

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 326  
5574902

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT (RAMA YELESWARAM) Applicant
AND	FOOD CITY LIMITED Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Alastair Dumbleton, Counsel for the Applicant  
Douglas Mitchell, Counsel for the Respondent

Determination: 23 September 2016

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**CONSENT DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

**Background**

[1] Food City Limited (Food City) operates a food court in Northcote. An approach was made to the Labour Inspectorate in August 2014, on behalf of 5 former employees of Food City, all of whom were Chinese migrants. The approach concerned minimum wage entitlements. As a result of the approach, the Labour Inspector began an investigation.

[2] The investigation culminated in various proceedings before the Authority, some of which were resolved and discontinued as detailed below. The remaining claim before the Authority is a penalties claim which was due to be heard by the Authority at an investigation meeting on 27 and 28 September 2016.

### **Penalties claim**

[3] The remaining matter before the Authority is a claim commenced by the applicant, Ms Rama Yeleswaram (Labour Inspector) to recover penalties from the respondent, Food City for breaches by it of the Minimum Wage Act 1983 (MWA), the Employment Relations Act 2000 (ERA) and the Holidays Act 2003 (HA).

[4] Penalties are claimed for breaches of the MWA, ERA and HA occurring in the course of the employment by Food City of the five employees.

### **Other proceedings in the Authority**

[5] Proceedings filed by the Labour Inspector in the Authority to recover wages and holiday pay for the 5 employees, were resolved between the parties. Upon satisfactory resolution, which included the payment of minimum wages, holiday pay and interest on the amounts by Food City, those recovery proceedings were discontinued in the Authority.

[6] Proceedings to have a director of Food City, Ms Diane Lynn Parsons, joined to the proceedings to recover wages and holiday pay were also discontinued.

### **Investigation Meeting**

[7] The remaining claim for penalties in respect of breaches of the MWA, ERA and HA were continued by the Labour Inspector against Food City and set down for an investigation meeting in the Authority on 27 and 28 September 2016.

[8] Prior to the investigation meeting the parties met and agreed to seek a consent determination from the Authority to resolve the claim for penalties and avoid the need for an investigation meeting.

### **Orders sought**

[9] The parties seek the following orders by consent:

(a) As penalties for the breaches claimed by the Labour Inspector against Food City, Food City shall pay \$37,500 in total made up as follows:

(i) For breaches of the MWA (failure to pay minimum wages):  
\$17,500;

- (ii) For breaches of the HA (failure to pay annual and public holiday pay): \$10,000;
  - (iii) For breaches of the ERA(failure to provide written employment agreements): \$5,000;
  - (iv) For breaches of the ERA (failure to keep wage and time records): \$5,000.
- (b) Of the total of \$37,500, \$10,000 is to be paid to the Labour Inspector for the use of the 5 employees (\$2,000 each), pursuant to the discretion of the Authority under s.136(2) of the ERA. The balance of \$27,500 shall be paid to the Authority for payment into the Crown Bank Account pursuant to s.136(1) of the ERA.
- (c) Payment of \$30,000 (of the sum of \$37,500), including the penalties for the use of the 5 employees, to be made by Food City within 7 days of the date of the Authority's consent determination.
- (d) The balance of \$7,500 (of the sum of \$37,500), shall be paid by Food City within 3 months of the Authority's consent determination.

[10] In the joint memorandum dated 21 September 2016 by Counsel in support of the Authority determining the claim for penalties by consent, the following submissions are made:

- (a) Public interest factors are properly addressed by the issuing of a consent determination;
- (b) Food City has expressly admitted its liability to pay penalties for breaches;
- (c) The amounts for penalties under the MWA, ERA and HA agreed to by the parties are at or near those that the Authority is likely to have imposed in all the circumstances.

[11] Taking all these factors in to consideration, the Authority agrees and is willing to and does issue a consent determination making the orders as set out in paragraph [9] of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**