

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 18
3275459

BETWEEN	PAYAL PAYAL Applicant
AND	JB HOSPITALITY LIMITED First Respondent
AND	MANPREET SINGH Second Respondent

Member of Authority:	Sarah Kennedy-Martin
Representatives:	Mo Shomade, counsel for the Applicant Daler Singh for the Respondents
Investigation Meeting:	5 December 2024 in Palmerston North
Submissions and further information received:	24 December 2024, 5 April 2025 and up to 17 December 2025 from the Applicant 11 December 2024 and 13 May 2025 and up to 19 December 2025 from the Respondent
Determination:	13 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Payal (also known as Sammy or Sam) was issued with an Accredited Employer Work Visa and travelled to New Zealand to work for JB Hospitality Limited (JBHL) in Palmerston North in July 2023. She was employed as a duty manager at the Stunned Mullet Bar. Payal claims she was constructively dismissed because of how she was treated by JBHL including not being paid wages for the first month or for all the hours she worked once wage payments started. Payal also says she was instructed to pay her wages to another employee and was required to make a payment to secure her employment in New Zealand (the premium payment) before she left India. She seeks

compensation, wage and holiday arrears, lost wages, repayment of the premium payments and penalties.

[2] Manpreet Singh, (also known as Maddy), is the sole director and shareholder of JBHL. JBHL is a company listed on the New Zealand Companies Register. Manpreet Singh says he was put in touch with Payal in India by his brother Daler Singh at a time when he needed a new employee. Arrangements were made, an individual employment agreement was signed and Payal's visa was issued before she travelled to New Zealand.

[3] Manpreet Singh denies requesting or receiving any premium payments from Payal or her family and says all wages were paid. He says Payal stopped coming to work and misrepresented her abilities with English, was a poor worker, lacked the skills to be a duty manager and had a plan to defame his business. There are no wage and time records available because he says were stolen from his office around the time Payal's employment ended.

[4] There is reference to a sexual harassment allegation in the parties' evidence. No evidence of conduct that reaches the threshold of harassment was provided to the Authority. Payal made a statement to Police. Police took no further action closed and its file. What is recorded in Payal's statement to Police is her description of the employment relationship. This includes not being paid for all the work she did and what Manpreet Singh said to her once he knew she was talking to Police and the local Council in relation to her employment. I will return to that below.

The Authority's investigation

[5] For the Authority's investigation written witness statements were lodged from Payal, Chevera Nichols, friend and business owner, Monika Rana, flatmate and Sonia, Payal's mother. On behalf of the respondents' statements were lodged from Manpreet Singh before he left to go overseas, Daler Singh and Paras Kapoor. Amandeep Kaur and Warren McLaughlin also provided written statements on behalf of the respondents but did not attend the investigation to give in person evidence. While Mr Kapoor did attend the investigation meeting he left before giving evidence. The written statements from witnesses who did not give oral evidence under oath or affirmation and who were not available for questions from the Authority or Payal have not been considered. All

other witnesses answered questions under oath or affirmation from me and the parties' representatives.

[6] There were delays in resolving this matter. Manpreet Singh's representative at the time provided a medical certificate in July 2024 and the first scheduled investigation meeting was adjourned from 3 September 2024 to 5 December 2024. Manpreet Singh remained overseas and unwell but arranged for his brother Daler Singh to attend the investigation meeting on behalf of the respondents.

[7] After the investigation meeting the Authority requested further documentary evidence from both parties and further information from Immigration New Zealand. Ms Shomade provided written submissions on behalf of Payal. Manpreet Singh advised no written submission would be provided and asked the Authority to consider the information in his written statement as his submission.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[9] The issues requiring investigation and determination are:

- (a) Was a premium charged for employment and if so, should it be refunded;
- (b) Should the circumstances leading up to Payal's employment ending be treated as a constructive dismissal and if so, what remedies should flow;
- (c) If not constructively dismissed, was Payal nevertheless unjustifiably disadvantaged by how she was treated during her employment by JBHL:
 - failing to pay any wages and holiday pay from 24 July to 1 September 2023;
 - requiring Payal to work excessive hours, sometimes alone and without breaks;
 - failing to pay Payal at the relevant minimum wage rate;
 - requiring Payal to withdraw her wages and pay them to another employee;

- threatening Payal and her family when she tried to exercise her minimum rights as an employee;
 - failing to keep wage and time records;
 - breaching the employer's duty of good faith towards Payal.
- (d) What remedies should be awarded including whether Payal is owed wage and holiday arrears;
- (e) Did Payal contribute to the situation she found herself in.

Payal's employment

[10] Arrangements for Payal to come to New Zealand started while Payal was studying in her first semester at university in India in 2023. A cousin put her in touch initially with Daler Singh but he had no need for extra staff at that time so he passed her details on to his brother Manpreet Singh. Manpreet Singh and Payal had several phone conversations. Payal says her cousin told Payal's father a payment would be required for the "New Zealand Government and an agent".

[11] A written agreement was entered into between Payal and a Mandeep Kumar, who does immigration work in India, for payment to be made in order for Payal to come to New Zealand for employment. Payal's father paid the money in several instalments in India before her visa was issued. The money was paid in cash to people unknown to Payal.

[12] The agreement is dated 30 May 2023 and recorded in Punjabi. The Authority obtained a certified translation. It records agreement that Mandeep Kumar would receive payment from Payal's father. Mandeep Kumar, Payal, and her cousin signed the agreement. It records the following terms:

- (a) Payal's father to pay 24 Laks to Mandeep Kumar;
- (b) Payment was for sending Payal to New Zealand on the three year work permit;
- (c) Payment was to be in instalments;
- (d) If there were any problems with the visa, Mandeep Kumar would return the first instalment to Payal;
- (e) If Payal created any problems she remained responsible for making the full payment;

(f) The witness was Payal's cousin.

[13] It was submitted 24 Laks in Indian Rupees was equivalent to approximately \$48,000.00 New Zealand dollars at that time. Daler Singh on behalf of Manpreet Singh said this payment has nothing to do with him, Manpreet Singh or JBHL. Manpreet Singh has no knowledge of the payment for Payal's employment. They do not know Mandeep Kumar.

[14] On 26 June 2023, after the money was paid in cash Manpreet Singh emailed Payal an individual employment agreement (IEA) for her signature and asked her to send it to the New Zealand Immigration agent. The IEA provided for a 90-day trial period. I note at this point this was unlikely to be valid because no start date was recorded and Payal did not have the opportunity to seek legal advice about employment agreements in New Zealand before signing and returning it. The rate of pay was \$29.70 per hour and Payal was to work no more than 45 hours per week over five days. Payal signed and returned the agreement.

[15] JBHL was an accredited employer through the Accredited Employer Work Visa scheme in place at that time. A New Zealand immigration agent obtained Payal's visa. This was approved on 3 July 2023 permitting her to work as a duty manager in Manawatu-Wanganui for JB Hospitality Limited for three years.

[16] After the visa was confirmed Manpreet Singh telephoned Payal in India asking when she was coming to New Zealand. Payal booked flights and arrived in Palmerston North on 24 July 2023. She says she started work at 3.00pm that day with Paras Kapoor and one other employee. Manpreet Singh travelled to Palmerston North to meet Payal when she first started but he was mostly based in Christchurch during the remainder of her employment.

[17] Payal arrived with \$2,000.00 cash to support herself initially and she paid a bond for her accommodation out of this money. Payal says Manpreet Singh paid her \$270.00 each week comprising \$180.00 for rent and \$90.00 for food. Payal says Manpreet Singh telephoned each week from Christchurch and authorised Mr Kapoor to give her the \$270.00 in cash from the till until 3 September 2023 which was when her wage payments commenced. Accommodation was not referred to in the IEA.

[18] On the first day Payal says Manpreet Singh told her she would not be paid any more than the accommodation money during the first two and a half months because that was the training period. Despite this Payal provided screen shots of five rosters sent to her phone. At least four are for the July/August period that Manpreet Singh said was unpaid due to training and one was undated. Payal says the undated message from Manpreet Singh was the first roster:

SAM
MONDAY OFF
TUESDAY 11 TO 5
WEDNESDAY 11 TO 5
THURSDAY 11 TO 5
FRIDAY 11 to close
SATURDAY 11 TO CLOSE
SUNDAY 11 TO CLOSE

[19] Payal replied to that message “Okay” and Manpreet Singh replied “Be on time every day”. The second roster was from Paras Kapoor and dated 25 July:

Next week Roster
Monday: 11 to close
Tuesday: 4 to close
Wednesday: 11 to close
Thursday: 11 to 5
Friday: 11 to 9
Saturday: 11 to 5

[20] The next three were from Manpreet Singh and dated 30 July, 20 August and 27 August:

Next week Roster
Monday : 11 to close
Tuesday: 4 to close
Wednesday: 11 to 5
Thursday: 11 to 5
Friday: 11 to 9
Saturday: 11 to 6

SAM
MONDAY OFF
TUESDAY 11 TO 5
WEDNESDAY 11 TO 5
FRIDAY 11 TO CLOSE
SATURDAY 11 TO CLOSE
SUNDAY 11 TO CLOSE

Sam Schedule
Monday OFF
TUESDAY 11-5
WEDNESDAY 11-5

THURSDAY 11-5
FRIDAY 11- CLOSE
SATURDAY 4 TO CLOSE
SUNDAY 4 TO CLOSE

[21] Payal's evidence was that she worked for the first four weeks in accordance with the rosters sent to her phone but was not paid any wages. When wage payments did start on 3 September 2023 she was instructed to pay those wages to Mr Kapoor. In addition she also says she worked long hours often without proper breaks.

[22] Payal recorded handwritten notes of her hours in a diary and a copy was provided to the Authority. It records eleven weeks of work that comes to a total of 702 hours from 24 July 2023 to the week ending 8 October 2023. The least amount of hours recorded over a week was 48 hours during the week ending 13 August. The most was 88 hours during the week ending 24 September. The diary notes and rosters show five and six day working weeks and at least one stretch of 12 days of consecutive work with no days off.

[23] On approximately 16 August 2023, Payal says Manpreet Singh called her around 10.30pm at night and asked her to be the acting duty manager for alcohol licensing purposes. That is consistent with Payal's evidence that she worked particularly long hours during the month of September because Mr Kapoor was not allowed to work alone as the duty manager under his visa conditions which is why she was required to be there. Payal says she asked Manpreet Singh when he was going to pay her. He told her from 5 September 2023 but that she would have to pay the money to Mr Kapoor. When Payal asked him why he said he had already told her he was not going to pay her for first two and half months. She says he spoke in their local language and threatened her that if she complained he would "kick her out". Manpreet Singh denies he said any of those things to Payal or that this conversation took place.

Employment comes to an end

[24] By late September 2023, Payal was struggling with the long hours and not being paid. She said her flatmates noticed her crying and encouraged her to get help. An Environmental Health Officer at the Palmerston North City Council saw her one day and asked her how she was and she started crying. That led to a conversation and an

arrangement to make a statement to Police. She was encouraged not to return to work which is what happened.

[25] Payal's diary records her last day of work was 7 October 2023. Payal was offered support by Che Nichols who was a business owner and had come to know Payal. Ms Newth attended the meeting with the Environmental Health Officer and kept a note of what was discussed at that meeting as follows:

- To come to NZ Maddy said you had to pay \$50,000 cash for NZ visa. His brother picked it up. See agreement.
- When first came Maddy said do a couple of hours training a day and he would not pay me but would pay rent and food - \$270.00.
- Was not a couple of hours – it was 13-14 hrs per day with no payment.
- Offered to make me acting manager for 3 week to cover Parras because he didn't have his manger cert.
- He agreed to pay me 30 hour per week but made me give it all to Parras. So I was still not being paid to work. This was for 10 weeks of working over 60 hours per week.
- He also tried to make me spend romantic time with him which I refused.
- I know that all of this is wrong, which is why I contacted the council. Maddy is now threatening to hurt me and my family if I talk about it.
- Less that a week ago he sent [name] to work at the bar. He told me to tell the police that [name] had worked there the whole time. This is not true.

[26] During this period Payal also said her father stopped talking to her. He was worried about her living in New Zealand on her own. He received threats and did not want to make trouble for Manpreet Singh. She described it as a devastating time for her and her family and she suffered severe anxiety. She said Mr Kapoor made contact with her a few weeks later saying he would support her but he changed his mind.

[27] Manpreet Singh continued to call her and text her and her family in India. He sent Payal a letter dated 26 October 2023 stating it was his understanding that she was not returning to work having received a WhatsApp message on 16 October 2023 from her mobile number that said “will not be returning to work as long as the investigation is ensuing.” He stated his understanding was that she had resigned but invited her to contact him if he had got the situation wrong. If he did not hear from her he said termination of her employment would be confirmed and her final pay would be processed and paid on 31 October 2023.

[28] Payal applied for a migrant exploitation visa which was granted. In December 2023, Payal relocated to Auckland and eventually found work in a bar in Hamilton in January 2024. She described the impact on her health during this period as being significant. Payal also says Manpreet Singh contacted her new employer and tried to have them fire her.

Assessment of the evidence

[29] There are several conflicts in the evidence. Firstly, Mr Singh denies any involvement in the premium payment in India. He accepts there was a written agreement that Payal produced but says he has no knowledge of that, the people involved or of the payments. Secondly, he denies Payal worked from 24 July to 25 August because this was a month-long training period during which Payal completed alcohol licensing training. Payal instead commenced work on 28 August 2023 after she finished this training. Thirdly he says she only ever worked 30 hours per week consistent with the pay slips and payments into Payal's bank account and lastly he says he did not direct Payal to pay her wages to another employee or threaten to "kick her out" if she complained.

[30] The Authority assesses points of difference in the evidence of witnesses on the balance of probabilities which means consideration is given to what was more probable or likely to have happened. Background information such as relevant documents that support one parties position or the other assist in this assessment.

Was a premium payment requested and paid?

[31] In New Zealand payment of money to secure employment is not permitted. Section 12A of the Wages Protection Act 1983 prohibits such payments being sought or received by an employer or a person on behalf of an employer. The person who paid the money may recover that amount from the employer as a civil debt due to that person and penalties can be awarded against a person or company who have sought or received premium payments.

[32] Payal's evidence and her mother's was that Manpreet Singh required the payment outlined in the agreement to be paid in India before the visa was organised for Payal to come to New Zealand. Payment was made in cash but not to Manpreet Singh.

Payal described her cousin in India and others taking her and her father to an address in India where the cash was handed over. Payment was in instalments and they did this several times. Payal said she received instructions about the payment from Manpreet Singh during telephone calls in India but she no longer has that phone or any records of those calls.

[33] The agreement records that Mandeep Kumar, who does immigration related work, would receive payment in instalments for sending Payal to New Zealand on a three year work permit.

[34] The Authority requested the parties obtain information from Mandeep Kumar. Payal explained that she and her family had been blocked from contacting Mandeep Kumar and she does not believe she can contact him because he is close to the respondents. Manpreet Singh did not respond to that request. Daler Singh denied the respondents had any knowledge of Mandeep Kumar or that there was any connection between them.

[35] The only link between Mandeep Kumar and Manpreet Singh is the timing in that it coincides with arrangements that were being made by Manpreet Singh for Payal to start work at the Stunned Mullet in Palmerston North and Payal's evidence that Manpreet Singh gave her instructions over the phone regarding the payments. Payal accepts Manpreet Singh was not in India at the time the cash payments were made and the written agreement does not refer to Manpreet Singh. There is no other information to support Payal's contention that Manpreet Singh asked for the payment or received the payment. The money was paid by Payal's family in cash to unknown people in India. The agreement provided Mandeep Kumar, who does immigration work, was to receive the money.

[36] The signed agreement suggests a premium payment was sought and paid for Payal's employment in New Zealand but the timing alone is insufficient to link Manpreet Singh to Mr Mandeep Kumar or to show Manpreet Singh asked for or received the payments. In these circumstances there is insufficient information the payment was requested by or paid to the New Zealand employer.

[37] It has not been established that Manpreet Singh was involved in seeking or receiving a premium payment from Payal.

Did Payal work between 24 July and 28 August 2023?

[38] The employment agreement between Payal and JBHL does not contain a start date. Manpreet Singh says Payal did not start work on her first day in New Zealand. When she arrived he travelled to Palmerston North with her and they went for lunch. Later they went to the Stunned Mullet where Mr Kapoor was working. They also went to K Mart to buy her work uniforms. His written statement recorded that Payal did not start work until 28 August after she finished a training period which involved studying towards her Licence Controller Qualification (LCQ). The LCQ was required for Payal to work in the bar as a Duty Manager under the Sale and Supply of Alcohol Act 2012.

[39] Both parties agree that during the month-long training period Payal was paid \$270.00 in cash for accommodation and food but their evidence differs as to whether or not Payal was engaged in training rather than full time work during this period. Manpreet Singh says before Payal started, Mr Kapoor and another employee were covering the opening hours which he says were only 80 – 85 hours per week. Mr Kapoor worked nearly 60 hours and the other employee covered the rest. The other employee was only helping until Payal got up to speed. Manpreet Singh said it was his intention to give Payal and Mr Kapoor equal hours of around 30 hours each per week and the other employee would cover the rest which is what he says happened.

[40] Manpreet Singh also says the first roster Payal provided was Mr Kapoor's roster which Manpreet Singh mistakenly sent to her and the wage and time records went missing about the time she left.

[41] Manpreet Singh says the pay slips are evidence Payal was paid from 3 September 2023 which is when work started. There are pay slips for six weeks work between 28 August and 8 October showing regular payment for 30 hours work at \$29.70 per hour. Manpreet says wages stopped because Payal disappeared and stopped coming to work. He gave her a chance to come back if she wanted and did not dismiss her. His letter stated Payal's final pay would be processed and paid by 30 October 2023. The

pay slips and Payal's bank account records show a final payment on 18 February 2024 in the amount of \$397.14.

[42] Manpreet Singh also denies telling Payal to give money to Mr Kapoor.

[43] In assessing the evidence Manpreet Singh's statement that Payal did not work during the first month lacks creditability for two main reasons. Firstly, the text messages sent to Payal clearly show weekly rosters for work between Payal's arrival in New Zealand in July and the wage payments commencing in September 2023.

[44] While Manpreet Singh says one roster was Mr Kapoor's roster sent to Payal in error, that does not explain the others. After further analysis it is clear the rosters are also consistent with Payal's diary notes in that the days off she recorded in her diary are consistent with the rosters she was sent by text.

[45] Secondly, the arrangements to have Payal come New Zealand show Manpreet Singh hurrying the process along. A previous employee left suddenly and he was eager for her to start because he urgently needed staff. Payal's evidence was of the third employee not doing very many hours and being replaced by a different employee about the time she left. The urgency with which Manpreet Singh acted to have Payal come to New Zealand to start work is inconsistent with Payal arriving and JBHL not providing her with work for the first month.

[46] I also observe the hours recorded in Payal's diary and the rosters are consistent with full time work and not a few hours training each day. They are also a contemporaneous record of what happened that month. Ms Newth's written notes from the meeting with the Council also shows consistency between what the documents show and what Payal told others which is also consistent with her evidence in the Authority. Payal was a careful witness and I consider her evidence reliable because there is consistency between her evidence, the diary notes and the rosters. This strongly supports Payal's statement she worked at the bar for the first month rather than this being an unpaid training period.

[47] Taking all of that into account I am satisfied Payal started work earlier than 28 August 2023. While she arrived on 24 July 2023 and went into the bar that day the best

evidence of when she started work comes from a text conversation Payal had with Mr Kapoor. On 25 July 2023, he asked Payal if she wanted to come in “today or tomorrow morning” and Payal replied she was coming tomorrow which would have been Wednesday 26 July 2023.

[48] The undated roster Payal says Manpreet Singh sent her which she also said was her first roster had her starting on Tuesday 25 July. That is also the day the text messages with Mr Kapoor show they agreed she would come in the next day.

[49] I am satisfied Payal started work on Wednesday 26 July 2026 and the best evidence of the hours she worked for the duration of her employment at JBHL is recorded in her diary notes. Payal was not paid for all the work she completed for JBHL, including receiving no wages for the first months’ work. It follows that Payal is entitled to recover unpaid wages from her employer.¹

Paying wages to another employee

[50] Payal claims Manpreet Singh asked her to pay her wages to Mr Kapoor once she started receiving them which is also denied by Manpreet Singh. Payal’s evidence of the late night phone call in mid August when Manpreet Singh told her she would be the Acting Duty Manager was that she asked when she would be paid. She says Manpreet Singh told her she would be paid from 5 September but that she would have to give the money to Mr Kapoor. Payal asked why she had to do that and was told it was because Manpreet Singh had told her she would not be paid for the first two and a half months. She said he spoke in their local language and threatened to “kick her out” if she complained.

[51] Payal says she also spoke to Mr Kapoor about why she needed to pay her wages to him and whether he could give her some of the money back. Mr Kapoor told her he was going to give the money to his family and she could not have any of it back. Payal points out the payments recorded in her bank statements to Mr Kapoor as evidence she was told to pay him her wages.

¹ Employment Relations Act 2000, s 131 and Wages Protection Act 1983, ss 4 and 11.

[52] Payal also said she was required to give her tips to Mr Kapoor. Ms Nichol's evidence was that from time to time, if she received winnings from the Pokie machines at the bar, she gave it to Payal but she was aware Payal was required to pass it on to Mr Kapoor.

[53] Manpreet Singh says Payal borrowed \$2000.00 from Mr Kapoor to purchase a new phone and had to pay that money back. Mr Kapoor's written statement also referred to him lending money to Payal and said the bank transactions show Payal repaying him the money she borrowed from him. Had Mr Kapoor given evidence under oath or affirmation further questions could have been asked of him to assist in assessing the veracity of the statements about these payments. Without him giving evidence the best information available to establish what happened are the bank statements and Payal's evidence.

[54] Payal says she did not borrow money from Mr Kapoor to purchase a phone. She did concede that on several occasions early on she borrowed small amounts of money because she was struggling financially having just arrived in the country and was not being paid but says she did not borrow money for a phone. She says Mr Kapoor instead told her to record "phone buy" as the reference when she made a bank transfer of the largest amount (\$1,300.00) which she says was after she was instructed by Manpreet Singh to pay her wages to Mr Kapoor.

[55] Payal's bank account was opened on 20 August with an opening balance of \$1,400.00 which she says was the balance of the \$2,000.00 her parents gave her to help her get started in New Zealand, after paying a bond for her accommodation. Monika Rana, Payal's flatmate, gave evidence consistent with Payal's in that the rent was \$200.00 per week and that Payal paid a bond equivalent to three weeks rent.

[56] There are six transactions from Payal to Mr Kapoor which the reference "bill payment", "mobile top up" or "top up" between 22 August and 25 September 2023. They come to a total of \$266.00. On 4 October there is one final payment to Mr Kapoor of \$1,300.00 with the reference "phone buy". From 5 September there are six wage payments in the amount of \$740.29 from JBHL and a final payment of \$259.33 from JBHL on 17 October 2023.

[57] Payal accepted at the investigation meeting that the payments to Mr Kapoor totalling \$266.00 were repayments of money she did in fact borrow from him. She recalled she borrowed the first amount to have her nails done when she first arrived in New Zealand. The others she said were for food or other small expenses and the initial ones were because she was not properly set up with her banking. Payal was adamant the \$1,300.00 payment was because Manpreet Singh told her to pay her wages to Mr Kapoor.

[58] Given Payal's concessions regarding the \$260.00 and that her evidence about work set out above was supported with other documentary evidence, I consider her to be a careful and honest witness. Payal's evidence that she was instructed to pay her wages to Mr Kapoor is accepted.

[59] Payment of wages to another employee is sometimes referred to as "wage recycling" and has been considered in the past by the Court and the Authority to constitute a premium payment.

[60] In *Labour Inspector of the Ministry of Business, Innovation and Employment v Prisha's Hospitality (2017) Ltd*² the Employment Court said that payments made by one employee to other employees at the direction of the employer could constitute an unlawful premium. The Court also said that although the employer did not receive the payments directly, the payments were for the employee's benefit as they were wage top-ups paid on behalf of the employer. Judge Holden concluded premium payment also extend to indirect payment, such as when an employee is paying money to satisfy the debt of the employer.

[61] There was no evidence about the new phone which was denied by Payal and \$1,300.00 is significantly higher than the smaller amounts Payal had previously borrowed from Mr Kapoor to make ends meet. Payal also had some funds in her bank account at that time suggesting she did not need to borrow a large amount for such a purchase, particularly at a time when she had not been earning wages and was becoming increasingly unhappy in her employment.

² *Labour Inspector of the Ministry of Business, Innovation and Employment v Prisha's Hospitality (2017) Ltd* [2023] NZEmpC 89 at [114]-[115].

[62] Although there was no evidence available about why Manpreet Singh wished to have Mr Kapoor receive Payal's wages, on this occasion I am satisfied the evidence shows Payal's payment of \$1,300.00 to Mr Kapoor on 4 October was at the direction of Manpreet Singh and was an example of a premium payment. It is appropriate that Manpreet Singh be ordered to repay this amount to Payal. Liability for penalties also arises for breaches of s 12A of the Wages Protection Act 1983.

Was Payal constructively dismissed?

[63] Payal has claimed that the way she was treated including not being paid wages led to her resignation and should be treated as a constructive dismissal. A resignation can amount to a dismissal if it is the result of a breach of duty by an employer that leads an employee to resign. Such a breach of duty needs to be sufficiently serious to make the resignation foreseeable.

[64] The Court and the Authority have in the past found that failure to pay wages is such a fundamental breach by an employer that it can amount to a constructive dismissal. JBHL's failures to pay Payal wages for all the work she completed are breaches of the employment agreement, the Wages Protection Act 1983 and the Minimum Wage Act 1983. The IEA between the parties set out the hourly rate Payal was to be paid for work and guaranteed 35 hours of work per week. The situation Payal found herself in work was to work for no wages for the first four weeks and then approximately six weeks of wages in an amount equivalent to 30 hours per week when in fact her hours varied in accordance with when the bar closed. Payal consistently worked more than 30 hours each week.

Additional breaches and disadvantages claimed

[65] Payal also claimed JBHL failed to provide breaks during the workday. Employees are entitled to paid rest and unpaid meal breaks that give them a reasonable chance to rest and refresh and take care of personal matters during the workday and that are an appropriate length for their working day. Sections 69ZD and 69ZE of the Act set out the minimum entitlements to rest and meal breaks. An employer who does not comply with these sections is liable to a penalty.³

³ Employment Relations Act 2000, s 69ZF.

[66] In the absence of wage and time records Payal was unable to provide the specific details of this claim. Daler Singh reiterated that the wage and time records went missing. Manpreet Singh says money also went missing and blames Payal for that saying a complaint was made to Police about the wage records and money going missing after Payal worked alone in the pub. This was in relation to paper records. Given the pay slips were generated electronically it is clear there was some sort of electronic record but this was not provided. In any event I have not accepted Manpreet Singh's evidence about Payal's work hours and instead found she worked when JBHL denies that she did.

[67] The Act allows the Authority to rely on the employees claims in respect of wages paid and the hours days and time worked by the employee if the employer's failure to keep a wages and time record prejudiced the employee's ability to bring an accurate claim for arrears. This is such a case. JBHL was unable to adequately explain the absence of wages and time records and it is accepted Payal worked long hours without the required breaks. This is supported by Payal's diary notes which show her hours of work regularly exceeded the maximum 45 hours set out in the individual employment agreement and that she worked an average of 62 hours each week. There was at least one 12 day stretch with no days off.

[68] Payal also says she was paid below the minimum wage and that claim is also made out. Minimum wage rates apply to all employees in New Zealand aged 16 years and over and migrant workers have the same rights as New Zealand workers. Employers are liable to penalties for failing to pay employees at the applicable minimum wage rate. While Payal's hourly rate in the IEA was above the minimum wage rate at that time, when JBHL failed to pay her for hours worked what she received fell below the hourly minimum wage rate for the number of hours worked. JBHL has in that way breached the Minimum Wage Act 1983.

[69] Payal also claimed Manpreet Singh threatened her and her family when she left work at a time when she was trying to exercise her minimum rights as an employee. Manpreet Singh denies that. He says instead Payal disappeared and he was concerned for her safety. The evidence was difficult to assess in relation to what happened around that time. Manpreet Singh was contacted by Police at the time and what was conveyed did not give rise to safety concerns. In order to have established threats were made to

Payal's family additional detail would have been required. As a consequence no finding is made about that.

[70] Failing to pay minimum wage and provide rest breaks disadvantaged Payal in her employment because they were not only breaches of the employment agreement but also breaches of the statutory obligations on employers to provide the minimum statutory entitlements for employees. These contributed to the seriousness of JBHLs failures and to Payal's decision to leave work. On that basis they form part of the constructive dismissal grievance.

[71] Payal says when she asked Manpreet Singh over the phone in mid August when she would be paid he became angry and threatened her with "kicking her out". In that conversation she says she was also informed she was to give her wages to Mr Kapoor once her wage payments started. The financial situation she found herself in by the end of September was becoming unsustainable and stressful. On at least one occasion she worked for 12 days in a row with no days off. Payal's records show on average she worked 62 hours per week.

[72] Given the position she was in with her employment in New Zealand being linked to her employment with JBHL at the Stunned Mullet, it was reasonably foreseeable that once she sought advice and support she would decide not to continue working instead of hoping things would resolve. It was not until an alleged incident involving potentially unwanted romantic attention that Payal sought help and advice about her situation and had it confirmed by others that the nonpayment of wages and long hours without breaks were not permitted in New Zealand. She was encouraged to leave her employment which she did.

[73] In light of the contractual and statutory obligations on employers to pay employees in return for work done and the findings above, the shortcomings by JBHL were significant. Payal's evidence was also of long hours without proper breaks and of becoming increasingly tired with an impact on her mental health. This was compounded by the vulnerability she felt knowing her employment was tied to JBHL.

[74] This made the position untenable for Payal. The breach of Payal's terms and conditions of employment was serious and it was reasonably foreseeable she would resign.

[75] I am satisfied that Payal was constructively dismissed.

Payal is entitled to remedies

[76] Having been successful with her constructive dismissal grievance claim Payal is entitled to consideration of compensation for humiliation, loss of dignity and injury to feelings caused by the grievance. Payal seeks \$50,000.00 in compensation because of the harm caused by JBHL's actions. It was submitted Payal suffered profound disappointment having left her university course to travel to New Zealand for employment, an extensive emotional cost caused by the breakdown of the employment relationship and a dire financial situation JBHL placed her in when it failed to pay her wages for work done.

[77] Payal gave evidence of the hurt and distress caused to her by the impact of JBHL's actions. She suffered financial stress and her mental health was impacted. Being without support in a new country compounded the negative effect the situation had on her. She found herself suffering from panic attacks and needing to seek medical advice.

[78] Ms Rana gave evidence that supported Payal's evidence in terms of the impact the long hours and nonpayment of wages had on Payal's wellbeing and of that increasing over the time she lived with her to the point Payal was often visibly upset at home and tearful.

[79] On the basis of this evidence, I accept Payal suffered significant humiliation, loss of dignity and injury to her feelings. On balance, and having considered awards made in other similar cases, I consider an award of \$22,000.00 to be appropriate compensation for the impact on Payal from being constructively dismissed. That sum recognises the distress caused to Payal at the time and immediately after she left her employment but also takes into account that with support Payal was able to apply for another visa, relocate and find new work in a different city after several months.

Lost wages

[80] Payal seeks lost wages in the amount of three months' ordinary time. She started new employment in early January 2024 after a short delay while a new visa was applied for and then issued. Until that was issued she was not permitted to work for a different employer.

[81] I find Payal has suffered lost remuneration equivalent to three months wages as a result of JBHL's actions. After Payal took steps to remove herself from the financial position JBHL put her in, Payal took steps to mitigate her loss by applying for a new visa and then seeking new employment. It was not possible for her to seek new work until the new visa was issued. It is appropriate to make an order for 13 weeks lost wages calculated on the basis of Payal's hourly rate using the average number of hours she recorded in her diary.⁴

Wage and holiday arrears

[82] Having found Payal was not paid for all the hours she worked it is also appropriate to make an order under s 131 of the Act that JBHL pay Payal wage and holiday arrears for work done between 26 July and 8 October 2023. Based on Payal's average hours worked from 26 July 2023 and deducting the wages she did receive, Payal is owed wage and holiday arrears in the amount of \$17,303.07.⁵

[83] No deductions are made for the accommodation payments Manpreet Singh made because although it is not clear what those payments were but they were not in the nature of wage payments.

Contribution

[84] There are no issues with contribution under s 124 of the Act because there is no evidence Payal contributed to the situation she found herself in. To the extent Manpreet Singh suggested Payal was a poor worker, misrepresented her abilities with English and lacked the skills to be a Duty Manager these are not relevant to the nonpayment of wages and the resulting failures to ensure JBHL complied with the minimum statutory obligations required of employers in an employment relationship.

[85] Manpreet Singh's statement that Payal was responsible for money and wage records that went missing and that she was responsible for company losses and defamed JBHL were bare assertions and not supported by any other information or evidence. As such they have been given no weight and are not accepted.

[86] The decision not to pay wages for the first month and then direct Payal to pay her wages to another employee was Manpreet's Singh's decision and Payal did not

⁴ \$29.70 x 62 hours x 13 weeks= \$23,938.20.

⁵ 686 hours at an hourly rate of \$29.70 + 8% - wages paid \$4,701.07 = \$17,303.07.

contribute to that. If there were issues with her work, a fair and reasonable employer could address those in accordance with the good faith obligations in the s 4 of the Act and justification test in s 103A of the Act.

Was Manpreet Singh a person involved in the default in payment of wages to Payal?

[87] Payal has also sought leave under s 142Y of the Act to recover wage arrears from Manpreet Singh in the event JBHL is unable to pay the wage arrears owed to Payal. Manpreet Singh is the director of JBHL and he was responsible for payment of wages to Payal. He was personally involved in recruiting her from India and arranging for her to start work in New Zealand at the Stunned Mullet in Palmerston North that was operated by JBHL. He had was responsible for payment of her wages and had direct knowledge that wages were not being paid. He was also the person who directed Payal to pay her wages to another employee.

[88] I am satisfied Manpreet Singh was a person involved in the default in payment of wages to Payal and leave is granted under s 142Y of the Act for Payal to recover wage arrears from Manpreet Singh in the event JBHL is unable to pay the wage arrears owing.

Breaches of good faith and penalties

[89] JBHL's failure to pay wages is fundamental breach of the obligation on employers to treat employees fairly and in good faith. These failures also amount to breaches of good faith under s 4 of the Act. While penalties are available for these breaches and the other statutory breaches set out above, penalties must be applied for within 12 months of the date the action became known or should have become known to the employee. Penalties were not applied for within that time frame and as a consequence the Authority is not able make any orders for payment of penalties.

Orders

[85] JB Hospitality Limited is ordered to pay Payal with in 28 days the following sums:

- (a) Compensation in the amount of \$22,000.00 under s 123(1)(c) of the Act for humiliation, loss of dignity and injury to feelings;
- (b) Lost wages in the amount of \$23,938.20 under s 123(1)(b) of the Act;

- (c) Wage and holiday arrears in the amount of \$17,303.07 under s 131 of the Act.
- (d) Repayment of the premium payment in the amount of \$1,300.00 under s 12A of the Wages Protection Act 1983.
- (e) Manpreet Singh is a person involved in the breaches by JB Hospitality Limited under s 142W of the Act and is liable in respect of the breaches of employment standards if there is a default in payment of the amounts in the orders above in accordance with s 142Y of the Act.
- (f) Filing fee of \$71.55.

Costs

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

[88] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Payal 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 JB Hospitality Limited 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.

[89] 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.⁶

Sarah Kennedy-Martin
Member of the Employment Relations Authority

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