

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 23  
5646320

BETWEEN                      A LABOUR INSPECTOR OF  
   THE MINISTRY OF  
   BUSINESS, INNOVATION &  
   EMPLOYMENT (Thaherunissa  
   (Taahera) Begum)  
   Applicant

AND                                RAW N FRESH LIMITED  
   Respondent

Member of Authority:        Anna Fitzgibbon

Representatives:             Marija Urlich, Counsel for the Applicant  
   Surendra Bennett, Counsel for the Respondent

Determination:                25 January 2017

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**CONSENT DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Following the commencement of an investigation in the Authority, the Labour Inspector and Raw n Fresh Limited (Raw n Fresh) have reached agreement that Raw n Fresh acted in breach of section 12A(1) of the Wages Protection Act 1983(WPA) for seeking a premium from an employee, Firoj Khan (the employee).

[2]     The parties agree that accordingly, Raw n Fresh is liable to pay a penalty to the Labour Inspector pursuant to s13(1)(b) of the WPA for such breach.

[3]     The parties have not reached agreement as to the level of penalty and request the Authority determine penalties ‘on the papers’.

## Orders sought

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

- (a) Raw n Fresh is liable for a breach of section 12A(1) of the WPA.
- (b) That the Authority determine penalty and the level of penalty on the papers following receipt of the parties' submission on the application of the 4 step process in accordance with *Borsboom (Labour Inspector) v Preet PTV Limited and another* [2016] NZEmpC 143 as follows:
  - That a breach has occurred as agreed
  - The severity of the breach
  - Mitigating factors
  - Raw n Fresh's ability to pay

[5] In the joint memorandum dated 20 December 2016 filed by Counsel, the parties request the current timetable set on 24 November 2016 for the investigation and determination of the matter by the Authority, be suspended and consent as follows:

- The parties will file an agreed statement of facts by Tuesday, 31 January 2017,
- The Labour Inspector will file submissions by Tuesday, 7 February 2017,
- Raw n Fresh will file submissions by Tuesday, 21 February 2017,
- The Labour Inspector will file submissions in reply by Tuesday, 28 February 2017.

[6] 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 [4] and [5] of this determination.

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