

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 206
3001812

BETWEEN A LABOUR INSPECTOR OF
 THE MINISTRY OF
 BUSINESS INNOVATION
 AND EMPLOYMENT
 Applicant

A N D RATTU & LALLI
 DEVELOPMENTS LIMITED
 Respondent

Member of Authority: T G Tetitaha

Representatives: M Denyer, Counsel for Applicant
 S Ahmed, Respondent Representative

Oral Determination: 13 July 2017

ORAL DETERMINATION OF THE AUTHORITY AS TO COSTS

Employment relationship problem

[1] This matter was set down for hearing today on 13 July 2017.

[2] In a Minute of the Authority I directed both parties to file evidence. The applicant was to file his evidence by 26 June 2017 at 3pm. The respondent company was to file its evidence by 7 July 2017 at 3pm.

[3] At the start of this hearing no evidence had been filed by either party. The Labour Inspectorate proposed that I could continue on the basis that the parties agreed with the content of its statement of problem. It was apparent there was no agreement with the content of the statement of problem after hearing submissions from Mr Ahmed.

[4] I would have declined to take that approach in any event. There was no reasonable or legal basis for the Labour Inspectorate to ignore my direction for filing evidence. This is an application for penalties against a company which start at

\$20,000 per breach. There are four alleged breaches. The starting point for assessing penalties in this case is \$80,000. The respondent company is not legally represented. Its representative is an accountant. By comparison the Labour Inspectorate is part of a Ministry which is well resourced and legally represented.

[5] The Labour Inspectorate is well aware that the effect of the Court's decision in *Borsboom v Preet Pvt Ltd*¹, requires it to produce evidence of the breaches including issues of compliance or not by the respondent. From Mr Ahmed's submissions the matter of compliance is hotly contested.

[6] This last minute application about how I should progress matters this morning to remedy a breach of my timetabling directions with an unrepresented respondent which is facing potentially a large amount of penalties is firmly rejected.

Adjournment

[7] I have allowed the Labour Inspectorate some time to consider whether it wished to seek an adjournment or withdraw its application. The amount of breaches alleged are few – four at most. It is accepted at least three of the four breaches have now been remedied. The respondent alleges it has complied with all of the required elements. It feels somewhat aggrieved that the Labour Inspectorate still intends continuing to hearing despite compliance. It has incurred costs in attending today's hearing of \$750.

[8] As indicated to counsel today, I am prepared to grant an adjournment but only on the basis that the costs of the respondent in attending today are met by the Labour Inspectorate. Timetabling orders shall be made in a separate Minute issued on this matter.

[9] I order the Chief Executive of the Ministry of Business Innovation and Employment pay the respondent company the sum of \$750 within seven days.

T G Tetitaha
Member of the Employment Relations Authority

¹ [2016] NZEmpC 143