

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 652
3319720

BETWEEN JOSHUA MCCLUNG
 Applicant

AND GURJEET SINGH
 Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Joshua McClung in person
 Gurjeet Singh in person

Investigation Meeting: 25 June 2025 in Tauranga and by AVL

Submissions and
information received: 26, 27 June, and 9, 22 and 23 July 2025 from the
 Applicant
 7 July 2025 from the Respondent

Determination: 16 October 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Joshua McClung says he was employed by Gurjeet Singh (also known as Babu) in January 2022 to do seasonal orchard work at various orchards in the Bay of Plenty. Mr Singh denies he was in an employment relationship with Mr McClung but says instead Mr McClung was employed briefly by his company Kiwifruit Horticulture Management Ltd (KHML) in March 2023. Mr McClung says Mr Singh orchestrated these payments to cover up migrant exploitation.

[2] Mr McClung seeks compensation, wage arrears from January 2022 until 28 June 2024, which is the date he says he was dismissed and penalties. The statement of problem lists nine claims:

- (a) failure then refusal to provide a written permanent employment agreement or any written employment agreement at all
- (b) failure to properly calculate and pay holiday pay entitlements
- (c) misuse of Mr McClung's IRD number
- (d) failure to pay sick leave entitlements
- (e) failure and refusal to pay annual leave entitlements
- (f) failure to issue accurate wage slips
- (g) discriminatory refusal to provide any employment
- (h) minimum wage act breaches
- (i) unjustified dismissal

[3] This determination resolves the issue of whether Mr McClung was an employee of Mr Singh. If there was an employment relationship Mr McClung's personal grievance and minimum entitlement claims can proceed. If Mr McClung was not an employee the Authority has no jurisdiction to resolve Mr McClung's claims.

The Authority's investigation

[4] The parties agreed the preliminary issue of whether Mr McClung was an employee would be initially resolved on the papers. Written witness statements were lodged from Mr McClung and from Gurjeet Singh. After the parties lodged their evidence the Authority made arrangements to hold an investigation meeting. Given there is a significant conflict in the evidence the parties were given an opportunity to answer questions under oath or affirmation to assist the Authority with its investigation.

[5] Mr Singh was supported at the investigation meeting by Sukhman Shidu who also translated for Mr Singh when necessary. Mr McClung attended by AVL. Both parties answered questions under oath or affirmation from the Authority.

[6] As permitted by s 174E of 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 issue

[7] The preliminary issue is whether Mr McClung was an employee of Mr Singh. Mr McClung says Mr Singh personally employed him in January 2022. Mr McClung relies on his recollection of a verbal conversation on his first day at Bruntwood Farms Orchard as the basis for the existence of an oral agreement reached between the parties to support his position he was an employee of Mr Singh.

[8] The test for determining whether a person is an employee is set out in s 6 of the Act. An employee is defined as any person who is employed by an employer to do any work for hire or reward under a contract of service. In determining whether a person is employed by another person under a contract of service, the Authority must determine the real nature of the relationship between them and in doing that must consider:¹

- (a) all relevant matters, including any matters that indicate the intention of the persons, and
- (b) must not treat as a determining matter any statement by the persons that describes the nature of their relationship.

Mr McClung says he was employed by Mr Singh from January 2022 to 28 June 2024

[9] Mr McClung was working for an employer called Ashwani Kumar Enterprises (Ashwani) and he says his employment transferred from Ashwani to Mr Singh in January 2022. He says Ashwani contacted Mr Singh, put in a good word and gave Mr McClung a location to meet Mr Singh. The location was Bruntwood Farms Orchard. Mr McClung said on the first morning he introduced himself to Mr Singh and they got straight into work.

¹ Employment Relations Act 2000, s 6(2) and (3).

[10] Mr McClung described the conversation on the first day in this way:

On the first day I told Mr Singh that Ashwani had mentioned that he had permanent employment available for me and Mr Singh confirmed that he did indeed, I therefore accepted the permanent position as the basis of my employment with him, there was no trial period or casual employment. I already came highly recommended as a knowledgeable and skilled employee by Ashwani.

[11] Mr McClung says he worked for a couple of months at more than one orchard under the direction of Mr Singh who told him where to go and what work to do until the harvest started in March 2022 at which time Mr McClung went to work elsewhere. Mr McClung says he went back to work for Mr Singh in late May early June 2022 and then worked consistently for Mr Singh until the end of 2022. Over Christmas and New Year he had a two week break before recommencing work until March 2023.

[12] Mr McClung says it was agreed between them that he would go and work elsewhere until the end of the packing/picking season until he had his company properly organised and up and running. Mr McClung said they were in constant communication planning the upcoming winter pruning but neither party has any record of those communications. Mr Singh blocked and removed Mr McClung from his WhatsApp towards the end of 2023 and Mr McClung has a new phone and cannot access old messages.

[13] Mr McClung said something changed in the relationship between Mr Singh and Ashwani in late March 2022 and Mr McClung was no longer paid wages via the Ashwani payroll system. He says Mr Singh became solely responsible for his “wage payments in addition to my employment” and this was when things started to go wrong. He received no wages in June 2022 and Mr Singh said he would pay him when his client paid him and promised to issue him a permanent employment agreement soon. He told Mr Singh he needed a permanent position and a written employment agreement because he needed to take out a personal loan and the bank required him to have at least four weeks income of not less than \$1000 per week and a permanent employment agreement.

[14] In July 2022, Mr McClung received no wages but followed Mr Singh's directions to start winter pruning at several different orchards. In July, Mr McClung needed a written permanent employment agreement urgently to assist his partner with a Partnership Visa Application. He says he told Mr Singh this and kept working under the direction of Mr Singh waiting for Mr Singh to pay his wage arrears and give him a written employment agreement for a permanent position. In August, he says Mr Singh directed him to begin summer work including pole work at a different orchard.

[15] The messages between them show Mr McClung telling Mr Singh he intended to purchase a new work vehicle and needed \$40,000 to \$50,000 and that as he would be paying for it partly on finance that required him to have a permanent reliable income with a written employment agreement with regular documented wage payments. He says Mr Singh acknowledged this and explained that as he was new to labour hire contracting, he needed time to register his company and apply for the relevant accreditations and said he would have cashflow problems from time to time during the start-up phase. He also says Mr Singh said any wage arrears would be paid out at a supervisor level.

[16] October and November 2022 were the same and in November he says there is independent evidence Mr Singh sent him to supervise cane training at another orchard because a health and safety sign in sheet shows this. December was spent working largely at one orchard and he attended an end of year break up BBQ. After the Christmas shut down Mr McClung and his partner purchased an RV and lived and worked at an orchard.

[17] Mr McClung said in approximately March 2023 he and his wife were talking to Tuariki Delamere who was pressing them for documents needed for immigration purposes. One such document was a permanent employment agreement. In mid-March 2023, Mr McClung says he received one pay slip from KHML which he says was a complete surprise because Mr Singh has not told him he had registered his company. Mr McClung says this payslip is correct in that it is for actual work he did at an orchard but incorrectly records his total income which started in June 2022 and should have been around 10 months continuous wages at \$29.50 per hour for not less than 60 hours per week.

[18] In April 2023, Mr McClung says with no written employment agreement for a permanent position, wage documentation, no wages, or a supervisor's position available to him from Mr Singh he and his wife packed up their RV and went on unpaid leave and sick leave to the Coromandel to destress themselves. He received two further payslips from KHML for picking work that included Easter Monday which he says are fraudulent because he and his wife were away in the Coromandel. Mr Singh says those two additional payments were made in error and KMHL seeks to recover those as overpayments from Mr McClung.

[19] In May 2023, Mr McClung says Mr Singh started to say he was running short of work and when Mr McClung pressed him about two bogus wage slips from KHML he told Mr McClung about an incident at an orchard that was supposedly putting him under pressure. Mr McClung kept communicating with Mr Singh until approximately December 2023 at which point Mr Singh deleted him from WhatsApp. Mr McClung started messaging others and engaging with them about Mr Singh. Mr McClung says the messages show Mr Singh knew he owed wage arrears and was avoiding his responsibilities.

[20] In November 2023, Mr McClung's wife was granted a temporary visa and messages indicate Mr McClung blames Mr Singh for not providing a written permanent employment agreement and wage documentation causing delays with Mr McClung's wife's visa application.

[21] Mr McClung says he was employed by Mr Singh right up until 28 June 2024. He explains how he went about establishing an end date for the purpose of his application to the Authority. Mr McClung asked Mr Singh on 27 June 2024 whether he had any orchard work available. Because Mr Singh admitted to having one month's picking and pruning work before the end of the season and he did not offer Mr McClung any work that was the point in time Mr McClung says he was dismissed.

[22] Mr McClung lodged his statement of problem in the Authority on 27 August 2024.

Mr Singh says there was no employment relationship with Mr McClung

[23] Mr Singh says he met Mr McClung at Bruntwood Farms Orchard at a time when they were both employed by different employers and they were friends. He says at no point was he ever Mr McClung's employer. Mr Singh was an employee of another contracting company and his own business KHML was not up and running until 2023. He explained they had discussed the idea of setting up a company together to provide labour to the industry in the area but that never eventuated as a joint venture because Mr McClung did not want to share the costs of getting started. Mr Singh incorporated KHML and says KHML did employ Mr McClung for a very short period of time in March 2023 but he never employed Mr McClung.

[24] Mr Singh points to the wages Mr McClung received from Ashwani at a time when Mr McClung says Mr Singh was his employer. Mr McClung goes on to explain there was an agreement between Mr Singh and Ashwani that he worked for Mr Singh but Ashwani pay his wages. The basis for Mr McClung's belief there was collaboration between Mr Singh and Ashwani is tied back to Mr McClung's views of wrongdoing by several employers in the orchard industry. There is nothing to support those assertions and it is denied by Mr Singh.

[25] Mr Singh's messages are consistent with his evidence they had been friends and he did what he could to assist Mr McClung until communications took a different turn and Mr McClung started accusing him of improper employment practices and demanding meetings to discuss a written permanent employment agreement and to give him work. After Mr McClung proposed Mr Singh finance a vehicle for him through his company and Mr McClung would make the repayments so long as Mr Singh gave him permanent employment, Mr Singh said the communications had become coercive and he stopped communicating with Mr McClung. Having read those messages that appears to be a reasonable conclusion to reach.

KHML payments

[26] The payments from KHML to Mr McClung are not directly relevant to the question of whether Mr McClung was an employee of Mr Singh's but they do provide context to the relationship between the parties. Mr McClung says they are evidence of

corruption and wrongdoing by Mr Singh. Mr Singh strongly refutes that saying Mr McClung worked for KHML for one week in 2023. After this Mr Singh says Mr McClung started harassing him and threatened to ruin his business unless Mr Singh paid him large amounts of money. Mr Singh says the threats included filing false complaints against him, threats to involve gangs to intimidate Mr Singh and his family and spreading false information to damage his reputation. Mr Singh says Mr McClung's actions have caused significant harm to his reputation and business relationships.

[27] It seems there was employment with KHML for a short period of time in 2023 but that does not advance Mr McClung's position that he was employed by Mr Singh. The fact mediation was arranged naming KHML as the employer also undermines Mr McClung's position that Mr Singh was his employer.

[28] On 29 May 2023, Mr Singh paid Mr McClung \$500.00. Mr McClung points to this as evidence of employment with Mr Singh. Mr Singh provided text messages on the same day that supports his evidence that this payment was not wages. He said Mr McClung asked to borrow money to help with his car so he could get his wife to her prenatal appointment. Messages show Mr Singh saying he was "doing 500". Mr McClung replies "yes thanks mate" and then "Ok I have it, thanks Babu". Later that night Mr McClung sends pictures of the ultrasound scan of a baby to Mr Singh saying "I hope it is a boy mate". The descriptor for the payment into Mr McClung's bank account is "Josh Help Oil". The text messages support Mr Singh's evidence that this payment was the result of a private agreement between them and not connected with employment.

Was there work for hire or reward?

[29] There is a complete conflict in the evidence between Mr Singh and Mr McClung about whether an employment relationship was entered into and whether Mr McClung carried out work for Mr Singh as his employer. Mr Singh says he not only had no knowledge of such an agreement but also could not have intended to employ Mr McClung in January 2022 because he was working for another contracting company at the time. He also notes Mr McClung admits he was working for Ashwani in January

2022 and received wages and pay slips from Ashwani up until the end of March 2022 so it makes no sense that Mr Singh would employ him personally.

[30] Both parties agree Mr McClung left and worked elsewhere from the end of March for several months. That coincides with Mr McClung's last wage payments from Ashwani. Mr McClung says he came back and worked for Mr Singh until the end of 2022 and into early 2023 and has claimed he is owed wage and holiday arrears for the period January 2022 through to 28 June 2024. At the investigation meeting he was asked how he got by if he was not being paid wages and he said he was on a WINZ benefit and his IR record confirms this. He was asked why he worked for such a long period of time if he was not receiving wages and his answer was that his priority was his wife and he needed permanent work.

[28] No evidence was proffered by Mr McClung to support his statement that Mr Singh had entered into an employment relationship with him when he arrived at Bruntwood Farms Orchard in January 2022. Mr McClung's IR records confirm his income from Ashwani ended in March 2022. That is consistent with Mr McClung's statement that he left to work elsewhere at that time.

[31] Mr McClung says he returned in approximately July 2022 and worked for Mr Singh until the end of the year and into 2023 but was paid no wages. The IR records confirm Mr McClung received a benefit from the Ministry of Social Development from 1 April 2022 to 31 March 2023. Benefit payments commenced at the same time as payments from Ashwani ended.

[32] There is no doubt Mr Singh and Mr McClung knew each other but there is insufficient evidence an employment relationship was entered into in January 2022 and continued to 28 June 2024. Mr McClung's income from Ashwani covering the period he says Mr Singh employed him undermines his statement Mr Singh personally employed him to perform work at Bruntwood Farms Orchard. Mr McClung's assertion the wage payments are explainable is based on allegations of corruption and wrongdoing in the industry is not supported by any evidence and it is denied by Mr Singh.

[33] There is no written evidence of employment and no evidence of any wage payments from Mr Singh to Mr McClung. There is no correspondence between the parties evidencing any work arrangement. While the lack of any written agreement and correspondence is not fatal to finding an employment relationship may have existed, it is unusual for there to be not only no correspondence but also no wage payments from Mr Singh. In addition, mediation services were engaged in an attempt to resolve Mr McClung's grievances but the employer on record is KHML not Mr Singh.

[34] There is nothing to indicate a shared intention to form an employment relationship. The conversation on the first day that Mr McClung relies on did not touch on key terms and conditions of employment such as wages and hours. Without evidence as to the key terms being agreed upon it is unlikely the Authority could be satisfied an employment relationship was entered into. There was a short period of employment with KHML in March 2023 but that does not assist with whether Mr Singh employed Mr McClung in January 2022.

[35] I also note none of Mr McClung's messages, either individually or read as a whole clearly put Mr Singh on notice of the situation Mr McClung advances in the Authority now. That is that an employment relationship commenced in January 2022 and continued all the way through to June 2024. Mr McClung's messages towards the end of 2023 show him reaching out and wanting to catch up with Mr Singh in a manner that suggests there had been a break in their contact and therefore work. That is inconsistent with the narrative recorded in Mr McClung's statements to the Authority and with someone owed wages arrears for the entire duration of the employment relationship.

[36] Mr McClung points to at least two meetings he had with Mr Singh in early 2024 and says Mr Singh said he had access to money and would correct the wage arrears but could not give it to Mr McClung all at once because he was saving for a house. Mr Singh gave very little evidence about those meetings other than to say what Mr McClung stated he had said was incorrect. The short point about those meetings is that they do not necessarily provide evidence of an employment relationship between Mr Singh and Mr McClung. They were known to each other and had been friends. I accept Mr Singh's evidence he loaned money to Mr McClung and tried to assist where possible but also that Mr McClung's communications had become coercive by that stage.

[37] The sign in sheets are also not sufficient on their own to show Mr McClung was an employee of Mr Singh. The name of the company recorded as being associated with Mr McClung's name on the sheet is not Mr Singh's company. There is a company registered with the Companies Office having that name. The text message from the orchard about transferring the information request (for the sign in sheets) to KHML also does not take Mr McClung any further with proving Mr Singh employed him. The photos and the video allegedly showing Mr McClung undertaking orchard work fall into the same category.

[38] In terms of a dismissal on 28 June 2024, Mr McClung's evidence was that he needed a termination date for the purposes of lodging his statement of claim in the Authority. He embarked on a series of messages with Mr Singh to identify a termination date. At no stage did Mr Singh indicate they were communicating about an employment relationship that had existed for over two years. What he did indicate was that in general there was only about one month's work left at the end of the season and what he did say was not consistent with terminating a permanent employee from employment. There were numerous inconsistencies between Mr McClung's narrative and the messages between the parties.

[39] I am persuaded by Mr Singh's evidence. They were known to each other and at one time had discussed going into business together but Mr Singh did not employ Mr McClung in January 2022. There may have been a different arrangement, however, it is not necessary for me to consider that or determine the balance of Mr McClung's claims. There is sufficient information before me to conclude on the balance of probabilities that there was no employment relationship between the parties.

Controlling third party applications

[40] Mr McClung also lodged two separate statements of problem applying to have Hume Pack N Cool Limited and Gavin Hume joined as controlling third parties to the proceeding against Gurjeet Singh.²

² 3323480 and 3321820.

[41] At a case management conference on 3 December 2024, the parties agreed to adjourn those matters until it had been established there was an employment relationship between Mr Singh and Mr McClung.

[42] As a consequence of the finding above those matters cannot proceed as there are no grievances they can be linked to. Those files will be closed.

Costs

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

[44] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Singh may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Mr McClung will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[45] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.³

Sarah Kennedy-Martin
Member of the Employment Relations Authority

³ www.era.govt.nz/determinations/awarding-costs-remedies