

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 327
5586097

BETWEEN NAPINDER SINGH JAURA
 Applicant

AND TRISTAR FOOD MART
 LIMITED
 Respondent

Member of Authority: Nicola Craig

Representatives: Arunjeev Singh, Counsel for Applicant
 Asif Ahamad Azeezullah, Director of Respondent

Investigation Meeting: 13 and 14 June 2016 in Hamilton

Submissions Received: 17 and 24 June 2016

Determination: 26 September 2016

DETERMINATION OF THE AUTHORITY

- A. Mr Jaura was not paid for all of the hours which he worked for Tristar Food Mart Limited (Tristar).**
- B. I order Tristar to pay Mr Jaura \$11,305.00 gross in wage arrears within 28 days of the date of this determination.**
- C. Mr Jaura was not paid by Tristar for all of his entitlements under the Holidays Act 2003.**
- D. I order Tristar to pay Mr Jaura the following sums within 28 days of the date of this determination:**
- (a) \$3409.20 gross for holiday pay;**

(b) \$443.43 gross for the extra half time payment due for public holidays worked; and

(c) \$1013.00 gross for pay due for alternative days (lieu days).

- E. Tristar is entitled to deduct from the money owed to Mr Jaura \$648.38 gross for a week's insufficient notice of resignation.**
- F. Tristar is entitled to deduct from the money owed to Mr Jaura, by agreement from Mr Jaura, \$500.00 for goods purchased from Tristar by Mr Jaura.**
- G. Tristar is entitled to deduct from the money owing to Mr Jaura, by agreement from Mr Jaura, \$200.00 for rent outstanding.**
- H. Tristar does not succeed in its other claims to deduct money from what is owing to Mr Jaura.**
- I. Tristar does not succeed in its claim that Mr Jaura breached the confidentiality provision in his employment agreement.**
- J. Costs are reserved.**

Employment relationship problem

[1] Tristar Food Mart Limited (Tristar) is a small business running a dairy in Huntly, with Asif Ahamad Azeezullah (Mr Asif) being the sole director and shareholder. The shop was open for around twelve hours or more a day.

[2] Napinder Singh Jaura (Mr Jaura) was employed by Tristar to work as a supervisor. Mr Jaura started work on 6 May 2013. He resigned, finishing work on 6 October 2014.

[3] The parties signed a first written employment agreement in April 2013 and a replacement in September 2014. The two agreements are essentially the same, other than the first specifying 36 hours of work per week at \$13.75 gross per hour, and the second Monday to Friday 8 hours per day at \$14.25 per hour. Mr Jaura's actual pay rate had changed earlier in 2014 when the minimum wage went up to \$14.25.

[4] Although Mr Jaura's title was supervisor, for periods of time he was on his own in the shop, and most of the remainder of the time, Mr Asif was present.

[5] Mr Jaura claims that he was not paid for all of the hours which he worked, and was not properly paid for holiday pay, for public holidays which he worked on, and for alternative days (days in lieu of public holidays).

[6] Tristar claims that Mr Jaura was correctly paid for the hours which he worked, and that he left his job owing various sums of money to Tristar or Mr Asif and his family.

[7] For some months after Mr Jaura's employment finished, neither party pursued any claims against the other. Mr Jaura's lawyer wrote to Tristar in April 2015 claiming a personal grievance for failure to maintain wages and time records, and seeking payment of various sums of money owing. Tristar first formally raised any of its claims against Mr Jaura in the statement in reply.

[8] At the investigation meeting, evidence was heard from Mr Jaura, Mr Asif, Sabarine Asif (Mr Asif's wife) and Aqhib Kham Asif (Mr Asif's son)¹. The Authority was assisted for part of the meeting by an interpreter of the Punjabi language.

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

¹ Referred to as Aqhib Asif, to distinguish him from his father.

The nature of the claims

[10] Before identifying the issues which I am to determine, I consider firstly at the nature of Mr Jaura's claims. In addition, some claims by both parties were only raised in the closing submissions received in writing after the investigation meeting was concluded.

[11] Mr Jaura's claim is framed as, or at least includes, a personal grievance claim. This is said to be an unjustified disadvantage claim that proper wage and time records were not kept. However, the remedies sought related mainly to wages and would normally be described as an arrears claim for unpaid wages and payments due under the Holidays Act 2003.

[12] Under s 160(3) of the Act, I am not bound to treat a matter as being of the type described by the parties, and may concentrate on resolving the employment relationship problem however described.

[13] I am therefore going to treat Mr Jaura's claim as an arrears claim for wages and other money payable regarding various holiday issues.

[14] There is also the matter of claims only raised by both parties in closing submissions received in writing after the investigation meeting.

[15] Closing submissions on behalf of Mr Jaura included for the first time an allegation of a breach of the duty of good faith under s 4(1) of the Act, with a claim for a penalty under s 4A(a) of the Act.

[16] I do not consider that Tristar had proper notice of either the breach of good faith or the penalty claim. There is also an issue about whether the claim was filed within the limitation period in s 135(5) of the Act, being one year after the cause of action became or should reasonably have become known to the person bringing the action. I therefore decline to consider a separate good faith claim.

[17] In the closing submissions for Tristar, Mr Asif claimed \$20,000 compensation for the "personal grievances, physical and emotional stress, mental agony which made me lack concentration in business as well as family affairs due to Mr Jaura's false claim". This appears to be a personal claim by Mr Asif rather than on behalf of

Tristar, despite him personally not being a party to the case. In addition to the very late raising of this issue, I am not satisfied that I have jurisdiction to deal with this claim.

Issues

- [18] The issues for investigation and determination are therefore:
- (i) Was Mr Jaura paid by Tristar for all the hours he actually worked?
 - (ii) If he was not, what is he owed by Tristar in terms of wages?
 - (iii) Does Mr Jaura have outstanding entitlements under the Holidays Act 2003 for holiday pay, statutory holiday pay and alternative days, and if so, how much?
 - (iv) Is Tristar entitled to deduct from any money payable to Mr Jaura, two weeks' pay for sufficient notice of resignation?
 - (v) Is Tristar entitled to deduct from any money payable to Mr Jaura, for two weeks in May 2013 and one week in September 2014, when it says Mr Jaura did not work?
 - (vi) Is Tristar entitled to deduct for goods purchased by Mr Jaura from the shop, but not paid for, and if so, how much?
 - (vii) Does the Authority have jurisdiction regarding rent owing and any property damage on the flat which Mr Jaura lived at which was provided by Mr and Mrs Asif?
 - (viii) Is so, what, if anything, does Mr Jaura owe Tristar regarding the flat?
 - (ix) Does Tristar have a claim against Mr Jaura regarding confidential information?
 - (x) Should either party be required to contribute to the other's costs for this proceeding?

Payment for all the hours worked?

[19] Mr Jaura claims that he worked significantly more hours than he was paid for. He says that he worked more than 36 hours every week and sometimes up to 45 or 50 hours, but he was paid for less, sometimes as low as 32 hours. This work was not on a fixed roster but was as required by the employer. He was usually required to work six days a week, and got one day off.

[20] Mr Jaura did not receive any payslips. He is not aware of any records of time and wages other than a notebook², and information he has from his bank account and his IRD earnings and deductions record.

[21] Mr Jaura acknowledged that when he worked over 45 hours Mr Asif would sometimes pay him cash for the hours above 45 per week. His monetary claim set out in the section below takes that into account.

[22] The original letter of offer of employment dated 10 April 2013 required Mr Jaura to work four shifts on (of nine hours) and then have three days off.

[23] In terms of working hours, the employment agreement between the parties specifies³ that the times of starting and ceasing work shall be advised by the employer as specified in Schedule A. In Schedule A of the first employment agreement the hours of work are described 36 per week. The agreement also provides that the employee may be required to work additional hours as reasonably required by the employer⁴.

[24] The letter of offer of 10 September 2014 required Mr Jaura to work five shifts on (of eight hours) then two days off. Schedule A to the second employment agreement specified the hours as Monday to Friday, eight hours per day.

[25] Tristar says that Mr Jaura was paid for all the hours which he worked. It says that the business was a small one which was easily handled by the family members. Mrs Asif and her son Aqhib Asif were able to cover most of the time when Mr Asif was not in the shop.

[26] Tristar says that Mr Jaura worked about the hours required in his employment agreement. Mrs Asif thought that that was approximately 30 to 35 per week. Mr Asif says that until April 2014 Mr Jaura was paid for 33 hours per week and worked 4 days a week. This would equate to 8 and a quarter hours' work a day. Mr Asif says that from April 2014 Mr Jaura only worked 32 hours per week.

² Discussed below

³ Clause 4.1

⁴ Clause 4.2

[27] With one significant exception, there was little in the way of documentary evidence to assist in determining what hours Mr Jaura actually worked. Tristar did not produce employer monthly tax schedules, time and wage records or computerised till records from the shop showing Mr Jaura's login dates and times.

[28] The exception was photographs which Mr Jaura produced, of a notebook which he says recorded the days and hours which he worked.

[29] Mr Jaura says that the book was in the shop and Mr and Mrs Asif both used to record his hours in the notebook. He says that he believes that the number of hours recorded in the book correctly reflect his actual working hours at Tristar and that the book is a genuine record of his work.

[30] Tristar accepts that a book which it calls a duty chart was kept. However, it denies that other than the first page or two of entries, the photographs show the actual records which Mr and Mrs Asif wrote up. It was alleged that Mr Jaura removed pages from the notebook which had properly been filled out by the Asifs and replaced them with pages which he had fabricated.

[31] The Asifs say that the duty chart was used to keep a record of hours so that they could be adjusted the following week. This was somewhat like a time in lieu system. Mr Jaura's pay mostly did not change week to week, but it is clear even from the initial entries which Mr and Mrs Asif accept that they made, that Mr Jaura was working variable hours each day and week

[32] Both parties deny that they have the original notebook. Mr Jaura says it was in the shop when he finished. Tristar says that it disappeared when Mr Jaura left his job, although its absence was not discovered until later.

[33] Mr Jaura produced electronic records showing that the photographs were taken on 1 October 2014, while he was still working for Tristar. Tristar suggested that Mr Jaura may have taken the photograph of the original book, prepared a false one on that basis, brought it back to the shop and photographed it on 1 October. I find that scenario to be unlikely.

[34] The photographs show notebook pages with entries starting from 25 May 2013. There is a note in the top corner of the first page of “9 hrs have to pay Nazze”⁵. The final week in the photographs starts 23 September 2014 but has start and finish times but no number of hours entered for Monday to Friday. For 28 and 29 September the line is blank whereas other weeks have a recording of “Day Off” rather than blank lines.

[35] Evidence was heard regarding whether handwriting accepted by Mr Jaura, Mr Asif and Mrs Asif as their own was the same as or different from handwriting which was claimed to be theirs, but which they denied was. In the absence of an expert, I ultimately found this evidence to be of little assistance in my decision regarding the authenticity of most of the notebook entries.

[36] There are significant differences between Mr Jaura’s evidence regarding his working hours, and Mr and Mrs Asif’s evidence in that regard. Aqhib Asif’s evidence was of little assistance on this issue as he was mostly not able to recall details of when he and Mr Jaura had worked or not worked. He also had less involvement in aspects of the Tristar business than his parents.

[37] Overall I found Mr Jaura’s evidence to be more internally consistent. He made appropriate concessions, for example, that he could have owed Tristar more for his shop purchases than the figure he recalled.

[38] Both Mr and Mrs Asif provided much new evidence when questioned, that was not incorporated in either the very detailed information provided with both the statement in reply and the amended statement in reply, or in their witness statements.

[39] I found their evidence less internally consistent than Mr Jaura’s. For example, in the statement in reply Mr Asif wrote that Mr Jaura’s purchases from the shop were recorded in the same exercise book as his hours of work were recorded. At the investigation meeting Mr Asif stated for the first time that there were two exercise books. Given the crucial nature of the photographic evidence, this was an important point.

[40] In conclusion I prefer Mr Jaura’s evidence that the photographs show genuine pages of the duty chart, and accurately record his actual working hours.

⁵ Nazze was identified as Napinder Singh

Amount of wages owed by Tristar to Mr Jaura

[41] Mr Jaura says that he raised the underpayment issue with Mr Asif whilst he was working at Tristar. He says that Mr Asif said that he was having property issues in India and could not afford to pay at the moment, but that he would sort it out later and pay Mr Jaura then.

[42] Mr Jaura was mostly paid a set rate of pay each week by way of automatic payment. This was for 33 hours of work. This was less than the contracted hours of 36 weeks in place for most of Mr Jaura's employment.

[43] The total final claim for unpaid wages for hours worked but not paid for is \$11,305.00 gross. Mr Jaura's claim was based on two periods:

- (a) 6 May 2013 to 1 April 2014, at the hourly rate of \$13.75 gross, for 45 hours per week, when \$27,225.00 gross should have been paid, but the IRD records show \$19,910.00 was paid, leaving a balance unpaid of \$7,315.00; and
- (b) 1 April 2014 to 5 October 2014, at the hourly rate of \$14.25 gross, for 24 weeks when \$15,390.00 gross should have been paid, but the IRD records show \$11,400.00 was paid, leaving a balance unpaid of \$3990.00.

[44] Mr Jaura was able to give a clear account at the investigation meeting of how he had calculated the amounts which he says are owing to him. I am satisfied with the way in which the claims were calculated.

[45] I find that Tristar owes Mr Jaura \$11,305.00 gross in wage arrears, and order that it pays him that sum within 28 days of the date of this determination.

Payments due under the Holidays Act

[46] Mr Jaura's claim concerns annual leave, time not properly paid for work on public holidays, and payment not received for alternative days for those public holidays.

[47] Mr Jaura claims that he was not paid for any annual leave whilst he worked at Tristar and was not paid any holiday pay when he finished employment.

[48] Tristar accepted that Mr Jaura was not paid any holiday pay. At the investigation meeting Mr Asif said that he would have paid Mr Jaura for the holiday pay owing but never got the opportunity. Given that Mr Jaura had been paid his wages by Tristar into his bank account, I find that explanation unlikely. Tristar's closing submissions relied on Mr Jaura not having requested any holiday pay before leaving his job.

[49] On Mr Jaura's behalf a figure of \$3712.50 was claimed for six weeks' holiday pay. However, on the basis of the total proper pay for the period of employment of \$42,615.00 (the figures of \$27,225.00 and \$15,390.00 as outlined above), I find that holiday pay of 8% is \$3409.20 gross. I order that Tristar pay Mr Jaura the sum of \$3409.20 gross for holiday pay within 28 days of the date of this determination.

[50] Mr Jaura claims that he worked on nine public holidays in his time at Tristar. He identified the various days which he worked on and how many hours he had worked in each day.

[51] Tristar denied prior to the investigation meeting that Mr Jaura worked on any public holidays. However, at the investigation meeting it became apparent that the parts of the notebook entries which Mr and Mrs Asif accepted were genuine, showed Mr Jaura having worked on Queen's Birthday in 2013. However, there was no indication that any additional payment had been made for hours worked on a public holiday or any provision of an alternative holiday resulting.

[52] Mrs Asif stated that she, her husband and son worked on public holidays, but could not give her exact hours worked on which public holidays and who covered the rest of the hours. Mrs Asif and her son did not record their hours as they were assisting the family business and were not paid.

[53] At the investigation meeting, having initially denied that Mr Jaura worked on any public holidays, once it was established that he had worked on Queen's Birthday 2013 Mr Asif said that they wanted to pay out the extra half time (from the time and a half) owed for the public holiday, at the end of Mr Jaura's employment. I did not find this likely.

[54] I prefer Mr Jaura's evidence regarding the public holidays which he worked on. He claims \$1456.43 gross, being \$443.43 for the extra half time (on top of ordinary time already paid) which should have been paid and \$1013.00 for alternative days' holiday. I accept those claims.

[55] I order Tristar to pay Mr Jaura the following sums within 28 days of the date of this determination:

- (a) \$443.43 gross for the extra half time payment due for public holidays worked; and
- (b) \$1013.00 gross for pay due for alternative days (lieu days).

Deductions claimed by Tristar

[56] Tristar claimed that it should be able to deduct sums from any money it owed Mr Jaura for the following:

- (a) The two weeks' notice of resignation which Tristar says that Mr Jaura did not give when he left employment;
- (b) Wages for two weeks in May 2013 and one week in September 2014, when it says Mr Jaura did not work but it still paid him under an automatic payment;
- (c) The money which Mr Jaura owed Tristar for goods which he had taken from the shop on account but not yet paid for;
- (d) Money for rent owing and damage to the flat which Mr Jaura was provided at Mr and Mrs Asif's home; and
- (e) Money which Mrs Asif had lent Mr Jaura.

Notice of resignation

[57] Tristar claims that Mr Jaura did not give proper notice of resignation. The employment agreement requires either party to give two weeks' notice, and states that:

Where either party fails to give the required notice, an amount equivalent to the un-expired period of notice shall be paid or forfeited by the party improperly terminating the employment.⁶

⁶ Clause 8.2.1

[58] Mr Jaura received his final salary on 6 October 2014, the same day which Tristar says he quit without giving two weeks' notice and a resignation letter.

[59] Mr Jaura says that he gave notice at the end of September 2014, and that his last day of work was 5 or 6 October 2014. When asked why he did not give two weeks' notice he said that it was not clear at his end that he was going to resign; it was an unpredicted situation relating to his visa and a move to Auckland.

[60] I accept Mr Jaura's evidence that he gave one week's verbal notice. Evidence given by various Tristar witnesses regarding Mr Jaura's sudden departure during the middle of the night without having given any notice, was inconsistent.

[61] There was no requirement in the employment agreement for notice to be in writing, so Mr Jaura was entitled to give verbal notice. However, he admits that he only gave about a week's notice. This is one week less than the two weeks' required.

[62] Under clause 8.2.1 I therefore find that Mr Jaura forfeits a week's pay for the inadequate notice, and that he owes Tristar \$648.38 gross for that week. I base that figure on the weekly average of 45.5⁷ hours, from the last four weeks of employment for which there are full records of hours for in the notebook⁸.

Three weeks' wages

[63] Tristar says that it should be permitted to deduct three weeks' wages from whatever it owes Mr Jaura, as he was sick for two weeks in May 2013, shortly after starting employment and thus not having any sick leave entitlement, and a week in September 2014. Mr Jaura does not accept that he was off work for those periods

[64] The notebook appears only to have been started immediately after the period when Mr Jaura was supposedly sick. Although there are a couple of references in the top corners of the first page, neither appear to assist with establishing that Mr Jaura had been off sick or owed Tristar for two weeks' work, as the company suggests.

[65] In terms of the week in September 2014, the notebook shows some days worked, one "day off" day, and on the other days start and finish times but no entries

⁷ \$14.25 per hours gross

⁸ Starting 25 August 2014

of hours or reference to day off. In any event Tristar's position was that the September records were not genuine.

[66] Tristar was thus unable to produce wages and time records for the relevant periods. On that basis I rely on s 132(2)(b) of the Act that Mr Jaura's claim to have worked in that period is accepted. Tristar therefore cannot deduct salary for these three weeks.

Goods from the shop

[67] Tristar permitted Mr Jaura to take goods from the shop, make a record of them in the same notebook where hours were recorded, then pay for them later with a staff discount. Tristar claims that Mr Jaura owed it about \$1,000 in this regard. Mr Asif considered that Mr Jaura was trying to avoid paying this money by leaving without giving notice of resignation.

[68] Mr Asif's evidence at the investigation meeting was that the purchases were recorded in a separate book (referred to as the credit book) from the hours recorded in the duty chart book. He says that he threw away the credit book after Mr Jaura left Tristar. Mr Asif was unable to recall when he threw it away and the reason for doing so. This was surprising in light of his evidence that the book demonstrated a \$1000 debt owed by Mr Jaura.

[69] Submissions were made on Mr Jaura's behalf that there was no term of the employment agreement that if Mr Jaura purchased items from the shop, the cost could be deducted from his wages or entitlements.

[70] However, Mr Jaura accepted that he owed Tristar money for goods from the shop. There was a dispute as to the amount. The record of goods taken was in the book which both sides say they do not have. Therefore the exact amount of the debt is unclear.

[71] Tristar put the figure at about \$1,000, but without having the credit book available to check the exact figure. Mr Jaura thought that it was about \$300 but on questioning accepted that it could have been as high as \$500.

[72] On the basis of Mr Jaura's admission that money was owed and that it could have been as much as \$500, I find that Mr Jaura owes Tristar \$500.00. By consent I order that \$500.00 is deducted from the amounts owed to Mr Jaura by Tristar.

The flat

[73] Tristar says that Mr Jaura left his job owing rent on the flat provided out the back of Mr and Mrs Asif's house, and also damaged the flat. It says that it had to spend \$900 on repairs.

[74] In terms of rent Tristar's closing submissions claimed that rent had not been paid for 75 weeks (5 May 2013 to 9 October 2014). This covers Mr Jaura's entire period of employment.

[75] There is a dispute as to how much rent was payable. Mrs Asif said the rent was either \$140 or \$150 per week but that included power and internet. She was somewhat uncertain regarding the exact figure, at least partly on the basis that Mr Asif had dealings with Mr Jaura about it, not her. Mr Jaura says that when he had a friend staying with him it was \$140 per week, but after the friend left Mr Asif agreed to Mr Jaura paying \$75. Mr Jaura says that he paid it in cash.

[76] Mr Jaura says that he had been paying \$75.00 per week rent to pay but accepts that he owes \$200 in outstanding rent from the end of his time at Tristar. By consent I order that \$200.00 is deducted from the amounts owed to him by Tristar.

[77] I now consider whether I have jurisdiction regarding the remaining issues concerning the flat. The Authority's jurisdiction concerns employment relationship problems⁹. The Court of Appeal in *JP Morgan Chase Bank NA v Lewis* considered that an employment relationship problem "must be one that directly and essentially concerns the employment relationship"¹⁰.

[78] There is no reference in the letters of offer of employment or in the employment agreement to accommodation being offered or Mr Jaura being required to stay in particular accommodation. There was no evidence that rent was ever deducted or offered to be deducted from Mr Jaura's wages by Tristar.

⁹ S161(1) of the Act

¹⁰ [2015] NZCA 255 at [95]

[79] The flat was on the property of Mr and Mrs Asif's residence. There was no evidence that it was owned by Tristar. Mr Asif described the property as "my family house" and referred to paying "my house mortgage loan".

[80] Given the facts outlined above, I am not satisfied that the matter of rent for accommodation or damage to that accommodation can be said to be directly and essentially concerned with the employment agreement. A similar approach has been taken by the Authority in at least two other decisions¹¹.

[81] I find that I do not have jurisdiction to consider this claim.

[82] In the event that I am wrong regarding the jurisdiction issue, I note that Tristar provided little evidence regarding damage or receipts from repairs. In closing submissions Mr Asif referred to plumbing work which cost him a "few thousand dollars", but no receipts were provided.

Loan from Mrs Asif

[83] Mrs Asif says that Mr Jaura borrowed \$2,000.00 from her in order to assist his family in India. Mr Jaura accepted that he had discussed a family difficulty in India with the Asifs, but denies that he borrowed any money from Mrs Asif.

[84] Mrs Asif's evidence at the investigation meeting was that the money was a personal loan, not from the shop.

[85] I am not satisfied that I have jurisdiction to consider this claim. Mrs Asif is not a party to this proceeding. She was not a party to the employment agreement. She is not a director or shareholder of Tristar, although I accept that she did work in the shop at times.

[86] Under s 161(1) of the Act the Authority has jurisdiction to make determinations about employment relationship problems generally, including in various listed categories. However, the issue here is not between parties to an employment agreement. I therefore am unable to consider this claim.

¹¹ *Melgers v Gower* [2014] NZERA Auckland 220 and *Morunga v Waterford Holdings Ltd* [2014] NZERA Christchurch 128

Confidential Information

[87] Tristar claims that Mr Jaura breached his obligations of confidentiality under the employment agreement by photographing his made-up duty chart and internal documents related to client invoices, contact information for customers/suppliers and amounts owed to suppliers.

[88] The employment agreement contained a provision requiring Mr Jaura, including after employment, to keep Tristar's business information and other commercially sensitive information, confidential¹². The clause goes on to provide that the employee must not use that information except on behalf of the employer, including after employment.

[89] Regardless of the issue of authenticity of some of the entries in the duty chart, Mr Jaura was entitled to a copy of his time (and wage) records, and so this cannot be Tristar's confidential information.

[90] I accept that names and contact details of Tristar customers, and how much they owed the business, may be confidential. However, in order to establish a breach of the employment agreement I would need to be satisfied that Mr Jaura misused that information. I am not satisfied that there is evidence that he did so. Therefore Tristar has no claim regarding breach of the confidential information clause in the employment agreement.

[91] For the sake of completeness I record that no particular remedy was claimed by Tristar regarding confidential information, and there was no evidence of loss or harm to the company.

Costs

[92] Mr Jaura has claimed costs. Costs are reserved. The parties are invited to resolve the matter. Mr Jaura has been largely successful in his claim, whereas Tristar has been largely unsuccessful. Any costs award is likely to reflect this.

[93] If the parties are unable to resolve this matter Mr Jaura shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. Tristar shall have a further 14 days in which to file and serve a memorandum

¹² Clause 20.0

in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[94] The parties could expect the Authority to determine costs, if asked to do so, on its usual ‘daily tariff’ basis unless particular circumstances or factors require an adjustment upwards or downwards

Nicola Craig

Member of the Employment Relations Authority