

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 619
3344440

BETWEEN SHARNPREET KOUR
Applicant
AND UGESHNI SHALINI NAIDU
Respondent

Member of Authority: Sarah Blick
Representatives: Susanne Lass, advocate for the applicant
No appearance for the respondent
Investigation Meeting: On the papers
Information and Submissions received: 3 September 2025 from the applicant
Determination: 2 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 8 August 2024, Sharnpreet Kour was successful in seeking orders for arrears of wages and holiday and leave pay, interest and a penalty (substantive determination).¹ A subsequent determination awarding her costs was issued on 4 October 2024 (costs determination).² Ms Kour says she has not received any payment from either her former employer Arvind and Shalini's Cakes Limited (Shalini's) or its director Ugeshni Shalini Naidu, who were both named as respondents in those earlier determinations.

¹ *Kour v Arvind & Shalini's Cakes Limited (in liquidation) and Anor* [2024] NZERA 475.

² *Kour v Arvind & Shalini's Cakes Limited (in liquidation) and Anor* [2024] NZERA 589.

[2] Not having recovered the Authority awards, Ms Kour lodged an application for a compliance order naming both respondents. As Shalini's is in liquidation, the Authority sought clarification from the appointed liquidator as to whether approval to commence or continue with the compliance order application was given.³ Approval was declined, on the basis Shalini's did not have funds available to meet any potential orders. The application has proceeded against Ms Naidu only, in her personal capacity, having been found to be a person involved in breaches of employment standards and liable to pay monies in the event Shalini's was unable to pay them.

[3] Ms Naidu has not lodged a statement in reply and has not sought to reply to this application during the investigation process.

The Authority's process

[4] There were difficulties in serving Ms Naidu with the original statement of problem, and a subsequent amended statement of problem lodged on 28 March 2025. However, on 10 July 2025, the amended statement of problem was delivered and signed for by "Shalini Naido" at a Papakura address. The Papakura address was identified as the registered office of another registered company on the Companies Register, incorporated on 11 June 2024. Ms Naidu is listed as director and shareholder of that company, with the same Papakura address.

[5] A case management conference call was arranged for 22 August 2025 with Ms Kour. Authority records show a letter confirming the date and time of the conference was delivered to the Papakura address on 13 August 2025. The conference call proceeded by telephone on 22 August 2025. Ms Lass attended for Ms Kour. At the time of the conference call an Authority officer attempted to telephone Ms Naidu, who I am told answered the call, but hung up very shortly after. The conference call then proceeded in Ms Naidu's absence.

[6] Written directions were issued on 25 August 2025 timetabling the lodgement of further information from Ms Kour. In the directions the Authority stated Ms Naidu still had an opportunity to contact the Authority to seek leave to respond to this application by email, and the relevant Authority email address was provided. Authority records show the directions were delivered to the Papakura address on 26 August 2025.

³ Pursuant to the Companies Act 1993, section 248(1)(c).

[7] The Authority is satisfied Ms Kour has been served with the amended statement of problem and directions and now proceeds to determine this matter “on the papers”, as agreed at the conference call, and confirmed in the directions. The Authority has determined this matter after receiving witness statements for Ms Kour and advocate Sunny Sehgal confirming no monies have been received by them in compliance with the earlier determinations. Submissions for Ms Kour have also been provided.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all evidence and submissions received and considered during the Authority’s investigation 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.

The issues

[9] The following are the issues for investigation and determination:

- (a) Have Shalini’s and Ms Naidu failed to comply with the two earlier determinations by not paying the amounts awarded in them (at paragraph [35](a)-(f) of determination number [2024] NZERA 475 and paragraph [14] of determination number [2024] NZERA 589)?
- (b) Should a compliance order be issued requiring Ms Naidu to pay amounts owing in the determinations?
- (c) Should interest be awarded on amounts owing?
- (d) Should the Authority award Ms Kour an amount in costs and the Authority application fee in relation to this application?

Assessment

[10] Written correspondence provided by Ms Kour’s advocate demonstrates attempts made to recover the amounts owing under the earlier determinations through Shalini’s liquidator and Ms Naidu. I am satisfied those attempts have been unsuccessful and Ms Kour has not received any of the monetary awards from the earlier determinations.

[11] In Shalini’s liquidator’s Third Report to Creditors and Shareholders dated 15 July 2025, the liquidator states his assessment that the company had been trading while insolvent for a

period of time prior to liquidation on 19 June 2024, based on a review of Shalini's financial records and its inability to meet its obligations as they fell due during that time.

[12] The Report says the liquidator arranged for Shalini's stock to be independently valued and subsequently sold all stock held to its director (Ms Naidu). It says while a partial payment had been received, the balance was to be paid by way of agreed weekly instalments, which had not been received. Any prospect of a distribution to creditors was said to be dependent upon the quantum of the recovery from the overdrawn shareholders' current accounts and sale of stock. The creditors' claims in the Report vastly outweigh the overdrawn shareholders' current account balance and stock value. Recovery of any amounts from Shalini's is very unlikely on the information before me.

[13] Ms Kour points out that Ms Naidu became a director and shareholder of the other registered company (mentioned above) on 11 June 2024. This was just a few days before Shalini's was placed into liquidation by special resolution of its shareholders. The industry classification for the other company is identified as "cake retailing". Ms Kour has provided a screenshot of a Facebook page for "Shalini's Cakes" based in Manukau, which she says was active as of 3 September 2025.⁴

[14] Based on the evidence, it is clear Ms Naidu is ignoring her liability for amounts owing under the Authority's earlier determinations. She also appears to be trading under another entity.

Compliance order to be issued

[15] Section 137(1)(b) of the Act gives the Authority power to order compliance where a person has not complied with any order or determination of the Authority. The amounts owing here include minimum entitlements, the recovery of which I treat with priority. Having found the orders in the earlier determinations have not been satisfied, it is appropriate to issue a compliance order to prevent further non-compliance with the relevant orders.

⁴ The Facebook page remains active as of today's date, with posts of a cake photograph and Diwali price list posted within the last day.

Interest is to be awarded

[16] Interest has already been awarded on the arrears of wages and holiday pay in the Authority's substantive determination. Interest continues to accrue on those amounts in accordance with that determination.

[17] It is appropriate where a person has been deprived of the use of money to make an award for interest, and as such Ms Kour is also entitled to an award of interest on the amounts owing under the costs determination. Interest must be calculated and paid on the outstanding costs and application fee amounts, using the civil debt interest calculator from the date the amounts became due under the costs determination.⁵

Outcome

[18] Arvind and Shalini's Cakes Limited and Ugeshni Shalini Naidu remain liable to pay Sharnpreet Kour the amounts at paragraph [35] of the substantive determination, number [2024] NZERA 475. For the purposes of this determination, these are:

- (a) \$840.00 gross (August 2021 shortfall);
- (b) \$106.00 gross (oven deduction);
- (c) \$1,060.00 gross (sick leave pay);
- (d) \$1,060.00 gross (notice period);
- (e) \$1,851.01 gross (annual holiday pay); and
- (f) Interest on amounts (a) to (e).

[19] Ms Naidu remains liable, as a person involved, to pay the monies at [35](a) to (e) to the extent Arvind & Shalini's Cakes Limited have defaulted in payment on those amounts. Pursuant to s 137 (2) of the Act, within 28 days of the date of this determination, Ugeshni Shalini Naidu must comply with the substantive determination ([2024] NZERA 475) by paying the amounts listed at [18](a) to (e) above in this determination.

[20] Arvind and Shalini's Cakes Limited and Ugeshni Shalini Naidu remain jointly and severally liable to pay an award of costs to Sharnpreet Kour in the amount of \$3,000 and an application fee of \$71.55, pursuant to paragraph [14] of the costs determination ([2024]

⁵ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

NZERA 589). Pursuant to s 137 (2) of the Act, within 28 days of the date of this determination, Ugeshni Shalini Naidu is ordered to pay those costs to Sharnpreet Kour.

[21] The imposition of a compliance order is a serious matter. Should Ms Naidu fail to comply with the compliance orders set out above, the Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding three months.⁶ Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

[22] Ugeshni Shalini Naidu is also liable to pay Sharnpreet Kour interest on the outstanding amounts in the costs determination.

Costs

[23] It is not appropriate to reserve costs in relation to this application in the circumstances. The Authority has the power under Schedule 2, clause 15 of the Act to award costs. The discretion to order a party to pay costs to another must be exercised on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note and Practice Direction, both of which are publicly available online.⁷ When considering costs, the starting point is the Authority's daily tariff, which is \$4,500 for a one-day investigation meeting.

[24] Ms Kour is entitled to a contribution to her costs as she has been successful. Ms Kour's advocate seeks recovery of her full costs, or failing that, at the full daily tariff amount.

[25] Ms Kour has been put to unnecessary expense in seeking a compliance order. The circumstances are not such that indemnity costs are clearly appropriate. Bearing in mind that costs in the Authority are modest, the Authority orders Ugeshni Shalini Naidu to pay \$1,250 in costs and reimburse the application of fee of \$71.55 to Sharnpreet Kour within 28 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority

⁶ Employment Relations Act 2000, ss 139 and 140(6).

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1
www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.