

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

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

**[2023] NZEmpC 89
EMPC 450/2019**

IN THE MATTER OF minimum employment standards –
 applications for exercise of powers under
 Part 9A of the Employment Relations Act
 2000

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

AND PRISHA’S HOSPITALITY (2017)
 LIMITED TRADING AS ROYAL
 CAMBRIDGE INDIAN RESTAURANT
 First Defendant

AND AJAY SHARMA
 Second Defendant

AND KAVITA SHARMA
 Third Defendant

EMPC 453/2019

IN THE MATTER OF minimum employment standards –
 applications for the exercise of powers
 under Part 9A of the Employment Relations
 Act 2000

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

AND PRISHA’S HOSPITALITY LIMITED
 TRADING AS ROQUETTE
 RESTAURANT & BAR
 First Defendant

AND AJAY SHARMA
 Second Defendant

AND

KAVITA SHARMA
Third Defendant

Hearing: 16–27 May and 4 October 2022
(Heard at Auckland)

Appearances: R Denmead and M L Brown, counsel for the plaintiff
P Wicks KC, counsel for the defendants

Judgment: 16 June 2023

JUDGMENT OF JUDGE J C HOLDEN

[1] The Labour Inspector has brought proceedings against two related companies and their director/shareholders. The proceedings are in respect of alleged breaches of minimum entitlement provisions for employees of those companies.

[2] In respect of each proceeding, the Labour Inspector seeks:

- (a) declarations of breach pursuant to s 142B(2) of the Employment Relations Act 2000 (the Act) in respect of what the Labour Inspector says are serious breaches of minimum entitlement provisions;
- (b) compensation orders for arrears of wages, annual holiday pay and public holiday pay, deductions and premiums;¹
- (c) compensation orders to compensate the affected employees for non-pecuniary loss;² and
- (d) orders for pecuniary penalties.³

[3] The Labour Inspector also seeks interest on any arrears of wages, annual holiday pay and public holiday pay, deductions and premiums ordered, pursuant to sch 3 cl 14 of the Act.

¹ Employment Relations Act 2000, ss 142J(1) and 142L.

² Sections 142J(1) and 142L.

³ Section 142E(1).

[4] By agreement, this judgment deals with the first two matters. It also deals with interest. Further submissions will be needed on the issues of compensation for non-pecuniary loss and penalties in light of the Court's findings.

The companies owned restaurants

[5] Prisha's Hospitality (2017) Limited (Prisha's Royal Cambridge) was the proprietor of the Royal Cambridge Indian Restaurant in Cambridge. Mr Ajay Sharma is the sole director of Prisha's Royal Cambridge. He and Mrs Kavita Sharma are shareholders and managed the Royal Cambridge Indian Restaurant.

[6] Prisha's Hospitality Limited (Prisha's Roquette) was the proprietor of the Roquette Restaurant and Bar (Roquette Restaurant) in Whakatane. Mr Ajay Sharma is the sole director of Prisha's Roquette. He and Mrs Kavita Sharma are shareholders and managed the Roquette Restaurant.

[7] The companies no longer operate either restaurant. The Royal Cambridge Indian Restaurant burnt down on 16 December 2018 and ceased operations. The Roquette Restaurant was sold in or about September 2021.

[8] The period that this judgment covers is from December 2017 until June 2019.

The Labour Inspector's claims are in respect of seven individuals

[9] The Labour Inspector's claims are in respect of six former employees of Prisha's Royal Cambridge and one former employee of Prisha's Roquette.

[10] All these employees were immigrants from India. They had a variety of immigration statuses; some were on visas tied to the employer, and others were not.

[11] Mr Kalra worked at the Royal Cambridge Indian Restaurant as the restaurant manager between December 2017 and December 2018. Prisha's Royal Cambridge says Mr Kalra started as a volunteer, not an employee. He worked part-time initially but received no wages. He then began working full-time and started to be paid from April 2018. He finished working at the Royal Cambridge Indian Restaurant when the

restaurant was destroyed by fire. He received his last pay in May 2019. He gave notice on 6 May 2019, with his last day of employment being 5 June 2019.

[12] Mr Sachdeva started work for Prisha's Royal Cambridge as an assistant manager in May 2018. His last day at work was in December 2018, and he resigned in January 2019.

[13] Mr Singh was employed as a chef for Prisha's Royal Cambridge between December 2017 and August 2018.

[14] Mr Ram was the head chef for Prisha's Royal Cambridge and was employed between December 2017 and July 2018.

[15] Mr Prasad was a curry chef for Prisha's Royal Cambridge. He was employed between May 2018 and November 2018.

[16] Ms Thakur was employed part-time by Prisha's Royal Cambridge to work front of house at the restaurant between December 2017 and February 2018.

[17] Mr Chawla, in contrast to the other employees, was employed by Prisha's Roquette. He was an assistant manager at the Roquette Restaurant between December 2017 and November 2018.

[18] Both Mr and Mrs Sharma were active in the operation of the two restaurants. They lived near where the Roquette Restaurant is, which is where they principally worked, but Mr Sharma also attended at the Royal Cambridge Indian Restaurant regularly. Mrs Sharma was responsible for a range of matters relating to the employees and made decisions in respect of financial matters, including payroll. In this judgment I refer to the "defendants" meaning, Prisha's Royal Cambridge and Mr and Mrs Sharma when dealing with the employees of that company, and Prisha's Roquette and Mr and Mrs Sharma when dealing with Mr Chawla.

[19] The key issues in these proceedings are:⁴

- (a) Was Mr Kalra an employee in the first period during which he worked?
- (b) What days and hours of work did the employees work?
- (c) Which public holidays did the employees work?
- (d) What holiday pay was due to the employees on termination of their employment?
- (e) What (if any) shortfall in remuneration is owing to the employees?
- (f) Were deductions to employees' pay lawful?
- (g) Were premiums paid? If so, at what amounts?
- (h) Were Mr and Mrs Sharma persons involved in any breach of employment standards and liable for any shortfall in wages or other money payable to the employees?

The minimum code applies

[20] The former employees were entitled to be paid at least the minimum wage for the hours they worked.⁵ They also were entitled to paid annual holidays and to be recognised for public holidays either worked or, if not worked, if they would otherwise be a working day for the employee.⁶

[21] The minimum wage for the period up to 31 March 2018 was \$15.75 per hour or \$630 for a 40-hour week.⁷ Between 1 April 2018 and 31 March 2019, it was \$16.50 per hour or \$660 for a 40-hour week.⁸

Employers must keep proper records

[22] Prisha's Royal Cambridge and Prisha's Roquette were obliged to keep wages and time records, and holiday and leave records. These records are to identify the

⁴ Not all issues apply to all employees.

⁵ Minimum Wage Act 1983, s 6.

⁶ Holidays Act 2003, ss 16, 23, 25, 40, 49, 50, 56 and 63.

⁷ Minimum Wage Order 2017, cl 4.

⁸ Minimum Wage Order 2018, cl 4.

hours worked, wages paid, leave entitlements, dates upon which leave is taken, and payment for leave.⁹ Prisha's Royal Cambridge and Prisha's Roquette also had to ensure that they kept records in sufficient detail to demonstrate they had complied with minimum entitlement provisions.¹⁰

[23] Where an employer fails to keep proper records, and that failure prevents an employee from bringing an accurate claim, the Authority, or the Court, may accept as proved, in the absence of evidence to the contrary, statements made by the employee about:¹¹

- (a) the wages actually paid to the employee;
- (b) the hours, days, and time worked by the employee;
- (c) the holiday pay or leave pay actually paid to the employee; and
- (d) annual holidays, public holidays, sick leave, and bereavement leave actually taken by the employee.

[24] The Labour Inspector says that there are no accurate or contemporaneous wage and time or holiday and leave records for Prisha's Royal Cambridge and that the wages and time, and holiday and leave records kept for Prisha's Roquette were not accurate for Mr Chawla or Mr Sharma. The Labour Inspector also says that no records were kept for Mrs Sharma. The defendants acknowledge that proper records were not kept for Mr and Mrs Sharma.

[25] The Labour Inspector says that the failure to keep records prejudiced the ability of the employees and the Labour Inspector to bring a claim.

Premiums are unlawful

[26] An employer may not seek or receive any premium in respect of the employment of any person, whether by way of deduction from wages or otherwise.¹²

⁹ Employment Relations Act, s 130; and Holidays Act, s 81.

¹⁰ Employment Relations Act, s 4B.

¹¹ Employment Relations Act, s 132; and Holidays Act, s 83.

¹² Wages Protection Act 1983, s 12A.

Declaration of breach – breach must be serious

[27] For a declaration of breach to be made, as sought by the Labour Inspector, the breaches of minimum entitlement provisions by the employers must be serious.¹³ In considering that issue, the Court may consider the amount of money involved, whether the breach comprises a single instance or a series of instances and, if the breach comprises a series of instances, how many instances it comprises and the period over which they occurred. The Court also will consider whether the breach was intentional or reckless and whether the employer concerned has complied with any relevant record-keeping obligations imposed by any Act. The Court also may consider any other relevant matter.¹⁴ Other relevant matters may include whether the breaches were systemic and exploitative.¹⁵

Persons involved in a breach of minimum standards may be liable

[28] Where a person is involved in a breach of employment standards, they can become liable for any wages or other money payable to the affected employee if the employer is unable to pay the arrears.¹⁶ A person is involved in a breach by a corporate employer if the person is an officer of the employer and they have:¹⁷

- (a) aided, abetted, counselled or procured the breach; or
- (b) induced, whether by threats or promises or otherwise, the breach; or
- (c) been in any way, directly or indirectly, knowingly concerned in, or party to, the breach; or
- (d) conspired with others to effect the breach.

[29] The level of knowledge required to establish liability for a person “knowingly concerned in” a breach of employment standards is “knowledge of the essential facts that establish the contravention by the employer”.¹⁸

¹³ Employment Relations Act, s 142B(2)(b).

¹⁴ Section 142B(4).

¹⁵ *Labour Inspector v Jeet Holdings Ltd* [2021] NZEmpC 84, [2021] ERNZ 336 at [72]–[73].

¹⁶ Employment Relations Act, s 142Y.

¹⁷ Employment Relations Act, s 142W.

¹⁸ *Labour Inspector v Southern Taxis Ltd* [2021] NZCA 705, [2021] ERNZ 1345 at [59].

[30] The Labour Inspector claims that Mr and Mrs Sharma are persons involved in the breaches of employment standards. That is denied by the defendants.

Each employee considered

[31] The Labour Inspector summarises the amounts due to the employees to be:

Item	Employee						
	<i>Kalra</i> \$	<i>Sachdeva</i> \$	<i>Singh</i> \$	<i>Thakur</i> \$	<i>Ram</i> \$	<i>Prasad</i> \$	<i>Chawla</i> \$
Alternative Holiday	868.47	323.00	815.05	126.00	1,260.72	333.00	1,552.95
Time and a half arrears	729.61	242.92	799.90	-	1,120.81	167.82	449.97
Minimum wage arrears	8,737.89	3,567.54	-	-	4,064.90	6,387.75	4,331.23
Unlawful deductions	-	-	122.48	-	-	480.00	-
Holiday pay	5,377.59 ¹⁹	2,320.58	2,856.74	261.45	2,276.86	2,123.06	3,251.45
Public Holidays on termination	694.78	-	-	-	-	-	-
Premium	7,090.00	4,200.00	1,972.00	-	-	-	4,400.00
Sub total	23,498.34	10,654.04	6,566.16	387.45	8,723.28	9,491.63	13,985.59
<i>Less amount paid</i>	3,266.89	1,597.06	1,000.00	-	2,241.60	-	1,238.74
TOTAL ARREARS	20,231.45	9,056.98	5,566.16	387.45	6,481.68	9,491.63	12,746.85

[32] These figures are not accepted by the defendants.

¹⁹ Including eight per cent holiday pay arrears.

[33] The evidence demonstrates that the work and financial arrangements between the employers and employees, and as between the employees themselves, were somewhat complicated and fluid. The lack of clear and accurate employment records has made ascertaining the facts difficult. It has disadvantaged the Labour Inspector and the employees in their efforts to determine the full picture.

[34] It is convenient to work through the circumstances of each employee. As well as the oral evidence of the witnesses, the Court has considered the documentary records, in particular the rosters, timesheets, and bank records of the employees. As I accept, pursuant to s 132 of the Act and s 83 of the Holidays Act, that the employees and the Labour Inspector have been disadvantaged by the failure to keep accurate records, I have used the employees' evidence as a starting point. I have, however, found some of the evidence from the employees to be unreliable. I also found Mr and Mrs Sharma's evidence to be unreliable in part. Therefore, where possible I have relied on the bank records and/or other documentary evidence available. The bank records assist in indicating where the employees were on the days in issue – there are records indicating the employees of Prisha's Royal Cambridge were away from Cambridge in some instances, but in others the bank records show purchases from shops that neighbour the Royal Cambridge Indian Restaurant, indicating the employees were at work on those days.

[35] By considering the evidence, the Court has been able to draw conclusions as to the hours worked.

[36] The employees all gave credible evidence of the stress they felt while working for the defendants. Some employees spoke of feeling caged or like a slave. They pointed to Mr Sharma's communications and to the cameras that were present in the workplace.

[37] The employees at the Royal Cambridge Indian Restaurant gave evidence in relation to an incident in which Mr Singh was injured with a knife while at work. The defendants pointed to this evidence as showing that the employees had exaggerated what had occurred, comparing their evidence to that of the CCTV footage. The defendants say this impacts generally on the credibility of those witnesses. It is not

disputed that Mr Singh cut himself while at work; it also is not disputed that the other employees took him to Waikato Hospital for treatment for his injury or that treatment was given. Further, there was evidence that after that incident, Mr Sharma was more concerned about the hours worked by Mr Singh. Of course, recollections will vary when such an incident occurs. Objectively, it may not have been as dramatic as the employees described it, but I do not consider much turns on that. As noted, I have looked beyond the evidence of the employees to other evidence of hours worked.

[38] The defendants placed in evidence several documents that they said were agreements signed by Mr Singh and Mr Prasad. These comprised purported agreements to deductions being made for meals, agreements that they remain at the restaurant so they could return home together, a return to work interview document with Mr Singh, and a document purportedly signed by Mr Singh to ask for a loan to cover rent payments. The employees denied signing these documents. A police senior document examiner considered the signatures on the documents in issue. For some, the poor image quality meant she could not conclude whether the signatures were genuine but, for others, she found the signatures shared a common source, showing they either were copies or duplicates of signatures from other documents. I do not accept the veracity of any of the documents in issue.

[39] Several of the employees gave evidence of doing shopping for the restaurant or delivering flyers during their down time. This evidence is too vague and uncertain to be taken into account.

Mr Kalra

Mr Kalra started employment in December 2017

[40] The first issue with respect to Mr Kalra is whether he was an employee of Prisha's Royal Cambridge from December 2017. The defendants say he initially was a volunteer. They rely on s 6(1)(c) of the Act. Mr Sharma's evidence in chief was that Mr Kalra commenced full-time employment after he got his visa on 7 March 2018. However, under cross-examination and in submission, it was said he was a volunteer until 9 April 2018, when he received his liquor licence, which was, the defendants say, a condition of his employment.

[41] The meaning of s 6(1)(c) of the Act must be ascertained from its text and in the light of its purpose and its context.²⁰

[42] It provides:

6 Meaning of employee

(1) In this Act, unless the context otherwise requires, employee—

...

(c) excludes a volunteer who—

(i) does not expect to be rewarded for work to be performed as a volunteer; and

(ii) receives no reward for work performed as a volunteer

...

[43] Section 6(1)(c) was apparently included in the Act to “provide increased clarity as to the policy intent” after some submissions on the original Bill suggested that volunteers might fall within the definition of “employee”.²¹ It seems that this was a “belts and braces” approach as one would not expect a true volunteer to meet the general test in s 6 of whether, looking at the real nature of the relationship between them, a person is employed by another person under a contract of service.²²

[44] The term “volunteer” is used in other legislation, but definitions vary, and none are identical to that in s 6(1)(c) of the Act. Some definitions are circular, defining a “volunteer” as someone who works on a “voluntary basis”²³ or in a “volunteer capacity”;²⁴ but s CW62B of the Income Tax Act 2007 is more substantive, defining a “volunteer” as a person who freely undertakes an activity in New Zealand:²⁵

(a) chosen either by themselves or by a group of which they are a member; and

(b) that provides a benefit to a community or another person; and

(c) for which there is no purpose or intention of private pecuniary profit for the person.

²⁰ Legislation Act 2019, s 10.

²¹ *Employment Relations Bill: Report of the Department of Labour to the Employment and Accident Insurance Legislation Select Committee* (ER/DOL/9, June 2000) at 21.

²² *Brook v MacOwn* [2014] NZEmpC 79, [2014] ERNZ 639 at [26].

²³ Health and Safety at Work Act 2015, s 16.

²⁴ Fire and Emergency New Zealand Act 2017, s 6 definition of “FENZ volunteer or volunteer”.

²⁵ Income Tax Act 2007, s CW62B(4).

[45] It has been suggested that s 6(1)(c) provides a definition so that “the dual factors of expectation and non-receipt define a volunteer”.²⁶ Cases, however, also refer to the context in which the unpaid work is performed, for example whether it is performed for a profit-making enterprise that would not be expected to be relying on unpaid volunteers.²⁷

[46] The way I read s 6(1)(c) is that it excludes from the definition of employee, individuals who exhibit all of the three following characteristics: first, the person is a “volunteer”; second, the person does not expect reward; and third, the person does not receive reward. While this may seem to be a literal approach,²⁸ it is consistent with the purpose of the Act. Allowing parties to avoid the obligations of employment by agreeing a worker would not be paid would allow for arrangements that are exploitative. That would be inconsistent with the policy behind the minimum code. It is also contrary to the intention behind s 238 of the Act, which prevents parties to an employment arrangement from contracting out of the provisions of the Act. In short, if someone is not a volunteer, they do not turn into one because the parties agree that they will not be paid.

[47] Therefore, the first question is whether a person is a “volunteer”. While each situation must be judged on its own facts, the general expectation is that for somebody to be a volunteer there would be something in the nature of the enterprise, or in the relationship between it and the worker, that explained why the worker might wish to donate their work to the enterprise for no pay, to benefit that enterprise or the wider community. Some enterprises where volunteers are common are noted in *Kidd v Beaumont*: “small local museums, religious communities, amateur sporting organisations, theatrical societies, [and] the provision of some companionship services to the elderly”.²⁹ Situations where the relationship between the worker and the enterprise explains the provision of work for free might include where a parent assists at their child’s school, or where neighbours help each other out.

²⁶ *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746 at [185]; and *Brook v MacOwn*, above n 22, at [18].

²⁷ *Kidd v Beaumont* [2016] NZEmpC 158, [2016] ERNZ 257 at [44]–[56] and [64].

²⁸ *Brook v MacOwn*, above n 22, at [18].

²⁹ *Kidd v Beaumont*, above n 27, at [45].

[48] The nature of the work is not necessarily determinative. For example, people who assist in an opportunity shop run by a charity may perform work that is on all fours with other shop assistants, but the nature of the enterprise is such that people who support that enterprise want to, and do, provide their work for no reward.

[49] I turn next to consider the second and third questions, being whether the person expects or receives reward. I note the Court has previously relied on the existence of what would be seen as a small reward as being the factor that turns a person from a volunteer into an employee.³⁰ That approach seems somewhat artificial and does not accord with the purpose of the exception in the Act. I prefer the approach that a volunteer would be covered by s 6(1)(c) even if they expect and receive a token gesture of appreciation, such as a handshake or a bunch of flowers.³¹ “Reward” in this context means something that is more than token; it would represent some substantive value to the worker for the work they perform.

[50] I note, however, that merely because someone expects and receives some non-token reward for the work they do, does not mean they necessarily are an employee; a person can receive an honorarium, or they may expect their efforts to be rewarded in some other way, without them necessarily being an employee; the parties may not be able to rely on s 6(1)(c), but the usual s 6 analysis is still required – was the real nature of the relationship one of employer and employee?³²

[51] Prisha’s Royal Cambridge was a private business operating for profit. The evidence is that Mr Kalra was looking for paid work when he contacted Prisha’s Royal Cambridge; he went through a recruitment process and was offered the restaurant manager job just a few weeks before the Royal Cambridge Indian Restaurant opened. From 15 December 2017, Mr Kalra worked managing the Royal Cambridge Indian Restaurant. Although he was working with another manager until 10 March 2018, his duties during this time were consistent with the work he performed from April 2018.

³⁰ *Salad Bowl Ltd v Howe-Thornley* [2013] NZEmpC 152, [2013] ERNZ 326 at [36]–[37].

³¹ *Brook v MacOwn*, above n 22, at [26].

³² *Brook v MacOwn*, above n 22, at [19]; and *Kirby v New Zealand China Friendship Society* [2015] NZEmpC 189 at [15]–[16].

[52] Mr Kalra was not a volunteer. Prisha's Royal Cambridge cannot rely on s 6(1)(c) of the Act. Further, the arrangements in place conclusively point to him being an employee from the date he started work for Prisha's Royal Cambridge. They had all the indicia one would expect from an employment relationship: he was subject to the direction and control of Prisha's Royal Cambridge; he was integrated into the business; and he worked in the same way as an employee. I did not take from the evidence or submissions from the defendants that a contrary view is taken. They were simply relying on s 6(1)(c).

[53] I note for completeness that Mr Kalra received meals during the period he was unpaid and was working in the expectation he would obtain paid employment. I have not, however, relied on these rewards to find he was an employee and not a volunteer when he started working for Prisha's Royal Cambridge.

Mr Kalra's claimed hours are overstated

[54] As a general comment, Mr Kalra's evidence included a number of inconsistencies. At times, he exaggerated and when discrepancies in his evidence were pointed out to him, his answers often were not compelling. For this reason, the supporting evidence in the bundle of documents and other material has been relied on to determine Mr Kalra's hours of work.

[55] His employment at Prisha's Royal Cambridge can be split into three time periods:

- (a) 15 December 2017 – 4 March 2018;
- (b) 5 March 2018 – 6 May 2018; and
- (c) 7 May 2018 until the end of Mr Kalra's employment.

15 December 2017 – 4 March 2018

[56] During this period, Mr Kalra worked on Friday evenings, Saturdays and Sundays. Mr Kalra says that he left his previous job early on Friday evenings so as to

be able to get down to Prisha's Royal Cambridge for the evening shift. I accept that he worked five hours each Friday evening.

[57] He worked two shifts on each of the weekend days and had a half hour meal break in the early shift. He says, and I accept, that he left to return to Auckland at around 9.30 pm on Sunday evenings. I accept that Mr Kalra worked 8 hours each Saturday (3 hours in the morning (excluding the meal break) and 5 hours in the evening) and 7.5 hours (3 hours in the morning (excluding the meal break) and 4.5 hours in the evening) each Sunday.

5 March 2018 – 6 May 2018

[58] Mr Kalra acknowledges that he did not work on 5 and 6 March 2018. His evidence was that he commenced full-time employment with Prisha's Royal Cambridge on 7 March 2018.

[59] Mr Kalra's evidence was that he was working seven days a week during this period and not getting time off.

[60] Timesheets begin from 9 April 2018, but there are a number of versions of many of the timesheets. I therefore consider the timesheets in light of the other evidence before the Court.

[61] On some days in issue there were payments made by Mr Kalra in Auckland and at petrol stations between Cambridge and Auckland, which is inconsistent with Mr Kalra being at work at the restaurant in Cambridge on the days in question.

[62] There is other evidence of Mr Kalra having some time off, for example when Mr Chawla worked at Prisha's Royal Cambridge for a few days.

[63] Mr Kalra was employed on a salary of \$46,000; he received his first pay on 16 April 2018. His usual hours of work were to be 40 hours per week, but his contract also provided for him to work additional hours at no extra pay. At the relevant minimum wage, Mr Kalra could be asked to work 53.61 hours per week before there was a breach of the Minimum Wage Act.

[64] Generally, I accept Mr Kalra worked 11 am to 2.30 pm, with a half hour meal break, and 5 pm to 10 pm. There is variability, however. My conclusions on hours worked by Mr Kalra over this period are set out in Schedule A. As can be seen, in the period from 7 April to 6 May 2018, he only exceeded 53.61 hours in the last week, 30 April – 6 May 2018, by approximately 6 hours.

[65] I have concluded that Mr Kalra worked on 30 March 2018, 2 April 2018 and 25 April 2018, all of which were public holidays. He was entitled to be paid time and a half and given a day off in lieu in respect of each of these days.

7 May 2018 until the end of Mr Kalra's employment

[66] From 7 May 2018, Mr Sachdeva worked for Prisha's Royal Cambridge and assisted Mr Kalra. Mr Kalra acknowledges that from that date he was getting three mornings off a week; he claims he was working seven night shifts and four morning shifts each week, averaging 7.14 hours each day.

[67] For the first week in this period there are multiple versions of the same timesheet. After that there is only one version. There is also a printed roster. The timesheets are broadly consistent with the roster, which was required to be put on the kitchen wall, presumably so employees knew the hours they were expected to work. Mr Kalra says he worked on Tuesdays, which the defendants dispute. His timesheets and the roster indicate he had that as a day off. I find he generally did have Tuesdays off, although there were some exceptions to that, as indicated by the timesheets and some of the till receipts.

[68] Having considered the evidence, I have concluded that Mr Kalra worked between 35 and 54 hours per week over this period, as set out in Schedule A.

[69] There was a small breach of the Minimum Wage Act for the first week only in this period.

[70] During this period, Mr Kalra worked on Queen's Birthday and Labour Day, for which he was entitled to be paid time and a half and given a day off in lieu.

[71] Mr Kalra says that he resigned on 6 May 2019. His resignation letter indicated his final day of employment was 5 June 2019. The Labour Inspector, however, only claims wages up until 16 December 2018, which was the date of the fire.

[72] In total, Mr Kalra is due \$9,967.59 (gross), as set out in Schedule A to this judgment.

Evidence does not support that premium payments were sought or paid

[73] Mr Kalra gave evidence that, from April 2018, Mr Sharma asked him to repay \$200 each week from his wages, as a premium for his job, and that he did so every two to three weeks.

[74] The difficulty is that there is insufficient evidence to support that claim.

[75] The bank account evidence shows various modest sums being withdrawn from Mr Kalra's current account, of between \$150 and \$300, coming to a total of \$1,100. There was also an ATM withdrawal of \$900 from a separate account on 11 November 2018.

[76] Mr Kalra gave evidence that he had borrowed \$3,500 in cash in one lump sum from a friend. That evidence was not supported by any documentary evidence and was not given until half-way through cross-examination.

[77] There is further evidence of monies being withdrawn at the SkyCity Auckland and Riverside Casinos, which Mr Kalra says he used to "try [his] luck". The total withdrawals were approximately \$3,000. Finally, Mr Kalra says that he bought an Indian TV box for \$290 for the restaurant on 20 August 2018. The same claim has been made by Mr Sachdeva.³³

[78] There was no evidence of money being deposited into bank accounts of the defendants.

³³ Mr Kalra says Mr Sachdeva was asked to buy a TV box for Mr Sharma's home, but Mr Sachdeva's evidence is that it was for the restaurant.

[79] The evidence is insufficient to prove that Mr Kalra paid any of the defendants premium payments. There is no allowance in Mr Kalra's evidence for money withdrawn for discretionary spending, and it is inherently implausible that the monies withdrawn at the two casinos led to winnings for Mr Kalra, or that the withdrawals and/or any winnings were paid to the defendants.

[80] Based on the evidence, I do not accept that Mr Kalra paid a premium to Prisha's Royal Cambridge or to Mr and/or Mrs Sharma.

Mr Sachdeva

[81] Mr Sachdeva worked for Prisha's Royal Cambridge and assisted Mr Kalra. He was employed on an hourly rate of \$19 per hour for 30–40 hours work. He was paid \$646 per week.

[82] Again, the evidence included a number of inconsistencies. There were times when Mr Sachdeva appeared to exaggerate the hours that he worked. As with Mr Kalra, I have looked to supporting evidence in an attempt to determine Mr Sachdeva's hours of work.

[83] Although there is a little uncertainty over whether Mr Sachdeva commenced work at the Royal Cambridge Indian Restaurant on 6 May 2018 or 7 May 2018, on balance, the evidence supports that he commenced work on Monday, 7 May 2018.

[84] Mr Sachdeva gave evidence that, in his first two weeks of employment, he had one full day and four mornings off. He says that his hours subsequently increased. There are a number of different timesheets covering this two-week period, the most reliable of which indicates that during that time Mr Sachdeva worked 36 hours each of these two weeks.

[85] Mr Sachdeva says that after working for two weeks, he was told by Mr Sharma that he needed to increase his hours to at least 47 hours per week with no days off.

[86] Mr Kalra gave evidence that Mr Sachdeva used to work seven nights from approximately 4.45 pm to 10.15 pm or later, depending on how busy the restaurant

was, and three morning shifts at least and sometimes more. Mr Kalra says that Mr Sharma asked him to put only 34 hours in Mr Sachdeva's timesheet each week, but the hours he actually worked were at least 50 hours apart from some rare occasions.

[87] The roster from 18 May 2018 indicates that Mr Sachdeva worked 36 hours that week.

[88] The hours recorded for that week are broadly consistent with the hours recorded on timesheets for Mr Sachdeva for subsequent weeks.

[89] There was an issue as to whether Mr Sachdeva had Mondays off; he claimed that he did not. However, the documentary evidence, including Mr Sachdeva's bank records, suggests that Mr Sachdeva generally had Mondays off work.

[90] Having considered the evidence, it seems likely that Mr Sachdeva did work more than the 36 hours per week as noted on the roster, but not as much as he says he worked. For example, there are till records that showed Mr Sachdeva working longer hours than the roster shows. Overall, I find that he worked on average 38 hours per week in most weeks during his employment. Mr Sachdeva was only paid for 34 hours per week in most weeks, therefore, as an hourly worker, he is entitled to an additional \$66 for each week of those weeks; the minimum wage for hourly workers cannot be averaged across hours.³⁴

[91] Although I have determined that he worked 38 hours per week on most weeks, he worked additional hours on three weeks: on the week of 18–24 June 2018, he worked 40.5 hours, excluding breaks; on the week of 3–9 December 2018, he worked 47 hours, excluding breaks; and on the week of 10–16 December 2018, he worked for 56.7 hours.

[92] I also accept that he worked on Monday, 22 October 2018, which was a public holiday, for which he was entitled to be paid time and a half. However, as Mr Sachdeva normally had Mondays off, it was not an ordinary working day for him, so he is not entitled to a day in lieu.

³⁴ *Idea Services Ltd v Dickson* [2011] NZCA 14, [2011] 2 NZLR 522 at [26]–[52].

[93] Mr Sachdeva says he took sick leave on 11 November 2018. The payment for the time off on that day was deducted from his annual leave entitlement. Mr Sachdeva was entitled to sick leave on that date, so the payment needs to be re-categorised as sick leave rather than annual leave.

[94] Mr Sachdeva resigned from Prisha's Royal Cambridge on 29 January 2019 but had stopped working when the restaurant burnt down. The claim for wages only covers up until 16 December 2018.

[95] In total \$2,492.60 (gross) is due to Mr Sachdeva, as set out in Schedule B.

Evidence does not support that premium payments were sought or paid

[96] Mr Sachdeva first raised a complaint about paying premiums on 7 February 2019. That was repeated on 4 March 2019.

[97] He claims that he paid Mr Sharma \$150 a week from the third week he was employed, withdrawing the cash each month and giving it to Mr Sharma when Mr Sharma visited the restaurant. He claims he paid premiums totalling \$4,200.

[98] Mr Sachdeva also claims that Mr Sharma made him buy an Indian TV box for \$290 for the restaurant. It seems that such a TV box was purchased, but Mr Sharma says that was for Mr Sachdeva's personal use.

[99] The difficulty with Mr Sachdeva's claims regarding premium payments is that they are not supported by other evidence. There were only relatively small amounts of cash withdrawn from Mr Sachdeva's account, and there was no evidence of other monies being available to make premium payments.

[100] I am not satisfied that a premium was paid by Mr Sachdeva to the defendants.

Mr Singh

[101] Mr Singh commenced employment with Prisha's Royal Cambridge when it opened; he had been employed in the restaurant by the previous owner. This means he started working for Prisha's Royal Cambridge on 11 December 2017.

[102] He was on a salary of \$49,500, for 40 hours work per week. However, his employment agreement provided for overtime to be worked without additional payment. There is no claim from the Labour Inspector for a shortfall in the minimum wage.

[103] Mr Singh says he worked all public holidays and was not provided an alternative day off. I accept that Mr Singh worked the following public holidays:

- (a) 26 December 2017;
- (b) 1 January 2018;
- (c) 2 January 2018;
- (d) 29 January 2018; and
- (e) 6 February 2018.

[104] Mr Singh was entitled to be paid time and a half for working on public holidays. He also was entitled to five days in lieu for working those days, which were ordinary working days for him. In 2017, Christmas Day fell on a Monday. As it would otherwise have been a working day for Mr Singh, he was entitled to be paid for it, even though it was not worked.³⁵

[105] During the course of his employment, \$1,122.48 was deducted from his wages. After Mr Singh left Prisha's Royal Cambridge on 5 August 2018, the company did not pay Mr Singh his holiday pay or any alternative days. It says that it was entitled to deduct that money as Mr Singh owed money to Prisha's Royal Cambridge on account of loans that had been made to him, and that a general deductions clause in his contract allowed deductions of outstanding debts or moneys owed to the employer.

³⁵ Holidays Act, s 49.

[106] The Labour Inspector acknowledges, and I accept, that \$1,000 was lawfully deducted. Mr Singh agreed to the deductions in exchange for receiving \$1,000 into his bank account on 15 March 2018 as holiday pay in advance.

[107] However, the additional deduction of \$122.48 and the subsequent deductions of Mr Singh's entire termination pay were not lawful. There is no evidence that Mr Singh was consulted about these additional deductions as required by cl 9 of the employment agreement and s 5(1A) of the Wages Protection Act 1983.

[108] In total, \$1,830.69 (gross) and \$122.48 (net) are due to Mr Singh as set out in Schedule C.

Premium payments were made

[109] Mr Singh says that Mr Sharma made him pay other chefs \$150 per week as a premium except when he was on holiday.

[110] The banking records indicate that Mr Singh was making payments of \$150 to various bank accounts. Many of those payments were made to Mr Ram with Mr Singh's banking records indicating they were for "rent". There are other payments where the descriptor on the bank statements is "borrow" or "borrow back". Several of those payments were made to Mr Sachdeva.

[111] The Labour Inspector does not claim that all those payments were premiums. The payments in question are those between 21 December 2017 and 26 May 2018.

[112] Mr Ram's evidence was that the payments Mr Singh made to him were wage top-ups paid to him by Mr Singh on behalf of Prisha's Royal Cambridge. There is other evidence that demonstrates that the employees borrowed and returned money to each other, but this arrangement with Mr Ram is of a different nature.

[113] I accept that Mr Sharma directed Mr Singh to make 13 payments of \$150 and one payment of \$172, which comes to a total of \$2,122.³⁶ Seven payments were made to Mr Ram and seven payments were made to another employee. Such a direction is in breach of s 12 of the Wages Protection Act, which provides that no employer shall impose any requirement on any worker as to any place or manner in which, or any person with whom, the worker shall expend wages. It is a contravention of the Act for which the employer, and every person involved in the contravention, is liable to a penalty.³⁷

[114] Mr Wicks KC, counsel for the defendants, initially submitted that s 12A of the Wages Protection Act was not breached by the payment. That provision states: “No employer or person engaged on behalf of the employer shall seek or receive any premium”. Although Mr Singh’s employer, Prisha’s Royal Cambridge, did not receive any payment directly, the payments were for its benefit. I do not accept that s 12A can be avoided by having an employee meet obligations of the employer, rather than paying the employer or someone engaged on their behalf directly. Mr Wicks conceded that s 12A must extend to indirect payments, such as when an employee is paying money to satisfy the debt of the employer.

[115] Therefore, I also consider that the payments were in breach of s 12A of the Wages Protection Act. The sum of \$2,122 (net) is to be recovered from Prisha’s Royal Cambridge for the benefit of Mr Singh under s 12A(2).

Ms Thakur

[116] Ms Thakur worked at the Royal Cambridge Indian Restaurant from the time it was taken over by Prisha’s Royal Cambridge in December 2017 until mid-February 2018.

[117] There was uncertainty over when her last day was. There is an email of 17 February 2018 in which Ms Thakur wrote “yesterday was my last working day as per our phone conversation”, but the timesheets recorded that she worked on the

³⁶ The Labour Inspector only claimed \$1,972 on behalf of Mr Singh; however, there was an additional payment of \$150 which falls within the same group of transactions.

³⁷ Wages Protection Act, s 13.

evenings of 17 and 18 February 2018. In evidence, Ms Thakur accepted that, based on the email, her final day was likely 16 February 2018, and I take that as her final day of employment.

[118] The only issue with respect to her is her final pay.

[119] The defendants submit that Prisha's Royal Cambridge was entitled to withhold Ms Thakur's outstanding holiday pay as she only gave one week of notice rather than four weeks of notice as required by her contract. Clause 9 of the employment agreement allowed the employer to deduct, following consultation, a sum equivalent to the unworked notice period if she failed to give the correct period of notice. The defendants submit that the sum equivalent to the unworked notice period was \$945 and that the sum lawfully retained was less than that.

[120] When Ms Thakur gave her notice, she was informed that if she did not work out her notice period, she would not receive her holiday pay. Ms Thakur acknowledged the warning and told Mr Sharma that he could keep her holiday pay but asked for 5.5 hours of outstanding pay for public holidays. Therefore, it appears that Ms Thakur was consulted about the deduction before it occurred as required by the cl 9 of the contract and s 5(1A) of the Wages Protection Act.

[121] However, s 5A of the Wages Protection Act prohibits an employer from making unreasonable deductions. If a general deductions clause in an employment agreement allows an employer to make deductions without proof of loss when an employee fails to work out their notice, then that clause will essentially function as a penalty provision. A deduction from an employee's minimum entitlements which functions as a penalty is unreasonable under s 5A and unlawful for the purposes of s 5(1) of the Wages Protection Act, which states that deductions must be made for a lawful purpose. Therefore, as Prisha's Royal Cambridge has not demonstrated its losses as a result of Ms Thakur providing short notice, its deductions from her final pay were unreasonable and unlawful.

[122] The Labour Inspector claims \$387.45 for Ms Thakur, and I accept that is payable.³⁸

Mr Ram

[123] Mr Ram was already working in the Royal Cambridge Indian Restaurant when it was bought by Prisha's Royal Cambridge. He commenced with Prisha's Royal Cambridge on 12 December 2017 and was an hourly worker paid \$17.50 per hour for 48 hours per week.

[124] His employment can conveniently be divided into three time periods:

- (a) 12 December 2017 – 1 February 2018
- (b) 12 March 2018 – 13 May 2018
- (c) 14 May 2018 – 18 July 2018

12 December 2017 – 1 February 2018

[125] The hours recorded in Mr Ram's timesheets during this period are generally consistent with his evidence. They are accepted as accurate and record his weekly hours:

- Monday: 11 am – 2.15 pm; 5 pm – 10 pm
- Tuesday: 11 am – 2.15 pm; 5 pm – 10 pm
- Wednesday: 11 am – 2.15 pm; 5 pm – 10 pm
- Thursday: 11 am – 2.30 pm; 5 pm – 10 pm
- Friday: 11 am – 2.30 pm; 5 pm – 10 pm
- Saturday: 11 am – 2.30 pm; 5 pm – 10 pm
- Sunday: 11 am – 2.30 pm; 5 pm – 10 pm

[126] I also accept that Mr Ram had a meal break for which I allow half an hour per day.

³⁸ As set out at [31], \$261.45 was owing under s 23 of the Holidays Act and \$126 was owing under s 56 of the Holidays Act.

[127] He did not work on Christmas Day, but that was on a Monday, which was a usual day of work for him, so he was entitled to be paid. He worked in the evening on Boxing Day, so he was entitled to payment at time and a half for the five evening hours. He also was entitled to a day off in lieu. Additionally, Mr Ram worked his ordinary hours on 1 and 2 January 2018 for which he was entitled to be paid at time and a half. He also was entitled to two days off in lieu as a result.

[128] Mr Ram left for India on 1 February 2018. His bank account records indicate he did not work on 30 and 31 January 2018, when it seems he was in Auckland. However, I find that he worked his normal hours on Monday, 29 January 2018, which was a public holiday. He was entitled to be paid at time and a half for that day and to a day in lieu.

12 March 2018 – 13 May 2018

[129] Based on bank account evidence, I accept that, after his return from India, Mr Ram started back at work on 16 March 2018. I also find that he worked on 17 and 18 March 2018.

[130] There are two sets of timesheets over the period that follows, with more than one for most weeks. Mr Ram's evidence also has inconsistencies – he says he worked the same hours as previously but also acknowledges he had a day off, although he says he was on-call on his day off.

[131] The days off recorded in the first set of timesheets comprise 21 March 2018, 28 March 2018, 2 April 2018, 9 April 2018, 16 April 2018 and 23 April 2018. Based on Mr Ram's bank account records, however, it seems he was at work on 2 April 2018, 9 April 2018, 16 April 2018 and 23 April 2018, as they show him visiting the neighbouring shops. That discrepancy and other evidence indicates that the first set of timesheets are not reliable; they seem to have been prepared to align with the payments made to Mr Ram.

[132] The second set of timesheets are broadly consistent with the timesheets in the first and last periods of Mr Ram's employment. However, although they do not show him as having a day off, I accept that he did.

[133] Accordingly, over this period I accept that Mr Ram worked 46.5 hours per week (six days from 11 am to approximately 2.15 pm and 5 pm – 10 pm, with a half hour meal break).

[134] I also find that Mr Ram worked on 30 March 2018, 2 April 2018, and 25 April 2018, which were public holidays. He was entitled to be paid at time and a half and to a day in lieu for each of these days.

14 May 2018 – 18 July 2018

[135] The timesheets for this period are broadly consistent with the roster and with other evidence, and I accept them. They show Mr Ram usually working 47.5 hours per week, which was what he was paid for.

[136] I find that, during this period, Mr Ram worked 4 June 2018, which was a public holiday for which he was entitled to payment of wages at time and a half. He also was entitled to a day in lieu for working that day.

[137] Mr Ram's final day of employment was 18 July 2018.

[138] Mr Sharma claimed in evidence that Mr Ram was paid an advance of \$700 cash on 29 January 2018 before going to India. A loan document was produced in which Mr Ram purportedly acknowledged collecting \$700 from Mr Prakash Bhandari and asked for his pay to be adjusted accordingly. In his evidence in reply, Mr Ram denies having signed the loan agreement, and the signature is different to those contained in the employment agreements. Mr Ram was not cross-examined on the document, no evidence was called from Mr Bhandari, and Mr Wicks did not rely on it in his submissions. On that basis I do not take it into account.

[139] Similarly, I am not willing to accept Mr Sharma's evidence that Mr Ram was advanced \$475 from Prisha's Royal Cambridge. I accept that a transaction of that amount took place, but there is no evidence to suggest that the sum was a loan to Mr Ram.

[140] Finally, Mr Ram received a sum of \$1,072 from Mr Singh in seven instalments. The Labour Inspector deducted that amount from the claim made for Mr Ram.

[141] In total, with that deduction, Mr Ram is due \$3,024.94 (gross), as set out in Schedule D.

Mr Prasad

11 May 2018 – 10 June 2018

[142] Mr Prasad arrived in New Zealand on the morning of 11 May 2018. He was employed as an hourly worker on \$18.50 per hour for a 40–45 hour week. At that time, the Royal Cambridge Indian Restaurant was short-staffed, and I accept Mr Prasad started work immediately, working the evening shift that day. I accept also that he worked both shifts on each of 12–15 May 2018.

[143] The roster prepared on 18 May 2018 suggests that Mr Prasad then worked the following hours:

Monday:	11 am – 2.30 pm; 5 pm – 10 pm
Tuesday:	11 am – 2.30 pm; 5 pm – 10 pm
Wednesday:	11 am – 2.30 pm
Thursday:	5 pm – 10 pm
Friday:	11 am – 2.30 pm; 5 pm – 10 pm
Saturday:	11 am – 2.30 pm; 5 pm – 10 pm
Sunday:	11 am – 2.30 pm; 5 pm – 10 pm

[144] I accept those were his work hours during the period 11 May to 10 June 2018 with two exceptions. First, Mr Prasad did not work on the morning of 11 May 2018 as noted, and second, he had 23 May 2018 off work. Additionally, I find that Mr Prasad had a meal break of half an hour for each double shift that he worked.

11 June 2018 – 5 August 2018

[145] There are several difficulties in getting a clear picture of Mr Prasad's hours of work over the period from 11 June to 5 August 2018. His evidence is not consistent with the timesheets. Mr Kalra, however, says the timesheets were not accurate but were falsified to show Mr Prasad working 38 hours a week.

[146] The banking transactions supplied also indicate Mr Prasad was at work on some of the days he is recorded as being away.³⁹

[147] On balance, I accept that during this period Mr Prasad worked six days a week from 11 am – 2.30 pm and from 5 pm – 10 pm (with a half hour meal break).

6 August 2018 – 4 November 2018

[148] On 17 October 2018, Mr Prasad went to Hobbiton with Mr Kalra. He says, and the timesheets record, that he worked that evening.

[149] Otherwise, I accept that, in the period from 6 August to 4 November 2018, Mr Prasad worked seven days a week with one morning shift off. He finished at Prisha's Royal Cambridge on 4 November 2018.

[150] Prisha's Royal Cambridge accepts that Mr Prasad worked on Queen's Birthday and Labour Day 2018 and that two alternative days' pay are due to him. He also was entitled to time and a half for time worked on those days.

[151] There were also deductions taken from Mr Prasad's pay, purportedly for food and beer. The Labour Inspector says that Mr Prasad did not consent to those deductions and was not consulted about them. The Labour Inspector also says that the provision of meals was part of Mr Prasad's remuneration, consistent with the arrangements of the other employees. I have already determined that the purported letter in which Mr Prasad consented to deductions for meals lacked credibility. In the absence of credible evidence that Mr Prasad consented to or was consulted about the

³⁹ There were small transactions made at a food store that neighboured the Prisha's Royal Cambridge Indian Restaurant, indicating he was at work on those days.

deductions, I find that they were unlawful.⁴⁰ The total amount deducted for food and beer was \$480 (net). That is due from Prisha's Royal Cambridge to the Labour Inspector for the benefit of Mr Prasad.

[152] In total, Mr Prasad is due \$7,299.45 (gross) and \$480 (net), as set out in Schedule E.

Mr Chawla

[153] Mr Chawla was employed on a salary of \$38,000. His hours of work were to be 40 per week, but with no additional pay for overtime. This meant his salary was compliant with the Minimum Wage Act for weeks where Mr Chawla worked 46.4 hours or less when the minimum wage was \$15.75 an hour and 44.3 hours or less when the minimum wage increased to \$16.50 an hour.

[154] There are various possible start dates for Mr Chawla – 1 December, 7 December, 12 December, 14 December and 18 December 2017. On balance, I find that Mr Chawla started work on 12 December 2017, which is consistent with his evidence that he started work before he received his work visa. The time records, however, first record him as working on 18 December, which is when he started to be paid.

12 December 2017 – 17 December 2017

[155] I accept that, in his first week, Mr Chawla worked six days from 6.30 pm until 10 pm. He says he worked those hours as Mr Sharma wanted to avoid anyone coming in asking questions about him working when he had no work visa, an explanation that is credible.

[156] This means Mr Chawla worked for 21 hours without pay. He was an employee during that time, essentially for the same reasons that Mr Kalra was an employee before his liquor licence was issued.

⁴⁰ Wages Protection Act, s 5.

18 December 2017 – 11 March 2018

[157] Mr Chawla said that he increased his hours to 40–45 hours after another staff member left Prisha's Roquette. The timesheets indicate him working a 40-hour week, initially in the week of 18 December 2017, but I consider they reflect his hours generally. However, the timesheets do not include times when Mr Chawla was cleaning the restaurant, which he did outside of normal business hours. I therefore accept that he worked for 43 hours per week in the period 18 December 2017 to 11 March 2018.

[158] In weeks in which public holidays fall, however, the hours must be adjusted down where Mr Chawla was paid for that day. I allocate an average of seven hours per public holiday for this period.

12 March 2018 – 27 May 2018

[159] Evidence of the hours for the period from 12 March 2018 until when Mr Chawla went to India at the end of May 2018 range from the 40 hours recorded on timesheets, to Mr Sharma's estimate of 44–48 hours, to Mr Chawla's varying estimates of 50–56 hours, 55–62 hours and up to 70.5 hours.

[160] There was evidence given by another employee, who was called by the defendants. While he was a credible witness, he was not always present when Mr Chawla says he was working, in particular between the early shift and the evening shift.

[161] Taking into account Mr Sharma's estimate, the cleaning work that I have found Mr Chawla did, and the other evidence available to me, I accept that Mr Chawla worked 50 hours per week during this period. Again, as with the previous period, in weeks in which public holidays fall, the hours must be adjusted down. I allocate an average of 8 hours per public holiday for this period.

[162] Mr Chawla left for India on 27 May 2018, and his last day of work prior to departure was 26 May 2018.

2 July 2018 – 29 July 2018

[163] Mr Chawla returned from India on 28 June 2018.

[164] I find he returned to work on 2 July 2018 with similar hours to those already identified, that is 50 hours per week. Mr Chawla returned to India on 27 July 2018 after his father died. The timesheets record him as sick on 27 and 28 July 2018, but Mr Chawla says he was not paid any bereavement leave for this period. Mr Chawla was entitled to three days of bereavement leave under the Holidays Act, so those days are to be recategorised as paid bereavement leave.⁴¹

15 August 2018 – 14 October 2018

[165] Mr Chawla returned to New Zealand from India on 15 August 2018 and returned to work the following day.

[166] From that time, Mr Chawla says that he began to keep a diary of his hours, which he updated each day.

[167] Although Mr Chawla was cross-examined extensively on this diary record and some discrepancies were identified, overall, his evidence was credible. In particular, I note that although Mr Chawla had access to some timesheets after he finished with Prisha's Roquette, he did not have access to all timesheets, and it is difficult to see how he then could have falsified his personal records. Mr Wicks, counsel for the defendants, also pointed to the layout of the diaries as showing some parts were written out of sequence. However, I consider Mr Chawla's explanation of looking for whole pages to record tables was credible.

[168] Accordingly, I accept the records in the diary for the period of 15 August to 14 October 2018.

⁴¹ Holidays Act, s 70(1)(a).

15 October 2018 – 25 November 2018

[169] Mr Chawla stopped keeping his diary in mid-October 2018, and he gave little evidence about his hours of work after that date. As a result, I accept the hours as recorded in the timesheets for this period. I find that he did not work in the afternoons or on Sundays during this period.

[170] Mr Chawla had 9 and 18–20 October 2018 on sick leave for which he was entitled to be paid four days leave.

[171] Mr Chawla gave notice of his resignation on 1 November 2018 and finished working three weeks later. I take his last day of employment to be 23 November 2018, which was the last day for which he was paid.

[172] The only public holiday that I accept Mr Chawla worked was Christmas Day 2017, for which he was entitled to wages at the rate of time and a half, and to a day in lieu. His payslip records that he worked 8.5 hours on that day, which I accept. Although Mr Chawla did not work the other public holidays which fell during his employment, he was still entitled to be paid for them as they were ordinary working days, with the exception of 4 June 2018, which fell when he was on leave without pay.

[173] In total, Mr Chawla is due \$4,810.23 (gross), as set out in Schedule F.

Premium payments were made

[174] There is evidence that Mr Chawla paid Mr Sharma \$100 per week in cash as a premium. That evidence is in Mr Chawla's diary, and in text messages between Mr Chawla and Mr Sharma where the \$100 is discussed. There are other conversations where payment of figures of \$200 or \$300 are discussed.

[175] There was some evidence given by Mr Sharma in relation to what he says was a loan of \$1,110, which he says was being repaid at \$100 per week from Mr Chawla. I do not accept that explanation. The evidence supports that the \$1,110 were takings that Mr Kalra provided to Mr Chawla to take to Mr Sharma.

[176] Mr Chawla was cross-examined on withdrawals which did not equate to the amounts that he says were paid as premiums. However, I found the explanation Mr Chawla gave was credible. He said that Mr Sharma had asked him to stop withdrawing money from the ATMs so that the money was less traceable. He therefore had to get money from petrol stations or the New World supermarket when he went shopping. There is a recorded conversation where Mr Sharma and Mr Chawla appear to discuss the premium payments and Mr Chawla says “the problem is withdrawing money. Now I am not withdrawing from ATM. Ok.”

[177] Mr Chawla’s diary also records a comment in September 2018 “it [is] more than 40 weeks in total that I am giving him \$100 cash out of my wage every week, so already he got more than \$4,000 from me”.

[178] On balance, I accept that Mr Chawla made premium payments totalling \$4,400 as claimed by the Labour Inspector. That sum is to be repaid to the Labour Inspector for the benefit of Mr Chawla.

Interest is payable

[179] Interest is also appropriately recoverable on the sums set out in this judgment. The calculation of interest should be from the last date of employment until the date of judgment for each of the employees. Interest is to be calculated in accordance with sch 2 of the Interest on Money Claims Act 2016.

Declarations of serious breach

[180] I declare that Prisha’s Royal Cambridge’s conduct as set out in this judgment breached the following minimum entitlement provisions:

- (a) Section 6 of the Minimum Wage Act – in relation to Mr Kalra, Mr Sachdeva, Mr Ram, and Mr Prasad.
- (b) Sections 16, 24 and 25 of the Holidays Act – in relation to Mr Kalra.
- (c) Section 23 of the Holidays Act – in relation to Mr Sachdeva, Mr Singh, Mr Ram, Ms Thakur and Mr Prasad.

- (d) Section 49 of the Holidays Act – in relation to Mr Ram.
- (e) Section 50 of the Holidays Act – in relation to Mr Kalra, Mr Sachdeva, Mr Singh, Mr Ram, and Mr Prasad.
- (f) Section 56 of the Holidays Act – in relation to Mr Kalra, Mr Singh, Mr Ram, Ms Thakur and Mr Prasad.
- (g) Section 4 of the Wages Protection Act – in relation to Mr Singh and Mr Prasad.
- (h) Sections 12 and 12A of the Wages Protection Act – in relation to Mr Singh.

[181] I declare that Prisha’s Roquette’s conduct as outlined in this judgment breached the following minimum entitlement provisions in relation to Mr Chawla.

- (a) Section 6 of the Minimum Wage Act.
- (b) Section 23 of the Holidays Act.
- (c) Section 49 of the Holidays Act.
- (d) Section 56 of the Holidays Act.
- (e) Section 63 of the Holidays Act.
- (f) Section 12A of the Wages Protection Act.

[182] The quantum of each breach is set out in the schedule for each employee. The quantum of the breaches relating to Ms Thakur are as set out in this judgment at [31].

[183] For the purposes of s 142B of the Act, I find that the breaches of the minimum entitlement provisions were serious, given:

- (a) In the case of Prisha’s Royal Cambridge, there were several employees affected, over a significant period;
- (b) both employers failed to comply with their record-keeping obligations under the Act and the Holidays Act;

- (c) the workers were vulnerable; they all were migrant workers. Mr Chawla and several the employees of Prisha's Royal Cambridge were dependent on the defendants for their visas;
- (d) there was a significant power imbalance between the employees and the defendants.

Mr and Mrs Sharma were involved in the breaches

[184] Both Mr and Mrs Sharma were involved in the initial engagement of each of the employees, and in determining their wages. They were both officers of the respective employers; Mr Sharma was a director of both companies; Mrs Sharma was a person in a position to exercise significant influence or control over the management or administration of the employers.⁴² They were both active and personally engaged in running the restaurants. Accordingly, they both had knowledge of the essential facts that established contraventions by the employers. They were both persons involved in those breaches. To the extent Prisha's Royal Cambridge and/or Prisha's Roquette is unable to pay the arrears in wages or other monies due to the employees, the Labour Inspector may recover those monies from Mr and Mrs Sharma.

Payment directed

[185] I note, however, that the Employment Court holds \$225,000 plus interest accrued on that sum.⁴³ I direct that the Registrar pay \$36,937.43, together with interest calculated in accordance with this judgment from that amount to the Labour Inspector for disbursement to the employees. The Labour Inspector is to calculate interest in consultation with the defendants and provide the Court with a memorandum advising the sum due. I note deductions will be required from the amounts payable to the employees for taxation. Adjustments may also have to be made for KiwiSaver. The sum remaining from the amount paid into Court is to continue to be held, pending further orders of the Court.

⁴² Employment Relations Act, s 142W(3)(e).

⁴³ *A Labour Inspector of the Ministry of Business, Innovation and Employment v Prisha's Hospitality (2017) Ltd t/a Royal Cambridge Indian Restaurant* [2021] NZEmpC 176.

Penalties and non-pecuniary loss still to be resolved

[186] As noted, this judgment does not deal with the Labour Inspector's claim for penalties. It also does not deal with the Labour Inspector's claim for compensation orders in respect of non-pecuniary loss. Further submissions are now required on those issues, in light of the Court's findings. A directions conference will be convened to arrange timetabling for those submissions.

[187] Costs are reserved.

J C Holden
Judge

Judgment signed at 4.30 pm on 16 June 2023

SCHEDULE A – KALRA

Week ending	Ord Hrs	Min Ord	Paid Ord	Unpaid Ord	Stat Hrs	Min Stat	Paid Stat	Unpaid Stat
17/12/17	20.5	\$322.88	\$0.00	\$322.88				
24/12/17	20.5	\$322.88	\$0.00	\$322.88				
31/12/17	20.5	\$322.88	\$0.00	\$322.88				
07/01/18	20.5	\$322.88	\$0.00	\$322.88				
14/01/18	20.5	\$322.88	\$0.00	\$322.88				
21/01/18	20.5	\$322.88	\$0.00	\$322.88				
28/01/18	20.5	\$322.88	\$0.00	\$322.88				
04/02/18	20.5	\$322.88	\$0.00	\$322.88				
11/02/18	20.5	\$322.88	\$0.00	\$322.88				
18/02/18	20.5	\$322.88	\$0.00	\$322.88				
25/02/18	20.5	\$322.88	\$0.00	\$322.88				
04/03/18	20.5	\$322.88	\$0.00	\$322.88				
11/03/18	36.5	\$574.88	\$0.00	\$574.88				
18/03/18	50	\$787.50	\$0.00	\$787.50				
25/03/18	59	\$929.25	\$0.00	\$929.25				
01/04/18	48	\$762.00	\$0.00	\$762.00	8	\$189.00	\$0.00	\$189.00
08/04/18	48	\$792.00	\$0.00	\$792.00	8	\$198.00	\$0.00	\$198.00
15/04/18	38	\$627.00	\$884.62	-				
22/04/18	42	\$693.00	\$884.62	-				
29/04/18	43	\$709.50	\$774.02	-	5	\$115.74	\$165.86	-
06/05/18	59.5	\$981.75	\$884.62	\$97.13				
13/05/18	54	\$891.00	\$884.62	\$6.38				
20/05/18	45.5	\$750.75	\$884.62	-				
27/05/18	45	\$742.50	\$884.62	-				
03/06/18	45	\$742.50	\$884.62	-				
10/06/18	37	\$610.50	\$707.67	-	8	\$191.79	\$265.38	-
17/06/18	45	\$742.50	\$884.62	-				
24/06/18	47	\$775.50	\$884.62	-				
01/07/18	40	\$660.00	\$884.62	-				
08/07/18	41	\$676.50	\$884.62	-				
15/07/18	41	\$676.50	\$884.62	-				
22/07/18	42.5	\$701.25	\$884.62	-				
29/07/18	41	\$676.50	\$884.62	-				
05/08/18	45.5	\$750.75	\$884.62	-				
12/08/18	40	\$660.00	\$884.62	-				
19/08/18	40	\$660.00	\$884.62	-				
26/08/18	40	\$660.00	\$884.62	-				
02/09/18	46	\$759.00	\$973.08	-				
09/09/18	45	\$742.50	\$973.08	-				
16/09/18	42	\$693.00	\$973.08	-				
23/09/18	47.5	\$783.75	\$973.08	-				
30/09/18	41	\$676.50	\$973.08	-				
07/10/18	40	\$660.00	\$973.08	-				

Week ending	Ord Hrs	Min Ord	Paid Ord	Unpaid Ord	Stat Hrs	Min Stat	Paid Stat	Unpaid Stat
14/10/18	43.5	\$717.75	\$973.08	-				
21/10/18	42.5	\$701.25	\$973.08	-				
28/10/18	34	\$561.00	\$796.21	-	6.5	\$168.98	\$265.29	-
04/11/18	40.5	\$668.25	\$973.08	-				
11/11/18	43.5	\$717.75	\$973.08	-				
18/11/18	50.5	\$833.25	\$973.08	-				
25/11/18	43	\$709.50	\$973.08	-				
02/12/18	41.5	\$684.75	\$973.08	-				
09/12/18	35	\$577.50	\$973.08	-				
Total	1995	\$32,593.93	\$31,824.18	\$7,823.69	35.5	\$863.51	\$696.53	\$387.00

Summary

Minimum wage	\$7,823.69
Time and a half (s 50)	\$387.00
Alternative holidays	\$759.34
Annual holidays	\$3,892.32
Annual holidays (8%)	\$372.13
Termination PH (s 40)	\$0.00
Total	\$13,234.48
Total less final pay	-\$3,266.89
Outstanding (gross)	\$9,967.59
Premium (net)	\$0.00

SCHEDULE B – SACHDEVA

Week ending	Ord Hrs	Paid Ord Hr	Unpaid Ord Hr	Unpaid Ord	Stat Hrs	Paid Stat Hr	Unpaid Stat Hr	Unpaid Stat
13/05/18	36	21	15	\$247.50				
20/05/18	36	34	2	\$33.00				
27/05/18	38	34	4	\$66.00				
03/06/18	38	35.5	2.5	\$41.25				
10/06/18	38	34	4	\$66.00				
17/06/18	38	34	4	\$66.00				
24/06/18	40.5	38.5	2	\$33.00				
01/07/18	38	34	4	\$66.00				
08/07/18	38	34	4	\$66.00				
15/07/18	38	34	4	\$66.00				
22/07/18	38	34	4	\$66.00				
29/07/18	38	34	4	\$66.00				
05/08/18	38	34	4	\$66.00				
12/08/18	38	34	4	\$66.00				
19/08/18	38	34	4	\$66.00				
26/08/18	38	34	4	\$66.00				
02/09/18	38	34	4	\$66.00				
09/09/18	38	34	4	\$66.00				
16/09/18	38	34	4	\$66.00				
23/09/18	38	34	4	\$66.00				
30/09/18	38	34	4	\$66.00				
07/10/18	38	34	4	\$66.00				
14/10/18	38	34	4	\$66.00				
21/10/18	38	34	4	\$66.00				
28/10/18	34.5	34	0.5	\$8.25	3.5	0	3.5	\$99.75
04/11/18	38	34	4	\$66.00				
11/11/18	38	29	9	\$148.50				
18/11/18	38	34	4	\$66.00				
25/11/18	38	34	4	\$66.00				
02/12/18	38	34	4	\$66.00				
09/12/18	47	45.5	1.5	\$24.75				
16/12/18	56.7	56.7	0	-				
Total	1238.7	1110.2	128.5	\$2,120.25	3.5	0	3.5	\$99.75

Summary

Minimum wage	\$2,120.25
Time and a half (s 50)	\$99.75
Alternative holidays	\$0.00
Annual holidays (8%)	\$1,869.66
Total	\$4,089.66
Total less final pay	-\$1,597.06
Outstanding (gross)	\$2,492.60
Premium (net)	\$0.00

SCHEDULE C – SINGH

Week Ending	Stat Hrs	Min Stat	Paid Stat	Unpaid Stat
17/12/17				
24/12/17				
31/12/17	5	\$127.50	\$160.65	-
07/01/18	16	\$409.97	\$356.97	\$51.00
14/01/18				
21/01/18				
28/01/18				
04/02/18	8	\$203.99	\$203.83	-
11/02/18	8	\$203.99	\$135.99	\$68.00
18/02/18				
25/02/18				
04/03/18				
11/03/18				
18/03/18				
25/03/18				
01/04/18				
08/04/18				
15/04/18				
22/04/18				
29/04/18				
06/05/18				
13/05/18				
20/05/18				
27/05/18				
03/06/18				
10/06/18				
17/06/18				
24/06/18				
01/07/18				
08/07/18				
15/07/18				
22/07/18				
29/07/18				
05/08/18				
Total	37	\$945.45	\$857.44	\$119.00

Summary

Time and a half (s 50)	\$119.00
Alternative holidays	\$744.36
Annual holidays (8%)	\$2,243.73
Total	\$3,107.09
Total less paid leave	-\$1,276.40
Outstanding (gross)	\$1,830.69
Illegal deduction (net)	\$122.48
Premium (net)	\$2,122.00

SCHEDULE D – RAM

Week ending	Ord Hrs	Paid Ord Hr	Unpaid Ord Hr	Unpaid Ord	Stat Hrs	Paid Stat Hr	Unpaid Stat Hr	Unpaid Stat
17/12/17	47.5	47.5	-	-				
24/12/17	55.25	47.5	7.75	\$122.06				
31/12/17	39.75	36.21	3.54	\$55.76	5	4.5	0.5	\$13.13
07/01/18	39.75	37.5	2.25	\$35.43	15.5	10	5.5	\$144.38
14/01/18	55.25	47.5	7.75	\$122.06				
21/01/18	55.25	47.5	7.75	\$122.06				
28/01/18	55.25	0	55.25	\$870.19				
04/02/18	-	-	-	-	7.75	0	7.75	\$203.44
11/02/18								
18/02/18								
25/02/18								
04/03/18								
11/03/18								
18/03/18	23.25	0	23.25	\$366.19				
25/03/18	46.5	35	11.5	\$181.13				
01/04/18	38.75	28.5	10.25	\$161.44	7.75	6.5	1.25	\$32.81
08/04/18	38.75	35	3.75	\$61.88	7.75	0	7.75	\$203.44
15/04/18	46.5	35	11.5	\$189.75				
22/04/18	46.5	35	11.5	\$189.75				
29/04/18	38.75	30	8.75	\$144.38	7.75	5	2.25	\$59.06
06/05/18	46.5	47.5	-	-				
13/05/18	46.5	47.5	-	-				
20/05/18	53	47.5	5.5	\$90.75				
27/05/18	47.5	47.5	-	-				
03/06/18	47.5	47.5	-	-				
10/06/18	39.5	39.5	-	-	8	8	-	-
17/06/18	47.5	47.5	-	-				
24/06/18	47.5	47.5	-	-				
01/07/18	47.5	47.5	-	-				
08/07/18	47.5	47.5	-	-				
15/07/18	47.5	47.5	-	-				
22/07/18	17	17	-	-				
Total	1162	993.71	170.29	\$2,712.83	59.5	34	25	\$656.26

Summary

Minimum wage	\$2,712.83
Public holidays (s 49)	\$16.87
Time and a half (s 50)	\$656.26
Alternative holidays	\$1,120.00
Annual holidays (8%)	\$1,832.58
Total	\$6,338.54
Total less wage top-up	-\$1,072.00
Total less final pay	-\$2,241.60
Outstanding (gross)	\$3,024.94

SCHEDULE E – PRASAD

Week ending	Ord Hrs	Paid Ord Hr	Unpaid Ord Hr	Unpaid Ord	Stat Hrs	Paid Stat Hr	Unpaid Stat Hr	Unpaid Stat
13/05/18	21	0	21	\$346.50				
20/05/18	48.5	35	13.5	\$222.75				
27/05/18	45.5	35	10.5	\$173.25				
03/06/18	48.5	35	13.5	\$222.75				
10/06/18	40.5	28	12.5	\$206.25	8	7	1	\$27.75
17/06/18	48	35	13	\$214.50				
24/06/18	48	35	13	\$214.50				
01/07/18	48	38	10	\$165.00				
08/07/18	48	38	10	\$165.00				
15/07/18	48	38	10	\$165.00				
22/07/18	48	38	10	\$165.00				
29/07/18	48	38	10	\$165.00				
05/08/18	48	38	10	\$165.00				
12/08/18	53	38	15	\$247.50				
19/08/18	53	38	15	\$247.50				
26/08/18	53	38	15	\$247.50				
02/09/18	53	38	15	\$247.50				
09/09/18	53	38	15	\$247.50				
16/09/18	53	38	15	\$247.50				
23/09/18	53	38	15	\$247.50				
30/09/18	53	38	15	\$247.50				
07/10/18	53	38	15	\$247.50				
14/10/18	53	38	15	\$247.50				
21/10/18	53	38	15	\$247.50				
28/10/18	45	30	15	\$247.50	8	8	-	-
04/11/18	53	0	53	\$874.50				
Total	1269	879	390	\$6,435.00	16	15	1	\$27.75

Summary

Minimum wage	\$6,435.00
Time and a half (s 50)	\$27.75
Alternative holidays	\$296.00
Annual holidays (8%)	\$1,874.92
Total	\$8,633.67
Total less final pay	-\$1,334.22
Outstanding (gross)	\$7,299.45
Illegal deduction (net)	\$480.00

SCHEDULE F – CHAWLA

Week ending	Ord Hrs	Min Ord	Paid Ord	Unpaid Ord	Stat Hrs	Min Stat	Paid Stat	Unpaid Stat
17/12/17	21	\$330.75	\$0.00	\$330.75				
24/12/17	43	\$677.25	\$730.77	\$0.00				
31/12/17	36	\$567.00	\$575.54	\$0.00	8.5	\$216.68	\$232.96	\$0.00
07/01/18	43	\$677.25	\$730.77	\$0.00				
14/01/18	43	\$677.25	\$730.77	\$0.00				
21/01/18	43	\$677.25	\$730.77	\$0.00				
28/01/18	43	\$677.25	\$730.77	\$0.00				
04/02/18	36	\$567.00	\$637.11	\$0.00				
11/02/18	36	\$567.00	\$575.54	\$0.00				
18/02/18	43	\$677.25	\$730.77	\$0.00				
25/02/18	43	\$677.25	\$730.77	\$0.00				
04/03/18	43	\$677.25	\$730.77	\$0.00				
11/03/18	43	\$677.25	\$730.77	\$0.00				
18/03/18	50	\$787.50	\$730.77	\$56.73				
25/03/18	50	\$787.50	\$730.77	\$56.73				
01/04/18	42	\$663.00	\$597.98	\$65.02				
08/04/18	42	\$693.00	\$634.89	\$58.11				
15/04/18	50	\$825.00	\$730.77	\$94.23				
22/04/18	50	\$825.00	\$730.77	\$94.23				
29/04/18	42	\$693.00	\$597.98	\$95.02				
06/05/18	50	\$825.00	\$730.77	\$94.23				
13/05/18	50	\$825.00	\$730.77	\$94.23				
20/05/18	50	\$825.00	\$730.77	\$94.23				
27/05/18	50	\$825.00	\$730.77	\$94.23				
03/06/18								
10/06/18								
17/06/18								
24/06/18								
01/07/18								
08/07/18	50	\$825.00	\$730.77	\$94.23				
15/07/18	50	\$825.00	\$730.77	\$94.23				
22/07/18	50	\$825.00	\$730.77	\$94.23				
29/07/18	32	\$528.00	\$531.54	\$0.00				
05/08/18								
12/08/18								
19/08/18	32.5	\$536.25	\$0.00	\$536.25				
26/08/18	59.08	\$974.82	\$730.77	\$244.05				
02/09/18	54.92	\$906.18	\$730.77	\$175.41				
09/09/18	56	\$924.00	\$730.77	\$193.23				
16/09/18	54.42	\$897.93	\$730.77	\$167.16				
23/09/18	56.83	\$937.70	\$730.77	\$206.93				
30/09/18	56.16	\$926.64	\$730.77	\$195.87				
07/10/18	55.91	\$922.52	\$730.77	\$191.75				
14/10/18	49.42	\$815.43	\$730.77	\$84.66				

Week ending	Ord Hrs	Min Ord	Paid Ord	Unpaid Ord	Stat Hrs	Min Stat	Paid Stat	Unpaid Stat
21/10/18	26.25	\$433.13	\$398.67	\$34.46				
28/10/18	29.25	\$482.63	\$633.82	\$0.00				
04/11/18	36	\$594.00	\$730.77	\$0.00				
11/11/18	35	\$577.50	\$730.77	\$0.00				
18/11/18	34	\$561.00	\$730.77	\$0.00				
25/11/18	17.75	\$292.88	\$730.77	\$0.00				
Total	1877.49	\$30,486.61	\$28,567.71	\$3,540.20	8.5	\$216.68	\$232.96	\$0.00

Summary

Minimum wage	\$3,540.20
Public holidays (s 49)	\$444.29
Time and a half (s 50)	\$0.00
Alternative holidays	\$121.70
Annual holidays (8%)	\$2,860.76
Sick leave	\$151.03
Bereavement Leave	\$196.70
Total	\$7,314.68
Total less paid leave	-\$1,265.71
Total less final pay	-\$1,238.74
Outstanding (gross)	\$4,810.23
Premium (net)	\$4,400.00