

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 157
3048992

BETWEEN A LABOUR INSPECTOR
Applicant

AND JUJHAR SINGH
Respondent

Member of Authority: Andrew Dallas

Representatives: Marija Ulrich, counsel for the Applicant
Peter Broad, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 27 February 2019 from the Applicant and 15 March
2019 from the Respondent

Date of Determination: 20 March 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This matter has a long history.¹ The Labour Inspector says Jujhar Singh has failed to make payments totalling \$119,338.37 as agreed in a consent determination² and as required by a timetable for payment subsequently promulgated Authority.³ Mr Singh does not deny he has not paid the amount in full but says he has made payments totalling \$49,338.37 in five tranches. The Labour Inspector says the outstanding balance of \$70,000 is due and owing.

¹ *A Labour Inspector v Binde Enterprises Limited* [2016] NZERA Auckland 399 and *A Labour Inspector v Singh* [2018] NZERA Auckland 60.

² *A Labour Inspector v Singh* [2018] NZERA Auckland 256

³ *A Labour Inspector v Singh* (No.2) [2018] NZERA Auckland 287

[2] The matter proceeded on the basis of affidavit evidence provided by the Labour Inspector and Mr Singh and submissions lodged by the parties' representatives. By agreement with the parties, this matter has been determined under s 174D(1) of the Employment Relations Act 2000 (the Act).

The Labour Inspector's submissions

[3] The Labour Inspector seeks compliance with Authority's timetabled orders for payment of \$119,338.37.⁴ The Labour Inspector says Mr Singh acknowledges his default but appears to say this is due to financial circumstances.

[4] The Labour Inspector said Mr Singh made representations to the Authority during the investigation meeting on 15 August 2018 that he would have access to \$90,000 in the short term. However, this amount has not been forthcoming.

[5] The Labour Inspector said Mr Singh would need to provide an affidavit setting out his financial circumstances if he wished these to be taken into account as a basis for the Authority to include an instalment arrangement for payment of the outstanding amount as part of any compliance order. Absent any such arrangement, the Labour Inspector said Mr Singh should be given 14 days to pay.

Mr Singh

[6] Mr Singh provided an affidavit setting out his financial position. Mr Singh said this was not a situation where he was simply refusing to pay the outstanding amount. Rather, he said he was not presently in a position to pay it.

[7] Presumably, in response to his representations at the Authority investigation meeting on 15 August 2018, Mr Singh said he had not been able to secure the significant funds he hoped, as he had been unable to sell his late model BMW for a "good price" and had only been able to borrow limited funds from friends and via his credit card.

⁴ Above n 3 at para [2].

[8] Mr Singh said he earns wages of \$6,000 a month as operations manager of Quick Staff Limited, a company owned and controlled by his wife, Harvinder Kaur. Mr Singh said in addition to this money, he receives approximately \$8,000 a month as shareholder income from Dhaliwal Construction Limited. Mr Singh said he is a director and one-third shareholder of Dhaliwal. He said he could make monthly payments of \$10,000 “at this point” until October 2019; thereby discharging the sum owed.

[9] Mr Singh said he had discussed the possibility of using his home as security for the amount but Ms Kaur had refused. The property is owed by a trust, which requires unanimous trustee (Mr Singh and Ms Kaur) decision-making. Mr Singh provided an otherwise very complex deed to the Authority as evidence of this requirement.

Compliance order

[10] Unfortunately, Mr Singh’s financial position may be more involved or complex than disclosed by him. Based on a cursory review of the Companies’ Office website he is a director and/or shareholder of up to 32 current (or former) companies and is associated with, at least, one further property. Complete disclosure of his financial interests was required for the Authority to consider a (further) instalment plan as part of any disposal of the matter before it.

[11] Standing back and assessing the situation, it is appropriate in all the circumstance of this case to make a compliance order. The Labour Inspector has been very patient in many of those circumstances but that patience has been exhausted. So, in turn, is the patience of the Authority. Consequently, Mr Singh must comply with the Authority’s determination of 15 August 2018 by paying the Labour Inspector the balance owing of **\$70,000** on or before **19 April 2019**.

[12] Failure by Mr Singh to comply with this compliance order may result in the Labour Inspector applying to the Employment Court to exercise its powers under s 140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

Costs

[13] Costs are reserved.

Andrew Dallas
Member of the Employment Relations Authority