

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 44  
5531714

BETWEEN	ZHOU WEN FANG Applicant
AND	INTERNATIONAL AUCKLAND GROUP PTY LIMITED First Respondent
AND	AUCKLAND HARBOUR LIMITED Second Respondent

Member of Authority:	Robin Arthur
Representatives:	Applicant in person No appearance for the Respondents
Investigation Meeting:	11 February 2015
Determination:	11 February 2015

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**DETERMINATION OF THE AUTHORITY**

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- A. Within 28 days of the date of this determination International Auckland Group Pty Limited must pay Zhou Wen Fang the following sums:**
- (i) \$5991.04 for holiday pay owed to her for the period from April 2010 to June 2013; and**
  - (ii) \$134.48 as interest due on that holiday pay up to the date of this determination; and**
  - (iii) From 11 March 2015, if the amount due has not been paid by then, an additional 82 cents a day as further interest until the holiday pay is paid; and**
  - (iv) \$71.56 in reimbursement of the fee she paid to lodge her claim in the Authority.**

## **Employment relationship problem**

[1] Zhou Wen Fang applied to the Authority for an order seeking payment of holiday pay she said was owed to her for work done in a downtown Auckland souvenir business between April 2010 and August 2014. Her application stated she was also not paid any extra amount for work on public holidays, had no written employment agreement, and her employer had had “*unreasonable (sic) fired me without any reason*” and “*I need them to pay me reparation*”.

[2] IRD information Ms Zhou provided with her application showed she was paid by two different companies during the years 2010 to 2014 - International Auckland Group Pty Limited (IAGPL) for the period from April 2010 to June 2013 and Auckland Harbour Limited (AHL) from June 2013 to March 2014.

[3] The Authority served copies of Ms Zhou’s application to the registered offices and addresses for service of both companies – as listed in the Companies Office register – but neither IAGPL nor AHL lodged a statement in reply in the required statutory period. The Authority then sent two Minutes (dated 23 December 2014 and 28 January 2015) to addresses for those companies and their directors as well as to an address for the director of another company, ANZ International Investment Group Limited. Companies Office records showed that latter company was the sole shareholder of IAGPL. The Authority Minute of 23 December 2014 was also sent to a consultant who had earlier corresponded with a Labour Inspector about Ms Zhou’s holiday pay claim in respect of AHL.

[4] Both Minutes encouraged further response from both companies, with no result. The consultant referred to – who appeared to be based in Australia – did respond by email to an Authority officer and advised she understood the claim in respect of AHL had been resolved earlier, with a payment made to Ms Zhou, but that she was not engaged by either AHL or IAGPL to assist any further.

## **The Authority’s investigation**

[5] The 28 January 2015 Minute was accompanied by a Notice of Investigation Meeting. Authority records confirm the Notice was delivered to the registered offices

of IAGPL and AHL – which are the offices of a chartered accountant in downtown Auckland.

[6] No representatives of either company attended the investigation meeting at the notified time and I have proceeded to determine Ms Zhou's application as permitted under the Employment Relations Act 2000 (the Act).<sup>1</sup> The Minute sent with the Notice of Investigation Meeting advised that course of action could be taken in the event of a party failing to attend or be represented.

[7] Ms Zhou and her husband Leon Liu attended the Authority investigation meeting at the notified time. With the assistance of an interpreter arranged by the Authority Ms Zhou gave sworn oral evidence in Mandarin in response to questions from me. Mr Liu, also under oath, provided some brief additional information in English and Mandarin.

### **The issues for determination**

[8] Ms Zhou confirmed AHL had paid her around \$2900 gross in November 2014 for holiday pay it owed her. The remaining issues for determination were:

- (i) Did IAGPL owe Ms Zhou holiday pay and, if so, what amount?
- (ii) Should interest be awarded on any amount of holiday pay found to be owed to Ms Zhou?
- (iii) Was any further order required in respect of pay for public holidays?
- (iv) Was the Authority able to determine whether Ms Zhou was unjustifiably dismissed?
- (v) Should Ms Zhou be reimbursed the cost of the fee charged to lodge her claim in the Authority?

#### **(i) Holiday pay from IAGPL**

[9] Ms Zhou could not explain why the corporate identity of her employer, as recorded in the Inland Revenue Department records for her earnings information, changed in June 2013. She said she was not aware of any change as she worked in the same store locations (at two addresses in downtown Auckland) for the same employer for four and a half years. Her job involved sales transactions and counting stock. She

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<sup>1</sup> Clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

worked every week although the number of days required ranged up to seven a week during the peak tourist season and down to five in the off peak season.

[10] She had no written employment agreement and had received her regular pay initially by cheque and later by direct credit to her bank account. The IRD records were the only documents available to the Authority about what she was paid.

[11] Ms Zhou said she had no paid annual leave during the period from April 2010 to June 2013 that the IRD records show she was employed by IAGPL. She had stopped work for some of that time (from March to May 2013) to have a baby and got statutory paid parental leave (paid by the government, not her employer) for it.

[12] I was satisfied from her evidence that she was entitled to the holiday pay she claimed from IAGPL (which excluded the period for which she received paid parental leave). Based on her earnings from her work for IAGPL (as shown in the IRD record) of \$74,888 for the period from April 2010 to June 2013, Ms Zhou was entitled to holiday pay of \$5991.04. This amount due to her was additional to the holiday pay she was later paid by AHL.

**(ii) Interest due on holiday pay**

[13] The latest date on which Ms Zhou should have been paid all holiday pay due to her was August 2014, being the time at which her employer ended her employment at the store on the basis that she was no longer needed (a supposed redundancy).

[14] I have taken that as the latest date even though, according to IRD records, her employment by that time had apparently transferred to AHL. However as there might have been some arrangement for the transfer of holiday pay liability between the companies, I have given the benefit of that doubt to IAGPL in respect of the period to which an order for interest might apply.

[15] Ms Zhou was entitled to the full use of the amount due to her as holiday pay by no later than her last day of work, which she said was in late August 2014.

[16] Accordingly I have ordered IAGPL must pay Ms Zhou interest at the annual rate of five per cent from 1 September 2014 to the date of this determination – that is

164 days.<sup>2</sup> The five per cent rate on the amount of \$5991.04 due equates to 82 cents per day so the amount due in interest for that period is \$134.48.

[17] In the event that IAGPL has not paid the amounts of holiday pay and interest due within 28 days of the date of this determination – that is by no later than 11 March 2015 – IAGPL must also then pay further interest of an additional 82 cent a day from that date until the amount due is paid.

**(iii) Pay for public holidays**

[18] Ms Zhou said she had worked on public holidays but received only her ordinary hourly pay.

[19] She had no record of the days said to have been worked and was not able to provide any information about them. As a result I lacked the evidence necessary to make an order for any additional payments due for work on public holidays.

**(iv) The end of Ms Zhou's employment**

[20] Ms Zhou said she had asked in July 2014 for her days of work to be reduced from full-time to three so she could start a course of study in English. She said she was then told that she was no longer needed because there was not so much business going on anyway. She worked part-time for three days a week during July and August but her employment ended in late August 2014.

[21] She said she made no written or oral complaint to her employer about that decision at the time because she did not know there was such an option.

[22] On her evidence Ms Zhou did not raise a personal grievance about the end of her employment at the time or within 90 days of it occurring. Her application to the Authority was lodged outside that period so could not have amounted to having raised a grievance for unjustified dismissal.

[23] There may have been grounds for Ms Zhou to apply under s114 of the Act for leave to raise a grievance outside the statutory period. According to her evidence her employer had not given her a written employment agreement so she never received

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<sup>2</sup> Clause 11 of Schedule 2 of the Employment Relations Act 2000 and clause 4 of the Judicature (Prescribed Rate of Interest) Order 2011 (SR 2011/177).

the necessary explanation of the need to raise a grievance within 90 days. On that basis she appeared to come within the exception provided under s115(c) of the Act to pursue a grievance out of time. However Ms Zhou had not made the necessary application to the Authority for such leave and I considered in the circumstances that I could not take that matter any further. Even if such leave had been sought and granted, the Authority would have then had to refer the parties to mediation and, if not resolved there, provide the employer with a further opportunity to provide information about whether there was a genuine business case for ending Ms Zhou's employment at the time.

**(v) Reimburse Authority fee**

[24] Ms Zhou was successful in her claim seeking an order for her holiday pay. IAGPL must reimburse her the cost of the fee charged by the Authority for her to lodge her claim.

**Enforcement**

[25] If IAGPL fails to pay the amounts ordered by the Authority Ms Zhou may seek further orders for compliance in the Authority or, under s141 of the Act, file the orders made in this determination in the District Court where the order is then enforceable in the same manner as an order made by the District Court.

Robin Arthur  
Member of the Employment Relations Authority