

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 290  
3109253

BETWEEN	INDERJIT SINGH Applicant
AND	CHARANJIT SINGH DHILLON First Respondent
AND	AMARJEET KAUR DHILLON Second Respondent
AND	JAS HOLDINGS LIMITED Third Respondent

Member of Authority: Nicola Craig

Representatives: John Wood and Sunny Seghal, advocates for the applicant  
John Delaney, counsel for the respondents

Investigation Meeting: 9 March 2022 by audio-visual link

Submissions [and further Information] Received: 17 March and 1 April 2021 for the applicant  
24 March 2022 for the respondents

Date of Determination: 30 June 2022

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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- A. Inderjit Singh was employed by Charanjit Dhillon.**
- B. Mr Singh's unjustified dismissal personal grievance claim was raised in time.**
- C. Costs are reserved.**

### **What is the Employment Relationship Problem?**

[1] Inderjit Singh worked at several Bottle-O liquor stores in Rotorua. The stores are operated by Charanjit Dhillon and his wife Amarjeet Dhillon. The Dhillons have been involved in running liquor stores for about 14 years. They are the directors and shareholders of several companies related to the Bottle O franchises including Jas Holdings Limited (Jas or the company).

[2] Mr Singh claims that he was constructively dismissed and also raises other concerns regarding wages, holidays, records, good faith and a premium. The respondents denied Mr Singh's claims.

### **What has the Authority's process been?**

[3] Mr Singh's claim originally identified only Mr Dhillon as respondent employer. Mr Singh lodged his own statement in reply as well as a statement in defence.

[4] By the time of a case management conference on 26 October 2021 Mr Dhillon was represented and his representative raised the proposition that Jas was Mr Singh's employer. In order to ensure a proper process to deal with the question of the identity of the employer, by agreement, I joined Jas as an additional respondent.

[5] Subsequently further additional respondents were listed in an amended statement in reply (Ms Dhillon) and amended statement of problem (S Dhillon Limited and Dhillon Liquor Limited). At the start of the investigation meeting another company, Dhillon Enterprises Limited, as also mentioned by Mr Singh's representative.

[6] I decided to firstly investigate some preliminary issues. An investigation meeting was held on 9 and 10 March 2022 by audio-visual link. Evidence was given by Mr Singh, Mr Dhillon and Ms Dhillon.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

### **What are the issues?**

[8] The preliminary issues being investigated are:

- (a) Who was Mr Singh's employer?
- (b) Regarding the constructive dismissal claim:
  - (i) Was the personal grievance raised in time?
  - (ii) If not, did the employer/s consent to the grievance being raised out of time?
  - (iii) If not, are there exceptional circumstances and should leave be granted to raise the grievance out of time?
- (c) Should additional respondents be joined, particularly Ms Dhillon, and additional three companies involved with Bottle O stores - S Dhillon Limited, Dhillon Liquor Limited and/or Dhillon Enterprises Limited?

### **What are the parties' positions on who the employer was?**

[9] Mr Singh's primary position is that Mr Dhillon alone was his employer. In the alternative he says it was Mr Dhillon and the multiple companies involved that jointly employed him.

[10] The respondents say that Mr Singh was employed by Jas. The respondents strongly reject that there was any sham which should result in the lifting of the corporate veil, identifying Mr Dhillon as the real employer. The various companies involved had been established for some years and the Dhillons' evidence was that their accountant had suggested the structure of one company per store.

[11] At one point there appeared to be a suggestion that Ms Dhillon, as well as her husband, might have been the employer although ultimately that was not pursued. The respondents strongly reject that prospect.

[12] Both parties relied on the Employment Court's decision in *Vince Roberts Electrical Limited v Carroll*.<sup>1</sup> That decision confirms that:

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<sup>1</sup> *Vince Roberts Electrical Limited v Carroll* [2015] NZEmpC 112, including reference to s 6 of the Act.

- the onus is on the employee, on the balance of probabilities, to establish who the employer was.
- the real nature of the relationship must be assessed.
- a party's view as to who the employer was is not conclusive.
- what is needed is an objective observation of the employment relationship at its outset with knowledge of all relevant communications between the parties at that point.

[13] It is agreed that joint employment was possible. Such situations usually feature common control by the joint employers.<sup>2</sup>

#### **What did the witnesses say?**

[14] There was substantial disagreement between Mr Singh's evidence on the one hand and Mr Dhillon's evidence on the other. Ms Dhillon was less involved in the appointment process but generally her evidence supported that of her husband.

[15] Mr Singh and Mr Dhillon agree:

- Mr Singh arrived in Rotorua at the invitation of his friend Mr P who lived with other Bottle O workers at the house rented for that purpose by Mr Dhillon next to one of the Bottle O stores.
- Mr P and flatmates worked at Bottle O stores associated with Mr Dhillon, primarily as store managers.
- Mr Singh was involved for a day in the painting one of Mr Dhillon's houses with his friends and the two met that day.
- On returning from India in mid-February 2019 one of the friends picked Mr Singh up from the airport and took him to stay at their house.

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<sup>2</sup> *Hutton v Provencocadmus Limited (In rec)* [2012] NZEmpC 207.

- On 16 February 2019 Mr Singh went to the store next door where Mr P was working. Mr Dhillon was at the store and offered Mr Singh work. Mr Dhillon indicated Mr Singh could live at the house with the other workers.
- Mr Singh started undertaking tasks that same day, with the initial period being referred to as training.
- Mr Singh's work, at least initially, was as a retail assistant, including making deliveries between the Bottle O stores. Mr Singh reported to Mr Dhillon who ran the stores. Ms Dhillon was more focused on business administration.
- Mr Singh worked at different liquor stores associated with Mr Dhillon – Bottle O Ngongatahā, Bottle O Fenton Street or Rotorua, Bottle O Springfields and Bottle O Sunset Road.
- Mr Singh also worked at another Bottle O store in Tauranga which Mr Dhillon's sister operated. He covered for about ten days when people were overseas. He appears to have continued to be paid as usual for that time.

[16] Mr Singh's version of events included:

- He puts the house painting in October 2018. Having observed Mr Singh's work, Mr Dhillon said that he liked Mr Singh and said he could stay at the liquor store. Mr Singh said he would be in touch after he got back from the trip to India.
- During the 16 February 2019 discussion he told Mr Dhillon his work visa was with an orchard and legally he could not start working yet. Mr Singh was to apply for an open visa.
- During that discussion Mr Dhillon made several comments that he was the owner of the business and would be Mr Singh's employer and boss. He indicated Mr Singh should come to him with any problems and he would support Mr Singh with his immigration situation.

- Mr Dhillon referred to Bottle O as the workplace and to the Bottle O stores, not to any companies. There was no mention of Jas or the other companies. At some point Mr Singh knew it was a franchise.
- Mr Dhillon indicated Mr Singh could start with two weeks 'training', which would be paid but the money held until after the open visa came through.
- There was no communication about the identity of his employer during the 'training' period.
- He was never offered a written employment agreement.

[17] Mr Dhillon's evidence included:

- The Dhillons operated by establishing another company each time a new business was bought. Staff were generally paid by the company they had their employment agreement with, even though they worked across several stores. If someone worked more time than two or three weeks at another store that store's company would pay them.
- One of the workers contacted Mr Singh about work without Mr Dhillon asking.
- In his witness statement he said that he first met Mr Singh in February 2019. However, under questioning he accepted that he could have met Mr Singh earlier but not been aware of his name.
- His witness statement records Mr Singh's first day of work was 27 February 2019, having offered him a written employment agreement on 25 February.
- At the investigation meeting Mr Dhillon accepted that he had met Mr Singh on 16 February 2019 when Mr Singh came into the store to meet Mr P. Mr P asked Mr Dhillon if they could hire Mr Singh. Mr Dhillon replied that they did not need a staff member but when asked by Mr P to give Mr Singh a try, Mr Dhillon agreed Mr Singh could do training.

- Mr Dhillon’s evidence regarding whether the identity of the employer was mentioned on 16 February 2019 was contradictory and is outlined below.
- At the time Mr Dhillon did not see the employment starting until 25 or possibly 27 February as Mr Singh required training having come from another industry.
- Mr Singh was offered and signed a written employment agreement on 25 February.

[18] Ms Dhillon was not directly involved in the discussions on 16 or 25 February 2019 but reports having prepared an employment agreement which she gave to her husband and he returned, signed by Mr Singh.

### **What about an employment agreement?**

#### *Agreement with Mr Singh*

[19] On 3 June 2020 Mr Singh’s representative requested from Mr Dhillon documents including “all employment agreements with Mr Singh” including variations, as well as wages and time records. None of that information was supplied in response. The Dhillons referred to being confused about who the request related to and the changing of Mr Singh’s representatives.

[20] No employment agreement was provided with the initial statement in reply in July 2020. Despite Mr Dhillon seemingly having representation from at least early 2021, the employment agreement relied on by the respondents was not provided to the Authority until November 2021 when an amended statement in reply was lodged.

[21] The agreement is dated 25 February 2019 although it does not specify the date employment commences. It is between Jas and Mr Singh. It appears to be signed by Mr Singh and Mr Dhillon as director. It identifies Mr Singh as employed as a retail assistant for Jas trading as Bottle O Sunset Road but also potentially being required to work at Bottle O Ngongotahā, Bottle O Rotorua or Bottle O Springfield.

[22] Mr Singh denies having been offered or signed any agreement, maintaining his denial under cross examination. He questions why any agreement document was not emailed to

him when other business was transacted by way of email. Mr Singh accepts that the signature on the agreement looks like his but notes that he writes his whole name, rather than using initials and the signature is easy to copy.

[23] Mr Singh maintains that he asked Mr Dhillon for an employment agreement many times, but Mr Dhillon would avoid the issue, asking him why he needed one or offering one later when he needed to apply for a visa. There is text and email evidence from 2020 containing Mr Singh's requests related to immigration requirements.

[24] Ms Dhillon says she had a standard form contract on her computer which she pulled up and entered details when a new agreement was required. She says she saved any new agreement on top of the previous one. Ms Dhillon was unable to provide an electronic version of the agreement for Mr Singh, explaining that files were removed from the computer after another employee left, suggesting he was responsible.

[25] Mr Dhillon refers to the Sunset store operated through Jas as being the head office with storage and supplying stock to other stores. He saw Mr Singh operating as a spare worker and so linked him with Jas.

[26] Mr Dhillon says that he gave Mr Singh the agreement on 25 February 2019 and they both signed it. He explains not having the original signed document being because he mistakenly gave Mr Singh the original after signature, only keeping a copy for himself. I find that somewhat surprising for someone who operated at least four companies, owned several houses and had been in business for about 15 years. In his oral evidence Mr Dhillon said he ran the business like a family and so did not think about which agreement he was going to give to Mr Singh.

#### *Agreements with others*

[27] For Mr Singh employment documents were provided from other Bottle O workers. These included what appeared to be unsigned versions of Mr P's earlier agreement with S Dhillon Limited and later agreement with Dhillon Enterprises Limited. They are in quite a different form to the agreement the respondents filed for Mr Singh. They are dated earlier - 2015 and 2017.

[28] Also, two employment agreements were provided dated 3 January 2020 between Mr P and Dhillon Enterprises Limited. The agreements are signed, one with dates next to signatures and one without. The signatures, although seemingly from the same people in the two documents, are not identical to each other suggesting that there may be two different documents. One contains a salary provision, the other an hourly rate. The documents are in similar form to the employment agreement the respondents provided the Authority regarding Mr Singh.

[29] The Dhillons did not offer any specific explanation as to why the earlier agreements were in different forms or why there were two agreements with different payment provisions on the same date, although they did not necessarily accept that all were genuine agreements. In the absence of evidence from Mr P these documents can be given limited weight.

[30] There is no letter of offer of employment to Mr Singh. Mr Dhillon was not able to provide a satisfactory explanation as to why Mr P appears to have received a letter of offer signed by Mr Dhillon but Mr Singh did not.

[31] Mr Singh is now aware that other workers had company names on their employment agreements. He suggests the reason others had an employment agreement and he did not was that they needed it for their work visas, whereas he had not as yet. I found the explanation that he saw employment agreements at Bottle O being connected with visas to be credible. He was expecting to get an agreement at the time he needed to apply for a visa which was not for a period after he started. When his time came he pursued getting an agreement with Mr Dhillon.

#### *Variations*

[32] At one point Mr Dhillon indicated that every time there was a significant change in an employee's terms and conditions, they would receive an amended employment agreement. However, when significant changes occurred to Mr Singh's salary he did not receive new agreements but supposedly received variations. Two letters were provided for the respondents referring to salary increases. They are on Bottle O letterhead but neither refers to Jas or any other company. They are signed by Mr Dhillon with no reference to him as a director. Mr Singh denied seeing these letters.

## **What other evidence was there?**

### *Timesheets and pay*

[33] Timesheets were provided by the respondents to the Authority although these are disputed by Mr Singh. Ms Dhillon says she put these together from figures noted in her diary, passed on from Mr Dhillon. The timesheets refer to Mr Singh being at only two stores in the course of his employment which is not consistent with the bank account records.

[34] Bank statements suggest wages coming from three companies. Mr Singh says he never realised the payments came from companies.

[35] The Dhillons refer to their accountants talking about internal invoicing with Jas charging other companies but it seemed easier just to have the company associated with the store Mr Singh was working in make the payments. The respondents' submissions describe the use of different companies as an administrative convenience.

[36] It seems that payment responsibility was only moved from Jas to another company if Mr Singh's work there extended beyond a few weeks. It was not suggested by the respondents that agreement was reached to change in the identity of the employer or that two companies (Jas and the store related company) jointly employed Mr Singh at times. Mr Singh's evidence did not support there being any such agreement either.

[37] Mr Dhillon says that if an employee was going to be paid by another company they would be told that verbally. I found that unlikely when there was so little emphasis on company names in the written communications referred to below.

### *Tax*

[38] IRD records refer to around one or two dozen payments of Mr Singh's PAYE coming from each of Jas and two of the Dhillons' other companies.

[39] Mr Singh did not have to file tax returns and says he did not check his IRD information whilst with Bottle O.

### *Other documents*

[40] An 18 March 2020 letter appointed Mr Singh as a temporary manager of Bottle O Springfield, owned by Dhillon Liquor Limited. There is no suggestion in the letter that Jas was the employer.

[41] Many documents refer to or are signed by Mr Dhillon. Some are on Bottle O letterhead but do not refer to a company name. A few but not all have different street addresses and phone numbers which appears to relate to different Bottle O stores, but without a company name reference. Some refer to Mr or Ms Dhillon as director but not all, with others just having their name printed at the bottom with no company or store reference.

[42] Whilst the reference to ‘director’ is indicative of the existence of a company structure, the existence of multiple companies and no reference to which one was involved in relation to particular pieces of correspondence does not assist the respondents’ claim that solely Jas was the employer.

[43] A letter provided to support Mr Singh’s application for a General Manager’s certificate refers to Mr Singh having worked “with us” since 16 February 2019 and has a Ngongotahā address on it. It does not refer to Dhillon Enterprises Limited, the company associated with that store.

[44] Two October 2020 letters from employees in support of the Dhillons’ good employment practices contain no reference a company. Both refer simply to their Bottle O store name and to the Dhillons.

[45] The email address the Dhillons used was “dhilloncrew@ [email provider name] .com”. There was no reference to any company name. The reference supports Mr Dhillon or both the Dhillons jointly being the employer.

[46] There was some other evidence of the use of company names:

- a public notice on the door of the Springfield store refers to Dhillon Liquor Limited.
- a credit card existed in the name of Dhillon Liquor Limited/Amarjeet Kaur Dhillon. Having received the photo of the card via text, Mr Singh asked if Dhillon Liquor Limited is the name of the company?

- a single payslip from Jas was sent to Mr Singh during lockdown in May 2020. Mr Singh acknowledges getting the email but says he did not open the payslip. There appear to have been no other payslips generated or provided.
- Mr Singh did receive deliveries at liquor stores which came with invoices seemingly showing names of companies as well as the Bottle O franchise name. However, the respondents did not provide an invoice which had Jas Holdings Limited on it.
- A letter from the Ministry of Social Development to Ms Dhillon regarding the wage subsidy refers to Jas, although there is no evidence Mr Singh saw that. Mr Singh's email, which had been requested, was sent to Mr Dhillon thanking him ("you") for applying on Mr Singh's behalf.

[47] When Mr Singh's job was advertised for immigration purposes, a text exchange suggests Mr Singh had knowledge of the corporate structure. However, Mr Singh says although from his phone, the messages were sent by the store manager who was involved in the advertising.

[48] Mr Dhillon lodged a statement of defence and statement of problem before he was represented. Both documents respond in detail to the claim, with the statement in defence particularly specifying agreement or denial of the assertions in the statement of problem and providing more information. Mr Dhillon also provided an affidavit, lodged after he was represented, regarding an urgency application. Neither the statement of defence, statement in reply, nor the affidavit contains reference to Jas or to Mr Dhillon not being the employer.

### **What about credibility?**

[49] Both Mr Singh and Mr Dhillon struggled to answer adequately questions about important parts of the evidence.

#### *Mr Singh*

[50] Mr Singh did not have a strong sense of differences between an employer, the owner of a business and the person who gave him instructions.

[51] Mr Singh was equivocal on questions about directorship, different corporate structures and whether he was aware that those corporate entities. He claimed to be unaware of the companies until after his termination, having only checked the balance of his bank account and never looked at the detail of who was referred to as having made the payments.

[52] Although I accept not everyone frequently examines the details of individual transactions on their bank statements, it seems unlikely that in the 15-month period Mr Singh worked at Bottle O stores he never occasionally noticed a reference to company names on his bank statements and the invoices for goods he was processing.

[53] Mr Singh accepts that during his work at Bottle O he had seen some documents which referred to Mr Dhillon or Ms Dhillon as a director, albeit not referring to a specific company.

[54] Submissions describe Mr Singh as at best wilfully blind to the evidence that his employer was a company.

#### *Mr Dhillon*

[55] In several important areas Mr Dhillon's evidence was vague or contradictory.

[56] Mr Dhillon appeared uncertain when questioned regarding events at the start of Mr Singh's time at the Bottle O stores, repeatedly attempting to check his notes before answering.

[57] Significantly Mr Dhillon gave contradictory evidence in relation to Authority questions on two important issues regarding 16 February 2019. These were whether:

- he spoke to Mr Singh about who the employer was. Initially he said that they had not discussed it on the 16<sup>th</sup> but later said that he had talked to Mr Singh then about the store Mr Singh was to work in being Bottle O Ngongatahā, owned by Dhillon Enterprises Limited. In addition to the inconsistency, that reference does not fit will with the assertion that Jas was the employer.
- they spoke about Mr Singh's visa that day. First Mr Dhillon said they did not discuss it. Mr Dhillon's explanation was that Mr Singh had already talked to Mr P and having arrived from India, he knew Mr Singh had some kind of visa. After questions on other matters, Mr Dhillon said Mr Singh had told

him on the 16<sup>th</sup> that he had an open visa and could work anywhere. The evidence became more elaborate when questioned about whether he had asked Mr Singh to have a look at the visa. Mr Dhillon replied that Mr Singh did not have it with him however, when queried if he had asked Mr Singh, Mr Dhillon said no. This was said to be based on Mr Singh not having anything with him (at the time). When asked whether the visa could have been in Mr Singh's pocket, Mr Dhillon replied that he had no idea.

[58] This contradictory evidence seriously undermined Mr Dhillon's credibility. He also had difficulty with other evidence regarding visas. When asked about why in May 2020 Mr Singh was asking for a manager's contract, he replied he had no idea, at that time they did not need any managers. When visa requirements for a manager's role were raised, Mr Dhillon denied knowing about that as he was never involved. Further questions about whether the companies sponsored anyone for visas led Mr Dhillon to repeat that he was not involved. Questions about which workers were sponsored resulted in Mr Dhillon indicating that (of about five Bottle O workers) maybe three other named workers were sponsored. They were all store managers. Mr Dhillon denied having been talked to by Immigration New Zealand about their visas.

[59] Ms Dhillon's evidence was that the companies sponsored employees' visas, she was not involved but Mr Dhillon was. I found her evidence more credible on this point.

[60] A final difficulty for Mr Dhillon concerned his statement of defence and statement of problem both of which failed to refer to Jas as the employer or even as a relevant company. He says he and his wife created these documents. The statement of defence adopts the traditional pleading style of "deny", "admit" or "agree", and "partially admit".

[61] When questioned Mr Dhillon said he had not legal background and did not consult a lawyer in the preparation of the documents. He denied having experience in other court matters other than one other Authority matter which started around the same time as this matter. Ms Dhillon also has no legal qualification. Other sources cannot be ruled out.

[62] The statement of problem which Mr Dhillon was replying to refers in the intituling to "*Charanjit Singh Dhillon (the employer)*". When ask about the failure to refer to Mr Singh's employer being anyone other than himself, Mr Dhillon said he did not consider this as it seemed like a minor matter and he did not go into that kind of detail. I find that evidence

out of keeping with the statement of defence in particular which does through providing a response to each of the problems identified in paragraph 1 and the facts in paragraph 2 of the statement of problem. It seems unlikely that an experienced businessman with several franchised stores who used accountants would not have any sense of needing to say he was not the employer.

[63] When taken together all these matters seriously undermine the credibility of Mr Dhillon's evidence and lead me to prefer the evidence of Mr Singh.

### **Who was the employer?**

[64] Who would an independent but knowledgeable observer say was Mr Singh's employer, with a focus on the start of the employment relationship?

[65] There were fewer indicators at the start of the relationship than would often be the case, with no advertisement, job application or letter of offer.

[66] A written employment agreement usually provides a useful starting point. However, not in this case. The employment started on 16 February 2019. Even on Mr Dhillon's evidence there was no written employment agreement offered at that point with the document being offered some nine days later.

[67] In addition, having found Mr Singh's evidence more reliable, I accept that there was no written employment agreement entered into.

[68] Focusing as I must on the situation at the start of employment, Mr Singh was not made aware of a company called Jas Holdings Limited or the other companies being involved with the business. This could be seen as a situation of an undisclosed principal.<sup>3</sup>

[69] It is difficult to get an entirely coherent picture of the operations of the different companies. The companies appear genuinely established but with some inconsistent use. Timesheets, PAYE returns and bank statements have different numbers of companies involved with Mr Singh. In addition, the entity which makes the payment is not definitive.<sup>4</sup>

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<sup>3</sup> *Fuimaono v Houia* [2017] NZEmp C 63.

<sup>4</sup> See for example, *Kidd v Beaumont* [2016] NZEmpC 158.

Although an employing company may be able to be nominated there was little here to link Mr Singh to Jas in particular with payments also came from other companies.

[70] Assessing all of the evidence with a focus on what happened at the time the employment relationship was formed, the better interpretation is that Mr Dhillon solely was the employer even if that was on the basis of him intending one or more undisclosed companies to be the employer. I conclude that Mr Singh was employed by Mr Dhillon.

[71] I have considered whether Jas by itself or with some or all the companies became Mr Singh's employer after he started with Mr Dhillon, by way of variation to the employment agreement. Overall, the evidence of Mr Dhillon and Mr Singh did not support that. Rather I find that Mr Dhillon remained the employer for the entire period Mr Singh worked at the Bottle O stores.

#### **What about additional respondents?**

[72] The second amended statement of problem asserts that Ms Dhillon is a person involved in breaches, as defined in s 142W of the Act. On behalf of Ms Dhillon and the other respondents it is claimed that she was not an employer. Her inclusion on that basis was opposed however, at the investigation meeting her joinder on the basis of a s 142 claim was accepted.

[73] I have not found that Ms Dhillon was Ms Singh's employer. However, that is not the only basis on which she could properly be a party. Under ss 142Y of the Act people involved in certain breaches may be liable for default in payment of wages or other money due to employees.

[74] People involved are defined in s 142W(1) of the Act to include those who aided, abetted, counselled or procured a breach. Given the employer was an individual the restriction in s 14W(2) regarding officers does not appear to apply. In any event there is an argument that Ms Dhillon is a person in a position to exercise significant influence over management or administration, as defined in s 142W(3)(e). This provides sufficient basis for Ms Dhillon to be joined as a party. She is added as second respondent.

[75] There may be little purpose in having Jas remain as a party but having heard no submissions on that point, the company remains, being third respondent.

[76] Having found Mr Dhillon to be the employer for the entire period of Mr Singh's work with Bottle O, I do not join the other companies.

### **Raising of the constructive dismissal claim**

[77] The respondents argue that the grievance was not raised in time with leave then being sought, if needed, by Mr Singh, for the grievance to be raised out of time.

[78] There is some uncertainty over when the employment finished with Mr Singh arguing he was constructively dismissed and the respondents asserting that he abandoned his employment (potentially from 19 May 2020) or alternatively resigned on 25 May 2020. There is also a 2 June 2020 letter from Mr Dhillon to Mr Singh terminating his employment, although Mr Singh denies having received it at the time.

[79] The parties accept that a grievance can be raised via service of a statement of problem on the employer.<sup>5</sup>

[80] Mr Dhillon was the employer. At the investigation meeting he said he received the statement of problem on 18 June 2020. He did say he regarded the grievance as being raised regarding Jas as the employer. However, the statement of problem clearly identifies Mr Dhillon as the employer and from an objective assessment the grievance was raised with him by service of the statement of problem.

[81] It does not matter of the events outlined by the parties are found to amount to the termination of Mr Singh's employment, as all occurred within 90 days prior to Mr Dhillon receiving the statement of problem. The grievance was raised within the required period.

[82] The issues of consent and leave therefore do not need to be decided.

### **What are the next steps?**

[83] The Authority will be in contact with the parties to arrange a case management conference.

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<sup>5</sup> See for example, *Premier Events Group Limited v Beattie* [2012] NZEmpC 79.

[84] Costs are reserved and will be dealt with alongside costs on the substantive application, if necessary.

**Nicola Craig**  
**Member of the Employment Relations Authority**