

[3] At the telephone conference I convened on 16 June 2015 to progress the matter after unsuccessful mediation, the respondent's representative sought leave to withdraw on the basis that she did not have current instructions and the matter has proceeded since then without any tangible engagement from the respondent until receipt of an email dated Sunday 19 July 2015 and timed at 10.49pm wherein the Governing Director of Khoobsurat claimed to be unable to attend the investigation meeting the following day because of ill health.

[4] Because of the failure to persevere with the legal representation as evidenced by the request from the former representative to be excused from continued attendance at the telephone conference, I had directed that the notice of investigation meeting be personally served on the Governing Director, Neelan Ahuja. Clearly Ms Ahuja received that advice because the request for a postponement of the investigation meeting the night before the commencement date confirms that.

[5] At the commencement of the investigation meeting I sought submissions from Ms Feeney's counsel about the proffered medical certificate and the request for adjournment. The Labour Inspector's view was that the medical certificate was completely unspecific about the nature of the condition that would prevent Ms Ahuja from attendance and it was not in the interests of justice as a consequence for the matter to be further postponed. Moreover, I was advised that a witness for the Labour Inspector, one of the former employees of the respondent, would give evidence that Ms Ahuja was working in her business on Sunday 19 July 2015 which is to say a day after the medical certificate indicates that she is *medically unfit to attend from 18 July 2015 and should be able to return on 22 July 2015*.

[6] I am not persuaded that I ought to further delay determination on this matter. This proceeding was commenced in September 2014 and it is difficult not to conclude that the ill health signalled is no more than a convenience. Nothing in the medical certificate helps me to understand precisely what it is that Ms Ahuja is suffering from in order that I can make a proper assessment as to whether to adjourn the proceeding or not and the fact that I am now presented with sworn evidence by one of the applicant's witnesses that Ms Ahuja is well enough to work the day after she obtained the medical certificate and the same day that she emailed the Authority to request an adjournment leaves me with little basis for granting the proposed adjournment. I accordingly decline to grant the requested adjournment and proceed.

[7] Ms Feeney's evidence is that there have been a number of complaints received about Khoobsurat, that the complaints started being received some years ago but that initial inquiries about Minimum Wage Act breaches in particular were not made out because the records produced by Khoobsurat showed that minimum wages were in fact being paid.

[8] Then on 21 March 2014, a further complaint was received from Azimun Neisha. The essence of Ms Neisha's claim was that she and other employees were working more than 40 hours a week each, but that the employer was only paying them for, and critically, only recording 20 or 25 hours work a week. Holiday and/or leave entitlements were also not properly provided for, a part of the claim that Khoobsurat appears to concede. Then another former employee of Khoobsurat, Renuka Kumar made contact with Ms Feeney and Ms Kumar confirmed the earlier allegation made by Ms Neisha.

[9] The essence of the allegation in respect to minimum wage entitlements is that staff are working sometimes as much as twice as many hours per week as are being recorded in Khoobsurat's records and accordingly, while the employer's records disclose a legally compliant minimum hourly rate, the actual reality is that those employees are working significantly longer hours, typically twice as many hours as are recorded and therefore receiving a fraction of their legal entitlement to minimum wage.

[10] Labour Inspector Feeney's conclusion after her investigation, and a conclusion that I agree with on the evidence I heard, is that Khoobsurat is falsifying wage and time records provided to the Inspector by the employer by recording, typically, less than half of the hours worked by more than one former employee thus creating a situation where those former employees are not receiving their legal entitlement to a minimum wage.

[11] Ms Feeney obtained evidence from some former employees to the effect that they were asked to *sign false wage and time records to state that (they) worked between four and five hours per day ...* when in fact they worked significantly longer periods of time.

[12] Another employee Renuka Kumar who was present to give supporting evidence at my investigation meeting, told the Labour Inspector that, like other former

employees, she was given some money in cash and some money by direct credit and that she was asked to sign only one side of the wage and time book every week while the other side (which included the actual hours worked) was hidden from her. As a consequence, Ms Kumar thought that the employer was manufacturing the hours that she actually worked after she had signed the wage and time book. This view of matters was confirmed by Ms Kumar in her evidence before me when she was shown time sheets prepared by the employer which appeared to be signed by her but which by her evidence on affirmation she had never seen before. She agreed that the signature was hers but denied having ever seen those time sheets previous to the present proceedings being on foot.

[13] A further troubling aspect of this situation was evidence provided to Ms Feeney that some of the former employees, when they checked with the Inland Revenue Department, were advised by the Department that insufficient tax had been paid. I am satisfied on the evidence before me that this aspect is also a consistent pattern in Khoobsurat's management of its affairs and as a consequence, I intend to make a copy of this determination available to the Commissioner for Inland Revenue in order that a proper accounting can be undertaken by the Inland Revenue Department in respect to their management of PAYE obligations by this employer.

Determination

[14] I am satisfied that Labour Inspector Feeney has uncovered a systemic abuse of vulnerable employees both in terms of Khoobsurat's failure to ensure that the minimum wage is paid to workers for each hour actually worked and in terms of Khoobsurat's failure to account to the Inland Revenue Department for the PAYE that those employees ought to have had deducted from their earnings.

[15] I agree with the Labour Inspector that this series of breaches of minimum standards legislation is egregious and I think it appropriate to order the payment of penalties at the higher end as a consequence.

[16] The material before me from the employer has not persuaded me that Ms Feeney's evidence ought not to be accepted. Allegations made for Khoobsurat include a reliance on the contention that former employees are lying and that the Authority ought to prefer the evidence of their wage and time records.

[17] But I am satisfied on the evidence before me that those wage and time records are fabrications; there is simply too much evidence to counter the suggestion that the employer's records can be relied upon. Amongst other things, Ms Kumar kept a personal diary of the hours that she worked. She provided that information to Ms Feeney for the latter's investigations and those diary entries support Ms Kumar's recollection of the hours that she worked, which themselves add support to the evidence provided to the applicant Labour Inspector from other employees similarly affected.

[18] Moreover, there is a sameness about the evidence provided both to the Labour Inspector and to me from the former employees not just about the hours that they worked but also about the way in which they were paid, the difficulties about contemporaneous access of their wage and time records, as well as the evidence a number of them gave of their contact with the Inland Revenue Department disclosing inadequate accounting of income tax by Khoobsurat.

[19] I direct that Khoobsurat Ltd is to pay to Labour Inspector Feeney for the use of former employees the sum of \$18,515.71 gross and to comply with the requirement that it pay that sum to the Labour Inspector within 14 days of the date of this determination.

[20] In reliance on s.165 of the Act and Schedule 2 Regulation 15(1), I direct that Khoobsurat Limited is to pay to the Labour Inspector the sum of \$71.56 being reimbursement of the Authority's filing fee.

[21] Finally I turn to the issue of penalties. I am satisfied this is a case where penalties ought to be imposed. There are breaches of the Minimum Wage Act and the Holidays Act and those breaches are relating to two employees in each case and indeed to two or more sections of each statute.

[22] On the fact of it, this is a cynical breach of employment law involving a blatant manipulation of employer records to falsify the hours that employees work on the one hand and an absolute failure to properly account for the legal minima in terms of holidays, statutory holidays and the leave entitlements that ought to accrue in those regards.

[23] I direct that a global penalty in respect to each group of breaches should apply such that the total penalty to be paid by Khoobsurat amounts to \$30,000 being

\$15,000 for the multiple breaches of the Minimum Wage Act (two employees) and \$15,000 for the multiple breaches of the Holidays Act (again two employees).

[24] Payments of penalty are to be made to the Labour Inspector for the Crown account within 14 days of the date of this determination.

[25] The Authority officer responsible for this file is to make a copy of this determination available to the Commissioner for Inland Revenue as well as issuing a Certificate of Determination to the Labour Inspector for enforcement purposes.

Costs

[26] There are no issues as to costs in this matter.

James Crichton
Member of the Employment Relations Authority