

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 27
5603550

BETWEEN LABOUR INSPECTOR of the
 MINISTRY OF BUSINESS
 INNOVATION AND
 EMPLOYMENT
 Applicant

A N D BAHN THAI RESTAURANT
 LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: Claire English, Counsel for Applicant
 Jeff Goldstein, Counsel for Respondent

Date of Determination: 16 February 2017

**DETERMINATION No 2 OF
THE EMPLOYMENT RELATIONSHIP AUTHORITY**

[1] By way of a determination dated 16 December 2016¹ (the determination) I ordered that the respondent was to pay a penalty to the Crown in the sum of \$25,000 by no later than 6 January 2017, together with the sum of \$71.56, being the Authority lodgement fee incurred by the Labour Inspectorate.

[2] The parties have since made a joint application to the Authority seeking a variation of the orders made in the determination so that the respondent may make the penalty payment by way of instalments.

[3] The Employment Relations Act 2000 (the Act) does not expressly empower the Authority to vary orders made in a determination pursuant to a joint application of the parties. The parties have effectively reached an agreement as to how the

¹ [2016] NZERA Christchurch 222

Authority's order is to be enforced, which would not usually require the Authority to vary its orders. However, I recognise that the Labour Inspectorate may want to enforce the instalment agreement that they have reached with the respondent in case the respondent does not comply. A new determination reflecting that agreement would likely assist in any such enforcement action.

[4] In the absence of an express power to vary the orders in the determination, I shall treat the joint application as an application to reopen the investigation pursuant to clause 4 of Schedule 2 of the Act.

[5] I grant that application, and substitute the orders contained in paragraphs [100] and [101] of the determination with the following orders, which reflect the wording provided in the joint application:

- a. The respondent is to pay a penalty of \$25,000, to be paid in 25 equal instalments of \$1,000 each;
- b. each instalment is to be paid to the Authority by way of direct credit to Westpac Bank account number 03 0049 0005128 26, on or before the end of each calendar month commencing at the end of the month of February 2017;
- c. The respondent is also to pay one payment of \$71.56 to the Authority, which will then pay it into an appropriate Crown Bank Account, on or before the end of March 2017.

[6] There is no issue as to costs between the parties.

David Appleton
Member of the Employment Relations Authority