

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OTUTAHI ROHE**

[2025] NZERA 680
3323780

BETWEEN	GURPREET SINGH Applicant
AND	IK HOSPITALITY LIMITED Respondent

Member of Authority:	Marija Urlich
Representatives:	Jason Archer, counsel for the Applicant Daler Singh, representative for the Respondent
Investigation Meeting:	15 July 2025
Submissions and information received:	24 July and 7 August 2025, from the Applicant 30 July, from the Respondent
Determination:	24 October 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Gurpreet Singh says he was employed by IK Hospitality Limited (IKH) as a bar person from 3 August 2023 to 20 September 2023 when his employment ended by way of resignation. He says his resignation amounts to an unjustified constructive dismissal for which he seeks remedies to compensate lost wages, injury to feelings and a contribution to costs. Mr Singh also says he was unjustifiably disadvantaged in his employment because IKH failed to pay wages and sought and received from him an unlawful premium. To remedy these grievances, he seeks to be reimbursed lost wages from when his employment ended and compensatory damages for hurt feelings. He also seeks orders for arrears of wages and holiday pay and reimbursement of the premium

paid. Penalties are also sought for breaches of statutory duty. He seeks a contribution to costs.

[2] IKH operates a bar in Christchurch. It accepts it assisted Mr Singh to learn the basics of bar operation and provided him help to obtain his license controller qualification (LCQ) but says this was in acquiescence to his request. IKH strongly denies Mr Singh was ever employed by IKH or that a premium was sought or received.

The Authority's investigation

[3] The Authority has received evidence from Mr Singh, Akashdeep Singh and by audio-visual technology, Jaibir Singh, Shalinder Singh, and Inderpal Singh by audio-visual technology and for IKH, Daler Singh, its director and shareholder. Daler Singh became the director of IKH on 12 October 2023. At the investigation meeting he advised the Authority IKH was not calling the previous director to give evidence because he (Daler Singh) had no contact with the previous director who he understood was overseas.

[4] 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. In determining this matter, the Authority has carefully considered all the material before it, including all information received from the parties and the submissions of their representatives.

Issues

[5] The issues identified for investigation and determination are:

- (i) Did IKH employ Mr Singh?
- (ii) If so, was Mr Singh unjustifiably disadvantaged in his employment by the actions of IKH including:

- (a) failing to pay wages for the duration of his employment; and

- (b) requiring a premium to be paid in exchange for employment.

- (iii) If so, what remedies should be awarded to Mr Singh including:
 - (a) reimbursement of lost wages under s 123(1)(b) of the Act;
 - (b) compensation under s 123(1)(c)(i) of the Act;

- (iv) Recovery of wage arrears and other money payable for the entire period of employment under s 131 of the Act?

- (v) Recovery of \$12,000 under s 12A(2) of the Wages Protection Act 2000

- (vi) Should interest be awarded on any sum for which recovery is ordered: schedule 2 clause 11 of the Act?

- (vii) Should penalties be ordered under s 135(1)(a) and (b) of the Act, a portion of which paid to Mr Singh for established breaches of the following statutory duties:
 - (a) of good faith: s 4A of the Act;
 - (b) to provide a written individual employment agreement: s 65; and
 - (c) to keep a wages and time record: s 130

- (viii) Should penalties be ordered under the following provisions, a portion of which paid to Mr Singh for:
 - (a) failure to pay him minimum wages under s 10 of the Minimum Wage Act 1983?
 - (b) failure to pay him holiday pay entitlements under s 23 Holidays Act 2003?
 - (c) requiring him to pay a premium prohibited under s 13 Wages Protection Act 1983?

- (ix) Is either party entitled to an award of costs.

Relevant law

Meaning of employee

[6] Section 6 of the Employment Relations Act 2000 sets out the meaning of employee and includes a person employed to work for hire or reward under a contract of service and excludes volunteers who do not expect and do not receive reward:

s.6 Meaning of employee:

(1) In this Act, unless the context otherwise requires, Employee –

(a) Means any person of any age employee by an employer to do any work for hire or reward under a contract of service; and

...

(c) excludes a volunteer who –

(i) does not expect to be rewarded for work to be performed as a volunteer; and

(ii) receives no reward for work performed as a volunteer

(2) In deciding ... 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.

(3) In deciding for the purposes of subsection (1)(a) whether a person is employed by another under a contract of service...the Authority...must determine the real nature of the relationship between them.

[7] The following sets out how the Authority should assess the real nature of the relationship:¹

“All relevant matters” certainly includes the written and oral terms of the contract between the parties, which will usually contain indications of their common intention concerning the status of their relationship. They will also include any divergences from or supplementation of those terms and conditions which are apparent in the way in which the relationship has operated in practice. It is important that the Court or the Authority should consider the way in which parties have actually behaved in implementing their contract. How their relationship operates in practice is crucial to a determination of its real nature. “All relevant matters” equally clearly requires the Court or the Authority to have regard to features of control and integration and to whether the contracted person has been effectively working on his or her own account (the fundamental test), which were important determinants of the relationship in common law. It is not until the Court or the Authority has examined the terms and conditions of the contract and the way in which it actually operated in practice that it will usually be possible to examine the relationship in the light of the control, integration and fundamental test.

¹ *Bryson v Three Foot Six Limited (No. 2)* [2005] NZSC 34 at [32].

[8] The Employment Court has more recently recognised a broader more nuanced approach to assessing employment status:²

All of this is a long way of saying that whether a contract of service exists may arise inferentially. Conducting an analysis of the common law markers of contractual relations as a precursor to the mandated inquiry under s 6 is unlikely to be helpful and may well lead to perverse results. If Parliament had intended such an approach it is likely s 6 would have been framed very differently. Rather, Parliament mandated a broader, more nuanced, approach. That is reflected in *Bryson's* identification of the range of features that generally exist in employment relationships, including high levels of integration and control by the putative employer over the work (when, where, how, why) undertaken by the putative employee; who is benefitting from the work; and what the economic reality of the relationship is. In short, the Court is concerned with conduct in context.

[9] With respect to volunteers in *Courage* the Court found there is a distinction between being a volunteer for the purposes of section 6 and doing work voluntarily. The Court found work usually performed for pay can be an indicator that it is economic in nature.³ In that case the reward was food, accommodation and security within the community.

The test for justification

[10] In considering personal grievances for unjustified action and dismissal, as here, the Authority must apply the test for justification set out at section 103A of the Act. The Authority must carefully assess the reasons given to the employee by the employer and decide, on an objective basis, whether the employer's actions were reasonable. In addition, a fair and reasonable employer is expected to comply with its statutory obligations which include the good faith obligations which include at s 4:

- (1) The parties to an employment relationship...
- (b) ...must not...do anything-
 - (i) to mislead or deceive each other; or
 - (ii) that is likely to mislead or deceive each other.
- ...
- (1)(A) The duty of good faith in subsection (1)—
 - ...
 - (b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment

² *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746 at [142].

³ Above at [187].

relationship in which the parties are, among other things, responsive and communicative;...

[11] Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action “because a fair and reasonable employer will comply with the law”.⁴

[12] Further, in accessing the fairness and reasonableness of the employer’s actions in a s 103A setting focus is required on the employment relationship overall. In *FMV v TZB* the Supreme Court discussed this emphasis in the Act and its relationship with the statutory good faith obligations:⁵

[46] ...As its name suggests, the current Act takes a relational approach, insisting that employment is more than a market transaction theoretically conducted at arm’s length between individuals with equal bargaining power. The result is that while the employment agreement remains very important, it is the employment relationship that is the real focus under the current Act. The scope of the employment relationship is wider than the employment contract and it adds an additional dimension to contractual rights and obligations. This is reflected in two important ways.

[47] The first is the statutory incorporation of the principle of good faith into the employment relationship. This principle underpins the Act’s relational approach.

[48] Part 1, “Key provisions”, begins by stating that the object of the Act is:

to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship...

[49] This is to be done, first and foremost, by:

... recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour...

[50] Section 4 then provides that parties to an employment relationship “must deal with each other in good faith”. This means, of course, that parties must not mislead or deceive one another, but its effect is wider than that. Parties must also actively and constructively establish and maintain a productive employment relationship; they must be responsive and communicative; and employers must comply with procedural fairness requirements...Parliament was at pains to ensure that the principle of good faith should be the driver of all employment relationships, independently of and in addition to obligations in the employment contract.

⁴ *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 (EmpC) at 842 [65].

⁵ *FMV v TZB* [2021] NZSC 102, [2021] 1 NZLR 466, [2021] ERNZ 740 at [46].

Background

[13] Gurpreet Singh came to New Zealand on 3 July 2023 on an accredited employer work visa (AEWV) to start a job as a duty manager in a liquor store in Christchurch. Mr Singh gave unchallenged evidence that the broker for this employment was the former director of IKH (the former director) who is also a close relative of Daler Singh. Gurpreet Singh said he understood from the former director the job was with their friend and customer. Gurpreet Singh paid a sum equivalent to \$30,000 for the visa and said the former director made the arrangements for the payment.

[14] On 28 July the employment for which the visa was granted ended. Gurpreet Singh said the employer told him there was no more work and that shift was to be his last. He had received no wages for the work performed. He turned to the former director for advice and support who told him he would try to resolve the issue with the employer and proposed an immediate solution - he (Gurpreet Singh) could work at his bar but he must pay \$12,000 for the job, the price to transfer his AEWV to IKH, they would help him with his rent which was \$200 per week and he was to go to the bar to start training. Gurpreet Singh accepted the offer. This arrangement was agreed on 2 August. Also, on 2 August Gurpreet Singh sent Daler Singh information about a licensed control qualification (LCQ) which he had been unable to progress with his employer at the liquor store. A duty manager in a liquor store must hold a LCQ as must a duty manager in a bar.

[15] Gurpreet Singh said as directed by the former director he started work with IKH on 3 August. He said he started work that day between 4pm and 5pm and finished between 10pm and 11pm and that Daler Singh told him to work with Akashdeep Singh who would show him what to do. Akashdeep Singh, in his evidence to the Authority confirmed Gurpreet Singh's evidence including that they worked together at the bar from 3 August and that Gurpreet Singh worked the same hours he did Monday to Saturday.

[16] Akashdeep Singh provided in evidence a photograph of a letter he said was presented to him by Daler Singh in late September 2024 and which Daler Singh asked him to take to a justice of the peace to sign and be witnessed. The letter includes that Gurpreet Singh came to the bar to observe operations particularly when Daler Singh was not present and usually on weekends and that he spent some time at the bar preparing for his LQC test. Akashdeep Singh said he told Daler Singh he refused to

sign the letter because its contents were not true. Attached to IKH's statement in reply dated 28 September 2024 are two unsigned statements – one under the name Akashdeep Singh and the other under the name of a person who worked as a duty manager at the bar while Gurpreet Singh was there. For completeness Daler Singh told the Authority at the investigation meeting the duty manager was unable to attend to give evidence. Little weight can be placed on the letter under the duty manager's name given they were unable to affirm the contents of such or be questioned. The contents of the statement under Akashdeep Singh's name attached to the statement in reply is the same as the document Akashdeep Singh produced to the Authority. I am satisfied Akashdeep Singh did not write the document, that it was presented to him by Daler Singh to sign and be witnessed and that he (Akashdeep Singh) refused to do so because he did not agree with the contents including the description of Gurpreet Singh's involvement with the bar.

[17] Gurpreet Singh described in detail the work he performed and the people with whom he worked. He has provided WhatsApp messages with Daler Singh from 5 August to 20 September which variously include:

“start mopping”

“ask for ID”

“start cleaning the Beer tap”

“stay with him when he is clearing the pokies”

“get the signs in”

“pick up the glass jugs from the smoking area

“lock the front main door”

[18] Gurpreet Singh says these are work instructions received from Daler Singh who was sitting in the office observing the bar on CCTV. He says Daler Singh confirmed shift start times and directed his duties. Daler Singh says he was helping Gurpreet Singh out to learn bar operations and the communications were for this purpose or to ask Gurpreet Singh to communicate instructions to other staff because he could not get hold of them. Daler Singh accepted he dropped Gurpreet Singh home when Friday and Saturday night shifts finished late and there were no bus services available.

[19] Also in support of his claim that he was an employee Gurpreet Singh has provided video recordings of him opening and closing tills in the bar, being shown how to close gaming machines and how to generate a consumption report. He said he made

these recordings on his phone so he could undertake the tasks himself. In another video, which was used for promotional purposes on the bar's website, Gurpreet Singh can be seen working behind the bar. Daler Singh says these videos are not evidence of employment but rather how IKH supported Gurpreet Singh to learn about bar operations.

[20] On 13 August Gurpreet Singh met with the former director and Daler Singh at the bar. Gurpreet Singh says the former director told him they were prepared to offer him a job so he could transfer his AEWV to IKH and Daler Singh confirmed this in front of him. Gurpreet Singh asked if he would be paid for the work he had done to date, and they said no because he was training but they would help him with his rent payments of \$200 per week. Gurpreet Singh said he agreed to this because he had no choice and sent his bank account details to the former director.

[21] On 14 August the former director deposited \$200 into Gurpreet Singh's bank account with the reference "rent". Gurpreet Singh said when he received the rent payment into his account, he felt he could trust the former director about the offer of a job with the bar and he set about arranging the \$12,000 he needed to pay as part of the agreement. He had \$2,000 available. On 15 August he contacted friends overseas, explained he needed money for his employment in New Zealand and they each agreed to give him \$5,000 which they immediately deposited into his bank account.

[22] On Thursday 17 August the former director sent a text message to Gurpreet Singh "Friday tomm". Gurpreet Singh understood this as code that he had to meet the former director the next day with the \$12,000. The following day Gurpreet Singh withdrew \$10,000 cash from his bank account. At about midday, as arranged, he met the former director outside his (Gurpreet Singh's) house and handed him a bundle of \$12,000 in cash through the window of a car in which the former director was sitting.

[23] Gurpreet Singh's bank account records were provided to the Authority and support the money deposits and withdrawals he described. Witnesses Jaiber Singh and Shalinder Singh corroborated Gurpreet Singh's evidence that he needed to borrow money for them to secure a job. Shalinder Singh has known Gurpreet Singh, Daler Singh and the former director for some years. He said he was in regular contact with Gurpreet Singh, knew he was concerned that he was not being paid for the work at the bar and when Gurpreet Singh stopped working at the bar he (Shalinder Singh) contacted Daler Singh and the former director and sought to reconcile the parties including asking

them to return the \$12,000 paid for the job. He said this was agreed on condition Gurpreet Singh left New Zealand because they did not want trouble with immigration. Daler Singh denied any knowledge of the \$12,000 payment or that he discussed the payment with Shalinder Singh or Gurpreet Singh.

[24] Gurpreet Singh's evidence as to the job price he was required to pay and how it was paid was unchallenged with direct evidence and was supported by compelling corroborating evidence. I accept Gurpreet Singh's evidence as to the fact of and the circumstances in which the payment was made to the former director. I also accept his evidence as to the purpose of the payment which was to secure employment with IKH.

[25] On 21 August Gurpreet Singh attended a one-day LCQ course. He understood a friend of the former director's booked and paid for the course payment of which he reimbursed. He received the LCQ certificate on 21 September.

[26] By 12 September Gurpreet Singh realised something was not right. He had received no more rent payments and had been paid no wages. His requests for payment had been brushed aside. That day he told Daler Singh he could not work if he was not being paid. I find this was his last day of work with IKH.

[27] On 20 September Daler Singh called him to ask him to work that night at the bar. He did not know what to do so he contacted the former director who asked him why he had not been at work. When he told the former director he could not work unless he was paid they said they would speak to Daler Singh. Gurpreet Singh went to the bar that evening anticipating matters would be clearer between the parties. He waited at the bar to speak to Daler Singh and when they spoke Daler Singh told him he would not be paid for his work.

[28] On 11 December Gurpreet Singh's representative wrote to IKH outlining this employment relationship problem including raising personal grievances and seeking reimbursement of the \$12,000 premium. I am satisfied the parties have attempted to resolve these matters between them, including attending mediation.

Discussion

(i) *Was Mr Singh an employee?*

[29] IKH says it did not offer employment to or employ Gurpreet Singh and he could not work for it under the terms of his visa. It says when he asked for help to learn bar operations after his employment ended IKH provided it including help to get a LCQ. IKH says Gurpreet Singh was never given instructions about when to start work or called to work, that Gurpreet Singh came and went to the bar as he pleased and Daler Singh may have asked him to pass on messages to his staff when they were busy when he (Gurpreet Singh) was sitting at the bar.

[30] Gurpreet Singh was employed by IKH. I am satisfied IKH's former director offered Gurpreet Singh a job in his bar on condition he paid \$12,000 and his rent of \$200 per week would be paid while he trained in the role. I am further satisfied that the parties through their actions met, or in IKH's part partially met, the terms of that arrangement - Gurpreet Singh paid the former director the job price and in exchange he worked in the bar diligently learning bar operations and gaining the necessary certification and the former director paid \$200 into Gurpreet Singh's bank account and liaised with the bar manager, Daler Singh, to facilitate Gurpreet Singh's access to the bar, training to learn bar operations and help to get his LCQ. At all times the former director was acting on behalf of IKH - he offered Gurpreet Singh a job at a bar owned by IKH, received the job price money from Gurpreet Singh to secure the job at IKH and was at all relevant times the sole director and shareholder of that entity.

[31] The evidence supports a finding Gurpreet Singh worked full time at IKH's bar performing bar duties from 3 August to 12 September 2023:

- (i) Akashdeep Singh an employee of IKH who worked full time at the bar corroborated Gurpreet Singh's evidence including the times and dates he worked and duties he performed;
- (ii) video recordings further corroborate Gurpreet Singh's claim which variously show him being trained or performing duties which were integral to IKH's business including opening and closing the tills, tasks involving gaming machines and cashing up and working behind the bar;⁶

⁶ *Talbot Agriculture Ltd v Wate* [2019] NZEmpC 31.

- (iii) the bar is a licensed, commercial operation which sells alcohol and operates gaming machines, in such a highly regulated environment it follows and the evidence establishes the tasks Gurpreet Singh performed where under the direction and control of the license holder, IKH;⁷
- (iv) further Gurpreet Singh was integrated into the business from the start and worked in the same way as an employee including being dropped home by Daler Singh after late closing Friday and Saturday; and
- (v) Gurpreet Singh expected to be paid for the work he performed, repeatedly asking for payment.

[32] Even if it was accepted Gurpreet Singh's involvement with IKH's bar was in a training capacity, in circumstances where a reward is expected and received, an employment relationship is more likely to arise.⁸ Given the evidence before the Authority of reward expected and received including the promise of formalising immigration status in exchange for the job price payment, a rent payment made and received, assistance with the LCQ process with the addition of the integration indicia as above, I find the parties were in an employment relationship.

(ii) *Was Mr Singh unjustifiably disadvantaged – failing to pay wages?*

[33] Gurpreet Singh's evidence was he was not paid wages for the hours he worked and he had an expectation he would be paid for those hours because he was an employee of IKH. He says he raised the non-payment of wages on multiple occasions and was eventually told he would not be paid. Gurpreet Singh's evidence is accepted. Akashdeep Singh, Jaibir Singh and Shalinder Singh gave evidence of the negative impact the failure to pay was having on Gurpreet Singh variously that he was tearful, stressed and worried about his family.

[34] Failure to pay wages in full when due and owing is a serious breach of the duty owed to Gurpreet Singh as an employee.⁹ IKH breached this duty because it did not pay Gurpreet Singh subsequent to his commencing employment, continued not to pay him and failed to engage constructively with him when he raised non-payment of wages. This failure has caused Gurpreet Singh to suffer a disadvantage in his employment. He

⁷ *A Labour Inspector of the Ministry of Business, Innovation and Employment v Prisha's Hospitality (2017) Ltd T/A Royal Cambridge Indian Restaurant* [2023] NZEmpC 89 at [52].

⁸ *Salad Bowl Limited v Howe-Thornely* [2013] NZEmpC 152 at [27] and *Labour Inspector v Ways Electrical Limited* [2018] NZERA Wellington 76.

⁹ *Wages Protection Act 1983, s 4.*

has established a personal grievance for unjustifiable disadvantage in respect of his employer's failure to pay wages.

(iii) *Was Mr Singh unjustifiably disadvantaged – requiring a premium to be paid?*

[35] No premium is to be charged for employment.¹⁰ I have found IKH required Gurpreet Singh to pay a premium as a job price and it received the premium payment after the employment relationship commenced. Such action is unlawful and unjustified and are not the actions of a fair and reasonable employer. I accept counsel's submission that the action was exploitative, put Gurpreet Singh into further financial and emotional hardship and further widened the inherent inequality of bargaining power in the employment relationship. I also accept IKH have capitalised for its financial gain on its position of trust and confidence arising from the employment relationship. This personal grievance for unjustified action is established.

(iv) *Was Mr Singh unjustifiably constructively dismissed?*

[36] An employee may be constructively dismissed by their employer when no explicit words of dismissal have been used. The Court of Appeal in *Auckland Shop Employees Union v Woolworths (NZ) Ltd* held that constructive dismissal includes, but is not limited to, cases where:

- (a) An employer gives an employee a choice of resigning or being dismissed.
- (b) An employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign.
- (c) A breach of duty by the employer causes an employee to resign.¹¹

[37] If the dismissal is caused by breach of duty the questions for consideration are then whether the breach of duty by the employer caused the employee's resignation and if yes, whether the breach was of sufficient seriousness to make it reasonably foreseeable resignation would follow.¹²

¹⁰ Wages Protection Act 1983, s 12A.

¹¹ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372, (1985) ERNZ Sel Cas 136 (CA).

¹² *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers Industrial Union of Workers (Inc)* [1994] 2 NZLR, 415, [1994] 1 ERNZ 168 (CA) at [172].

- *Did IKH breach the terms of the employment agreement causing Gurpreet Singh to resign?*

[38] Failure to pay wages in full when due and owing is a serious breach of the duty owed to Gurpreet Singh as an employee.¹³ IKH breached this duty because it did not pay him for work performed and this breach was ongoing through the employment relationship. Requiring Gurpreet Singh to pay a premium to secure employment was a breach of statutory duty and breach of the duty of good faith which requires parties to employment relationships not to mislead or deceive each other and be active and constructive in establishing and maintaining a productive employment relationship.

[39] I am satisfied Gurpreet Singh's employment ended on 12 September when he told Daler Singh he could not work without being paid. He had raised his concerns about non-payment of wages previously and the impact of its ongoing failure to pay. These concerns are properly seen in the context of a premium being paid on promise of regularisation. Despite this IKH took no action to remedy its breach.

- *If so, was Gurpreet Singh's resignation reasonably foreseeable given the nature of the breaches?*

[40] Yes. The failure to pay in the circumstances of this matter was a breach of duty of sufficient seriousness to make it reasonably foreseeable Gurpreet Singh would resign. He made it clear to IKH that his personal circumstances were such that he could not work without pay and that he expected to be paid for the work he performed. The steps he took to end the employment relationship on 12 September were readily foreseeable. Gurpreet Singh was unjustifiably constructively dismissed.

Remedies

[41] Gurpreet Singh has established personal grievances for unjustified action and unjustified dismissal. He is entitled to a consideration of the remedies sought.

Reimbursement of lost wages

[42] Gurpreet Singh seeks an award of reimbursement of lost wages resulting from the personal grievance for unjustified disadvantage of 5.7 weeks and unjustified dismissal of 12 weeks. The arrears claim is dealt with at [46] below.

¹³ *Wages Protection Act 1983, s 4.*

[43] After reviewing the evidence of loss and his attempts to mitigate that loss, including the grant of a migrant exploitation visa and securing a job in security in December, Gurpreet Singh is entitled to an award of lost wages of 12 weeks being \$14,982 (gross).¹⁴

Compensation for humiliation, loss of dignity and injury to feelings

[44] It is appropriate to globalise consideration of compensation under s 123(1)(c)(i) for the three found personal grievances due to their interrelated nature. The circumstances of Gurpreet Singh's personal grievances have caused him to experience uncertainty and stress which has had an ongoing negative impact. When he realised he had been exploited and his future was at risk this caused his mental health to plummet. He could not afford to seek medical help or access other government benefits due to his immigration status. He said this situation and the realisation that he had been exploited made him feel alone, lost and devalued as a human. He said after his dismissal he struggled to sleep and felt his brain was broken. He experienced terrible headaches which he tried to treat with over-the-counter pain relief and in the hope this would stop the depressive feelings he was experiencing. He said telling his family his situation was very difficult and he has struggled with feelings of guilt and shame. Gurpreet Singh has experienced harm under each of the heads of s 123(1)(c)(i) and is entitled to an award to compensate the humiliation, loss of dignity and injury to feelings consequent to such of \$30,000.

Contribution

[45] The Authority is required under s 124 of the Act, where it determines an employee has a personal grievance, to consider the extent to which the employee's actions contributed towards the situation that gave rise to the personal grievance and if the actions require, then reduce remedies that would otherwise have been awarded. Gurpreet Singh has not contributed in a blameworthy way to the circumstances which have given rise to his personal grievance.

¹⁴ \$22.70 (applicable adult minimum wage)/hour x 55 hours per week x 12 weeks = \$14,982 (gross).

Arrears of wages

[46] Gurpreet Singh has established he worked for IKH from 3 August to 12 September 2023, 5.7 weeks. He received a payment of \$200 from IKH during this period. IKH has not provided his wage and time records. His evidence to the Authority was he worked 55 hours per week over shifts worked Monday to Saturday and that he should be paid \$29.66 per hour because he understood he would be employed by IKH under an AEWV and that is the applicable minimum hourly rate. The days and hours of work are accepted for reasons set out above. I do not accept the claim of an hourly rate of \$29.66 per hour. This may have been Gurpreet Singh's expectation, but the evidence was unclear that an agreement was reached with IKH on the hourly rate and in the absence of such the applicable adult minimum wage is appropriate.

[47] IKH is ordered to pay Gurpreet Singh wage arrears totalling \$7,116.45 (gross) because he is entitled to be paid at the applicable adult minimum wage rate of \$22.70 for every hour worked and these wage arrears remain unpaid. The payment of \$200 is to be deducted from that amount. Holiday pay of \$553.32 (gross) calculated at 8% of total gross earnings is also to be paid by IKH to Gurpreet Singh.

Premium payment - \$12,000

[48] Gurpreet Singh seeks reimbursement of \$12,000 which he paid the former director for the job with IKH. The circumstances in which the payment was made are outlined above. He gave detailed evidence of the transaction details which is accepted.

[49] Section 12A of the Wages Protection Act 1983 provides no person or person engaged by the employer must seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person. I am satisfied the \$12,000 was paid by Gurpreet Singh to the former director to secure a job with his business, IKH. That is a premium under s 12A and IKH must repay that sum to Gurpreet Singh.

Interest

[50] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement. Gurpreet Singh is entitled to an award of interest on the orders of arrears and reimbursement of premium. IKH is ordered to pay interest, using the civil debt interest calculator, within 21 days of this determination, as follows:¹⁵

- (i) interest on the sum of \$12,000 (gross) from 18 August 2023 until the date payment is made in full; and
- (ii) interest on the sum of \$7,469.77 (gross) from 12 September 2023 until the date payment is made in full.¹⁶

Is IKH liable for a penalty?

[51] Penalties are sought for six statutory breaches - three for breaches of the Employment Relations Act 2000 and three for breaches of minimum entitlement provisions under the Holidays Act 2003, Minimum Wage Act 1983 and Wages Protections Act 1983. The breaches are established. IKH has been found to have failed to provide a written employment agreement, failed to keep wages and time record, breached the duty of good faith, failed to pay at least the applicable minimum wage for every hour worked, failed to pay holiday pay when due and owing and sought and received a premium. IKH has been on notice since 17 September 2024, when Gurpreet Singh's statement of problem was lodged that penalties were sought for the above breaches.

[52] The maximum penalty against a company is \$20,000.¹⁷ The breaches are sufficiently interrelated to warrant a globalisation into two breaches – those of the Employment Relations Act 2000 and those breaches of the minimum entitlement provisions. In considering whether a penalty is warranted and, if so, at what level, regard is had to the factors set out in s 133A of the Act, as well as the Employment

¹⁵ www.justice.govt.nz/fines/civil-debt-interest-calculator

¹⁶ Arrears of wages \$6,916.45 + holiday pay arrears \$553.32 = \$7,469.77.

¹⁷ Employment Relations Act 2000, s 135.

Court decisions in *Nicholson v Ford* and *A Labour Inspector v Daleson Investment Ltd*.¹⁸

- (i) *Employment Relations Act 2000 – failure to provide written employment agreement, failure to keep wages and time record and breach of statutory duty of good faith*

[53] IKH's failure to provide its employee Gurpreet Singh with a written employment agreement and failure to keep a wages and time record for him is a breach of statutory obligations which have hindered Gurpreet Singh's ability to bring his claim. He has had to establish his terms of employment without a written employment agreement and he has not had the benefit of wages and time records to calculate his arrears claims. He has had to use his own resources to establish these claims which will likely have caused stress and delay. The established breach of good faith is significant given the fundamental nature of the obligation and Gurpreet Singh's vulnerable status as a migrant worker whose visa restricted his ability to work and IKH's knowledge of these matters. IKH's actions must be seen as intentional and its culpability high. There is no relevant previous conduct of IKH to consider. There is no specific evidence before the Authority of any financial difficulty IKH may have in paying any penalty.

[54] Standing back and including comparison to other cases and the relevant matters listed in s 133A of the Act, a fair penalty is \$8,000. IKH is ordered to pay half the penalty to Gurpreet Singh to compensate him for the inconvenience and resources expended in pursuing statutory entitlements. The penalty is to be paid within 21 days of the date of this determination.

- (ii) *Minimum entitlement provisions – failure to pay the minimum wage, failure to pay holiday pay, seeking and receiving a premium*

[55] IKH's actions in failing to pay Gurpreet Singh at least the minimum wage for every hour worked, pay him holiday pay when his employment ended and requiring him to pay and receiving from him a premium for the job are clear breaches of the relevant minimum statutory provisions.

¹⁸ *Nicholson v Ford* [2018] NZEmpC 132 and *Labour Inspector v Daleson Investment Ltd* [2019].

[56] There are no factors which weigh in mitigation and IKH has taken no steps to mitigate these breaches. At all relevant times the breaches were overseen by and known to the then director of IKH and the manager of its business in which Gurpreet Singh worked. IKH knew Gurpreet Singh was a vulnerable, migrant worker and its actions have been found to have exploited that vulnerable position. IKH operates a business in a highly regulated sector and has employed employees on work visas including Akashdeep Singh. IKH was aware of or, could reasonably be expected to know the obligations of an employer employing a worker whose ability to lawfully work in New Zealand was dependant on their visa. These were intentional actions in breach of obligations owed Gurpreet Singh as an employee. Not much weight can be put on the factors IKH asserts as relevant, including that it was offering to train to Gurpreet Singh in bar operations, because these factors were known to it when it entered an employment relationship with Gurpreet Singh and IKH have been found to benefited from those circumstances to Gurpreet Singh's disadvantage.

[57] On the information before the Authority the subject failures were intentional actions in breach of obligations owed by IKH to Gurpreet Singh to pay wage arrears and holiday pay when due and owing and to require him to pay a premium for his job. IKH's culpability is high. There is compelling evidence of direct loss suffered by Gurpreet Singh as a result of these found breaches and he has spent time and resources seeking to enforce statutory obligations. There is no relevant previous conduct of IKH to consider. There is no specific evidence before the Authority of any financial difficulty IKH may have in paying any penalty.

[58] Standing back and including comparison to other cases, a fair penalty is \$10,000. IKH is ordered to pay half the penalty to Gurpreet Singh to compensate him for the inconvenience and resources expended in pursuing the payment of a statutory entitlements and the recovery of the premium. The penalty is to be paid within 21 days of the date of this determination.

Summary

[59] The Authority orders as follows:

- a) Within 21 days of the date of determination IK Hospitality Limited is ordered to pay Gurpreet Singh the following sums:

- i) \$14,982 (gross) pursuant to section 123(1)(b) of the Employment Relations Act 2000;
 - ii) \$30,000 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000;
 - iii) \$7,469.77 (gross) in arrears of wages and holiday pay;
 - iv) \$12,000 in premium reimbursement pursuant to s 12A Wages Protection Act 1983; and
 - v) total penalties of \$18,000 half of which is to be paid to the Crown and half to Gurpreet Singh.
- b) Within 21 days of the date of determination IK Hospitality Limited is to calculate and pay Gurpreet Singh interest on wage arrears, holiday pay and premium as awarded in paragraph [50] above.

Costs

[60] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If the parties are unable to resolve costs, and an Authority determination on costs is needed, Gurpreet Singh may lodge, and then should serve, a memorandum on costs within 14 days of the date of this determination. From the date of service of that memorandum IK 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. 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.

Marija Urlich
Member of the Employment Relations Authority