 |
| 22. | Doberstein | Marcello | 31.35 | 25.47 | 56.82 |

| | | | | | |
|------------|------------|------------|---------|--------|---------|
| 23. | Dobson | Charles | 27.25 | 61.63 | 88.57 |
| 24. | Elliot | Glenn | 420.29 | 64.88 | 485.17 |
| 25. | Frangi | Marco | 661.53 | 98.43 | 759.97 |
| 26. | Gabriel | Julia | 193.47 | 21.84 | 215.31 |
| 27. | Gallo | Matias | 587.74 | 144.64 | 732.38 |
| 28. | Gotthardt | Franz | 193.30 | 54.37 | 247.67 |
| 29. | Haslam | Jenny | 664.35 | 103.45 | 767.80 |
| 30. | Haythorne | Gemma | 740.29 | 135.00 | 875.29 |
| 31. | Hodgkinson | Barbara | 501.26 | 32.00 | 533.26 |
| 32. | Hsieh | Chen Yin | 94.66 | 15.14 | 109.80 |
| 33. | Jackson | Dane | 1270.67 | 151.07 | 1421.73 |
| 34. | Jamieson | Nathan | 138.94 | 22.23 | 161.17 |
| 35. | Ju | Hyosun | 457.27 | 63.42 | 520.69 |
| 36. | Khaw | Julia | 558.29 | 112.29 | 670.58 |
| 37. | Kim | Tae Yon | 234.81 | 54.12 | 288.93 |
| 38. | Kim | Kimani | 42.67 | 3.98 | 46.65 |
| 39. | Kong | Chae Young | 471.79 | 34.76 | 508.54 |
| 40. | Kostolna | Zuzana | -196.86 | 20.78 | -176.08 |
| 41. | Krpoun | Michal | 555.75 | 88.92 | 644.67 |
| 42. | Le Goff | Evan | 13.19 | 19.98 | 33.17 |
| 43. | Lemesle | Julia | 42.24 | 22.11 | 64.35 |
| 44. | Lin | Caixa | 367.41 | 71.00 | 438.41 |
| 45. | Lippens | Jolin | 525.25 | 172.93 | 698.18 |
| 46. | Lowery | Marin | -56.94 | 17.60 | -39.34 |
| 47. | Mangne | Cedric | 53.82 | 3.60 | 57.42 |
| 48. | Marsden | Gabriel | 541.15 | 103.76 | 554.90 |

| | | | | | |
|------------|-----------|-------------|---------|---------|---------|
| 49. | Mason | James | 267.91 | 97.10 | 365.00 |
| 50. | Melisova | Eva | 728.33 | 105.70 | 834.03 |
| 51. | Messiter | Luke | 0.00 | 6.82 | 6.82 |
| 52. | Mian | Sim Su | 482.95 | 73.08 | 556.03 |
| 53. | Min | Yun | 248.00 | 39.68 | 287.68 |
| 54. | Moanaroa | H B | 99.75 | 98.57 | 198.32 |
| 55. | Morgan | Danny | 1686.80 | 248.64 | 1935.44 |
| 56. | Netzel | Malik | 180.98 | 28.95 | 209.93 |
| 57. | Novotny | Jan | 371.78 | 26.43 | 398.21 |
| 58. | O'Leary | Claire | 643.37 | 73.43 | 716.80 |
| 59. | Oezkaya | Mukin | 41.10 | 6.57 | 47.67 |
| 60. | Ong | Ko Xin | 766.63 | 122.66 | 889.29 |
| 61. | Palci | Francesco | 500.96 | 71.04 | 572.00 |
| 62. | Paulin | Chanel | 290.80 | 38.41 | 329.21 |
| 63. | Peit | Kroll | 858.62 | 91.31 | 949.93 |
| 64. | Peyreigne | Nathalie | 19.87 | 79.69 | 99.54 |
| 65. | Pilz | Jessica | 00.00 | 0.00 | 0.00 |
| 66. | Piries | Alexander | 186.84 | 17.28 | 204.12 |
| 67. | Poprawa | Leana/Leona | 0.00 | 3.28 | 3.28 |
| 68. | Qi | Zu | 241.50 | 93.55 | 335.05 |
| 69. | Riwaka | Thomas | 0.00 | -289.31 | -289.31 |
| 70. | Roessler | Kathrin | 479.06 | 76.64 | 555.70 |
| 71. | Sabri | Yanis | 495.29 | 79.24 | 574.53 |
| 72. | Schmidt | Vito | 390.56 | 62.47 | 453.03 |
| 73. | Seyller | Margaud | 393.99 | 20.95 | 414.94 |
| 74. | Sgarbi | Livia | 403.77 | 51.50 | 455.27 |

| | | | | | |
|------------|------------|----------------------------|--------|--------|--------|
| 75. | Slaba | Hana | 71.25 | 106.19 | 177.44 |
| 76. | Smith | Caleb | 302.10 | 44.91 | 347.01 |
| 77. | Sykes | Taiki | 0.00 | 26.79 | 26.79 |
| 78. | Tang | Jun Jie | 708.22 | 153.65 | 861.87 |
| 79. | Trapl | Franz/Frantisek / Frant | 545.82 | 137.91 | 683.73 |
| 80. | Van Opstal | Tim /Tom | 41.65 | 7.87 | 49.52 |
| 81. | Webb | Tim | 0.00 | 33.67 | 33.67 |
| 82. | Werner | Alex | 110.89 | 17.74 | 128.63 |
| 83. | Yamaguchi | Mariko | 268.08 | 4.84 | 272.91 |

Schedule B - Penalties

Precise Contracting Limited
83 employees affected overall

| | | |
|---------------------------------------------------------------------------------|-----------------|--------------------|
| <i>Step 1: Nature & number of breaches – potential maximum penalties</i> | | |
| WPA ¹⁶ – s 8A – globalised | | \$ 20,000 |
| WPA – s 6 – individual penalties – one breach x 68 employees | | \$1,360,000 |
| HA – ss 23 and 27 – taken together as one breach x 79 employees | | \$1,580,000 |
| HA ¹⁷ - s 81 - globalised | | \$ 20,000 |
| | Subtotal | \$2,980,000 |
| <i>Step 2: Aggravating factors as a proportion of maxima in Step 1</i> | | |
| WPA – s 8A – 50% | | \$ 10,000 |
| WPA – s 6 – 70% | | \$1,088,000 |
| HA – ss 23 and 27 – 60% | | \$ 948,000 |
| HA – s 81 – 50% | | \$ 10,000 |
| | Subtotal | \$2,056,000 |
| <i>Ameliorating/mitigating factors as a proportion of maxima in Step 1</i> | | |
| WPA – s 8A – less 40% | | \$ 6,000 |
| WPA – s 6 – less 20% | | \$ 870,400 |
| HA – ss 23 and 27 – less 20% | | \$ 758,400 |
| HA – s 81 – less 40% | | \$ 6,000 |
| | Subtotal | \$1,640,800 |
| <i>Step 3: Defendant's financial circumstances</i> | | |
| The defendant's circumstances are constrained and deduction of 70% is warranted | Subtotal | \$ 492,240 |
| <i>Step 4: Proportionality/totality test</i> | | |
| Reduce significantly | TOTAL | \$ 40,000 |

¹⁶ Wages Protection Act 1983

¹⁷ Holidays Act 1983