

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2021] NZEmpC 84
EMPC 31/2018**

IN THE MATTER OF minimum employment standards, application
for declarations of breach and other orders

**EMPC 104/2018
EMPC 154/2018**

AND IN THE MATTER OF proceedings removed in full from the
Employment Relations Authority

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS INNOVATION
AND EMPLOYMENT
Plaintiff

AND JEET HOLDINGS LIMITED
First Defendant

AND JEET HOLDINGS NO 2 LIMITED
Second Defendant

AND JEET HOLDINGS NO 5 LIMITED
Third Defendant

AND JEET HOLDINGS NO 6 LIMITED
Fourth Defendant

AND JEET HOLDINGS NO 8 LIMITED
Fifth Defendant

AND JEET GROUP EMPLOYEES LIMITED
Sixth Defendant

AND AMAR DEEP SINGH
Seventh Defendant

Hearing: 2–3 November 2020
(Heard at Christchurch)

Appearances: G La Hood, counsel for plaintiff
No appearance for defendants

Judgment: 9 June 2021

JUDGMENT OF JUDGE K G SMITH

[1] These proceedings were issued following an Inspector's investigation into a complaint about the treatment of eight employees employed by one or more of the defendant companies.¹ The Inspector's claim was that between 2007 and 2018 employees of the defendant companies were not paid entitlements owed to them under the Minimum Wage Act 1983, and the Holidays Act 2003 and one employee paid a premium for his job in contravention of the Wages Protection Act 1983. Allied to those claims, the Inspector alleged that the defendant companies had breached the Employment Relations Act 2000 (the Act) for failing to keep accurate time and wage records.

[2] The defendant companies are, or were, controlled by a common director and shareholder, Amar Deep Singh. The eight employees on whose behalf the Inspector investigated were Pulkit Sharma, Jawhar Singh, Rajendra Bhandari, Guru Parshad, Santosh Ghorsane, Bunty Singh, Parkash Chand and Puran Singh.

[3] The Inspector sought against the defendants:

- (a) A finding as to the legal entity, or entities, that employed each of the employees.
- (b) Penalties under s 130(4) of the Act for failing to keep accurate wage and time records as required by s 130.

¹ The matter was removed to the Court by the Employment Relations Authority in *A Labour Inspector v Jeet Holdings Ltd* [2018] NZERA Christchurch 42 (Member van Keulen); *A Labour Inspector v Jeet Holdings No 2 Ltd* [2018] NZERA Christchurch 834 (Member van Keulen).

[4] The balance of the pleaded claims were divided into two time periods; from 6 February 2012 to 31 March 2016 and from 1 April 2016 to 5 February 2018. That division is consistent with pt 9A of the Act coming into force on 1 April 2016.

[5] For the first time interval the Inspector sought against each of the defendant companies found to have employed one or more of the employees:

- (a) Minimum wage arrears owing to each employee in accordance with s 6 of the Minimum Wage Act.
- (b) Penalties for each breach of s 6 of the Minimum Wage Act pursuant to s 10 of that Act.
- (c) Holiday pay owing to each employee under ss 24 and 25 of the Holidays Act.²

[6] So far as Jeet Holdings No 6 Ltd was concerned, the Inspector sought a finding that Mr Sharma was required to pay a premium to it for his employment, in breach of s 12A of the Wages Protection Act. Recovery of that premium was sought together with a penalty for the company having sought and received it.

[7] So far as the second time interval was concerned (April 2016 to February 2018) the Inspector sought against Jeet Holdings Ltd, Jeet Holdings No 2 Ltd, Jeet Holdings No 5 Ltd, Jeet Holdings No 6 Ltd, Jeet Holdings No 8 Ltd and Jeet Group Employees Ltd:

- (a) Declarations of breach pursuant to s 142B(2)(a)(i) of the Act, because each of them had breached minimum entitlement provisions in the employment of the employees named in the pleading.
- (b) Orders for pecuniary penalties pursuant to s 142E(1) of the Act for breaches of minimum entitlement provisions.

² Pursuant to Holidays Act 2003, s 77.

- (c) Compensation orders pursuant to ss 142J(1) and 142L of the Act, to compensate the employees for losses and damage suffered because of the breaches of minimum entitlement provisions.

[8] For the same time interval the Inspector sought against Mr Amar Deep Singh:

- (a) A declaration of breach, because he was a person involved in the breaches of minimum employment provisions by the defendant companies.³
- (b) Orders for pecuniary penalties.⁴
- (c) A banning order.⁵

[9] The defendant companies denied all the Inspector's claims. Mr Amar Deep Singh admitted being the sole director and shareholder of each of the companies but denied there were any breaches by them or him.

Preliminary matters

[10] There are three preliminary matters. The first one is that Mr Amar Deep Singh did not appear at the hearing. Mr Singh is a New Zealand citizen who is now resident in India, where he has been for some time. He participated in this proceeding, most recently in directions conferences by telephone.

[11] Mr Singh stated, more than once, his intention to return from India to appear at the hearing to oppose the Inspector's claims. He took active steps in the proceeding by filing a statement of defence and complied with directions to file and serve a brief of his anticipated evidence. He sought, and received, from the Inspector briefs of evidence in Hindi when they were initially provided only in English.

[12] Mr Singh was sent a hearing notice specifying the date, time and venue for the hearing. He received minutes from the Court dealing with procedural matters that repeated the time, date and place of the hearing.

³ Pursuant to Employment Relations Act 2000, s 142B(2)(a)(ii).

⁴ Pursuant to Employment Relations Act 2000, s 142E(1).

⁵ Pursuant to Employment Relations Act 2000, ss 142M(1)(a), 142M(1)(b) and 142N(1).

[13] The week before the hearing Mr Singh sent to the Registrar of the Court personal information about his health in what seemed like a precursor to a request for an adjournment. In response to that information he was sent a minute informing him that, if his intention was to apply for an adjournment, an application would have to be made supported by evidence from a qualified medical practitioner. Mr Singh replied by stating that he was not seeking an adjournment and did not want the hearing to be delayed.

[14] When the hearing began Mr Singh was not present in Court. He was called in the Court precinct and a search for him was carried out in the Court waiting area. He did not appear and has not subsequently explained his absence. I was satisfied it was appropriate for the Inspector's case to proceed.

[15] The second preliminary matter is that several of the defendant companies are in liquidation: Jeet Holdings, Jeet Holdings No 2, Jeet Holdings No 6 and Jeet Holdings No 8 respectively. The liquidators of those companies authorised the proceeding to continue and informed the Court that they would abide the decision.⁶ That meant no evidence was presented by them about any of the Inspector's claims or their present financial circumstances.

[16] The third preliminary matter is that Jeet Group Employees has been removed from the Companies Register. No application was made to restore the company to the Register and, so far as I am aware, none is planned.

[17] Mr La Hood, counsel for the Inspector, accepted that the company no longer exists.⁷ That is because, having been removed from the Register, it no longer complies with the definition of company in the Companies Act 1993.⁸

[18] Despite this difficulty, Mr La Hood's submissions were aimed at preserving an ability to obtain orders relating to, or connected with, actions that might be attributed to Jeet Group Employees. He referred to two cases to support that possible outcome in some way.

⁶ Noted in *A Labour Inspector of the Ministry of Business, Innovation and Employment v Jeet Holdings Ltd* [2020] NZEmpC 56 at [11](a).

⁷ Companies Act 1993, s 15.

⁸ Companies Act 1993, s 2.

[19] The first case was *Weston v Advkit Para Legal Services Ltd*.⁹ That case was a costs decision where the Court drew to the attention of counsel that the company had been removed from the Register. After several memoranda from counsel the Court reluctantly agreed to the request to determine costs. The decision was brief. It expressed reservations about continuing and there was no analysis of the ability to do what was asked for.¹⁰ *Weston* does not support the Inspector's proposition and has no value as a precedent.

[20] The second case was *Accident Compensation Corporation v OPC Managed Rehab Ltd (struck off)*.¹¹ In that decision the company was removed from the Register but litigation had continued because that fact was not drawn to the attention of the Court. Subsequently insolvency proceedings were instituted. The High Court decided it was appropriate to continue to consider them, relying on its inherent jurisdiction.

[21] The case was appealed. By the time the appeal was heard by the Court of Appeal the defendant had been restored to the Register. The Court of Appeal specifically mentioned the unusual situation that had arisen in the High Court, where orders were made when the company was not on the Register, but declined to make any further comment because the issue had been remedied.¹²

[22] These cases do not support the contention that, in some way, orders can be made against Jeet Group Employees. It no longer exists and the Inspector is not able to continue this action against it.

The business and what happened

[23] Each of the defendant companies was a part of a group that operated a chain of restaurants in Canterbury under the name Corianders Ethnic Indian Restaurant. It is important to note that some of those businesses were sold and continue to trade preserving the trading name "Corianders". Those businesses are not part of the group

⁹ *Weston v Advkit Para Legal Services Ltd* [2013] NZEmpC 6.

¹⁰ At [9].

¹¹ *Accident Compensation Corporation v OPC Managed Rehab Ltd (struck off)* HC Auckland CIV-2004-404-4143, 14 October 2004 [*ACC v OPMC*].

¹² *OPC Managed Rehab Ltd v Accident Compensation Corporation* [2006] 1 NZLR 778, (2005) 17 PRNZ 883 at [22].

of companies controlled by Mr Amar Deep Singh and are not, in any way, connected with this case.

[24] The six defendant companies operated the following restaurants:

Company Name	Restaurant Location
Jeet Holdings Ltd	Rolleston
Jeet Holdings No 2 Ltd	Edgware Branch
Jeet Holdings No 5 Ltd	Hanmer Springs
Jeet Holdings No 6 Ltd	St Asaph Street
Jeet Holdings No 7 Ltd	Kaikoura
Jeet Holdings No 8 Ltd	Bush Inn

[25] The table in paragraph [24] has been derived from the pleadings in the amended statement of claim admitted by the defendants but the situation about Jeet Holdings No 8 was far from clear. The pleadings did not unequivocally describe that company as operating the Bush Inn restaurant and the witnesses who gave evidence about working in that establishment did not separately describe their employer as Jeet Holdings No 8. Jeet Group Employees did not operate a restaurant but, so far as the Court is able to ascertain, was intended to be a vehicle to employ staff.

[26] As will become apparent shortly, the Inspector's investigation showed a consistent pattern of unacceptable behaviour between the companies and their employees. The eight employees were routinely instructed to show in their timesheets less hours worked than they had actually worked. That meant the time and wage records required to be kept to comply with s 130 of the Act were completely inaccurate.

[27] The Inspector concluded that the wage and time records were unreliable because of a premeditated, systematic, method of underpayment over several years. That meant the employees were not paid their statutory minimum entitlements.

[28] The Inspector interviewed Mr Amar Deep Singh, more than once, and was dissatisfied with his answers and explanations. The Inspector said, and I accept, that when spoken to Mr Singh denied that the companies underpaid employees or that there was any deficiency in record-keeping.

[29] As a result of the Inspector's inquiries he prepared tables showing the shortfall in wages for each employee. In each case the Inspector calculated, as best he could, the amount underpaid to the employees by drawing on employment agreements (where they were available), Inland Revenue Department information, pay slips, and information supplied by the employees when they were interviewed. The Inspector's approach to calculating the losses was pragmatic and reasonable in the circumstances. His calculations are set out later in this decision.

Where did the employees work and what did they do?

[30] Mr Sharma was employed on an individual employment agreement as restaurant manager for Jeet Holdings No 6; the St Asaph Street restaurant. His employment agreement provided that, while his job was at that restaurant he might be required to work temporarily, or permanently, elsewhere.

[31] Under the agreement Mr Sharma was to work 40 hours per week. Despite what the agreement said he worked an average of 70 hours per week, over morning and evening split-shifts. Mr Sharma also spent time working in the Rolleston and Hanmer Springs restaurants (that is for Jeet Holdings and Jeet Holdings No 5 respectively). He said, and I accept, that while working in the Rolleston restaurant his average working week was 54 to 60 hours, slightly less than he had been working at the St Asaph Street restaurant. He explained having been told by Mr Amar Deep Singh to complete timesheets for the staff he supervised, so that the hours worked by the chefs, kitchen hands and managers, were no more than 40 per week. That instruction deliberately differentiated between those employees who had recently migrated and were working in the kitchen and others Mr Sharma described as "front of the house" employees, who recorded their own hours and were paid correctly. Those working in "front of house" jobs were not recent migrants. Mr Sharma was at the St Asaph Street restaurant until he resigned in October 2016.

[32] Alone among the employees, Mr Sharma was required by Mr Singh to pay a premium for his job. Before starting work for Jeet Holdings No 6, Mr Sharma was working in Auckland. He successfully applied for the job and moved to Christchurch to start work. On the day after his arrival Mr Singh demanded \$10,000 in exchange for the restaurant manager's position. To pay that premium Mr Sharma borrowed money from his parents. Over time he paid \$7,500 of the \$10,000.

[33] Mr Chand was the manager at the Edgware restaurant, that is Jeet Holdings No 2. He worked on a sponsored visa. Initially he began work at the restaurant in Rolleston before transferring to Edgware. Unlike Mr Sharma's employment agreement, Mr Chand's agreement was specific to the Edgware restaurant and once there he did not relocate.

[34] Mr Chand was required to send a weekly summary of his hours to Mr Amar Deep Singh. In order not to show in excess of 40 hours per week in the timesheets, as he had been instructed by Mr Singh, he left Thursday's blank even though they were worked. He wrote "off" in the timesheet for his actual day off, and the correct number of hours for five of the other days. Mr Chand explained that he did not want to lie on the timesheet and could not, therefore, say he had another day off when he did not. He was never questioned about why a day was left blank in the timesheets.

[35] Mr Ghorsane worked at the St Asaph Street restaurant (Jeet Holdings No 6) as a kitchen hand. He began work in July 2016 and did not receive any pay for the first two weeks. Although Mr Ghorsane started working on a part-time basis, because he was a student, his hours eventually increased to between 30 and 35 per week. When this increase in hours was offered to him by Mr Amar Deep Singh it was on the basis that he would only be paid for 20 hours per week. Mr Ghorsane also spent some time working in the Bush Inn restaurant.

[36] A diary was kept at the restaurant for staff to write in their hours. Mr Ghorsane was instructed to only complete 20 per week regardless of the number actually worked. In the end his working week was regularly between 29 and 39 hours per week. He explained that during school holidays he worked longer hours, because he had to be available for lunch and dinner services seven days a week. On those occasions when he worked 70 hours per week, he did so for pay for either 32 or 33 hours per week.

[37] Mr Puran Singh began work for Jeet Holdings in 2014 (the Rolleston restaurant). He was introduced to the business through a friend, Mr Jawhar Singh, who also worked there. While he was uncertain about it, he thought that at some point his employer changed to Jeet Group Employees because of a name change on his pay slip. He did not, however, get a new employment agreement. He resigned in September 2019 having worked in the restaurants in Rolleston, Edgware, and St Asaph Street (Jeet Holdings, Jeet Holdings No 2 and Jeet Holdings No 6 respectfully).

[38] Mr Singh did not get a formal employment agreement offered to him when he started work in 2014 and it was not until three years later, in 2017, that he got one. It was provided to him then because he needed to be able to prove his employment status to support visa applications for family members.

[39] Mr Singh's working week was very similar to Mr Sharma's and Mr Ghorsane's. For the first two weeks of his employment he was told that he was on trial. He was paid \$800 in cash and did not have any days off. After completing the trial, he worked approximately 54 hours per week but was only paid for 40 of them.

[40] As with the other employees, Mr Singh was instructed to complete timesheets showing only 40 hours per week. When he confronted Mr Amar Deep Singh about why this was happening, the answer was that was how the company worked. Mr Amar Deep Singh's remarks were accompanied by a veiled threat, asking Mr Singh if he wanted to continue working. Given Mr Singh needed a visa to be able to work, I consider the statement had a real and chilling effect, dissuading him from taking matters any further at that time.

[41] Mr Jawhar Singh was employed to work at the Rolleston restaurant (Jeet Holdings Ltd). He occasionally worked in the restaurants in St Asaph Street and Edgware (that is Jeet Holdings No 6 and Jeet Holdings No 2 respectively). Like the other employees, he was only paid for 40 hours per week regardless of the total hours worked. Mr Singh's response was to photograph himself at work when the timesheets recording his hours of work incorrectly showed he was not there.

[42] Mr Bunty Singh worked six days a week, and for over 50 hours per week. Like the other employees he was only paid for 40 of them. The identity of his employer

was unclear to the Inspector. While Mr Singh signed an employment agreement a copy was not provided to him at any time during his 12 years of employment. However, he did borrow money from Mr Amar Deep Singh (not in any way related to this proceeding) and the acknowledgment of debt they signed recording him being employed at Corianders in St Asaph Street (that is Jeet Holdings No 6).

[43] Mr Bhandari was first employed by Jeet Holdings and later by Jeet Group Employees. Like the other employees, he started working in one of the restaurants and spent time working in other restaurants.

[44] Before April 2017, restaurant managers completed Mr Bhandari's timesheets for him. They never recorded more than 40 hours per week regardless of how long he worked. Things changed slightly in April 2017 after a meeting with Mr Amar Deep Singh. At that meeting, Mr Bhandari was told that he would be paid for more hours and was instructed by Mr Amar Deep Singh to start writing 8 pm as his finishing time. That change resulted in timesheets showing longer working hours per week than previously recorded but 8 pm was earlier than his actual finishing time each day.

[45] The first time Mr Bhandari filled in a timesheet after this meeting he recorded 54 hours, having worked six days per week and nine hours per day. Mr Amar Deep Singh refused to pay for them and instructed Mr Bhandari that the timesheet must be for 45 hours that week. After that, Mr Bhandari started taking photographs of days and times when he was working, and not being paid, just as Mr Jawhar Singh did.

[46] Finally, the Inspector produced evidence from Mr Parshad. Mr Parshad signed an employment agreement in December 2006 which stated that he would be based at Rolleston (that is Jeet Holdings) and elsewhere as directed. He had periods of time when he worked in restaurants in Edgeware, Kaikoura, Hanmer Springs and Bush Inn. In the three weeks prior to resigning his employment he worked in the restaurant in St Asaph St (Jeet Holdings No 6). Mr Parshad had periods of time working for each of Jeet Holdings, Jeet Holdings No 2, Jeet Holdings No 7, Jeet Holdings No 5 and Jeet Holdings No 8. The Inspector did not produce any evidence to suggest that between 2006 and 2017, Mr Parshad's employment agreement altered from the one he signed in 2006.

[47] As with the other employees, Mr Parshad consistently worked more than 40 hours per week, regularly up to 54 hours.

[48] There is a clear pattern from this evidence. Each of the employees worked for longer hours than they were paid. They were systematically underpaid because of instructions from Mr Amar Deep Singh and the records about their work were plainly false.

[49] Efforts to hide this behaviour, and continue with it, are obvious from what Mr Amar Deep Singh did when he became aware of the Inspector's investigation. He took active steps to try to avoid detection. In early April 2017 the Inspector received a recording, from Mr Sharma, of a meeting Mr Amar Deep Singh convened to discuss issues with chefs in at least one of the restaurants. The recording was in Hindi, but the Inspector was provided with a translation. The Inspector considered that the information in that translation showed Mr Amar Deep Singh was discussing with employees what he expected them to record on their timesheets for hours of work compared to what they were actually working. The Inspector's investigation led him to conclude that Mr Amar Deep Singh was telling his employees to record slightly more hours of work than had been the case previously but those increased hours were still to be well short of their actual hours.

[50] Compounding Mr Amar Deep Singh's actions in meeting with staff he attempted to mislead the Inspector. A ploy was devised after the April meeting where Mr Amar Deep Singh sent an email to staff, ostensibly describing planned changes to restaurant menus to satisfy increasing customer demand. His email disclosed a plan to make changes to the menu so it became more comprehensive. His email ended by informing the employees that these changes might lead to an increase in working hours. A new menu was prepared. The emails recording Mr Amar Deep Singh's intention to change the menu were handed by him to the Inspector, unsolicited, seemingly as an explanation for an increase in hours of work shown in the companies' records.

[51] The Inspector's review of the time and wage records showed that after this meeting in April 2017 there was a noticeable variability in the time and wage records. He considered that the meeting, and the emails referring to a changed menu, were

intended to make the increase in recorded working hours seem credible. He concluded, correctly I consider, that this was an attempt to obfuscate.

The Inspector's calculations of loss

[52] The Inspector calculated the losses sustained by each of the employees from a variety of sources, but it was not always clear to him which company each employee worked for. He did not have, for example, copies of employment agreements for most of the employees. Those he did have may not have covered all periods of time. The payslips were generic and the employees moved from restaurant to restaurant.

[53] In answer to a question from the Court, the Inspector explained that for the purposes of his calculations he did not treat each employee's movement from one restaurant to another as a change of employer unless that was very clear to him. That was because some employees had mobility built into their employment agreements and some moved frequently and briefly before returning to their original workplace. Other employees seemed to be permanently transferred. The Inspector explained that it did not seem to him that the employer changed when some of the moves were brief.

[54] Those answers were given against a background of questions from the Court about whether any of the employees gave evidence of being employed by Jeet Holdings No 5, Jeet Holdings No 7, or Jeet Holdings No 8. The Inspector was not able to refer to any evidence from the employees showing they had been employed by any of those companies. This issue is returned to later.

[55] The Inspector's calculations of loss arising from the employees not being paid minimum entitlements were produced in a table that took into account Jeet Group Employees being removed from the Companies Register:

Employee	Minimum Wage Arrears	Minimum Wage Arrears Jeet Group	Total (excluding Jeet Group)
Pulkit Sharma	\$ 16,297.50		\$ 16,297.50
Parkash Chand	\$ 30,293.00		\$ 30,293.00
Santosh Ghorsane	\$ 7,228.50		\$ 7,228.50

Bunty Singh	\$ 50,111.22	\$ 4,644.68	\$ 45,466.54
Jawhar Singh	\$ 56,227.00	\$ 6,024.48	\$ 50,202.52
Guru Parshad	\$ 40,096.00		\$ 40,096.00
Puran Singh	\$ 25,226.25	\$ 4,473.01	\$ 20,753.24
Rajendra Bhandari	\$ 60,826.00	\$ 6,835.50	\$ 53,990.50
TOTAL	\$ 286,305.47	\$ 21,977.67	\$264,327.80

[56] The total outstanding for unpaid minimum entitlements under the Minimum Wage Act, excluding Jeet Group Employees, is \$264,327.80. Not all of that sum is payable by all of the defendant companies. In addition, the Inspector claimed to recover \$7,500 Mr Sharma paid as a premium for his job.¹³

The issues

[57] Mr La Hood identified the following issues:

- (a) Which company or companies employed the employees?
- (b) Arising from the proceeding:
 - (i) Did the employees receive their minimum entitlements pursuant to the Minimum Wage Act and Wages Protection Act during their employment?
 - (ii) If there are breaches, was Mr Amar Deep Singh a person involved in them?
 - (iii) If there are breaches, are they serious?
 - (iv) Should declarations of breach be made?
 - (v) What arrears of minimum entitlements to wages are owed to the employees?

¹³ While breaches of the Holidays Act were pleaded no calculations of lost holiday pay were provided and the Inspector's claims for penalties and other orders did not refer to those breaches.

- (vi) If declarations of breach are made, should compensation orders be made and, if so, in what amount?
- (vii) If declarations of breach are made, should pecuniary penalties be imposed and, if so, in what amount?
- (viii) Should a portion of any pecuniary penalty awarded be payable to the employees affected by the breaches and, if so, how should the penalty be apportioned between them and the Crown?
- (ix) Should a banning order be made in respect of Mr Amar Deep Singh and, if so, for how long?
- (x) Finally, if compensatory orders are made, should interest be awarded?

The identity of the employers?

[58] The Inspector did not make submissions about which company, or companies, employed each of the employees. However, in compiling the financial information at paragraph [55] he prepared tables showing the source of the information he used in his calculations. In those tables he listed the companies which were considered to have paid the employees and, by inference, may have been their employers at relevant times. The situation was complicated by the fact that for some employees the supporting tables did not mention the company considered to have paid the employee concerned.

[59] There was, obviously, a very confused picture about where the employees worked from time to time. Despite the fact that the employees were, occasionally, moved from one restaurant in the group to another it would be difficult to conclude on the available evidence that they had more than one employer at any given time. Mr Sharma, for example, had an employment agreement describing his employer as Jeet Holdings No 6 (the St Asaph Street restaurant), but it specified he was to make himself available to work at other restaurants from time to time.

[60] Considering the information compiled by the Inspector in the tables supporting the financial calculations, the employment agreements where they were available, and the principal places of work described by the employees I find that:

- (a) Jeet Holdings Ltd employed Mr Jawhar Singh, Mr Parshad, Mr Bhandari and Mr Puran Singh.
- (b) Jeet Holdings No 2 employed Mr Chand.
- (c) Jeet Holdings No 6 employed Mr Bunty Singh, Mr Sharma and Mr Ghorsane.

[61] While the Inspector demonstrated that there were occasions when the employees were paid by other companies in the group, I am not satisfied that fact by itself is sufficient evidence to show that the identity of the employer changed. However, the Inspector made adjustments to his calculations of loss for those employees who did, in fact, become employees of Jeet Group Employees.

Did the employees receive minimum entitlements?

[62] Under s 6 of the Minimum Wage Act every worker is entitled to receive payment for work at not less than the prescribed minimum rate, regardless of anything to the contrary in an employment agreement. The employees in this case did not receive payment for work they performed and, therefore, did not receive pay at all, let alone pay at a rate of not less than the prescribed minimum rate of pay. That is obvious from the calculations in paragraph [55].

[63] The Inspector's calculation of loss for each employee was based on unpaid hours in each week for the whole of that person's employment. The employees are entitled to be paid for each hour spent at work. Their evidence about their hours of unpaid work was uncontested. It is self-evident from the nature of the work, and the instructions given by Mr Amar Deep Singh, that the employees were expected to work, and did work, long hours for which they were not paid.

[64] Each of the employees was underpaid because they did not receive minimum entitlements under the Minimum Wage Act that were due and owing to them.

[65] Additionally, I accept Mr Sharma paid \$7,500 as a premium for his job in breach of s 12A of the Wages Protection Act.

[66] I find that there were breaches of minimum entitlements under the Minimum Wage Act by Jeet Holdings, Jeet Holdings No 2 and Jeet Holdings No 6 and by Jeet Holdings No 6 of the Wages Protection Act.

Was Mr Amar Deep Singh involved in those breaches?

[67] Under s 142W of the Act a person may be involved in a breach by a company if employment standards are breached. A person is involved in a breach if he or she has:

- (a) aided, abetted, counselled or procured the breach; or
- (b) induced, whether by threats or promises or otherwise, the breach; or
- (c) been in any way, directly or indirectly, knowingly concerned in or party to the breach; or
- (d) conspired with others to affect the breach.

[68] The employment standards referred to in s 142W are in s 5 of the Act and include any of:

- (a) Section 130 (relating to the keeping of wage and time records).
- (b) The minimum entitlements under the Holidays Act.
- (c) The requirements of ss 81 and 82 of the Holidays Act (which relate to holiday and leave records and requests for access to them).
- (d) Minimum entitlements under the Minimum Wage Act.
- (e) The provisions of the Wages Protection Act.

[69] Mr La Hood submitted that in reaching a conclusion about whether Mr Amar Deep Singh was a person involved in a breach meant ascertaining what knowledge he had at relevant times. He accepted that proof of an intentional and purposeful action on the part of Mr Singh was required.¹⁴

[70] The Inspector has established that Mr Amar Deep Singh was involved in the breaches of employment standards. Specifically, because of the decisions made by him for his companies that resulted in breaches of the Minimum Wage Act, the Wages Protection Act and s 130 of the Act. He made the decisions about what was shown in the timesheets that lead to the employees being underpaid. He knew underpayments would result from his decisions and carried on regardless. When challenged about it by at least one employee he was unrepentant, indicating not only knowledge of his actions, and the consequences of them, but a certain callousness and disregard for the welfare of the employees. He instructed them to complete false timesheets and, when detection was likely, came up with a plan to attempt to cover up what was going on. He demanded the premium paid to Jeet Holdings No 6 by Mr Sharma. He was the driving force behind the employees not being paid properly.

[71] I find that Mr Amar Deep Singh's conduct meant he was directly involved in the breaches of the Minimum Wage Act, Wages Protection Act and the requirement to keep time and wage records under the Act. He was a person involved in the breaches of the employment standards within the meaning of s 142W(1) of the Act.

Are the breaches serious?

[72] Mr La Hood submitted the breaches are serious because:

- (a) the employees were not paid for work they had performed;
- (b) the breaches occurred over a significant period of time;
- (c) the employees are each owed a significant sum of money;
- (d) a premium was paid breaching the Wages Protection Act;

¹⁴ Relying on *Brill v Labour Inspector* [2017] NZCA 169, [2017] ERNZ 236 at [27].

- (e) all of the defendant companies failed to keep accurate time and wage records;
- (f) there was widespread falsification of time and wage records at the direction of Mr Amar Deep Singh;
- (g) those false timesheets were designed to enable the breaches of minimum entitlement provisions, which were intentional, systematic and cynical;
- (h) the employees were vulnerable migrants and that vulnerability was exploited; and
- (i) the defendants benefitted significantly from unpaid work.

[73] I agree with Mr La Hood's assessment and each of the points he made. The breaches are serious. The amount of money owed to each employee is significant, the breaches were spread over a considerable number of years, involved multiple employees, were systemic and exploitative.

Declarations of breach?

[74] Part 9A was introduced into the Act to provide additional provisions relating to enforcing compliance with employment standards. An Inspector may apply to the Court for declarations of breach in relation to breaches of minimum employment provisions that are serious.¹⁵

[75] The Inspector may also apply for pecuniary penalty orders for serious breaches of minimum entitlement provisions and seek compensation orders arising from those breaches.¹⁶ Compensation orders are intended to compensate employees who have suffered, or are likely to suffer, loss or damage as a result.

[76] The Court may make a declaration of breach if satisfied that a person has:¹⁷

¹⁵ Employment Relations Act 2000, s 142A(1)(a)(i).

¹⁶ Employment Relations Act 2000, ss 142A(1)(a)(ii) and 142A(1)(a)(iii).

¹⁷ Employment Relations Act 2000, ss 142B(2)(a)(i), 142B(2)(a)(ii) and 142B(2)(b).

- (a) breached a minimum entitlement provision; or
- (b) been involved in a breach of a minimum entitlement provision; and
- (c) the breach of the minimum entitlement provision is serious.

[77] Whether a breach of a minimum entitlement provision is serious is a question of fact.¹⁸ In deciding whether a breach of minimum entitlement provision is serious the Court may take into account:¹⁹

- (a) The amount of money involved.
- (b) Whether the breach comprised a single instance.
- (c) If the breach comprises a series of instances:
 - (i) How many instances it comprised; and
 - (ii) The period over which they occurred.

[78] Additionally, the Court may consider whether the breach was intentional or reckless and if the employer has complied with any relevant record keeping required by the Act.²⁰ Any other relevant matter can also be taken into account.²¹

[79] Declarations of breach are appropriate. The issue then becomes which companies they be should made about. The Inspector invited the Court to treat all of the companies together, as one employer, for the purposes of pt 9A.

[80] Mr La Hood submitted that this course of action would be appropriate because the companies were, in effect, joint employers of the employees.²² He relied on several decisions of the Court where the application of ss 5 and 6 of the Act resulted in findings

¹⁸ Employment Relations Act 2000, s 142B(3).

¹⁹ Employment Relations Act 2000, s 142B(4)(a)–(c).

²⁰ Employment Relations Act 2000, s 142B(4)(d)–(e).

²¹ Employment Relations Act 2000, s 142B(4)(f).

²² Relying on ss 5 and 6 of the Act and s 33 of the Interpretation Act 1999 including on the basis that while those sections referred to “a person” and “any” person pursuant to the Interpretation Act that includes the plural, justifying a reference to joint employers.

that an employee had more than one employer. In *Orakei Group (2007) Ltd (formerly PRP Auckland Ltd) v Doherty (No 1)* the companies had a common source of control over the employees' activities.²³ He referred to *Prasad v LSG Sky Chefs New Zealand Ltd*, where the full Court emphasised that the binary concept of employment was increasingly challenged by complex company structures that could make it difficult to determine who has responsibility to the employees.²⁴

[81] Supplementing those cases, Mr La Hood relied on Mr Amar Deep Singh being the sole director and shareholder of the companies. He was, consequently, the common source of control.

[82] In developing these submissions, Mr La Hood conceded that there was no evidence of any employee being employed by Jeet Holdings No 5, Jeet Holdings No 7 or Jeet Holdings No 8. Despite that concession presenting a difficulty to his submissions about grouping the defending companies together, he mentioned that IRD records showed that some of the employees had, at times, been paid by those companies. Those records were not included in the bundle of documents filed in this proceeding. They do not appear, at face value at least, to be disclosed as part of the Inspector's tables showing the calculations of loss for each employee. Consequently, no reliance can be placed on them.

[83] It is not appropriate for all of the companies to be treated as one employer. Three of them were not mentioned as employing any of the employees and one of the named defendants no longer exists. I am not prepared to treat the remaining companies; Jeet Holdings, Jeet Holdings No 2, and Jeet Holdings No 6 as one employer. While some of the employees worked for more than one of the remaining companies some did not, in fact, work for all of them. As examples, and as best that can be ascertained from the evidence presented, Mr Chand worked for Jeet Holdings No 2, but not for Jeet Holdings No 6. Mr Ghorsane worked for Jeet Holdings No 6,

²³ *Orakei Group (2007) Ltd (formerly PRP Auckland Ltd) v Doherty (No 1)* [2008] ERNZ 345 at [48]–[55] citing *Conference of the Methodist Church of New Zealand v Gray* [1996] 2 NZLR 554, [1996] 1 ERNZ 48 (CA). Further support was taken from *Hutton v Provencocadmus Ltd (in Rec)* [2012] ERNZ 566 where the Court emphasised that the finding of joint employers was necessary to avoid employers being able to evade obligations to employees by employing them through shell companies with no assets.

²⁴ *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 150, [2017] ERNZ 835 at [91].

but not for Jeet Holdings or Jeet Holdings No 2. That conclusion means the remaining decisions are required on a company-by-company basis.

[84] There is also a jurisdictional issue that stands in the way of what was requested for the Inspector although it was not the subject of submissions. While grouping together all of the companies has an attractiveness to it, given the control exercised by Mr Singh, that would result in treating separate legal entities as one entity and making each one responsible for meeting all of the obligations owed by all of the companies. That method of fixing liability does not appear to be contemplated by pt 9A.

[85] I am satisfied that declarations of breach should be made against each of Jeet Holdings, Jeet Holdings No 2 and Jeet Holdings No 6 as the offending employers. The companies are in the same position as Mr Amar Deep Singh; they were each involved in not paying their employees at least their minimum entitlements. This failure occurred over significant periods of time. In each case, substantial sums are owed. They did not keep proper records; in fact, they were false. In relation to Jeet Holdings No 6 it benefited from an unlawful premium demanded on its behalf by Mr Amar Deep Singh.

[86] In relation to Jeet Holdings, Jeet Holdings No 2 and Jeet Holdings No 6 the Inspector has satisfied s 142B(2) of the Act. They were involved in breaches of a minimum entitlement provision. I have already held that those breaches are serious.²⁵ The amounts involved are significant.²⁶ There were multiple breaches which occurred over a very long time period.²⁷ What was involved was systemic. The breaches were intentional, following instructions by Mr Amar Deep Singh, and resulted in each company gaining a commercial advantage, while significantly disadvantaging each employee.²⁸

[87] Section 142D of the Act requires a declaration of breach to state the minimum entitlement provision that the breach relates to and the conduct that constitutes it. In relation to each of the defendant companies; Jeet Holdings, Jeet Holdings No 2 and Jeet Holdings No 6, I make declarations of breach in that they did not comply with the

²⁵ Employment Relations Act 2000, s 142B(2)(b).

²⁶ Employment Relations Act 2000, s 142B(4)(a).

²⁷ Employment Relations Act 2000, s 142B(4)(c).

²⁸ Employment Relations Act 2000, s 142B(4)(d).

minimum entitlement provisions for each of their employees by failing to pay them minimum wages in breach of the Minimum Wage Act. In relation to Jeet Holdings No 6, I make a declaration that it breached the Wages Protection Act by seeking, and receiving, a premium for the employment of Mr Sharma.

[88] In relation to Mr Amar Deep Singh, I make a declaration of breach in relation to his involvement in each of the breaches of the defendant companies, the failure of them to pay minimum entitlements under the Minimum Wage Act, and in seeking and receiving a premium in breach of the Wages Protection Act.

Pecuniary penalty orders

[89] As already mentioned, the Inspector approached penalties and pecuniary penalty orders by grouping together all of the defendant companies and seeking orders that they be jointly and severally liable. Separately submissions were made seeking penalties against Mr Amar Deep Singh. There were no submissions about how the Court should deal with the application for penalties if, as has transpired, a conclusion was reached that the defendants were not joint employers, or for that matter where one of the companies has been removed from the Register.

[90] Making the best of the information provided, it is necessary for the Court to assess if orders should be made against Jeet Holdings, Jeet Holdings No 2 and Jeet Holdings No 6 and, if so, in what amount.

[91] Mr La Hood submitted that pecuniary penalties should be ordered and that the amount to be imposed should be assessed taking into account ss 133A and 142F of the Act. These submissions drew support from a number of cases including *Labour Inspector v Preet PVT Ltd*, *Labour Inspector v Prabh Ltd* and *Labour Inspector v Daleson Investment Ltd*.²⁹

[92] Before assessing what, if any, orders should be made it is convenient to set out what the Inspector claimed, even though it was on a global basis. As to the companies,

²⁹ *Labour Inspector v Preet PVT Ltd* [2016] NZEmpC 143, [2016] ERNZ 514 [*Preet*]; *Labour Inspector v Prabh Ltd* [2018] NZEmpC 110, [2018] ERNZ 310 [*Prabh*]; *Labour Inspector v Daleson Investment Ltd* [2019] NZEmpC 12, [2019] ERNZ 1 [*Daleson*]; see also *Nicholson v Ford* [2018] NZEmpC 132, [2018] ERNZ 393.

his submission was that the total penalty should be \$656,000. His calculations were on the basis that the failure to pay minimum wage entitlements attracted a maximum penalty of \$100,000 for eight employees, totalling \$800,000. He added \$100,000 as the maximum available penalty for seeking and receiving a premium. A further addition was made for failures to keep accurate time and wage records, for which a maximum penalty (but not a pecuniary penalty order) of \$20,000 is prescribed under the Act, for eight employees, totalling \$160,000. These sums totalled maximum penalties of \$1,060,000.

[93] The Inspector's view of the severity of the breaches was used to give revised starting points for the assessment. The Inspector's assessment was that the failure to pay minimum wage entitlements and to keep accurate wage and time records should be assessed at 60 per cent and for claiming a premium, 80 per cent. Those calculations reduced the starting point to \$656,000. No ameliorating factors were present, in the Inspector's view, and so the amount claimed for all penalties against the companies became \$656,000.

[94] So far as Mr Amar Deep Singh was concerned, for failure to pay the minimum wage the calculation was that for eight employees making the maximum available penalty \$400,000 (eight employees multiplied by the maximum available pecuniary penalty of \$50,000). Seeking and receiving a premium attracts a maximum pecuniary penalty of \$50,000. A failure to keep time and wage records attracted a maximum penalty (not a pecuniary penalty order) of \$10,000, so for eight employees the total exposure was to \$80,000. The combined total is \$530,000.

[95] The Inspector's starting point, for Mr Amar Deep Singh, was assessed at 70 per cent for the minimum wage breach, seeking and receiving a premium at 80 per cent, and the failure to keep accurate records at 60 per cent. That reduced the starting point for penalties against Mr Singh to \$368,000.

[96] While a more nuanced approach is required than was used by the Inspector, I will adopt his starting points.

Quantum of penalties

[97] The starting point is to assess the number and nature of the breaches. Having decided that, the Court is required to take into account considerations under ss 133A and 142F of the Act.³⁰ They are:

- (a) The object of the Act as stated in s 3 of the Act.
- (b) The nature and extent of the breach.
- (c) Whether the breach was intentional, inadvertent or negligent.
- (d) The nature and extent of any loss or damage suffered by any person.
- (e) Whether the person in breach or involved in the breach has paid an amount in compensation, reparation or restitution, or taken other steps to avoid or mitigate any adverse effects of the breach.
- (f) The circumstances in which the breach or involvement in the breach took place including the vulnerability of the employee.
- (g) Engagement in any previous similar conduct.

[98] In *Preet* (although that case was decided before pt 9A was enacted) the full Court developed a four-step process to evaluate penalties.³¹ Penalties were considered again in *Nicholson v Ford*.³² In that case, the Court reviewed the steps developed in *Preet*, now reflected in ss 133A and 142F with other additional considerations. Those additional considerations are deterrence (both particular and general), culpability, the consistency of penalty awards in similar cases, the ability to pay and the proportionality of outcome.³³

[99] *Preet* set out four steps:³⁴

³⁰ Employment Relations Act 2000, s133A. See for example *Preet*, above n 29; *Prabh*, above n 29; *Daleson*, above n 29.

³¹ *Preet*, above n 29.

³² *Nicholson*, above n 29.

³³ At [18].

³⁴ *Preet*, above n 29, at [151].

- (a) Step 1: identify the number and nature of the breaches.
- (b) Step 2: establish a provisional starting point by assessing the severity of the breach in each case, considering both aggravating and mitigating features.
- (c) Step 3: consider the means and ability of the person in breach to pay the provisional penalty arrived at in Step 2.
- (d) Step 4: apply the proportionality test (sometimes called the totality test) to ensure the amount of the final penalty is just in all the circumstances.

Step 1: the number of breaches

[100] The Court observed in *Nicholson v Ford* that the answer to this question depends on whether the breaches are separate or indivisible for penalty purposes. Materially identical breaches of a regular repeating nature against each affected employee may be treated as indivisible breaches and give rise to a single penalty in respect of each separate employee.³⁵

[101] Applying that approach to this case would lead to one penalty for each instance where there was a failure, in an ongoing way, to comply with the Minimum Wage Act and for failing to keep time and wage records. There would be one penalty for Jeet Holdings No 6 for seeking and receiving a premium.

[102] There were four employees of Jeet Holdings (Mr Jawhar Singh, Mr Prashad, Mr Puran Singh and Mr Bhandari). In relation to all four employees, Jeet Holdings failed to pay them their minimum wage entitlements. There were also failures in relation to all four of them to keep accurate wage and time records.

[103] The maximum pecuniary penalty order available for a body corporate where there has been a serious breach of a minimum entitlement is the greater of \$100,000 or three times the amount of the financial gain made by it from the breach.³⁶ The Inspector has not sought to fix the penalty by reference to financial gain. Therefore,

³⁵ *Nicholson*, above n 29, at [23]; and applying *Preet*, above n 29.

³⁶ Employment Relations Act 2000, s 142G(b).

the maximum pecuniary penalty order available against Jeet Holdings for failing to pay the employees their minimum entitlements to wages is \$400,000. The maximum available penalty against Jeet Holdings for failing to keep accurate time and wage records is \$80,000.

[104] The same breaches of the Minimum Wage Act occurred for Jeet Holdings No 6 in relation to three employees (Mr Bunty Singh, Mr Ghorsane, and Mr Sharma). The maximum available pecuniary penalty is therefore \$300,000. It also sought and received an unlawful premium where the maximum penalty is \$100,000.

[105] Jeet Holdings No 2 employed Mr Chand. Having breached the Minimum Wage Act, it is liable to a maximum pecuniary penalty of \$100,000. For failing to keep time and wage records the maximum penalty is \$20,000.

[106] Jeet Holdings No 6 is exposed to a maximum penalty (not a pecuniary penalty order) for failing to keep time and wage records for its three employees of \$60,000. The combined total penalty to which it is exposed is \$460,000.

[107] Under s 142G the maximum pecuniary penalty order that can be imposed against Mr Amar Deep Singh for his participation in breaching minimum wage entitlements is \$400,000. That figure is arrived at because he was involved in all of the breaches identified for each of the eight employees. His involvement in the failure to keep accurate records exposes him to a maximum penalty of \$160,000. The sub-total of all penalties is \$560,000. I have decided not to include any allowance for Mr Singh's involvement in seeking a premium from Mr Sharma to avoid a possible risk of unintentionally penalising the same action twice.

Step 2: provisional starting point

[108] Applying the Inspector's recommended starting points for the companies results in the following provisional penalties. For Jeet Holdings; the provisional penalty for breaching the Minimum Wage Act of \$240,000, and for failure to keep accurate time and wage records, \$48,000. For Jeet Holdings No 6; for breaching the Minimum Wage Act, a penalty of \$180,000. For the failure to keep accurate time and wage records \$36,000. For seeking and receiving a premium \$80,000. For Jeet

Holdings No 2; a provisional penalty of \$60,000 for breaching the Minimum Wage Act and \$12,000 for not keeping accurate time and wage records.

[109] For Mr Amar Deep Singh; the Inspector sort a starting point of 70 per cent for failure to pay the minimum wage and 60 per cent for failure to keep accurate wage and time records. Applying that assessment produces a starting point of \$280,000 and \$96,000 respectively.

[110] As part of step 2 from *Preet* aggravating and mitigating features are considered. The aggravating features have been mentioned; the systemic and intentional under-recording and underpaying of staff over many years and an attempt to derail the Inspector's investigation.

[111] I accept the Inspector's assessment when it comes to providing for the appropriate starting point. That means the starting points for penalties at this stage are:

- (a) Jeet Holdings, \$288,000.
- (b) Jeet Holdings No 6, \$296,000.
- (c) Jeet Holdings No 2, \$72,000.
- (d) Amar Deep Singh, \$376,000.

[112] Tables showing these calculations are in Schedule 1 to this decision.

Step 3: means and ability to pay

[113] No information was provided about the means of the defendants to pay. The liquidation of some of the companies is a clear indication that they are in financial distress. However, as was identified in *Daleson*, the statutory considerations in s 133A (and s 142F) do not include the ability to pay.³⁷ While I accept, as did the Court in *Daleson*, that ability to pay must have a bearing, it was not identified by Parliament as

³⁷ *Daleson*, above n 29.

significant enough to be specifically included in the statutory consideration and should not, therefore, be given too much weight.³⁸

[114] There was no evidence about Mr Amar Deep Singh's ability to pay. The Inspector attempted to produce evidence that he may have a financial interest in other restaurant businesses in India. That evidence was slight, and hearsay, and while it gave rise to a suspicion that the Inspector may be correct, it fell short of proving he does have such interests.

[115] Before considering step 4 (proportionality) the other considerations from *Daleson* need to be addressed.

Were the breaches intentional?

[116] This subject has already been covered. The breaches by the defendant companies, and by Mr Singh, were intentional.

Severity of the breaches

[117] The breaches were serious. The systemic nature of them for obvious financial advantage and, for them to have occurred over a long period of time, is egregious.

The nature and extent of any loss or damage

[118] It is self-evident that all of the defendants have suffered the loss of the use of their money. The breaches meant that the companies retained money they were not entitled to have and may have gained a commercial advantage.

Steps taken in mitigation

[119] No effort was made by the defendant companies, or Mr Amar Deep Singh, to mitigate the effects of their conduct or the damage sustained by the employees. No remedial payments were made to the employees. No steps were taken at any time to stop the offending behaviour. In fact, Mr Amar Deep Singh took steps to continue the behaviour by attempting to pass off to the Inspector, as an explanation for some change in paid hours, revised menus. He continued to deny that any breaches occurred.

³⁸ At [44].

[120] The defendants denied any wrongdoing throughout this proceeding. There was no evidence of remorse or contrition by Mr Amar Deep Singh.

Circumstances of the breach and vulnerability

[121] This issue has already been touched on. The breaches were intentional. I accept Mr La Hood's submission that the affected employees were vulnerable.

Previous conduct

[122] The defendants have not previously appeared in the Court.

Deterrence

[123] Mr La Hood submitted that specific deterrence was required for these employers, and general deterrence for other like-minded employers. I agree that specific and general deterrence is necessary to dissuade others from similar behaviour and to condemn what happened.

[124] Specific deterrence for Mr Amar Deep Singh is warranted, given he was the driving force behind the breaches and seems to be unrepentant.

Culpability

[125] Culpability for all the defendants was high, evidenced by the systemic way the companies manipulated time and wage records and the underpayments that resulted. A compounding factor was the attempt to deflect the Inspector's inquiry.

Consistency

[126] There have been very few cases from which the Court can consider consistency. In *Preet* penalties (not pecuniary penalty orders) totalling \$100,000 were imposed against two employers. In *Prabh* the penalties were \$100,000.

[127] In *Labour Inspector v Newzealand Fusion International Ltd* declarations of breach were made against the defendant.³⁹ Pecuniary penalties of \$300,000 were

³⁹ *Labour Inspector v Newzealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525 [*Fusion*].

made against one defendant, and \$150,000 against the second defendant director. In *Fusion* the Court observed the very small number of cases involving pecuniary penalty orders and as a result, only general guidance could be obtained from what had been imposed.

Step 4: Proportionality of outcome

[128] The Labour Inspector accepted that adjustment was needed to reflect proportionality of the final penalties. That was said to reflect the fact that the companies are closely related and whether there is any real prospect that any amount will be paid.

[129] In a table accompanying Mr La Hood's submissions, while prepared on a different basis, he invited a further reduction of 20 per cent of total penalties to reflect the liability of the companies and 30 per cent for Amar Deep Singh. While those reductions are generous, and taking into account the other evaluative matters just referred to, I will accept Mr La Hood's approach.

[130] I am satisfied that the following penalties should be imposed:⁴⁰

- (a) Jeet Holdings Ltd is ordered to pay penalties of \$57,600.
- (b) Jeet Holdings No 2 Ltd is ordered to pay penalties of \$14,400.
- (c) Jeet Holdings No 6 Ltd is ordered to pay penalties of \$123,200.
- (d) Amar Deep Singh is ordered to pay penalties of \$112,800.

[131] The Inspector sought that a portion of the penalties be directed to be paid to the employees but did not recommend what that ought to be.⁴¹

[132] It is appropriate for a portion of the penalties in each case to be payable to the employees. Of the penalty imposed on Jeet Holdings, \$5,000 each is payable to Mr Jawhar Singh, Mr Parshad, Mr Bhandari and Mr Puran Singh. Of the penalty imposed

⁴⁰ As per Schedule 1 to this judgment.

⁴¹ Employment Relations Act 2000, s136(2).

on Jeet Holdings No 2, \$5,000 is payable to Mr Chand. Of the penalty imposed on Jeet Holdings No 6, \$5,000 each is payable to Mr Bunty Singh, Mr Sharma and Mr Ghorsane. In each case the balance is to be paid to the Crown.

Compensation orders

[133] Compensation orders are appropriate.⁴² Orders were sought only against the companies. Each company is ordered to pay the following amounts to the employees:

Name	Jeet Holdings	Jeet Holdings No 2	Jeet Holdings No 6
Pulkit Sharma			\$ 23,797.50
Parkash Chand		\$ 30,293.00	
Santosh Ghorsane			\$ 7,228.50
Bunty Singh			\$ 45,466.54
Jawhar Singh	\$ 50,202.52		
Guru Parshad	\$ 40,096.00		
Puran Singh	\$ 20,753.24		
Rajendra Bhandari	\$ 53,990.50		
Total	\$165,042.26	\$ 30,293.00	\$ 76,492.54

[134] The amount payable to Mr Sharma includes recovering the premium paid by him.

Banning order

[135] The Court may make a banning order against any person if a declaration of breach has been made in respect of that person.⁴³ The Inspector sought a banning order against Mr Amar Deep Singh. A declaration of breach has already been made against him.

[136] In *Labour Inspector v Victoria 88 Ltd* the Court described a banning order as providing for the "...denial of the privilege of participating in the conduct of business

⁴² Employment Relations Act 2000, ss 142J and 142L.

⁴³ Employment Relations Act 2000, s 142M(1)(a); see also the circumstances in s 142M(1)(b).

under the shelter of limited liability.⁴⁴ It is penal in nature although the disqualification should be approached with protection of the public in mind rather than punitively”.⁴⁵

[137] A banning order is appropriate and necessary. Mr Amar Deep Singh controlled all of the companies. He planned and orchestrated their behaviour. He prohibited the employees from completing accurate timesheets. That meant they were systemically underpaid. He demanded the premium from Mr Sharma. He created the scheme to attempt to mislead the Inspector. I infer that he profited from these actions.

[138] Mr La Hood argued that this behaviour involved conscious, systematic and deliberate exploitation of migrant workers. I agree. These were not minor slips, or technical breaches, nor did they arise out of ignorance. They were calculating and deliberate.

[139] However, I am not prepared to give any weight to Mr La Hood’s submission that the Inspector needed to obtain a freezing order during the course of this litigation over transactions about the sale of certain restaurant assets. The implication in the submission was that funds were being diverted. There was a dispute, at that stage, as to whether the transactions were bona fide because of Mr Amar Deep Singh’s personal circumstances and a need to satisfy secured creditors. The freezing orders were discharged, the assets sold, and the secured creditor received payment. In considering a banning order it would not be prudent to attribute to Mr Singh a poor-quality motive arising from this transaction.

[140] Mr La Hood asked for a ban in the range of three to five years. The maximum is ten years. There have been very few cases of banning orders under pt 9A of the Act to provide comparisons. In *Prabh* an order was declined, because the ramifications for other employees but that is not a consideration here.⁴⁶ In *Fusion* the banning order was 18 months.⁴⁷ In that case the director did not express any remorse or insight despite overwhelming evidence. Orders were made despite the fact that there was

⁴⁴ *Labour Inspector v Victoria 88 Ltd, (t/a Watershed Bar and Restaurant)* [2018] NZEmpC 26, [2018] ERNZ 88.

⁴⁵ At [34]; citing Gault J in *First City Corp Ltd v Downsview Nominees Ltd (No 2)* [1989] 3 NZLR 710 (HC) at 766.

⁴⁶ *Prabh*, above n 29.

⁴⁷ *Fusion*, above n 39.

some similarity with *Prabh*, and it was the first time the defendants had been before the Court.

[141] What was said to support a banning order of between three and five years were similarities with *Fusion*. I agree that there are some similarities between this case and *Fusion* but the comparison can be taken only so far.

[142] In this case, weighing up the significance of the breaches, I am satisfied that a banning order should be made against Mr Amar Deep Singh for two years from the date of this judgment.

[143] Under the banning order Mr Amar Deep Singh is prohibited from:

- (a) entering into an employment agreement as an employer;
- (b) being an officer of an employer; and
- (c) being involved in the hiring or employment of employees.

[144] An order is made accordingly.

Interest

[145] Interest is awarded on the compensatory sums referred to in paragraph [134] under the Interest on Money Claims Act 2016 from the date on which each employee ended his employment with the relevant defendant company. If the Inspector has difficulty with this calculation leave is reserved to apply for further orders.

[146] Costs are reserved. If they are to be pursued a memorandum may be filed.

K G Smith
Judge

Judgment signed at 4.55 pm on 9 June 2021

Schedule 1

Jeet Holdings Ltd					
Employees	Initial Penalty	Starting Point	Revised Penalty	Further Discount	Penalty Ordered
Minimum Entitlements					
Jawhar Singh	\$100,000	60%	\$ 60,000	20%	\$ 12,000
Guru Parshad	\$100,000	60%	\$ 60,000	20%	\$ 12,000
Rajendra Bhandari	\$100,000	60%	\$ 60,000	20%	\$ 12,000
Puran Singh	\$100,000	60%	\$ 60,000	20%	\$ 12,000
Total	\$400,000		\$ 240,000		\$ 48,000
Time and Wage Records					
Jawhar Singh	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Guru Parshad	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Rajendra Bhandari	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Puran Singh	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Total	\$ 80,000		\$ 48,000		\$ 9,600
TOTALS	\$480,000		\$ 288,000		\$ 57,600

Jeet Holdings No 2 Ltd					
Employees	Initial Penalty	Starting Point	Revised Penalty	Further Discount	Penalty Ordered
Minimum Entitlements					
Parkash Chand	\$ 100,000	60%	\$ 60,000	20%	\$ 12,000
Total	\$ 100,000		\$ 60,000		\$ 12,000
Time and Wage Records					
Parkash Chand	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Total	\$ 20,000		\$ 12,000		\$ 2,400
TOTALS	\$ 120,000		\$ 72,000		\$ 14,400

Jeet Holdings No 6 Ltd					
Employees	Initial Penalty	Starting Point	Revised Penalty	Further Discount	Penalty Ordered
Minimum Entitlements					
Bunty Singh	\$ 100,000	60%	\$ 60,000	20%	\$ 12,000
Pulkit Sharma	\$ 100,000	60%	\$ 60,000	20%	\$ 12,000
Santosh Ghorsane	\$ 100,000	60%	\$ 60,000	20%	\$ 12,000
Total	\$ 300,000		\$ 180,000		\$ 36,000
Time and Wage Records					
Bunty Singh	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Pulkit Sharma	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Santosh Ghorsane	\$ 20,000	60%	\$ 12,000	20%	\$ 2,400
Total	\$ 60,000		\$ 36,000		\$ 7,200
Seeking and Receiving a Premium					
Pulkit Sharma	\$ 100,000	80%	\$ 80,000		\$ 80,000
Total	\$ 100,000		\$ 80,000		\$ 80,000
TOTALS	\$ 460,000		\$ 296,000		\$ 123,200

Amar Deep Singh					
Employees	Initial Penalty	Starting Point	Revised Penalty	Further Discount	Penalty Ordered
Minimum Entitlements					
Jawhar Singh	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Guru Parshad	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Rajendra Bhandari	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Puran Singh	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Parkash Chand	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Bunty Singh	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Pulkit Sharma	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Santosh Ghorsane	\$ 50,000	70%	\$ 35,000	30%	\$ 10,500
Total	\$400,000		\$ 280,000		\$ 84,000
Time and Wage Records					
Jawhar Singh	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Guru Parshad	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Rajendra Bhandari	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Puran Singh	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Parkash Chand	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Bunty Singh	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Pulkit Sharma	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Santosh Ghorsane	\$ 20,000	60%	\$ 12,000	30%	\$ 3,600
Total	\$160,000		\$ 96,000		\$ 28,800
TOTALS	\$560,000		\$ 376,000		\$ 112,800