

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2022] NZEmpC 234
EMPC 87/2020
EMPC 365/2020**

IN THE MATTER OF an application for the exercise of powers
under sections 142B, 142E, 142J, 142M,
142W and 142X of the Employment
Relations Act 2000

AND IN THE MATTER OF proceedings removed from the Employment
Relations Authority

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT
Plaintiff

AND SAMRA HOLDINGS LIMITED T/A TE
PUNA LIQUOR CENTRE
First Defendant

AND SAMRA ENTERPRISES LIMITED T/A
GREERTON LIQUOR CENTRE
Second Defendant

AND SAMRA BROTHERS LIMITED
PREVIOUSLY T/A PAEROA LIQUOR
CENTRE
Third Defendant

AND AKAL HOLDINGS LIMITED T/A
CHERRYWOOD LIQUOR CENTRE
Fourth Defendant

AND SUKHDEV SINGH
Sixth Defendant

Hearing: 9–11, 14 and 18 February 2022
(Heard at Auckland)

Appearances: S Blick and T Gray, counsel for plaintiff
SS Sharma, counsel for defendants

JUDGMENT OF JUDGE KATHRYN BECK

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Introduction

[1] The first to fourth defendant companies operated liquor stores in the Tauranga/Bay of Plenty region. Joga Liddar, Manpreet Sidhu, Dupinder Singh, Navjot Singh and Harpreet Singh (“the employees”) were employed by the companies at various times over the period of 23 September 2015 to 13 November 2019.

[2] The sixth defendant, Sukhdev Singh, exercised significant influence over the management and administration of the companies.

[3] The claims against the fifth defendant are now withdrawn, and she is removed as a party to these proceedings.¹

[4] The parties have already agreed,² and the Court has determined,³ that the companies breached minimum employment standards as set out below:

- (a) The employees were not paid their minimum entitlements pursuant to the Minimum Wage Act 1983 and the Holidays Act 2003.
- (b) Unlawful premiums for employment were sought and received from each of the employees in breach of the Wages Protection Act 1983.
- (c) The records kept by the four defendant companies were incomplete and did not reflect the employees’ true hours of work.
- (d) The individual employment agreements supplied to the employees did not comply with the Employment Relations Act 2000 insofar as they did not specify agreed hours of work or arrangements relating to the days and times the employees were to work.⁴

¹ In a joint memorandum dated 31 August 2021, and as recorded in the Court’s minute of 1 September 2021, the plaintiff agreed to withdraw the claims against the fifth defendant, Paramjit Kaur.

² In an agreed statement of facts dated 31 August 2021.

³ *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre* [2021] NZEmpC 149.

⁴ Employment Relations Act 2000, s 65(2)(a)(iv).

[5] The Court has also held that Sukhdev Singh was a person involved in those breaches of minimum employment standards in that he aided, abetted, counselled or procured the breaches by the defendant companies, induced those breaches, and was directly or indirectly concerned in or a party to those breaches.

[6] The breaches are numerous, and the sums are significant. There were 71 discrete breaches of employment standards by the first to fourth defendants. The total amount owing was \$516,378.87 (gross).⁵

[7] The sixth defendant, as a person involved in the breaches, was ordered to compensate the employees to the extent that the companies were unable to pay any of the amounts owing for the breaches that occurred after 1 April 2016. However, he was not ultimately called upon to do so.

[8] The companies have paid the amounts owing in full to each of the five employees as ordered by the Court.⁶

[9] Having resolved the issue of liability for arrears of wages and repayment of premiums by agreement, the purpose of the current decision is to determine the issue of penalties, banning orders and costs.

[10] There is some common ground between the parties. They have filed an agreed statement of facts and agree on the number of breaches – a total of 120 (71 for the first to fourth defendants and 49 for Sukhdev Singh). The breached provisions are as follows:

- (a) Section 6 of the Minimum Wage Act states that every worker who belongs to a class of workers in respect of whom a minimum rate of wages has been prescribed thereunder is entitled to receive payment for his work at not less than that minimum rate. The minimum rate is payable “for each and every hour ... worked”.⁷

⁵ Made up as set out at [32]–[43] below.

⁶ *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre*, above n 3.

⁷ *Idea Services Ltd v Dickson* [2011] NZCA 14, [2011] ERNZ 192 at [26].

- (b) Section 4 of the Wages Protection Act requires that when wages become payable, the employer is to pay the entire amount without deduction.
- (c) Section 16 of the Holidays Act provides that after each completed 12 months of continuous employment, an employee is entitled to not less than four weeks of paid annual holidays.
- (d) Sections 24, 25 and 26 of the Holidays Act provide for payment of holiday pay when employment ends and an entitlement to holiday pay has arisen. Section 27(1) requires an employer to pay an employee annual holiday pay before a holiday is taken unless they agree that payment will be paid in the period that relates to the period during which the holiday is taken, or upon termination of employment.
- (e) Section 49 of the Holidays Act provides that if an employee does not work on a public holiday that would otherwise be a working day for the employee, the employer must pay the employee for that day. Sections 50 and 56 require that an employee is to be paid at least time and a half for working on any public holiday, and is also to be provided an alternative day's holiday on pay.
- (f) Section 40 of the Holidays Act provides that a public holiday falling during an employee's annual holiday must not be treated as part of their annual holiday, and that where an employee leaves employment with an outstanding annual holiday entitlement, they are entitled to be paid for any public holidays falling during their remaining annual holiday period. Section 60 requires that, where a person takes an alternative holiday, having worked on a public holiday, they are to be paid not less than their relevant daily pay (or average daily pay) for the day which is taken as an alternative holiday.
- (g) Section 81 of the Holidays Act requires an employer to keep a holiday and leave record that contains specified information in respect of each

employee. An employer is required to provide a copy of the holiday and leave record to specified persons (including a Labour Inspector) upon request.⁸

- (h) Section 65(2)(a)(iv) of the Employment Relations Act requires that an individual employment agreement includes, among other things, hours of work or an indication of the arrangements relating to the times the employee is to work.
- (i) Section 130 of the Employment Relations Act requires that an employer keeps a record (called a wages and time record) showing, in the case of each employee, specified information.
- (j) Section 12A of the Wages Protection Act prohibits an employer from seeking or receiving a premium in respect of the employment of any person, whether the premium is sought from the person employed or from any other person.

[11] The parties also agree that the total possible penalties available are in the region of \$7.4 million, but that is where the agreement ends. There are significant differences between the defendants' approach and that of the Labour Inspector as to whether penalties should be imposed and, if so, how much.

[12] The Labour Inspector seeks total penalties of approximately \$3.2 million for what she says are sustained, systemic and serious breaches of minimum entitlement provisions and other employment standards. The defendants submit that \$330,000 is more appropriate given the concessions made by them.

[13] Likewise, Mr Sharma, counsel for the defendants, says that banning orders are not necessary as the businesses have been sold and are unable to obtain liquor licences. The plaintiff proposes banning orders of between four and six years for each company and Sukhdev Singh.

⁸ Holidays Act 2003, s 82.

Issues

[14] The Court heard evidence from the affected employees themselves and Sukhdev Singh. The issues for determination by the Court are:

- (a) Should penalties be imposed against the first, third and fourth defendants for the breaches occurring prior to 1 April 2016?

If so, in what amounts?

- (b) Declarations of breach having been made against the first to fourth and sixth defendants for breaches occurring on or after 1 April 2016, should ordinary and pecuniary penalties be awarded in respect of those breaches?

If so, in what amounts?

- (c) Should a portion of any ordinary or pecuniary penalties awarded be payable to the employees?

If so, how should they be apportioned between the employees and the Crown?

- (d) Should banning orders be made against the defendants?

If so, for how long?

- (e) Costs.

Issues 1 and 2: What penalties, if any, should be imposed?

Should penalties be imposed?

[15] The defendants do not accept that these are breaches that necessarily require the imposition of penalties. They say that all of the arrears have been paid in full and that the businesses have either been sold, or will be sold, in light of the fact that they

will be unable to renew their liquor licences. They submit – and in particular Sukhdev Singh submits – that the proceedings have caused a considerable amount of stress on his family, especially his wife.

[16] Mr Sharma also notes that the way the wages were paid, and the arrangements between the complainants, were agreed to by them in order to secure their visas and on a quid pro quo basis. He says that all the complainants were highly educated and came to New Zealand under the false pretence of intending to study while always intending to work and/or apply for residence. He points out that they admitted making false declarations to Immigration New Zealand on a number of occasions.

[17] Mr Sharma submits that these factors count against imposing penalties.

[18] I do not agree. Most of these factors go to the issue of the quantum of any penalty as opposed to the question of whether one should be imposed at all. The breaches by the defendants were significant and ongoing. They occurred over a lengthy period of time.

[19] The scale, breadth and gravity of the breaches that occurred indicate that penalties are warranted. The defendants obtained significant commercial benefit from the unlawful conduct. That cannot be without consequences.

[20] The acquiescence of the employees to the breaches, when they were reliant on the defendants for their employment and work visas, does not mitigate or reduce the impact of the breaches at all. These were persistent breaches.

[21] Having regard to the purpose of penalties, being to punish, deter, compensate victims, and eliminate unfair competition, it is clear that these circumstances and the breaches of minimum standards in this case are deserving of penalties.

[22] The degree of loss and harm suffered by each of the employees subject to the breaches over more than a four-year period, warrants the imposition of penalties for breaches that occurred both before and after 1 April 2016.

[23] The relevant factors concerning the imposition of pecuniary and (where pecuniary penalties are unavailable) ordinary penalties are the same. Accordingly, I will consider them together.

Penalties – the law

[24] The quantum of any penalties awarded must be assessed by the Court, taking into account ss 133A and 142F of the Employment Relations Act and the approach developed and approved in the decisions of *Labour Inspector v Preet PVT Ltd*,⁹ *Labour Inspector v Prabh Ltd*,¹⁰ and *Labour Inspector v Daleson Investment Ltd*.¹¹

[25] While those cases applied to breaches that took place before 1 April 2016, the approach has continued to be applied in this Court with cases brought under pt 9A, including *Labour Inspector v NewZealand Fusion International Ltd*,¹² *Labour Inspector v Chhoir t/a The Bakehouse Cafe*,¹³ and *Labour Inspector v Jeet*.¹⁴

[26] The approach of the full Court in *Labour Inspector v Preet PVT Ltd* is of particular assistance. In that decision, the full Court set out a four-step test. The steps are as follows:¹⁵

- Step 1: Identify the nature and number of statutory breaches. Identify each one separately. Identify the maximum penalty available for each penalizable breach. Consider whether global penalties should apply, whether at all or at some stages of this stepped approach.
- Step 2: Assess the severity of the breach in each case to establish a provisional penalties starting point. Consider both aggravating and mitigating features.
- Step 3: Consider the means and ability of the person in breach to pay the provisional penalty arrived at in Step 2.
- Step 4: Apply the proportionality or totality test to ensure that the amount of each final penalty is just in all the circumstances.

⁹ *Labour Inspector v Preet PVT Ltd* [2016] NZEmpC 143, [2016] ERNZ 514.

¹⁰ *Labour Inspector v Prabh Ltd* [2018] NZEmpC 110, [2018] ERNZ 310.

¹¹ *Labour Inspector v Daleson Investment Ltd* [2019] NZEmpC 12, [2019] ERNZ 1.

¹² *Labour Inspector v NewZealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525.

¹³ *Labour Inspector v Chhoir t/a Bakehouse Café* [2020] NZEmpC 203, [2020] ERNZ 479.

¹⁴ *Labour Inspector v Jeet Holdings Ltd* [2021] NZEmpC 84, [2021] ERNZ 336.

¹⁵ *Labour Inspector v Preet PVT Ltd*, above n 9, at [151].

[27] As noted above, the purpose of penalties is:¹⁶

- (a) to punish those who breach minimum employment standards;
- (b) to deter companies and individuals from committing employment breaches;
- (c) to compensate victims of such breaches; and
- (d) to eliminate unfair competition.

[28] In *Labour Inspector v Daleson Investment Ltd*, Chief Judge Inglis set out a number of considerations that must be assessed when considering the nature and severity of breaches. Alongside the statutory considerations in ss 133A and 142F, she also noted five additional considerations: deterrence, culpability, consistency, ability to pay and proportionality of outcome.¹⁷

[29] The defendants have also submitted that there is a further factor that should be considered, namely the cultural factors affecting the employment relationship. I consider that cultural factors are able to be considered where appropriate throughout the analysis and do not require a further separate consideration. I note, however, that having made the general submission, the defendants did not provide any expert evidence in relation to cultural factors, nor were there any further submissions directed to the point.

[30] I now turn to consider the factors listed above in *Daleson* within the framework provided by *Preet*.

¹⁶ *Labour Inspector v Preet PVT Ltd*, above n 9, at [61]–[63].

¹⁷ *Labour Inspector v Daleson Investment Ltd*, above n 11, at [19].

Step 1: Breaches, maximum penalties, and globalisation

Nature and Number of Breaches

[31] The specific breaches are set out in full in *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre*.¹⁸ However, in order to provide context, they are set out again here.¹⁹

First defendant – Samra Holdings Ltd t/a Te Puna Liquor Centre

[32] The first defendant breached the minimum entitlement provisions contained in the Minimum Wage Act by failing to pay minimum wages to Joga Liddar and Manpreet Sidhu. It was ordered to pay:

Joga Liddar

- (a) \$18,966.65 for its breach of s 6 of the Minimum Wage Act prior to 1 April 2016; and
- (b) \$59,728.49 for its breach of s 6 of the Minimum Wage Act after 1 April 2016.

Manpreet Sidhu

- (a) \$65,039.19 for its breach of s 6 of the Minimum Wage Act after 1 April 2016.

[33] The first defendant breached minimum entitlements under the Holidays Act to Joga Liddar and Manpreet Sidhu for annual and public holidays and for holiday pay owing at termination of employment. It was ordered to pay:

¹⁸ *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre*, above n 3.

¹⁹ At [32]–[46].

Joga Liddar

- (a) \$690.12 for its breach of s 50 of the Holidays Act prior to 1 April 2016;
- (b) \$1,288.99 for its breach of s 49 of the Holidays Act after 1 April 2016;
- (c) \$5,579.28 for its breach of s 60 of the Holidays Act after 1 April 2016;
- (d) \$10,898.14 for its breach of s 21 of the Holidays Act after 1 April 2016;
- (e) \$5,983.72 for its breach of s 25 of the Holidays Act after 1 April 2016.

Total = \$24,440.25

Manpreet Sidhu

- (a) \$423.64 for its breach of s 49 of the Holidays Act after 1 April 2016;
- (b) \$820.16 for its breach of s 50 of the Holidays Act after 1 April 2016;
- (c) \$3,321.86 for its breach of s 60 of the Holidays Act after 1 April 2016;
- (d) \$4,454.09 for its breach of s 21 of the Holidays Act after 1 April 2016;
- (e) \$432.71 for its breach of s 24 of the Holidays Act after 1 April 2016;
and
- (f) \$1,271.76 for its breach of s 25 of the Holidays Act after 1 April 2016.

Total = \$10,724.22

[34] The first defendant breached minimum entitlements under the Wages Protection Act to Joga Liddar and Manpreet Sidhu. It was ordered to pay:

Joga Liddar

- (a) \$7,500 for its breach of s 12A of the Wages Protection Act after 1 April 2016.

Manpreet Sidhu

- (a) \$1,800 for its breach of s 12A of the Wages Protection Act after 1 April 2016.

Second defendant – Samra Enterprises Ltd t/a Greerton Liquor Centre

[35] The second defendant breached the minimum entitlement provisions contained in the Minimum Wage Act by failing to pay minimum wages to Navjot Singh. It was ordered to pay him:

- (a) \$43,876.32 for its breach of s 6 of the Minimum Wage Act after 1 April 2016.

[36] The second defendant breached minimum entitlements under the Holidays Act 2003 to Navjot Singh for holidays and for holiday pay owing at termination of employment. It was ordered to pay him:

- (a) \$189.82 for its breach of s 50 of the Holidays Act after 1 April 2016;
- (b) \$5,241.60 for its breach of s 60 of the Holidays Act after 1 April 2016;
- (c) \$1,034.94 for its breach of s 40 of the Holidays Act after 1 April 2016;
- (d) \$11,667.91 for its breach of s 24 of the Holidays Act after 1 April 2016;
- (e) \$2,556.15 for its breach of s 25 of the Holidays Act after 1 April 2016.

Total = \$20,690.42

[37] The second defendant breached minimum entitlements by seeking and receiving unlawful premiums from Navjot Singh in breach of the Wages Protection Act. It was ordered to repay him:

- (a) \$14,676 for its breach of s 12A of the Wages Protection Act after 1 April 2016.

Third defendant – Samra Brothers Ltd previously t/a Paeroa Liquor Centre

[38] The third defendant breached the minimum entitlement provisions contained in the Minimum Wage Act by failing to pay minimum wages to Dupinder Singh. It was ordered to pay him:

- (a) \$18,546.49 for its breach of s 6 of the Minimum Wage Act prior to 1 April 2016; and
- (b) \$77,399.23 for its breach of s 6 of the Minimum Wage Act after 1 April 2016.

[39] The third defendant breached minimum entitlements under the Holidays Act 2003 to Dupinder Singh for holidays and for holiday pay owing at termination of employment. It was ordered to pay him:

- (a) \$49.86 for its breach of s 49 of the Holidays Act prior to 1 April 2016;
- (b) \$937.43 for its breach of s 50 of the Holidays Act prior to 1 April 2016;
- (c) \$201.90 for its breach of s 49 of the Holidays Act after 1 April 2016;
- (d) \$217.11 for its breach of s 50 of the Holidays Act after 1 April 2016;
- (e) \$6,676.41 for its breach of s 60 of the Holidays Act after 1 April 2016;
- (f) \$198.54 for its breach of s 40 of the Holidays Act after 1 April 2016;
- (g) \$1,364.34 for its breach of s 21 of the Holidays Act after 1 April 2016;

(h) \$12,812.82 for its breach of s 24 of the Holidays Act after 1 April 2016;
and

(i) \$4,459.67 for its breach of s 25 of the Holidays Act after 1 April 2016.

Total = \$26,918.08

[40] The third defendant breached minimum entitlements by seeking and receiving unlawful premiums from Dupinder Singh in breach of the Wages Protection Act. It was ordered to repay him:

(a) \$1,500 for its breach of s 12A of the Wages Protection Act.

Fourth defendant – Akal Holdings Ltd t/a Cherrywood Liquor Centre

[41] The fourth defendant breached the minimum entitlement provisions contained in the Minimum Wage Act by failing to pay minimum wages to Navjot Singh and Harpreet Singh. It was ordered to pay:

Navjot Singh

(a) \$15,798.29 for its breach of s 6 of the Minimum Wage Act prior to 1 April 2016; and

(b) \$17,328.08 for its breach of s 6 of the Minimum Wage Act after 1 April 2016.

Harpreet Singh

(a) \$57,157.16 for its breach of s 6 of the Minimum Wage Act after 1 April 2016.

[42] The fourth defendant breached minimum entitlements under the Holidays Act 2003 to Navjot Singh and Harpreet Singh for holidays and for holiday pay owing at termination of employment. It was ordered to pay:

Navjot Singh

- (a) \$899.30 for its breach of s 50 of the Holidays Act prior to 1 April 2016;
- (b) \$2,156.25 for its breach of s 60 of the Holidays Act after 1 April 2016;
- (c) \$5,409.38 for its breach of s 24 of the Holidays Act after 1 April 2016;
and
- (d) \$1,177.13 for its breach of s 25 of the Holidays Act.

Total = \$9,642.06

Harpreet Singh

- (a) \$80.53 for its breach of s 49 of the Holidays Act after 1 April 2016;
- (b) \$486.29 for its breach of s 50 of the Holidays Act after 1 April 2016;
- (c) \$1,998.61 for its breach of s 60 of the Holidays Act after 1 April 2016;
- (d) \$3,291.08 for its breach of s 21 of the Holidays Act after 1 April 2016;
- (e) \$5,012.20 for its breach of s 24 of the Holidays Act after 1 April 2016;
and
- (f) \$4,408.01 for its breach of s 25 of the Holidays Act after 1 April 2016.

Total = \$ 15,276.72

[43] The fourth defendant breached minimum entitlements by seeking and receiving unlawful premiums from Navjot Singh and Harpreet Singh in breach of the Wages Protection Act. It was ordered to repay:

Navjot Singh

- (a) \$3,371.25 for its breach of s 12A of the Wages Protection Act after 1 April 2016.

Harpreet Singh

- (a) \$6,000 for its breach of s 12A of the Wages Protection Act after 1 April 2016.

[44] In addition, the first to fourth defendants each acknowledge that:

- (b) they failed to keep accurate wages and time records in breach of s 130 of the Employment Relations Act and s 8 of the Minimum Wage Act, and accurate holiday and leave records in breach of s 81 of the Holidays Act for the five employees;²⁰ and
- (c) they failed to supply compliant employment agreements to the employees in that they did not specify any agreed hours of work or an indication of the arrangements relating to the days or times the employees were to work in breach of s 65(2)(a) of the Employment Relations Act.²¹

[45] This amounts to 71 individual breaches of minimum employment standards.

Sixth defendant – Sukhdev Singh

[46] The sixth defendant was a person involved in 49 breaches of minimum entitlement provisions by the first to fourth defendants in respect of Joga Liddar, Manpreet Sidhu, Dupinder Singh, Navjot Singh and Harpreet Singh (as set out above).

²⁰ Agreed statement of facts, 31 August 2021, at [105].

²¹ At [27], [40], [53], [66], [78] and [91].

Maximum penalties available

[47] The maximum penalty available in respect of the ordinary breaches²² of the Minimum Wage Act, Holidays Act and Employment Relations Act is \$20,000 per breach for the first to fourth defendants, and \$10,000 per breach for the sixth defendant.²³

[48] The maximum pecuniary penalty available, in respect of each serious breach²⁴ of the minimum entitlement provisions by the first to fourth defendants in respect of which a declaration of breach has been made, is the greater of \$100,000 or three times the amount of the financial gain by the company from the breach, and \$50,000 per breach for the sixth defendant.²⁵

[49] The plaintiff and defendants supplied tables setting out the nature and number of breaches for each defendant, both before and after 1 April 2016. Given the extensive number of breaches, I have adopted a similar method and attach tables for each defendant and employee as an appendix.

[50] The maximum penalty available for each penalisable breach can be found in the appendix to this judgment. However, in summary, the maximum pecuniary penalties available against each defendant are as follows:²⁶

First defendant – Samra Holdings Ltd t/a Te Puna Liquor Centre

- (a) \$100,000 for breaches before 1 April 2016 in respect of Joga Liddar;
- (b) \$1,654,303.04 for breaches after 1 April 2016 in respect of Joga Liddar and Manpreet Sidhu;

²² Those breaches that took place before 1 April 2016.

²³ Minimum Wage Act 1983, s 10; Holidays Act, s 75(1); and Employment Relations Act, s 135(2).

²⁴ Those breaches that took place after 1 April 2016.

²⁵ Employment Relations Act, s 142G.

²⁶ This is not disputed by the defendants.

Second defendant – Samra Enterprises Ltd t/a Greerton Liquor Centre

- (a) \$791,628.96 for breaches after 1 April 2016 in respect of Navjot Singh.

Third defendant – Samra Brothers Ltd previously t/a Paeroa Liquor Centre

- (b) \$120,000 for breaches before 1 April 2016 in respect of Dupinder Singh;
- (c) \$1,052,197.69 for breaches after 1 April 2016 in respect of Dupinder Singh.

Fourth defendant – Akal Holdings Ltd t/a Cherrywood Liquor Centre

- (a) \$100,000 for breaches before 1 April 2016 in respect of Navjot Singh;
- (b) \$1,411,628.96 for breaches after 1 April 2016 in respect of Harpreet Singh and Navjot Singh.

Sixth defendant – Sukhdev Singh

- (a) \$2,210,000 in respect of his involvement in 49 breaches after 1 April 2016 in respect of all of the employees.

[51] The total is \$7,439,758.65.

Is globalisation of penalties appropriate?

[52] All parties agree that globalisation of penalties is appropriate in the circumstances.

[53] The plaintiff proposes globalisation of the 120 breaches into six “types”, which are as follows:

- (a) breaches of s 6 of the Minimum Wage Act – failure to pay minimum wage;

- (b) breaches of provisions of the Holidays Act relating to annual holidays – failure to pay annual holiday pay;
- (c) breaches of provisions of the Holidays Act relating to public holidays – failure to pay public holiday pay;
- (d) breaches of s 12A of the Wages Protection Act – unlawfully seeking and receiving a premium;
- (e) breaches of s 65(4) of the Employment Relations Act – failure to supply compliant employment agreements; and
- (f) record keeping breaches, being breaches of s 130 of the Employment Relations Act and s 81 of the Holidays Act – failure to keep compliant wage and time, and holiday and leave records.

[54] The plaintiff says that this approach reflects a single course of conduct by each of the defendants that resulted in significant prejudice to each of the five employees and provides a reasonable starting point for assessing appropriate penalties.

[55] In reliance on *Labour Inspector v Prabh Ltd*, Mr Sharma for the defendants submits that breaches before and after 1 April 2016 should not be regarded as separate, as to do so would be to charge the defendants twice for the same continuous behaviour and would reach a result which is disproportionate to the offending.

[56] In relation to breaches of the Wages Protection Act and unlawful premiums, he submits that penalties should only be imposed against the sixth defendant as it was he who received the premiums and not the companies.

[57] Mr Sharma does not take issue with the number of individual breaches identified,²⁷ but submits that the categories can be further reduced to breaches of the statutes only. He argues that because breaches of the Holidays Act in relation to annual leave and public holidays are the same type of conduct, they should therefore be joined

²⁷ 71 for the first to fourth defendants and 49 for the sixth defendant – 120 in total.

together. Similarly, he submits that failure to keep proper records and record keeping in relation to the Employment Relations Act and the Holidays Act, and failure to supply a compliant employment agreement should also be consolidated.

[58] He therefore proposes that there be three types of breaches for each of the defendant companies and four for the sixth defendant

[59] I agree that the plaintiff's approach to globalisation is too restrictive. In relation to the claim for awarding penalties for the period to 1 April 2016 and then from 1 April 2016, I consider that these should be treated as one claim. To do otherwise potentially amounts to double jeopardy. The defendants would be punished twice for the same continuous behaviour simply because it spans the 1 April 2016 date. That is not desirable.

[60] Further, I agree that breaches of the Holidays Act in relation to annual and public holidays are the same type of conduct and should be consolidated.

[61] The plaintiff submits that the failure to provide a compliant employment agreement should be separate for the purposes of penalty, as the failure facilitated a system in which the workers could be required to work from open until close without proper payment.

[62] Accurate and compliant documentation is crucial for the protection of employees and ensuring that minimum standards are met. The defendants' employment agreements, while not containing an 'hours of work' provision, were otherwise compliant. I consider the issue of the agreed arrangements,²⁸ in relation to hours and the records kept (or not) of those hours, represents a single course of conduct,²⁹ and that any breaches in that regard can be treated globally.

[63] While I agree that the need to have a compliant employment agreement is an essential element of the statutory framework under the Employment Relations Act, and is a standalone obligation in its own right, it is also the starting point for record

²⁸ As recorded (or not) in the employment agreements.

²⁹ *Labour Inspector v Preet PVT Ltd*, above n 9, at [59].

keeping obligations. To link the failure to provide a compliant agreement with a failure to keep proper records, for the purposes of penalty, does not detract from the importance of the obligation and is appropriate in the circumstances.

[64] The payment of premiums arose in the context of employment relationships with the first to fourth defendants, and it is those defendants that have been found to have breached the Wages Protection Act.³⁰ Sukhdev Singh aided, abetted or procured these breaches, but he is not solely responsible for the conduct.³¹ To fail to hold the employing entities to account for such conduct would be undesirable.

[65] Accordingly, I consider that the breaches should be grouped for the purpose of globalisation for all defendants as follows:

- (a) breaches of the Minimum Wage Act;
- (b) breaches of the Holidays Act;
- (c) breaches of the Wages Protection Act; and
- (d) record keeping breaches under the Employment Relations Act and the Holidays Act (including failure to supply a compliant employment agreement).

Step 2: Starting point and aggravating and mitigating factors

Legal principles relating to starting point

[66] Under the second step, I turn to consider provisional starting points for each group of offences. The full Court in *Preet* said the following about setting starting points:

... under Step 2, the Authority and the Court should then assess the severity of the breach in each case. This will establish what we will call a provisional starting point for each penalty (potentially up to the maximum) and will

³⁰ *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre*, above n 3, at [9]–[21].

³¹ At [22]–[24].

include an adjustment for aggravating and mitigating factors in relation to each breach.

[67] In the following analysis, I will assess the severity of the breaches alongside any aggravating and mitigating features. This will be achieved through a discussion of the statutory considerations and two of the other considerations set out in *Daleson*. Starting points will then be set out for each globalised breach.

Severity – aggravating and mitigating factors

Statutory consideration 1 – the object of the Employment Relations Act 2000

[68] An object of the Employment Relations Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and the employment relationship. This object is achieved, in part, by the recognition of the requirement for mutual trust and confidence, as well as the legislative requirement for good faith behaviour, and by acknowledging and addressing the inherent inequality of bargaining power in employment relationships. Another object of the Act is to promote the effective enforcement of employment standards by conferring powers on Labour Inspectors, the Employment Relations Authority and the Court.³²

[69] It is clear that these elements are engaged in these proceedings. The failure to keep adequate or accurate wage and time records is clearly inconsistent with the purposes of the Employment Relations Act, as is the failure to pay minimum wage, annual holiday pay, public holiday pay, and requiring the payment of premiums. Such conduct undermines the obligations of mutual trust and confidence and supports the requirement for such breaches to attract opprobrium.

[70] The consideration of the purposes of the Employment Relations Act set out above reinforces the need for the imposition of penalties in this case.

³² Section 3.

Statutory consideration 2 – the nature and extent of the breach

[71] The nature and extent of the breaches have already been considered in terms of their types and quantum above. The Labour Inspector has described this proceeding as a high-water mark in this area given the large sum of arrears involved (\$516,378.87). She says the breaches were serious and sustained. I agree.

[72] Mr Sharma for the defendants acknowledges that the quantum involved in relation to unpaid wages and holidays was not insignificant. However, he submits that this was only due to the fact that the minimum wage had increased significantly since the decision of this Court in *Preet*. He submits that, rather than comparing monetary quantum, unpaid hours of work ought to be considered.

[73] Mr Sharma did not provide any particulars in relation to this submission. It was unclear what hours the defendants considered were unpaid. If they are the additional hours over and above the minimum hours in their employment agreements (being 40 hours per week), they were significant.

- (a) Joga Liddar (employed by Samra Holdings Ltd) – average of 67 hours per week worked; 27 hours per week unpaid.
- (b) Manpreet Sidhu (employed by Samra Holdings Ltd) – average of 69 hours per week worked; 29 hours per week unpaid.
- (c) Navjot Singh (when employed by Samra Enterprises Ltd) – average of 68 hours per week worked; 28 hours per week unpaid.
- (d) Dupinder Singh (employed by Samra Brothers Ltd) – average of 65.5 hours per week worked; 25.5 hours per week unpaid.
- (e) Harpreet Singh (employed by Akal Holdings Ltd) – average of 70 hours per week worked; 30 hours per week unpaid.
- (f) Navjot Singh (when employed by Akal Holdings Ltd) – average of 69.5 hours per week worked; 29.5 hours per week unpaid.

[74] The alternative is to calculate the amount of arrears paid by the minimum wage rate and come to an amount of unpaid hours that way. However, the breaches spanned more than one year, so the applicable rate would vary. In the absence of figures from counsel, I do not propose to undertake that calculation.

[75] The average hours worked, as agreed between the parties and set out above, are by any measure excessive.

[76] Accordingly, I do not accept that the quantum involved is only significant because the minimum wage has increased since previous decisions of this Court. The sums involved are significant because the amount of time the employees were required to work, and for which they were not rewarded, was significant.

[77] Overall, in light of the severity of the breaches, strong penalties will be appropriate.

Statutory consideration 3 – whether the breach was intentional, inadvertent or negligent

[78] The plaintiff says that each of the breaches reflects conscious business decisions by the sixth defendant on behalf of the first to fourth defendants to require the employees to work on average 65 to 70 (and sometimes many more) hours per week while supplying false records for immigration purposes, suggesting that they did not work more than 40 hours per week, and paying them accordingly. She says this resulted in serious and sustained breaches of the minimum employment standards throughout each employee's employment.

[79] It is not disputed that Sukhdev Singh was the controlling mind of all of the defendants. That has been accepted by Mr Sharma on the defendants' behalf. The defendants submit that the breaches arose due to naivety on the part of Sukhdev Singh and that they were inadvertent rather than intentional.

[80] When considering whether the breach was intentional or otherwise, it is necessary to consider a number of issues:

- (a) Was Sukhdev Singh aware of his responsibilities as an employer?
- (b) Did Sukhdev Singh know what hours the employees were working and the wages that were paid to them?
- (c) Did Sukhdev Singh know about the premiums?

[81] I consider each issue in turn.

Was Sukhdev Singh aware of his responsibilities as an employer?

[82] The full Court in *Labour Inspector v Preet PVT Ltd* considered it to be a matter of common knowledge within the community generally, and the commercial and small business community in particular, that minimum wages, minimum holiday requirements, and other statutory minima were applicable to all employees.³³

[83] In relation to the failure to pay the minimum wage, Sukhdev Singh states that he relied on a clause in the contracts which provides: “The Employer is not required to make extra payments where an Employee is required to work overtime.” He says that he now understands the clause is subject to minimum wage requirements but that he did not previously know that.

[84] I do not accept that. In 2014 Sukhdev Singh was served with an improvement notice by the Labour Inspector in relation to his kiwifruit business. That notice required the company to keep a time record, a wage record, and to pay employees at least the minimum wage. He says the kiwifruit business complied with that notice. It received a further notice in relation to Holidays Act compliance. Accordingly, in 2014, Sukhdev Singh was on specific notice of the need to pay minimum wage (among other things).

[85] Further, on any objective analysis, it was not reasonable to take the view that the contractual provision entitled the employer(s) to require the employees to regularly work 25 to 30 hours per week more than their 40-hour minimum and not be

³³ *Labour Inspector v Preet PVT Ltd*, above n 9, at [86]–[87].

compensated for it. Such an explanation is unsustainable and appears to be an attempt to retrospectively excuse or at least diminish culpable behaviour.

[86] In relation to the breaches of the Holidays Act, the employees' individual employment agreements accurately set out the position in relation to entitlements under the Holidays Act. Therefore, the defendants were not only aware of those obligations, but they specifically agreed to comply with them. Further, Sukhdev Singh had previously been advised about Holidays Act compliance, albeit in a separate business.³⁴

[87] Additionally, he is a highly experienced businessman. He has been involved in the liquor business in New Zealand since 2005. As noted above, he is also involved in running a kiwifruit business and has done so for many years.

[88] Given the judicial notice recorded in *Preet*, the contents of the employment agreements, Sukhdev Singh's extensive business experience and the receipt by him of improvement notices from the Labour Inspectorate in 2014, I find that it is more likely than not that he was aware of the defendants' obligations in relation to the keeping of wage and time records, minimum wage, normal and public holidays, and the ban on premiums.

Did Sukhdev Singh know what hours the employees were working and the wages that were paid to them?

[89] The next question is then whether he was aware of the hours and days actually worked by the defendants, at least in general terms.

[90] The employees gave evidence that they were not required to keep timesheets or rosters at all, other than those that were prepared for Immigration New Zealand purposes, which were falsified.

[91] Sukhdev Singh said that the defendants did keep manual wage and time records but that they were stored at his home address in a bag which was stolen on 1 May

³⁴ See above at [84].

2019.³⁵ However, his evidence was unclear as to whether such (stolen) records had accurately recorded the hours and days worked by the employees or whether, like the documents provided to Immigration New Zealand, they had simply recorded eight-hour days. I further note that in the agreed statement of facts, all defendants agreed that they did not keep accurate wage and time records.³⁶

[92] If the stolen records were similar to those filed with Immigration New Zealand, and Sukhdev Singh was aware of the hours that the employees were actually working (which I deal with below), they were knowingly false.

[93] If such records were accurate, that is that they had recorded the actual hours worked (on average 65 to 70 per week), then they should have alerted the defendants to their obligation to pay the employees for those hours.

[94] Mr Sharma submits that the record keeping issues arose as a result of a failure of “traditional methods of record keeping”. However, the Court was unable to consider what the traditional methods of record keeping for the defendants looked like as the documents were unavailable.

[95] Sukhdev Singh has already agreed in the agreed statement of facts that he directed the employees as to where and when to work. This is also consistent with the evidence of the employees.

[96] At the hearing, Sukhdev Singh attempted to say that at least some of the employees were managers and directed themselves as to when to work. However, it was clear that they had no autonomy in this regard. They worked the days and hours Sukhdev Singh directed them to.

[97] The employees also say Sukhdev Singh was fully aware of what they did on a day-to-day basis, either through calling them to check whether they had opened the stores, or were still open, and/or through observing them on CCTV cameras installed in the stores.

³⁵ A Police Acknowledgement Form of the complaint was provided to the Labour Inspector.

³⁶ Agreed statement of facts, 31 August 2021, at [105].

[98] Sukhdev Singh denied that he could remotely access the cameras in the stores, but he did accept that he told some employees that he could do so. At the very least, the employees felt that they were under surveillance. The phone records produced establish that he regularly rang them throughout the day. He says this was to talk about stock and what was on special that day. The employees say it was to check on them, but either way, he knew they were at work.

[99] Given that Sukhdev Singh directed the employees as to when to work, and spoke to them throughout the day, he must also have been aware of when they worked public holidays and took annual leave.

[100] He has also accepted that he signed off the payroll. Accordingly, he must also have been aware of what pay and holiday pay the employees were paid (or not).

[101] Accordingly, it is clear that he knew the hours they worked and the wages they were paid.

Did Sukhdev Singh know about the premiums?

[102] In terms of premiums, this Court has already made declarations that Sukhdev Singh was a person involved in the breach of the minimum entitlement provisions in relation to the employees (including seeking and receiving unlawful premiums).³⁷

[103] This was based on the agreed statement of facts which said:

107. Sukhdev Singh is neither a director nor a shareholder of the other defendants. However, Sukhdev Singh exercised significant influence over the management or administration of each of the first, second, third and fourth defendants. He had overall control over and responsibility for the five above-named employees' employment. This included directing the employees as to where and when they were to work, responsibility for the payment of the employees' wages, physical control over wage, time and holiday records, and requesting premiums for employment from the employees.

[104] It is not disputed that the amounts referred to as premiums were sought and received by Sukhdev Singh personally.

³⁷ *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre*, above n 3, at [22].

[105] In this hearing he attempted to reframe the payments made to him as repayments of overpayments, rather than premiums. The orders and declarations made in the consent judgment remain on foot. It is not open to Sukhdev Singh to now seek to challenge them or the basis on which they were made in this forum.

[106] In any case I did not find his evidence that the payments were anything other than premiums compelling. The sums were paid to him personally, not back to the various companies as one would expect with a refund of an overpayment. His evidence was also inconsistent with his own counsel's submission that penalties only be applied against him in relation to premiums, as they were paid to him personally, and only he benefited. Therefore, even if I were able to change the finding, I am not persuaded to do so. Sukhdev Singh knew about the premiums.

Conclusion

[107] Accordingly, I find that Sukhdev Singh, as controlling mind of the defendants, was aware of their responsibilities as employers. He was also aware of the hours and days actually worked, the wage payments made to them (or not), and the leave they took (or did not take). Further, he knew about and was personally involved in collecting the premiums.

[108] Therefore, the evidence supports the Labour Inspector's submission that the breaches were intentional and the result of a deliberate course of conduct over a four-year period. The starting point for penalties will need to reflect the intentional nature of the breaches.³⁸

Statutory consideration 4 – the nature and extent of any loss or damage

[109] In assessing the severity of the breaches, it is necessary to consider the nature and extent of the loss or damage to each of the employees themselves. The arrears that were ultimately paid to them are set out at [32]–[43] above. These are significant amounts.

³⁸ As a result of this finding, it is not necessary to consider the defendants' reliance in their oral submission on the defences in ss 142ZC and 142ZD of the Employment Relations Act. Those submissions were not supported by any evidence.

[110] Counsel for the defendants submits that the employees were paid well and above the minimum wage to assist with their visa applications. This would have been true had they only worked the 40 hours in their employment agreements, but that was not the case; they worked significantly more. They were paid well below the minimum wage for the hours they worked; hence the requirement for arrears payments. Further, on many occasions they were not even paid the amount due for the 40 hours in their agreements.

[111] Mr Sharma also suggests that any competitive advantage that the defendants received is inconsequential because such competitors would not have been paying the higher salaries that were set out in the employees' employment agreements. Again, this cannot be correct. Despite the salary in their employment agreements, the employees were paid below the minimum wage. The competitive advantage can be measured in the amount of wages underpaid. The nature and extent of loss suffered by each of these employees is substantial. The amounts speak for themselves. Compounding this is the requirement to pay premiums, together with the underpayment of holiday pay.

[112] In relation to the failure to keep proper records, Mr Sharma submits that there was not a complete failure on the part of the defendants as they did supply employment agreements (although not compliant). He also submits that failure to keep proper records did not financially disadvantage the employees in any way.

[113] Section 65 of the Employment Relations Act sets out the requirements in terms of the form and content of employment agreements, including that all such agreements must be in writing and that they must include (among other matters) any agreed hours of work or, if no hours are agreed, an indication of the arrangements relating to the times the employee is to work. A failure to record fundamental matters such as agreed hours of work or, if no hours are agreed, an indication of the arrangements relating to the times the employee is to work, may facilitate an employment relationship in which hours are excessive (as they were here) or unpredictable, and may enhance an employee's vulnerability.

[114] The records required to be kept under s 130 of the Employment Relations Act and s 81 of the Holidays Act are the foundation documents on which wage and leave entitlements are based. Correct and up-to-date records inform employees of what their entitlements are, and they act as a reminder to the employer of its obligations to its employees and ongoing liabilities. They also provide the basis for a Labour Inspector to ensure minimum entitlements are being provided to workers.

[115] I consider that the record keeping failures significantly contributed to the financial disadvantage suffered by the employees.

[116] The nature and extent of the loss and damage suffered by all the employees reinforces the need for strong penalties.

Statutory consideration 5 – steps to mitigate the effects of the breach

[117] The plaintiff has acknowledged that the defendants are entitled to credit for the payment of the arrears which were paid in full in accordance with the consent judgment of 10 September 2021.

[118] The plaintiff notes, however, that these payments occurred almost 18 months after the filing of proceedings in the Authority and the Court and further notes that no interest on the sums owing has been paid. She submits that the Court should adopt a similar approach to the Court in *Daleson* where it was held that payment of monies owing is not evidence of contrition and amounts to no more than the late performance of a duty.³⁹

[119] I agree that the payment itself is not evidence of contrition. Accordingly, it is necessary to consider the conduct of the defendants and, in particular, the sixth defendant as the controlling mind. The plaintiff submits that there is no evidence of genuine contrition by Sukhdev Singh for the breaches, or acknowledgement of the effects of the defendants' failures towards the employees.

³⁹ *Labour Inspector v Daleson Investment Ltd*, above n 11, at [33]–[35].

[120] Taking into account the natural desire of a defendant in these circumstances to defend their actions in order to minimise penalties payable, I agree that there is little evidence of remorse or understanding on the part of Sukhdev Singh as to the impact of the defendants' failures on the employees. His assertion that all of the employees were always in a comfortable financial position during their employment and that none of them was upset or depressed about their work or work environment, was clearly untenable and yet it was a view that he maintained throughout the hearing.

[121] Sukhdev Singh gave evidence that he has subsequently put in place a compliant computer-based wage and time record system which I recognise as a step in mitigation. However, he persisted in saying that he was not responsible for directing the staff as to where and when to work, that he kept a wages book which was signed by staff, that he had nothing to do with any false information submitted to Immigration New Zealand, and that working at the liquor stores was like a holiday for the employees who, he said, came and went as they pleased.

[122] These positions were completely inconsistent with the evidence before the Court, which has been set out elsewhere in this judgment.

[123] The plaintiff submits that despite the acknowledgement of the breach and payment of the arrears, Sukhdev Singh's evidence exhibits a troubling lack of insight into the effects of these breaches on the employees. I agree. His evidence to the Court was centred very much on the impact that these proceedings has had on him personally, his family and his ability to continue to trade. While he acknowledges that the monies were owing, he does not appear to have appreciated the impact of the long hours, underpayment and inability to take sick and other forms of leave on the individual employees. Nor does he appreciate the powerlessness felt by them when required to pay back wages that were hard earned. Of particular concern is his attempt to now re-categorise payments as repayments and deny that any premiums were paid at all.

[124] In these circumstances, only a modest discount can be applied for mitigating factors in relation to all defendants from this consideration.

Statutory consideration 6 – circumstances of the breach and any vulnerability

[125] These employees were migrant workers on temporary visas which were tied to their employment with the defendants.

[126] When looking at the numbers and the amounts involved in the breaches, it is important not to lose sight of the people behind them.

Navjot Singh

[127] Navjot Singh came to New Zealand in 2008 to study towards a Diploma in Computing and Information Technology. He first started working for Sukhdev Singh and his brother Jaswinder Singh in their kiwifruit contracting business at the end of 2011. His employment there is not part of this proceeding, but the arrangements at that time set the scene for his subsequent employment by the fourth defendant (23 October 2015 to 23 November 2016) and the second defendant (24 November 2016 to 13 November 2019).

[128] He was paid in cash for the kiwifruit work, and although he helped out in the various liquor stores operated by the defendants in the evenings, he says he was not paid for this work at all.

[129] He applied for a further student visa to study towards a National Diploma in Business. This was granted in September 2014 and allowed him to work 20 hours per week while he studied, and more during the holidays. He worked in various stores for Sukhdev Singh while a student and was paid cash, although irregularly. He says the sixth defendant said he would hold onto the payments for him to be paid later, although he never received those payments.

[130] Once he started to work for Akal Holdings Ltd, he worked six days per week. If he had more than one day off, he had to make it up. He was required to cover for Dupinder Singh when he went to India. Navjot Singh says he worked continuously from open to close without a break until Dupinder Singh returned. During that time, he was told to live at the back of the store. He slept in the storeroom at the back of the store at the Paeroa Liquor Centre in a cubicle, constructed from plywood and not much

bigger than a single bed. He was paid mainly cash, and not in full. Again, he was told the balance was being held for him, but when he requested it, it was not provided. When money was paid into his bank account (as opposed to cash), he was told this was not for him to keep but was being paid in case of inquiries. He was then required to hand over his bankcard and PIN number so that Sukhdev Singh could withdraw the amounts.

[131] The same pattern was followed when he became employed by Samra Enterprises Ltd.

[132] He says he struggled financially and had to borrow money to survive. He could not afford to send money home as initially planned, which caused him deep embarrassment. He felt he had a lack of control over his life which caused him significant stress and depression.

Manpreet Sidhu

[133] Manpreet Sidhu arrived in New Zealand in 2012 to study.

[134] He worked in Sukhdev Singh's kiwifruit business while a student and was paid in cash. He also helped out in the liquor stores, for which he was not paid. He was told by Sukhdev Singh that he would be paid in the future but that he could not have it then because he would "spend it".

[135] Once Mr Sidhu completed his studies, he went to work for the first defendant. He was told he would be paid the legal rate but that Sukhdev Singh would hold on to some of it so he would not spend it all.

[136] Despite the Te Puna Liquor Centre being noted on his work visa, he was required to work across other stores, which worried him in relation to his immigration status. He worked six days per week. If he took more than one day off, he had to make it up the following week. There were times when he worked for weeks on end without a day off. He too was told to stay in the makeshift plywood sleeping area in the storeroom of the Paeroa Liquor Centre for a period while a colleague was away.

[137] Before Mr Sidhu went to India to get married, Sukhdev Singh asked for his bankcard so that he could deposit money into the account. Mr Sidhu says he initially refused but eventually gave it to him. He says Sukhdev Singh did deposit funds but later used it to withdraw funds.

[138] Mr Sidhu says he developed back pain because of heavy lifting but did not feel able to take time off. He says he felt trapped until he was able to obtain an open work visa.

[139] He was stressed because he could not send money home. His long hours caused stress on his relationships, and he felt isolated from friends and family. He says Sukhdev Singh was constantly wanting to know where he was and what he was doing, even on a day off. He would then use that information to argue against any request for more remuneration because Mr Sidhu was “wasting” it.

[140] Mr Sidhu was worried about complaining because Sukhdev Singh was an important person in the Sikh temple which Mr Sidhu also attended.

Dupinder Singh

[141] Dupinder Singh arrived in New Zealand on 18 August 2013 from Punjab, India. He had a student visa and planned to study towards a Diploma in Business Management. His visa allowed him to work 20 hours per week. Like his colleagues, he began working for Sukhdev Singh in the kiwifruit contracting business and was paid in cash.

[142] In 2014, he helped in the Greerton Liquor Store in the evenings but was not paid – he was told it was good experience.

[143] He was granted his liquor licence in August 2015 and started working at the Paeroa Liquor Centre. At first, he lived in a cabin at the back of the store. He worked from September to November 2015 from open to close, with no days off, until he returned to India on the death of his father. He was not paid during this time, and although he did not have to pay rent (for the cabin), he did have to use his savings for his groceries.

[144] Once the cabin was taken away, he slept on a bed in the kitchen at the back of the store until the plywood cubicle (only slightly larger than a single bed) was built, after which he slept there. Living at the back of the store meant that he could receive deliveries after hours, which happened regularly. He had one day off every second week.

[145] After making requests in December 2015, on his return from India, he started to be paid in January 2016 (albeit irregularly). Despite an employment agreement (dated 5 September 2016) which said he would be paid a salary of \$37,440, he was only paid \$450 per week. He says Sukhdev Singh told him it was all he could afford and he (Sukhdev Singh) would save the extra dollars for him.

[146] When he applied for residency in August 2017, Dupinder Singh signed and backdated documents on Sukhdev Singh's advice to explain the irregularity of his pay. However, his application was declined due to issues with his remuneration. As a result, he started to be paid the contractual amount for 40 hours per week but was told that he could not keep it and would have to repay some. Sukhdev Singh and his brother put pressure on him until he paid \$1,500.

[147] Dupinder Singh says he felt trapped, depressed and isolated because of his long hours. He was ashamed of his circumstances but felt powerless to change them, until he made the complaint to the Labour Inspector.

Harpreet Singh

[148] Harpreet Singh was born in Punjab, India. He came to New Zealand on 25 February 2014 to study towards a National Diploma in Business.

[149] He too started work for the kiwifruit contracting business as a student and was paid in cash. Likewise, he was also required to work without pay in the evenings in the liquor stores. From February 2017 until the end of 2018, he worked mostly seven days per week. Single days off were given at random, once every three to four weeks.

[150] He worked in both the kiwifruit orchard and the stores and was paid irregularly until March 2018 when he started to receive regular wages at the contract rate for 40 hours.

[151] Sukhdev Singh told him that some of these wages were for record purposes only and that he had to repay them. Harpreet Singh paid \$6,000 to Sukhdev Singh into a bank account as directed. He says he felt he had no choice. He says Sukhdev Singh kept asking for more money but that he resisted on those occasions.

[152] Despite being injured and providing a medical certificate, he says Sukhdev Singh required him to return to work.

[153] He resigned on 31 October 2019, once he had a work visa which allowed him to work for any employer.

[154] Harpreet Singh says he did what he was told by Sukhdev Singh because he threatened to cancel his visa if he did not do so. He felt distressed and under constant pressure.

Jogar Liddar

[155] Jogar Liddar was born in Punjab, India. He was in his early 20s when he arrived in New Zealand on 25 December 2015 on a student visa to study towards a Diploma in Business Management.

[156] Once he had completed his studies, he obtained a job at the kiwifruit contracting business of Sukhdev Singh and his brother, who promised to help him obtain a work visa and residency.

[157] He began working in the Te Puna Liquor Centre on 1 October 2015 for periods ranging from 10 to 13 hours per day, six days per week. He was not allowed proper breaks, and his days off varied, although they usually were a Wednesday or a Thursday which changed to Sunday during the kabaddi season.⁴⁰

⁴⁰ A popular sport played (mainly by Punjabi sportspeople) in India, but also in other parts of the world.

[158] Early on, he was only paid \$250 per week. Sukhdev Singh refused to pay more and threatened not to help with the visa or residency applications if he did not work. His pay then increased to \$450 per week cash, although the payments were not regular and were sometimes held by Sukhdev Singh.

[159] From January 2017, wages were paid into Mr Liddar's bank account, although the amounts were not regular. He was told he could only keep \$450 per week and must repay the rest. Mr Liddar paid amounts back to Sukhdev Singh, both in cash and sometimes into a bank account.

[160] Before Mr Liddar travelled to India at the end of 2018, Sukhdev Singh asked him for his bankcard and PIN number. He says that Sukhdev Singh told him he would not deposit his holiday pay while he was away if he did not provide the card to him, which would look bad for his visa application. He provided his bankcard and PIN number, and Sukhdev Singh withdrew money from his account while he was away. Mr Liddar asked him to stop and then used his mobile banking application to block his card. Sukhdev Singh kept calling him to ask for more money, and when Mr Liddar said he would transfer it to him, he advised that he only wanted cash. Mr Liddar arranged to transfer money to a friend who then gave Sukhdev Singh \$2,500 cash.

[161] Mr Liddar says the amount of time he had to work affected the time he could spend with his family, which caused him stress. When his wife was pregnant, especially later in the pregnancy, she found it difficult to do many things, and he was not there to help her. She was left at home alone because he was always at work, and when he asked for time off because she was not feeling well, he was refused. Even after his wife had given birth to their baby via caesarean section and she needed his help, he was only allowed four days off before returning to work. He then continued to work long hours, meaning that he was not able to spend time with his wife or baby.

[162] Mr Liddar was also greatly stressed by the fact that he struggled to support his wife and baby on the pay he received. He says he often had to borrow money from friends and housemates to buy things for his family, which was humiliating.

[163] He says he felt totally broken by his work for Samra Holdings Ltd. He ended his employment on 30 July 2019.

[164] The breaches were systemic and took place over a four-year period. The defendants were complicit with the employees in the provision of false documentation to Immigration New Zealand. Sukhdev Singh was fully aware that the employees' visas were dependent on their continued employment.

[165] The employees were unfamiliar with New Zealand laws and regulations. On the other hand, the defendants have been in the liquor retail business since 2005, and the sixth defendant is also an experienced employer through his kiwifruit orchard interests.

[166] The employees were vulnerable, and the defendants took advantage of that vulnerability. This is an aggravating factor for these breaches.

Statutory consideration 7 – previous conduct

[167] It is common ground that none of the defendants has previously appeared before the Authority or the Court in respect of claims involving the Labour Inspectorate.

Additional consideration 8 – deterrence

[168] The defendants submit that there has already been a number of decisions of this Court in respect of businesses operating in the liquor industry and so a message has already been sent. They say that general deterrence will naturally follow from the outcome of this decision. They say further that in terms of specific deterrence, the four defendant companies are unlikely to have their retail liquor licences renewed. They are therefore in the process of selling the businesses and so are, in effect, deterred already. Mr Sharma also notes that the sixth defendant, as well as suffering considerable stress and embarrassment as a result of these proceedings, is now unable to obtain a liquor licence and so further deterrence through the penalty regime is not necessary.

[169] This is a case that involves serious, sustained and systemic breaches of minimum employment standards. I agree that there is a need to ensure that the penalties imposed in this case also operate as a deterrent to others in the future. Mr Sharma submits that earlier decisions in this industry were sufficient. Sadly, that is not the case; otherwise, these proceedings would not be before the Court. The defendants are correct that this is an industry that has had issues in the past. It continues to have issues which reinforces the need for deterrence in this instance.

[170] The defendants submit that the substantial amount of money that they have already agreed to pay, and have paid, is a significant specific deterrent for all of them. However, this submission is illustrative of their lack of insight into their offending. To date, they have only paid what each of the employees had worked for and was owed. To rely on such payment as a deterrent supports the plaintiff's submission that there is a need to bring home to the defendants, as well as to other employers, particularly in the retail liquor industry, the standards they are required to meet, and that the obligations apply at all times, not merely when it is financially convenient for them or when that employer is put under pressure by the Labour Inspector.⁴¹

[171] While the liquor businesses are being sold or have been sold, the sixth defendant continues to work in the kiwifruit industry through S & J 2020 Ltd (owned by a trustee company which has four equal shareholders, Sukhdev Singh, Jaswinder Singh, Paramjit Kaur and Karamjit Kaur). Given the sixth defendant's relative lack of contrition for the breaches and lack of insight into the impact of those breaches on the employees, I agree that there continues to be a need for specific deterrence in relation to the defendants notwithstanding the sale of the businesses. It is important that parties are aware that breaches such as this have severe consequences for the perpetrators.

Additional consideration 9 – culpability

[172] The plaintiff submits that there are a number of factors which increase the defendants' culpability which have already been discussed above but include:

⁴¹ *Labour Inspector v Daleson Investment Ltd*, above n 11, at [39].

- (a) the number of affected employees (five);
- (b) the significant sum of \$516,378.87 owing to those employees;
- (c) the length of time – in excess of four years – over which the breaches occurred;
- (d) the fact that the affected employees were migrant workers;
- (e) the continued denial of liability and any element of intention; and
- (f) the continued denial of premiums despite agreement in the agreed statement of facts and consent orders being made.

[173] I agree. However, I note that in relation to the number of affected employees, the first to fourth defendants only employed one or two employees each. Further, the sum owed, while large, is split between four defendants.

[174] Sukhdev Singh also claims that the defendants' culpability is shared with the employees in respect of the record keeping breaches. He denies that he or anyone else told the complainants to make the fake rosters or time and wage records that they then provided to Immigration New Zealand and says that he was unaware of them doing so.

[175] However, on many occasions, these documents were signed by a person who was a director of all four defendant companies. Sukhdev Singh suggests that this director's signature was forged on these documents. However, all employees deny that. There was no evidence produced in support of such an allegation, and the director in question did not give evidence. Therefore, I give no weight to it.

[176] The employees' evidence was that Sukhdev Singh directed the false wage and time records to be prepared. At the very least, on the evidence before the Court, it is apparent that the defendants (including Sukhdev Singh) were aware of the fake rosters and inaccurate time and wage records provided to Immigration New Zealand as part of the work visa application process.

[177] Fostering a situation where work visas were obtained using false documentation resulted in a situation which increased the employees' reliance on the defendants. They relied on them not only for the provision of work but for their ongoing complicity in order to maintain their livelihoods and remain in New Zealand.

[178] Additionally, the defendants were receiving premiums for their role in employing the employees. As such, they benefitted from any of the employees' breaches of immigration law.

[179] Accordingly, the employees' dealings with Immigration New Zealand do not go any way towards reducing the culpability of the defendants in relation to the breach of minimum standards, particularly where they were complicit in those dealings.

[180] The defendants were also critical of the employees for entering the country (lawfully) on student visas with the intention of obtaining qualifications and then attempting to gain residency or a lengthier work visa. It was suggested that this was somehow culpable behaviour that reduced the impact of any breach on them.

[181] I do not accept that submission. Mark Willson from Immigration New Zealand gave evidence that such a pathway to residency (lawful student visa - to work visa - to residency) was not unusual and not a concern to Immigration New Zealand. I do not consider the employees' intentions at the time of travelling to Aotearoa New Zealand to be relevant to the issue of severity of the breaches or the culpability of the defendants for those breaches.

[182] Overall, the factors set out above illustrate the defendants' culpability, and the defendants' suggestion that the employees were somehow culpable for the recordkeeping breaches is not sustainable.

Parties' submissions

[183] Mr Sharma acknowledges that the breaches for some of the employees were for longer periods of time (Dupinder Singh, Navjot Singh and Joga Liddar) compared to others (Harpreet Singh and Manpreet Sidhu) and that percentages in relation to

severity of breach may be adjusted accordingly. However, he has taken a uniform approach in respect of all five employees and submits that the following adjustments are appropriate in the circumstances:

- (a) failure to pay minimum wage – 50 per cent;
- (b) failure to pay public holiday – 50 per cent;
- (c) failure to supply compliant employment agreement and record keeping – 20 per cent; and
- (d) unlawfully seeking premiums – 50 per cent.

[184] The plaintiff also set out what she considers to be appropriate starting points in terms of the maximum penalty after globalisation. These were significantly higher than those proposed above.

Starting points for each defendant

[185] The starting points set out below have been reached by balancing three factors. First, the overall quantum of each breach. Secondly, the type of breach in each situation. Thirdly, the overall severity of the situation in light of the aggravating and mitigating factors set out above. Given the number of penalties in this case, it was necessary to consider the first two considerations to ensure overall internal proportionality, and the third consideration is intended to ensure consistency with other cases.

[186] Each starting point below is stated as a proportion of the statutory maximum. For pecuniary penalties for the first to fourth defendants, the statutory maximum is the greater of \$100,000 or three times the quantum of the breach.⁴² For ordinary penalties, the statutory maximum is \$20,000. On the other hand, the maximum pecuniary penalty for the sixth defendant is \$50,000, and the maximum ordinary penalty is

⁴² When calculating the maximum in this way, only the quantum of the breach which arose after 1 April 2016 is included.

\$10,000. Final calculations for each breach are included in the appendix at the end of this judgment.

First defendant – Samra Holdings Ltd

[187] The starting point for the failure to pay the minimum wage to Joga Liddar (between 1 October 2015 and 30 July 2019 – just over four years) and Manpreet Sidhu (between 6 February 2017 and 9 April 2019 – just over two years) should be assessed at 85 per cent (a five per cent increase to factor in the pre-2016 breach) and 80 per cent respectively. The underpayments were substantial over those periods (\$78,695.14⁴³ and \$65,039.19 respectively) and provided a significant financial advantage to the first defendant which received the benefit and associated competitive advantage of their labour without having to fully pay for it over a period of almost four years.

[188] The failures to pay public holiday pay to Joga Liddar (five types of breaches) and Manpreet Sidhu (six types of breaches), both for worked and unworked public holidays, and to provide alternative holidays, should be assessed at 45 per cent and 20 per cent respectively. It led to an underpayment of large amounts (\$24,440.25⁴⁴ and \$10,724.22). I agree that the penalty should recognise that employees who are required to work on public holidays should be appropriately compensated for the loss of free time and relaxation, and provided with an alternative day off. These breaches resulted in commercial advantage to the first defendant, and in the employees working without proper breaks or opportunities for rest and recreation.

[189] The unlawful seeking and receipt of premiums for employment from Joga Liddar (\$7,500) and Manpreet Sidhu (\$1,800) should be assessed at 40 per cent and 15 per cent respectively, recognising that this is a gross breach of trust in the circumstances where the employees relied on the first defendant for their visa status. I agree that the requirement that they repay portions of their earnings exploited the inherent inequality of bargaining power in the employment relationship.

⁴³ \$18,966.65 prior to 1 April 2016 and \$59,728.49 after 1 April 2016.

⁴⁴ \$690.12 prior to 1 April 2016 and \$23,750.13 after 1 April 2016.

[190] The failure to supply compliant employment agreements and record keeping breaches in relation to Joga Liddar and Manpreet Sidhu should be assessed at 70 per cent each, recognising that there was a total failure to keep accurate wage and time records, and that the records that were prepared were falsified for immigration purposes. Such failures facilitated a system in which systemic underpayments could be made. However, the employment agreements provided were for the most part compliant other than in relation to the hours of work provisions.

[191] **When these starting points are totalled, they add up to \$456,401.69.**

Second defendant – Samra Enterprises Ltd

[192] The failure to pay minimum wage to Navjot Singh between 24 November 2016 and 13 November 2019 should be assessed at 80 per cent. This was a large amount of underpayment (\$43,876.32) over an extensive period of time (three years) which provided a significant financial advantage to the second defendant which received the benefit of Navjot Singh's labour without having to fully pay for it.

[193] The failures to pay Navjot Singh (five types of breaches) for worked public holidays or to provide alternative holidays and to provide notional public holidays arising during annual leave entitlements, as well as failure to pay annual holiday pay on termination, should be assessed at 35 per cent. The breaches led to large amounts of unpaid holiday pay (\$20,690.42) which resulted in a commercial advantage to the second defendant, and in a significant disadvantage to Navjot Singh in that he was unable to have appropriate opportunities for rest and recreation.

[194] The unlawful seeking and receipt of premiums for employment from Navjot Singh should be assessed at 70 per cent, which recognises that it was a gross breach of trust. A total of \$14,676 was sought to be paid over the course of his employment (the most of any of the employees). This exploited the inherent inequality of bargaining power in an employment relationship.

[195] The failure to supply a compliant employment agreement and record keeping breaches in relation to the Holidays Act and Employment Relations Act should be

assessed at 70 per cent, recognising that while there was a total failure to keep accurate wage and time records, and that the records prepared were falsified for immigration purposes, the employment agreement was largely compliant.

[196] **When these starting points are totalled, they add up to \$224,303.16.**

Third defendant – Samra Brothers Ltd

[197] The failure to pay minimum wages to Dupinder Singh between 23 September 2015 and 20 May 2019 should be assessed at 85 per cent (a five per cent increase to factor in the pre-2016 breach). The amount involved (\$95,945.72)⁴⁵ was large (the most of any of the employees), over a period of almost four years, and provided a significant financial advantage to the third defendant which received the benefit of Dupinder Singh's labour without having to fully pay for it.

[198] The failure to pay Dupinder Singh for worked and unworked public holidays, to provide alternative holidays, to pay notional public holidays arising during unused annual leave entitlements, and to pay annual holiday pay correctly as it was taken, as well as to pay entitlements on termination (seven types of breaches), should be assessed at 50 per cent (a slight increase for pre 2016 breaches). The breaches led to underpayments of large amounts (\$26,918.08⁴⁶ – the largest of the employees) and no appropriate compensation for the loss of free time and relaxation, or the provision of an alternative day off. They resulted in commercial advantage to the third defendant, and in a significant disadvantage (over and above the financial loss) to Dupinder Singh in that he was unable to have appropriate opportunities for rest and recreation.

[199] The unlawful seeking and receipt of premiums for employment from Dupinder Singh should be assessed at 15 per cent, recognising that such conduct is a gross breach of trust, taking advantage of his visa status that was tied to the third defendant. This exploited the inherent inequality of bargaining power in the employment relationship. The amount of \$1,500 was lesser in this case than in relation to other employees and comparable to that paid by Manpreet Sidhu.

⁴⁵ \$18,546.49 prior to 1 April 2016 and \$77,399.23 after 1 April 2016.

⁴⁶ \$987.29 prior to 1 April 2016 and \$25,930.79 after 1 April 2016.

[200] The failure to supply a compliant employment agreement and record keeping breaches in relation to the Holidays Act and Employment Relations Act should be assessed at 70 per cent, recognising that while there was a total failure to keep accurate wage and time records, and that the records prepared were falsified for immigration purposes, an individual employment agreement was signed which was largely compliant with the exception of the hours of work provision.

[201] **When these starting points are totalled, they add up to \$276,368.03.**

Fourth defendant – Akal Holdings Ltd

[202] The failure to pay minimum wage to Navjot Singh (between 23 October 2015 and 23 November 2016 – one year) and Harpreet Singh (between 28 February 2017 and 12 November 2019 – two and a half years) should be assessed at 45 per cent (a five per cent increase to factor in the pre-2016 breach) and 80 per cent respectively. The amounts involved (\$33,126.36⁴⁷ and \$57,157.16) were large over an extended period and provided a significant financial advantage to the fourth defendant which received the benefit of their labour without having to fully pay for it.

[203] The failure to pay Navjot Singh (four types of breach) and Harpreet Singh (six types of breach) for worked and unworked public holidays, to provide alternative holidays, and to pay annual holiday pay correctly as it was taken, as well as to pay entitlements on termination, should be assessed at 12.5 per cent and 30 per cent respectively. The breaches led to underpayments of large amounts (\$9,642.06⁴⁸ and \$15,276.72) and resulted in commercial advantage to the fourth defendant, and in a significant disadvantage (over and above the financial loss) to Navjot Singh and Harpreet Singh in that they were unable to have appropriate opportunities for rest and recreation.

[204] The unlawful seeking and receipt of premiums for employment from Navjot Singh and Harpreet Singh (\$3,371.25 and \$6,000 respectively) should be assessed at 20 per cent and 35 per cent respectively, recognising that such conduct is a gross

⁴⁷ \$15,798.29 prior to 1 April 2016 and \$17,328.08 after 1 April 2016. The maximum for this minimum wage breach is \$100,000.

⁴⁸ \$899.30 prior to 1 April 2016 and \$8,742.76 after 1 April 2016.

breach of trust, taking advantage of their visa status that was tied to the fourth defendant. This exploited the inherent inequality of bargaining power in the employment relationship.

[205] The failure to supply a compliant employment agreement and record keeping breaches in relation to the Holidays Act and Employment Relations Act should be assessed at 70 per cent each, recognising that while there was a total failure to keep accurate wage and time records, and that the records prepared were falsified for immigration purposes, individual employment agreements were signed which were largely compliant with the exception of the hours of work provision.

[206] **When these starting points are totalled, they add up to \$307,677.18.**

[207] **The cumulative total of the first to fourth defendants is \$1,264,750.**

Sixth defendant – Sukhdev Singh

[208] It has been accepted by the defendants that the sixth defendant was in all respects the controlling mind behind each of the first to fourth defendants and was a party to each breach occurring after 1 April 2016. He has previously been declared a person involved in each of the breaches of the employment standards. I agree that the severity of each breach should be equivalent to the severity of those imposed against the first to fourth defendants for most of the breaches. This is reflected in the appendix attached to this judgment. Where there is more than one employee, the percentage has been averaged.

[209] A slightly different approach is appropriate in relation to the Minimum Wage Act breaches. Those breaches were extremely serious. Maximum penalties were not ordered for those breaches against the first to fourth defendants because companies are not subject to a fixed maximum penalty. However, in light of the severity of the breaches, the starting point should be close to the maximum. Therefore, I set the starting point for the Minimum Wage Act breaches at 90 per cent for all the breaches, except the fourth defendant's breach against Navjot Singh, which I set at 45 per cent to reflect the less serious nature of that breach. The starting point of 90 per cent is

adopted rather than the maximum to reflect the mitigating factors outlined earlier in this judgment.

[210] **This comes to a cumulative starting point of \$462,000.**

Conclusion

[211] **The cumulative total of the starting points for all defendants prior to ability to pay and proportionality analysis is \$1,726,750.**

Step 3: Ability to pay

[212] Having considered step 2 of the test in *Preet*, including the aggravating and mitigating factors, I now turn to consider the defendants' ability to pay any penalty.

[213] The defendants accept that there is no issue with ability to pay. The guarantee that was provided, whereby the Bank of New Zealand assumed responsibility to pay judgment debts on behalf of the first to sixth defendants up to an amount of \$3 million, remains in place.⁴⁹

Step 4: Proportionality of outcome

[214] The full Court in *Labour Inspector v Preet PVT Ltd* noted three factors that are of particular relevance in the proportionality or totality exercise: first, proportionality of the final penalty to the amount originally in issue; second, whether there was any real prospect that the final amount would be paid; and third, there must be an assessment of previous decisions to ensure consistency with other cases.⁵⁰

[215] The plaintiff acknowledged that if its submissions on penalties were accepted, the application of the proportionality test would lead to some reduction in penalties properly and fairly payable to reflect the proportionality of the final penalty to the amount originally at issue.⁵¹ However, the starting points adopted above have led to

⁴⁹ \$2,483,621.13 remain after payment of arrears.

⁵⁰ *Labour Inspector v Preet PVT Ltd*, above n 9, at [148] and [190]–[192]; but see *Labour Inspector v NewZealand Fusion International Ltd*, above n 12, at [80].

⁵¹ *Labour Inspector v Daleson Investment Ltd*, above n 11, at [60].

a considerably lower outcome than that submitted by the plaintiff, so further analysis is required on this issue.

[216] The breaches in this case totalled \$516,378.87. The penalties set out above total \$1,726,750. The first to fourth defendants are liable to \$1,264,750 in penalties. The sixth defendant is liable to \$462,000. Overall, this means that the first to fourth defendants are paying penalties of just over double the quantum of breach, and the sixth defendant is paying a penalty of just under the quantum of breach. Cumulatively this results in a total of just over three times the quantum of the breach. Given the severity of the breaches in this case, this outcome is proportionate and will provide the optimum deterrent effect.

[217] The plaintiff also notes the existence of the bank guarantee. There is still \$2,483,621.13 available for distribution in that loan. The plaintiff submits the existence of that loan will allay concerns about the prospect of payment of the final penalty. I agree.

[218] The issue of proportionality requires a balancing exercise. The first to fourth defendants are each responsible for their own breaches, not those of the group, and the penalties must be judged considering the various factors in relation to the individual entities or, in Sukhdev Singh's case, him personally, as opposed to all together. However, although each defendant is independently responsible, I have also considered the fact that the sixth defendant was the controlling mind behind the first to fourth defendants.

[219] Given the manner in which the sixth defendant has chosen to structure his affairs through company arrangements which are not always connected to himself, his relationship to those companies remains unclear. As a result, it is not appropriate to order a large discount. However, a discount of 10 per cent is appropriate in the circumstances to acknowledge the overlapping responsibilities of the sixth defendant and to acknowledge his primary responsibility for the premium breaches.

[220] **A reduction of 10 per cent leads to a sum of \$1,554,075.00.**

[221] I now turn to address the issue of consistency. There are a number of decisions which are relevant to this analysis. I consider each in turn.

[222] In *Labour Inspector v Preet PVT Ltd*, the full Court decided a situation under the pre-2016 regime.⁵² In that case, the quantum of breaches was \$73,345.05.⁵³ The maximum penalties available were \$400,000.⁵⁴ After a range of starting points were adopted for various breaches, the overall sum was reduced by 50 per cent for mitigating factors, which came to \$135,000.⁵⁵ Finally, this sum was reduced to \$100,000 when the defendants' ability to pay and overall proportionality were considered.⁵⁶

[223] I note that *Preet* was decided before pecuniary penalties were available. However, if the starting point had not been reduced for mitigating factors, the final penalty could have been about three times the quantum of the breach. In light of the fact that the introduction of pt 9A of the Employment Relations Act provides a clear signal from Parliament that more severe penalties are appropriate, I consider that the outcome for all five defendants, being at about three times the quantum of breach, in this case is generous.

[224] In *Labour Inspector v Victoria 88 Ltd t/a Watershed Bar and Restaurant*, the Court considered a situation where an employer had failed to pay holiday pay to two employees.⁵⁷ The sum owing was \$3,032.47.⁵⁸ The Court ordered pecuniary penalties of \$20,000 and made banning orders for three years.⁵⁹ However, this outcome was arrived at by agreement, and Judge Corkill indicated that the decision should not be used as "setting any precedent for future applications".⁶⁰

⁵² *Labour Inspector v Preet PVT Ltd*, above n 9.

⁵³ At [35].

⁵⁴ At [160].

⁵⁵ At [180].

⁵⁶ At [186] and [193].

⁵⁷ *Labour Inspector v Victoria 88 Ltd t/a Watershed Bar and Restaurant* [2018] EmpC 26, [2018] ERNZ 88.

⁵⁸ At [13].

⁵⁹ At [59]–[61].

⁶⁰ At [7].

[225] In *Labour Inspector v Prabh Ltd*, there were three defendants: one company and two individuals.⁶¹ The quantum of the breaches was \$67,075.32.⁶² The Court noted that after globalisation, maximum penalties of \$381,225.96 were available for the company and \$50,000 each for the two individuals.⁶³ In relation to pecuniary penalties, the Court adopted a starting point of 80 per cent.⁶⁴ However, the starting points were reduced by 50 per cent for mitigating factors and 20 per cent for ability to pay.⁶⁵ This led to the Court ordering total penalties of \$132,000 – \$100,000 against the corporate defendant and \$16,000 against each of the individuals.⁶⁶

[226] As with *Preet*, large reductions were made in *Prabh* for mitigating factors and the defendants' ability to pay. In light of the absence of mitigating factors in the present case, I consider that the outcome is generally consistent with *Prabh*.

[227] In *Labour Inspector v Daleson Investment Ltd*, there was \$12,450 owing.⁶⁷ The Court ordered penalties of \$40,000.⁶⁸ However, it accepted the Labour Inspector's approach, noting that it was generous.⁶⁹

[228] In *Labour Inspector v Parihar*, the Court considered a situation similar to the present, which involved the liquor industry.⁷⁰ The defendants were two individuals in partnership. The total quantum of breaches was \$250,470.05.⁷¹ The maximum penalty for each defendant was \$1,020,000.⁷² A starting point of 50 per cent of the maximum penalty was adopted for the first defendant, and this was further reduced by 30 per cent to acknowledge mitigating factors.⁷³ This resulted in a sum of \$357,000. Taking into account proportionality, this was reduced to \$180,000.⁷⁴ A further \$20,000

⁶¹ *Labour Inspector v Prabh Ltd*, above n 10.

⁶² At [39].

⁶³ At [67] and [70].

⁶⁴ At [68].

⁶⁵ At [68].

⁶⁶ At [84].

⁶⁷ *Labour Inspector v Daleson Investment Ltd*, above n 11, at [1].

⁶⁸ At [63].

⁶⁹ At [64].

⁷⁰ *Labour Inspector v Parihar* [2019] NZEmpC 145, [2019]

⁷¹ At [5].

⁷² At [50].

⁷³ At [44]–[45].

⁷⁴ At [46].

penalty was awarded for the second defendant, who was the wife of the first defendant and less involved in the breaches.⁷⁵

[229] As there were no corporate defendants, the starting points in *Parihar* were much lower than the starting points in the present case. This led to penalties which are not inconsistent with the penalties awarded against the sixth defendant in this case. This is particularly evident when the large reductions for mitigating factors are taken into account. Additionally, the largest breaches occurred prior to 1 April 2016 and were therefore not subject to pecuniary penalties.⁷⁶ If the breaches had occurred after that date, higher penalties would no doubt have been ordered. Therefore, I consider that the penalties in *Parihar* are consistent with the outcome in the present case.

[230] In *NewZealand Fusion International Ltd*, there were three employees.⁷⁷ The employer had sought premiums of about \$45,000; however, because those premiums were sought and paid in China, no penalties were sought in respect of them.⁷⁸ The employer also failed to pay the employees any wages or holiday pay. Approximately \$80,000 was owing.⁷⁹ Given the severity of the breaches, a penalty of \$300,000 was ordered against the defendant company, and \$150,000 was ordered against the company's owner.⁸⁰ A further sum of \$230,350 in compensation was ordered.⁸¹ Banning orders of 18 months were also issued.⁸²

[231] When the sums owing are compared, the penalties in *NewZealand Fusion* were clearly much more severe than the penalties which are set out above for the present defendants. The defendant company was ordered to pay a penalty of almost four times the quantum of the breach, and compensation was ordered in addition to that. Arguably, given the high quantum of the breaches in the present case, consistency with *NewZealand Fusion* may require higher penalties in the present case.

⁷⁵ At [48].

⁷⁶ At [5].

⁷⁷ *Labour Inspector v NewZealand Fusion International Ltd*, above n 12.

⁷⁸ At [59].

⁷⁹ At [80].

⁸⁰ At [81].

⁸¹ At [97].

⁸² At [104].

[232] However, in *NewZealand Fusion*, Chief Judge Inglis noted that the focus should be on the “defaulting behaviour” rather than the “amount of default”.⁸³ In that case, the defaulting behaviour was particularly severe. The employees came from overseas as a result of fraudulent representations of the defendant and after she had extracted large premiums from them; she then proceeded not to pay them anything. Recognising the severity of the situation in *NewZealand Fusion*, it is not necessary to make any increase for consistency in the present case.

[233] In *Labour Inspector v Chhoir t/a Bakehouse Café*, there were two employees.⁸⁴ The quantum of the breaches was \$36,191.11.⁸⁵ The defendants were two individuals.⁸⁶ The maximum penalty for each defendant was \$340,000.⁸⁷ This was reduced to a penalty of \$50,000 for the first defendant. Compensation of \$20,000 was ordered against the second defendant.⁸⁸ No banning orders were made.

[234] In comparison to the present case, the defendants in *Chhoir* accepted culpability, there were no premiums, and there were no corporate defendants. As there were no corporate defendants in *Chhoir*, the case is arguably the most relevant to assessing consistency in respect of the sixth defendant in this case. I have taken a different approach in respect of the sixth defendant to that followed in *Chhoir*. However, in light of how much more serious the breaches were in this case, I consider that the outcomes are consistent.

[235] In *Labour Inspector v Matangi Berry Farm Ltd*, a large number of employees were involved.⁸⁹ The primary breach involved total arrears of holiday pay of up to 207 workers in the sum of \$38,392.24. There was also \$4,265.74 owing in other breaches.⁹⁰ As most of the breaches involved small sums in respect of each employee, the breaches were globalised into types. This led to a maximum globalised penalty of \$320,000 for the corporate defendant and \$150,000 for the individual defendant.⁹¹

⁸³ At [80].

⁸⁴ *Labour Inspector v Chhoir t/a Bakehouse Café*, above n 13.

⁸⁵ At [3].

⁸⁶ At [1].

⁸⁷ At [41].

⁸⁸ At [65].

⁸⁹ *Labour Inspector v Matangi Berry Farm Ltd* [2020] NZEmpC 43, [2020] ERNZ 67.

⁹⁰ At [7].

⁹¹ At [33].

Starting points of 60 per cent of the maximum were adopted for each penalty. This was further reduced by 50 per cent for mitigating factors.⁹² Finally, the starting points were reduced by another 20 per cent for the defendants' inability to pay.⁹³ This led to final penalties of \$76,800 against the corporate defendant and \$36,000 against the individual defendant. The circumstances of *Matangi Berry Farm* were quite different from those in the present case, but I consider that the outcomes are consistent when considered in the whole.

[236] In *Labour Inspector v Jeet Holdings Ltd*, there were three corporate defendants and one individual.⁹⁴ The quantum of the breaches was \$264,327.80.⁹⁵ One of the breaches involved a \$7,500 premium payment.⁹⁶ The maximum penalties available were \$1,620,000.⁹⁷ Starting points of 60 to 80 per cent of the maximum were adopted for all of the breaches.⁹⁸ This led to a cumulative starting point of \$1,032,000.⁹⁹ No reductions were made for mitigating factors, and none is identified in the judgment. Additionally, no reductions were made for the defendant's ability to pay.¹⁰⁰

[237] However, when addressing the issue of proportionality, Judge Smith held:¹⁰¹

In a table accompanying Mr La Hood's submissions, while prepared on a different basis, he invited a further reduction of 20 per cent of total penalties to reflect the liability of the companies and 30 per cent for Amar Deep Singh. While those reductions are generous, and taking into account the other evaluative matters just referred to, I will accept Mr La Hood's approach.

[238] These reductions led to total penalties of \$312,000 being ordered.¹⁰² A further sum of \$271,827.80 in compensation was ordered.¹⁰³ Finally, banning orders of two years were made against the individual defendant.¹⁰⁴

⁹² At [71].

⁹³ At [74].

⁹⁴ *Labour Inspector v Jeet Holdings Ltd*, above n 14.

⁹⁵ At [56].

⁹⁶ At [32].

⁹⁷ At [103]–[107].

⁹⁸ At [108]–[109].

⁹⁹ At [111].

¹⁰⁰ At [113].

¹⁰¹ At [129].

¹⁰² At [130].

¹⁰³ At [133].

¹⁰⁴ At [142].

[239] The offending in the present case was quite similar to the offending in *Jeet*. Of course, the quantum of the breaches in the present case was almost twice as high, but overall, the nature of the offending was similar. It is therefore necessary to consider whether a similar approach to proportionality should be adopted.

[240] I consider that such an approach is not necessary because Judge Smith indicated that the reductions were made in accordance with the Labour Inspector's submissions and that they were "generous". In the present case, taking a similarly generous approach would not provide a sufficient deterrent to the defendants and the wider business community. Further, the Labour Inspector in this case has rightly sought higher penalties. Therefore, although the penalties in the present case are higher than those in *Jeet*, I do not consider there to be any inconsistency.

[241] Finally, for completeness, I note that the defendants, and in particular Sukhdev Singh, continue to attempt to distinguish themselves from other cases in terms of the level of control exercised by the employers in the cases cited. As I have already found above, and as previously agreed to by Sukhdev Singh, he was responsible for directing the employees as to where and when they were to work. He remained in contact with them throughout the day to ensure that they did so. To suggest that the employees had any autonomy in relation to their work patterns, hours of work and/or leave taken is unsustainable on the evidence.

[242] The Labour Inspector submits that this represents a new high-water mark in terms of number and the breadth and length of breaches of minimum employment standards that have been brought before the Court. Having considered the cases above, I agree. Some of the cases considered are more generous and others are more punitive; however, each case must be decided on its own merits, and within the overall context of these decisions, I find that the penalties adopted in this case are consistent with and proportionate to these prior decisions.

Issue 3: Should a portion of any ordinary or pecuniary penalties awarded be payable to the employees and if so, how should the penalties be apportioned between the employees and the Crown?

[243] The plaintiff submits that if the Court finds that pecuniary penalties should be awarded, a portion of them should be paid to the affected employees pursuant to s 136(2) of the Employment Relations Act. The plaintiff notes that the Labour Inspector has forgone her claim for interest on the arrears as well as a claim for compensation in respect of each of the employees. She submits that in this case it is appropriate to apportion part of the final penalties in a way that appropriately compensates the employees.

[244] The defendants do not object to the Court making an apportionment of any penalty to the defendants.

[245] When reading the briefs of evidence of the five employees, it is evident that they suffered significant hurt and humiliation as a result of the defendants' conduct. The plaintiff commends to the Court the apportionment of a significant portion of the penalties to the employees, utilising its discretion in accordance with its equity and good conscience jurisdiction while bearing in mind the approach followed in *NewZealand Fusion*.¹⁰⁵

[246] I agree that an apportionment of the penalties to each of the employees is appropriate to compensate for their hurt, humiliation and loss of dignity. I consider that the following amounts should be deducted from any penalty owed and paid by the defendants directly to the employees:

- (a) First defendant to Joga Liddar – \$50,000.
- (b) First defendant to Manpreet Sidhu – \$50,000.
- (c) Second defendant to Navjot Singh – \$25,000.
- (d) Third defendant to Dupinder Singh – \$50,000

¹⁰⁵ *Labour Inspector v NewZealand Fusion International Ltd*, above n 12, at [82]–[88].

(e) Fourth defendant to Harpreet Singh – \$50,000.

(f) Fourth defendant to Navjot Singh – \$30,000.

Issue 4: Declarations of breach having been made against the first to fourth and sixth defendants, should banning orders be made against those defendants and, if so, for how long?

[247] Banning orders are sought by the plaintiff against each of the first, second, third, fourth and sixth defendants. The circumstances in which the Court might consider a banning order were traversed in *Prabh*.¹⁰⁶ Judge Perkins acknowledged that banning orders are particularly draconian but that they were introduced to provide protection to employees from abuses by employers who were unwilling to comply with minimum standards of employment. His Honour noted that a banning order was more likely to be imposed in the prosecution of an employer for subsequent breaches of standards where the imposition of a penalty alone would not be sufficient. However, each case must be considered on a case-by-case basis.

[248] In *NewZealand Fusion*, Chief Judge Inglis also acknowledged that banning orders would not usually be a response to first-time offenders. However, she indicated that banning orders could be made for egregious breaches, particularly where the complainants were dealt with badly over an extended period of time, there was a lack of insight and the need for a message to be sent about the conduct in question.¹⁰⁷ In *NewZealand Fusion*, those factors weighed in favour of the banning order against the defendants. Her Honour also noted that she had no confidence that the defendant would not repeat the cynical behaviour that had brought her before the Court.¹⁰⁸

[249] The plaintiff submits that the conduct by the first to fourth defendants was egregious and it is appropriate that they bear the consequences in order to protect the public from the risk of repetition of such behaviour.

¹⁰⁶ *Labour Inspector v Prabh Ltd*, above n 10, at [72]–[78].

¹⁰⁷ At [103].

¹⁰⁸ At [102].

[250] The defendants submit that banning orders are not appropriate and not necessary. The sixth defendant has advised that the businesses operated by the first to fourth defendants have been disposed of during the course of these proceedings and that he and they are unlikely to be able to obtain liquor licences given the circumstances of this proceeding (effectively they are already banned).

[251] However, the evidence is more complicated than depicted in the defendants' submissions. Shares in the first defendant are currently held equally by Paramjit Kaur, the sixth defendant's wife, and her sister Karamjit Kaur, the wife of the sixth defendant's brother, Jaswinder Singh. All shares in the second defendant are now held by Karamjit Kaur. Shares in the third defendant are held equally by Paramjit Kaur and Karamjit Kaur. All shares in the fourth defendant are held by Karamjit Kaur. On this basis it is apparent that there is some risk of the sixth defendant and/or related entities continuing to trade in the liquor business.¹⁰⁹

[252] Further, the sixth defendant in his evidence made it clear that he intends to continue to operate his kiwifruit orchard business through S & J Family Trustees Ltd and S & J 2020 Ltd, although he says his brother will be responsible for hiring and managing employees. As already noted above, improvement notices have been issued previously in respect of a previous kiwifruit business.¹¹⁰

[253] While the sixth defendant argues that he is not in a position to exercise management or control over future liquor businesses given his inability to obtain a licence, it will not prevent him from operating a business. The first to fourth defendants were closely controlled by the sixth defendant. The sixth defendant was enriched by the unlawful actions of the first to fourth defendants. These employees were denied their lawful entitlements to wages and holiday pay for significant periods of time, and all defendants directly benefited financially from their conduct.

[254] This is a case involving systemic and deliberate exploitation of migrant workers. The defendants have shown no remorse or insight into their actions. I have

¹⁰⁹ Additionally, the sixth defendant is joint shareholder with his wife of NZ Samra Ltd, which owns the building out of which Te Puna Liquor Centre operates.

¹¹⁰ At [84].

little confidence that Sukhdev Singh will not repeat the behaviour which has brought him before the Court. Prospective employees should be protected from the defendants. In light of the severity of the breaches in this case and the risk of repetition, I consider that this is a case where banning orders are appropriate.

[255] Banning orders in *NewZealand Fusion* were for a period of 18 months in respect of the employer entity and the person involved. The plaintiff submits that the facts of this case call for banning orders of a longer duration, noting the sustained and systemic nature of the breaches. I agree.

[256] In all the circumstances, I consider that it is appropriate to impose banning orders of two years in relation to the first to fourth defendants and three years in relation to the sixth defendant.

Outcome

[257] This is a situation of serious and sustained breaches of minimum employment standards over a period of four years. The defendants obtained significant commercial benefit from their unlawful conduct and caused material loss and harm to the employees involved.

[258] Such conduct must have consequences.

[259] Given the findings above, I make the following orders:

- (a) The first defendant is liable for a penalty of \$410,761.53. Of that penalty, it is directed to pay \$50,000 to Joga Liddar and \$50,000 to Manpreet Sidhu. The balance of \$310,761.53 is to be paid to the Crown.
- (b) The second defendant is liable for a penalty of \$201,872.85. Of that penalty, it is directed to pay \$25,000 to Navjot Singh. The balance of \$176,872.85 is to be paid to the Crown.

- (c) The third defendant is liable for a penalty of \$248,731.23. Of that penalty, it is directed to pay \$50,000 to Dupinder Singh. The balance of \$198,731.23 is to be paid to the Crown.
- (d) The fourth defendant is liable for a penalty of \$276,909.47. Of that penalty, it is directed to pay \$50,000 to Harpreet Singh and \$30,000 to Navjot Singh. The balance of \$196,909.47 is to be paid to the Crown.
- (e) The sixth defendant is liable for a penalty of \$415,800. The whole of that penalty is to be paid to the Crown.

[260] These amounts are to be paid in full within 14 days of the date of this judgment.

[261] A banning order is imposed on each defendant. The terms of the banning orders are:

- (a) The first, second, third and fourth defendants are prohibited from entering into employment agreements as employers for a period of two years from 31 January 2023.
- (b) For a period of three years from 31 January 2023, the sixth defendant is prohibited from:
 - (i) entering into an employment agreement as an employer,
 - (ii) being an officer of an employer; and
 - (iii) being involved in the hiring or employment of employees.
- (c) Leave may be obtained from the Court by any defendant to do something prohibited by the terms of this order, pursuant to s 142N(2) of the Employment Relations Act.

- (d) These orders are to be notified to the Chief Executive of the Ministry of Business, Innovation and Employment, and by notice in the Gazette, pursuant to s 142Q1 of the Employment Relations Act.

Costs

[262] My preliminary view is that this matter is appropriately allocated Category 2B for costs purposes under the Practice Directions Guideline Scale.¹¹¹ The plaintiff is entitled to costs. The calculation of those costs ought to be able to be agreed. If that does not prove possible, the plaintiff may apply for costs by filing and serving a memorandum by 31 January 2023. The defendants may respond by memorandum filed and served within 14 days thereafter. Costs will then be determined on the papers.

Kathryn Beck
Judge

Judgment signed at 10 am on 15 December 2022

¹¹¹ “Employment Court of New Zealand Practice Directions” <www.employment.govt.nz> at No 16.

APPENDIX

Key:

MWA – Minimum Wage Act 1983
 HA – Holidays Act 2003
 ERA – Employment Relations Act 2000
 IEA – individual employment agreement

Name of first defendant:	Samra Holdings Ltd		
Number of employee(s):	Two (Joga Liddar and Manpreet Sidhu)		
<i>Nature and number of breaches – potential maximum penalties (prior to globalisation)</i>			
<i>Pre 1 April 2016 breaches</i>			
Failure to pay minimum wage, s 6 MWA	1 x \$20,000		\$20,000
Failure to pay time and a half for worked public holiday s 50 HA	1 x \$20,000		\$20,000
Failure to keep compliant holiday/leave record, s 81 HA	1 x \$20,000		\$20,000
Failure to keep compliant wages/time record, s 130 ERA	1 x \$20,000		\$20,000
Failure to provide compliant IEA, s 65 ERA	1 x \$20,000		\$20,000
	Subtotal		\$100,000
<i>Post 1 April 2016 breaches</i>			
Failure to pay minimum wage, s 6 MWA	Joga Liddar Manpreet Sidhu	1 x \$179,185.47 ¹ 1 x \$195,117.57 ²	\$374,303.04
Failure to pay time and a half for worked public holidays, s 50 HA		1 x \$100,000	\$100,000
Failure to provide/pay out alternative holiday where public holiday worked, ss 56, 60 HA		2 x \$100,000	\$200,000
Failure to pay unworked public holiday that is otherwise a working day, s 49 HA		2 x \$100,000	\$200,000
Failure to pay holiday pay as taken, s 21 HA		2 x \$100,000	\$200,000
Failure to pay holiday pay on termination, s 24 HA		1 x \$100,000	\$100,000
Failure to pay holiday pay on termination, s 25 HA 8%		2 x \$100,000	\$200,000
Failure to pay post-termination notional public holiday, s 40 HA		0 x \$20,000	NIL
Unlawful seeking of premiums for employment, s 12A WPA		2 x \$100,000	\$200,000
Failure to keep compliant holiday/leave record, s 81 HA (ordinary) ³		1 x \$20,000	\$20,000
Failure to keep compliant wages/time record, s 130 ERA (ordinary) ⁴		2 x \$20,000	\$20,000

¹ Being 3 times the amount of the financial gain made by the body corporate from the breach, s 142G(b)(ii) ERA.

² Above n 1.

³ Breach for record-keeping failure in relation to Joga Liddar is included under pre-1 April 2016 breaches.

⁴ Above n 3.

Failure to provide compliant IEA, s 65 ERA (ordinary)		2 x \$20,000	\$40,000
		Subtotal	\$1,654,303.04
		TOTAL	\$1,754,303.04
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>			
<i>Pre and post 1 April 2016 breaches</i>			
Breaches of MWA	Joga Liddar	1 x 179,185.47	\$374,303.04
	Manpreet Sidhu	1 x 195,117.57	
Breaches of HA		2 x 100,000	\$200,000
Breaches of WPA – unlawful premiums		2 x 100,000	\$200,000
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)		2 x 20,000	\$40,000
		Subtotal	\$814,303.04
<i>Starting point</i>			
Breaches of MWA	Joga Liddar	85%	\$152,307.64
	Manpreet Sidhu	80%	\$156,094.05
Breaches of HA	Joga Liddar	45%	\$45,000
	Manpreet Sidhu	20%	\$20,000
Breaches of WPA – unlawful premiums	Joga Liddar	40%	\$40,000
	Manpreet Sidhu	15%	\$15,000
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)		70%	\$14,000
			\$14,000
		Subtotal	\$456,401.69
<i>Proportionality</i>			
Less 10 per cent of the above subtotal			(\$45,640.16)
		TOTAL	\$410,761.53

Name of second defendant: Samra Enterprises Ltd		
Number of employee(s): One (Navjot Singh)		
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>		
<i>Post 1 April 2016 breaches</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$131,628.96	\$131,628.96
Failure to pay time and a half for worked public holidays, s 50 HA	1 x \$100,000	\$100,000
Failure to provide/pay out alternative holiday where public holiday worked, ss 56, 60 HA	1 x \$100,000	\$100,000
Failure to pay unworked holiday pay that is otherwise a working day, s 49 HA	0 x \$100,000	NIL
Failure to pay holiday pay as taken, s 21 HA	0 x \$100,000	NIL
Failure to pay holiday pay on termination, s 24 HA 8%	1 x \$100,000	\$100,000
Failure to pay holiday pay on termination, s 25 HA 8%	1 x \$100,000	\$100,000
Failure to pay post-termination notional public holiday, s 40 HA	1 x \$100,000	\$100,000
Unlawful seeking of premiums for employment, s 12A WPA	1 x \$100,000	\$100,000
Failure to keep compliant holiday/leave record, s 81 HA (ordinary)	1 x \$20,000	\$20,000
Failure to keep compliant wages/time record, s 130 ERA	1 x \$20,000	\$20,000
Failure to provide compliant IEA, s 65 ERA (ordinary)	1 x \$20,000	\$20,000
	Subtotal	\$791,628.96
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>		
<i>Pre and post 1 April 2016 breaches</i>		
Breaches of MWA	1 x \$131,628.96	\$131,628.96
Breaches of HA	1 x \$100,000	\$100,000
Breach of Wages Protection Act – unlawful premiums	1 x \$100,000	\$100,000
Record-keeping breaches under ERA and HA	1 x \$20,000	\$20,000
	Subtotal	\$351,628.96
<i>Starting point</i>		
Breaches of MWA	80%	\$105,303.16
Breaches of HA	35%	\$35,000
Breaches of WPA – unlawful premiums	70%	\$70,000
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)	70%	\$14,000
	Subtotal	\$224,303.16
<i>Proportionality</i>		
Less 10 per cent of the above subtotal		(\$22,430.31)
	TOTAL	\$201,872.85

Name of third defendant:	Samra Brothers Ltd	
Number of employee(s):	One (Dupinder Singh)	
<i>Nature and number of breaches – potential maximum penalties (prior to globalisation)</i>		
<i>Pre 1 April 2016 breaches</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$20,000	\$20,000
Failure to pay time and a half for worked public holiday s 50 HA	1 x \$20,000	\$20,000
Failure to pay unworked public holiday that is otherwise a working day, s 49 HA	1 x \$20,000	\$20,000
Failure to keep compliant holiday/leave record, s 81 HA	1 x \$20,000	\$20,000
Failure to keep compliant wages/time record, s 130 ERA	1 x \$20,000	\$20,000
Failure to provide compliant IEA, s 65 ERA	1 x \$20,000	\$20,000
	Subtotal	\$120,000
<i>Post 1 April 2016 breaches</i>		
Failure to pay minimum wage, s 6 MWA	1 x \$232,197.69	\$232,197.69
Failure to pay time and a half for worked public holidays, s 50 HA	1 x \$100,000	\$100,000
Failure to provide/pay out alternative holiday where public holiday worked, ss 56, 60 HA	1 x \$100,000	\$100,000
Failure to pay unworked public holiday that is otherwise a working day, s 49 HA	1 x \$100,000	\$100,000
Failure to pay holiday pay as taken, s 21 HA	1 x \$100,000	\$100,000
Failure to pay holiday pay on termination, s 24 HA	1 x \$100,000	\$100,000
Failure to pay holiday pay on termination, s 25 HA 8%	1 x \$100,000	\$100,000
Failure to pay post-termination notional public holiday, s 40 HA	1 x \$100,000	\$100,000
Unlawful seeking of premiums for employment, s 12A WPA	1 x \$100,000	\$100,000
Failure to keep compliant holiday/leave record, s 81 HA (ordinary) ⁵	0 x \$20,000	NIL
Failure to keep compliant wages/time record, s 130 ERA (ordinary) ⁶	0 x \$20,000	NIL
Failure to provide compliant IEA, s 65 ERA (ordinary)	1 x \$20,000	\$20,000
	Subtotal	\$1,052,197.69
	TOTAL	\$1,172,197.69
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>		
<i>Pre and post 1 April 2016 breaches</i>		
Breaches of MWA	1 x \$232,197.69	\$232,197.69
Breaches of HA	1 x \$100,000	\$100,000
Breach of WPA – unlawful premium	1 x \$100,000	\$100,000

⁵ Included under pre-1 April 2016 breaches – sustained failure.

⁶ See above n 5.

Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)	1 x \$20,000	\$20,000
	Subtotal	\$452,197.69
<i>Starting point</i>		
Breaches of MWA	85%	\$197,368.03
Breaches of HA	50%	\$50,000
Breach of WPA – unlawful premium	15%	\$15,000
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)	70%	\$14,000
	Subtotal	\$276,368.03
<i>Proportionality</i>		
Less 10 per cent of the above subtotal		(\$27,636.80)
	TOTAL	\$248,731.23

Name of fourth defendant: Akal Holdings Ltd			
Number of employee(s): Two (Navjot Singh and Harpreet Singh)			
<i>Nature and number of breaches – potential maximum penalties (prior to globalisation)</i>			
<i>Pre 1 April 2016 breaches</i>			
Failure to pay minimum wage, s 6 MWA		1 x \$20,000	\$20,000
Failure to pay time and a half for worked public holiday s 50 HA		1 x \$20,000	\$20,000
Failure to keep compliant holiday/leave record, s 81 HA		1 x \$20,000	\$20,000
Failure to keep compliant wages/time record, s 130 ERA		1 x \$20,000	\$20,000
Failure to provide compliant IEA, s 65 ERA		1 x \$20,000	\$20,000
		Subtotal	\$100,000
<i>Post 1 April 2016 breaches</i>			
Failure to pay minimum wage, s 6 MWA	Navjot Singh	1 x \$100,000	\$100,000
	Harpreet Singh	1 x \$171,471.48	\$171,471.48
Failure to pay time and a half for worked public holidays, s 50 HA		1 x \$100,000	\$100,000
Failure to provide/pay out alternative holiday where public holiday worked, ss 56, 60 HA		2 x \$100,000	\$200,000
Failure to pay unworked public holiday that is otherwise a working day, s 49 HA		1 x \$100,000	\$100,000
Failure to pay holiday pay as taken, s 21 HA		1 x \$100,000	\$100,000
Failure to pay holiday pay on termination, s 24 HA		2 x \$100,000	\$200,000
Failure to pay holiday pay on termination, s 25 HA 8%		2 x \$100,000	\$200,000
Failure to pay post-termination notional public holiday, s 40 HA		0 x \$10,000	NIL
Unlawful seeking of premiums for employment, s 12A WPA		2 x \$100,000	\$200,000
Failure to keep compliant holiday/leave record, s 81 HA (ordinary) ⁷		1 x \$20,000	\$20,000
Failure to keep compliant wages/time record, s 130 ERA (ordinary) ⁸		1 x \$20,000	\$20,000
Failure to provide compliant IEA, s 65 ERA (ordinary)		2 x \$20,000	\$40,000
		Subtotal	\$1,451,471.48
		TOTAL	\$4,551,471.48
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>			
<i>Pre and post 1 April 2016 breaches</i>			
Breaches of MWA	Navjot Singh	1 x \$100,000	\$100,000
	Harpreet Singh	1 x \$171,471.48	\$171,471.48
Breaches of HA		2 x \$100,000	\$200,000
Breach of Wages Protection Act – unlawful premiums		2 x \$100,000	\$200,000
Record-keeping breaches under ERA and HA		2 x \$20,000	\$40,000

⁷ Navjot Singh-related breach included under pre-1 April 2016 breaches – sustained failure.

⁸ Above n 7.

		Subtotal	\$711,471.48
<i>Starting point</i>			
Breaches of MWA	Navjot Singh	45%	\$45,000
	Harpreet Singh	80%	\$137,177.18
Breaches of HA	Navjot Singh	12.5%	\$12,500
	Harpreet Singh	30%	\$30,000
Breaches of WPA – unlawful premiums	Navjot Singh	20%	\$20,000
	Harpreet Singh	35%	\$35,000
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)		70%	\$14,000 \$14,000
		Subtotal	\$307,677.18
<i>Proportionality</i>			
Less 10 per cent of the above subtotal			(\$30,767.71)
		TOTAL	\$276,909.47

Name of sixth defendant:	Sukhdev Singh	
Number of employee(s):	Five ⁹	
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>		
<i>Post 1 April 2016 breaches</i>		
Failure to pay minimum wage, s 6 MWA	6 x \$50,000	\$300,000
Failure to pay time and a half for worked public holidays, s 50 HA	4 x \$500,000	\$200,000
Failure to provide/pay out alternative holiday where public holiday worked, ss 56, 60 HA	6 x \$50,000	\$300,000
Failure to pay unworked holiday pay that is otherwise a working day, s 49 HA	4 x \$50,000	\$200,000
Failure to pay holiday pay as taken, s 21 HA	4 x \$50,000	\$200,000
Failure to pay holiday pay on termination, s 24 HA	5 x \$50,000	\$250,000
Failure to pay holiday pay on termination, s 25 HA 8%	6 x \$50,000	\$300,000
Failure to pay post-termination notional public holiday, s 40 HA	2 x \$50,000	\$100,000
Unlawful seeking of premiums for employment, s 12A WPA	6 x \$50,000	\$300,000
Failure to keep compliant holiday/leave record, s 81 HA (ordinary) ¹⁰	3 x \$10,000	\$30,000
Failure to keep compliant wages/time record, s 130 ERA (ordinary) ¹¹	3 x \$10,000	\$30,000
	Subtotal	\$2,210,000
<i>Nature and number of breaches – potential maximum penalties (following globalisation)</i>		
<i>Post 1 April 2016 breaches</i>		
Breaches of MWA	6 x \$50,000	\$300,000
Breaches of HA	6 x \$50,000	\$300,000
Breach of Wages Protection Act – unlawful premiums	6 x \$50,000	\$300,000
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)	3 x \$10,000	\$30,000
	Subtotal	\$930,000
<i>Starting point</i>		
Breaches of MWA	82.5% ¹²	\$247,500
Breaches of HA	32%	\$96,000
Breach of Wages Protection Act – unlawful premiums	32.5%	\$97,500
Record-keeping breaches under ERA and HA (including failure to supply compliant IEA)	70%	\$21,000
	Subtotal	\$462,000

⁹ One of whom worked for two employers.

¹⁰ Only including those limited to post 1 April 2016 breaches.

¹¹ Above n 10.

¹² An average of 90 per cent for five employees and 45 per cent for one employee as discussed at [209].

<i>Proportionality</i>		
Less 10 per cent of the above subtotal		(\$46,200)
	TOTAL	\$415,800