

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 582
5432091

BETWEEN XIAO LING DENG
Applicant

A N D RAY WORLD INVESTMENTS
TRUST LIMITED trading as
CAFEINZ
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 No appearance for Respondent

Investigation meeting: 16 December 2013 at Auckland

Date of Determination: 18 December 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Deng) alleges that she is owed wages and holiday pay from her employment with the respondent (Cafeinz). Ms Deng also maintains that Cafeinz has failed to account to the Inland Revenue Department (the Department) for income tax on the moneys that she has been paid on account of wages and she seeks a direction from the Authority that any further payments made by order of the Authority should include a stipulation that Cafeinz is required to account to the Department for income tax on those sums as well.

[2] Despite the usual diligent efforts of the Authority's support staff to engage with Cafeinz, there has been absolutely no response from the employer. The Authority is satisfied that Cafeinz knew about the employment relationship problem raised by Ms Deng, knew about the Authority's process, but simply failed to take any active part.

[3] Indeed, Cafeinz behaviour in that regard is absolutely consistent with their response directly to Ms Deng where, in correspondence Mr Chong Gao, the sole director of the respondent, indicated in a communication to Ms Deng *you are welcomed (sic) to take any legal action you want, I believe I don't have to pay you whatever you asked.*

[4] There is nothing before the Authority from Cafeinz except the correspondence exhibited with Ms Deng's application. That material all suggests a truculent and repudiatory tone but even in the context of that kind of correspondence, the Authority is satisfied that Cafeinz acknowledged their obligation to provide what Mr Gao describes as *your basic pay.*

[5] The Authority has only the evidence of Ms Deng on what hours she worked and what amounts were paid to her on account. Cafeinz has only itself to blame if those calculations provided to the Authority by Ms Deng are not accepted by the respondent employer.

[6] Applying the best evidence rule, the Authority is satisfied, having heard Ms Deng's evidence on oath, that she is owed the sums she identifies in the material that has been provided to the Authority and the Authority's determination proceeds on that footing.

Determination

[7] Ray World Investments Trust Limited is to pay to Xiao Ling Deng the sum of \$3,737.50 net together with holiday pay on the total earnings. The Authority calculates the holiday pay due and owing at \$979.87. In addition, Ray World Investments Trust Limited is to pay to Ms Deng the Authority's filing fee of \$71.56.

[8] Because Ms Deng is concerned that Cafeinz has not accounted to the Department for the payment of income tax, the respondent employer is also directed to account to the Inland Revenue Department for the income tax due and owing on Ms Deng's employment. To facilitate that, a copy of this determination is to be made available to the Inland Revenue Department at Auckland.

[9] The payments ordered to be made by Cafeinz to Ms Deng by the Authority are to be payable to Ms Deng within 28 days of the date of this determination.

[10] A certificate of determination is to issue with this determination.

James Crichton
Member of the Employment Relations Authority