

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 299
3145982

BETWEEN	WEI WANG Applicant
AND	ALLSTAR ROOFING LIMITED First Respondent
AND	MINGYANG MA Second Respondent
AND	MENGYAO YU Third Respondent

Member of Authority:	Pam Nuttall
Representatives:	David Kim, advocate for the Applicant Cherie Holland, counsel for the Respondents
Investigation Meeting:	5-6 April 2022 at Auckland
Submissions received:	12 April 2022 from Applicant 1 April 2022 from Respondents
Determination:	07 July 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Wei Wang was employed to work as a Sheetmetal Trades Worker for Allstar Roofing Limited (Allstar) from 3 January 2020 until 30 November 2020. His employment was arranged in China through a recruitment agent.

[2] Mr Wang claims that he was not paid for all the hours he worked for Allstar and that he is also owed payment for some public holidays, annual leave and unpaid rest

breaks. He also claims that he was constructively dismissed and unjustifiably disadvantaged in his employment.

[3] Penalties are sought against all three respondents for various breaches of the Employment Relations Act 2000 (the Act) and the Holidays Act 2003 (HA).

[4] Allstar claims that the personal grievances for constructive dismissal and unjustified disadvantage were raised outside of the statutory 90 day period and denies that Mr Wang was constructively dismissed or unjustifiably disadvantaged. Allstar claims that the second and third respondents should not be parties in this matter.

[5] Allstar also denies that Mr Wang is owed wage arrears and denies that he is entitled to any outstanding payments for public holidays, annual leave or rest breaks.

The Authority's investigation

[6] For the Authority's investigation written witness statements were lodged from Mr Wang and a work colleague, Baoyou Liu and from Mingyang Ma and Mengyao Yu, directors of Allstar. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave oral closing submissions and provided more detailed submissions in writing.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[8] The issues requiring investigation and determination were:

- (a) Was a personal grievance for constructive dismissal raised within the required statutory 90 days period?
- (b) Was a personal grievance for unjustified disadvantage raised within the required statutory 90 days period?
- (c) If not, should the Authority grant leave to raise either grievance out of time?

- (d) If either grievance was raised within the required statutory 90 days period or raised with leave out of time, was Wei Wang constructively dismissed or unjustifiably disadvantaged?
- (e) Are there unpaid entitlements owed to Mr Wang for:
- (i) wage arrears;
 - (ii) public holidays
 - (iii) annual leave
 - (iv) paid rest breaks;
- (f) Are there breaches of the Act and the Holidays Act 2003 and if so, should penalties be imposed?

Background

[9] Mr Wang was recruited to work for Allstar in China by a recruitment agent to whom he paid a service fee for the job of RMB 85,000 (about NZ\$18,500). An employment agreement was signed on 22 December 2020 in China and both Mr Wang and Allstar say that agreement was signed in reliance on the agent's explanation of the English wording of the agreement.

[10] The employment agreement included the following terms:

- **Hours of work:** The employee will work for at least 36 hours each week on Monday to Saturday, between the hours of 7:00am to 6:30pm.
- **Payment of wages:** The employee will be paid \$46,800 (gross) per annum.
- **Overtime:** If the employer has asked, and the employee agrees to work more than their usual hours of work in a day, the employee will get hourly rate.
- **Breaks:** The employee is entitled to paid rest breaks and unpaid meal breaks. Breaks will be a suitable length to give the employee time out, eg for food, drink, rest or personal errands. Breaks will be taken at suitable times during the employee's work. The employer will offer reasonable compensation if breaks cannot be reasonably given.

[11] For the first three months that he worked for Allstar, Mr Wang says that he worked more than 60 hours per week but was only paid \$900.00 gross per week. Allstar says that Mr Wang's employment agreement recorded an annual salary, not an hourly rate, so that \$900.00 gross per week was his salary amount, regardless of the hours he

worked. From May 2020, Allstar says that Mr Wang's employment agreement was varied and that he was paid an hourly rate from this date in order to allow him to be paid for the additional hours he did work. The evidence of the third respondent, Mengyao Yu is that: "I had told the applicant that after three months he would be paid based on the actual hours he works...".

[12] However, after working for Allstar for three months, Mr Wang's employment was affected by the first covid lockdown. For several pay cycles Mr Wang's pay is recorded as a mix of the government covid payment and some top up for hours worked.

[13] In the interim, Mr Wang was under considerable pressure from the Chinese recruitment agent to pay outstanding instalments on the service fee which he had financed with a bank loan. He complained to the agent about wage arrears he believed he was owed as well as other concerns about meal breaks and public holiday payments. Mr Wang says that he continually asked Allstar to pay what he considered to be arrears of wages owed to him.

[14] On 30 October 2020 there was an interaction between the second respondent, Mingyang Ma and Mr Wang on the building site where Mr Wang was working. The evidence of Mr Wang and his work colleague Baoyou Liu is that Mr Wang requested payment of wage arrears and other benefits owed and also asked for compensation. They say that this was refused, and that Mr Ma said he would not pay a cent and to sue him by any means Mr Wang liked. Mr Wang says he resigned the same day so as not to be further exploited.

[15] In the investigation meeting, Mr Ma gave evidence that Mr Wang's account was not correct and that he went to the building site because he had received a resignation letter from Mr Wang. However the respondents' submission, lodged before the investigation meeting, indicates that the sequence of events was:

- an approach from Mr Wang for payment of wages and benefits owed and compensation for humiliation,
- Mr Ma was ambushed and not sure what was being talked about and
- a subsequent resignation.

Mr Wang's evidence was that he was asking for compensation for humiliation because he had by this time engaged with an immigration advisor and taken legal advice.

[16] The resignation letter, dated 30 October 2020, provides no reason for leaving the position and concludes with wishes for best of luck and future success for the company. The employment agreement contained a four week notice period under which Mr Wang worked until 30 November 2020.

Was a personal grievance for constructive dismissal raised within the required 90 day period?

[17] It is settled law that the time of dismissal is the time at which the employment relationship terminates, not the time at which notice is given.¹ The statutory 90 day time period for Mr Wang to raise a personal grievance for constructive dismissal then runs from the final day of work on 30 November 2020. A letter dated 24 May 2021 from David Kim, the applicant's representative to Mingyang Ma and Mengyao Yu sets out at [10]:

Personal grievance is hereby officially raised against your company and both of you. Based on what you have done to Wei Wang, the unfair treatment, unjustified disadvantage and underpayment throughout the employment amounted to a constructive dismissal.

This letter is clearly outside the 90 day time period, but the applicant's submission argues that this letter merely reiterates a personal grievance raised orally on 30 October 2020.

[18] Was a personal grievance for constructive dismissal raised with the Allstar on 30 October 2020? Section 114 (2) of the Act specifies that:

a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

If the employer is to address the grievance it must be specified sufficiently to enable this to occur. Grievances need not be raised in writing, but conflicting accounts of a grievance allegedly raised orally are more difficult to assess. In this situation it appears from the evidence of both Mr Wang and Mr Ma that Mr Wang had made the employer sufficiently aware that he was aggrieved that he had not been paid wages and other benefits which he believed were owed to him. It is less evident, however, that any grievance is raised in relation to the ending of Mr Wang's employment.

¹ *GFW Agri-Products Ltd v Gibson* (1995) 2 ERNZ 323 (CA).

[19] The resignation letter does not raise any reasons or issues which have prompted the ending of the employment. Allstar's evidence is that the company believed that Mr Wang had already arranged another job to go to. Mr Wang denies that he had alternative employment when he resigned but stated that he found another job right after he left work with Allstar. There is no claim for lost wages as a result of a constructive dismissal.

[20] From Mr Wang's witness statement and the evidence given to the Authority in the investigation meeting, it appears that his major concern at the time of his resignation was with repaying the recruitment agent in China who was threatening legal action. The balance of this agent's fee was eventually repaid by Allstar after repeated requests from Mr Wang, subsequent to the ending of his employment. I find that issues of non-payment of wages, outstanding payments for leave and public holidays and concerns about the agent's fee were all raised with the employer and that this constitutes raising a personal grievance for disadvantage.

[21] I further find that specific concerns about Mr Wang's resignation were not raised at this time in that the employer was not made aware that a constructive dismissal grievance was alleged and that Mr Wang wanted the employer to address this issue.

[22] Allstar did not agree that a grievance for constructive dismissal could be raised outside of the 90 day period. The Act provides that the employee may apply for leave to raise the personal grievance after the expiration of the 90 day period in this situation under s114(3) & (4). The Authority must be satisfied that the delay in raising the grievance was occasioned by exceptional circumstances and that it considers it just to grant leave. However no application for leave was made by the applicant and no exceptional circumstances for the delay in raising the grievance were advanced. Accordingly, the Authority did not further investigate a personal grievance claim for constructive dismissal.

Was Mr Wang disadvantaged in his employment by some unjustifiable action by the employer?

[23] In investigating this personal grievance it is also necessary to consider whether Mr Wang's claims for wage arrears and unpaid annual leave, public holidays and rest breaks can be established.

[24] As already noted, Allstar considered that the employment agreement recorded that Mr Wang was to be remunerated by an annual salary of \$46,800 (gross), which meant he would be paid \$900 (gross) per week. Allstar said it expected that Mr Wang would not be working more than a forty hour week because he was still in his training period. However, the third respondent and director, Mengyao Yu, admitted that Allstar had kept no record itself of the hours Mr Wang worked in those first three months and that there was no manager on-site to oversee what hours the staff were working. The payroll records do not contain any information about hours worked but show the regular gross payment of \$1800 per fortnight. Ms Yu confirmed that Allstar relied entirely on the explanations given to Mr Wang by the agent in China as the expectation that he would be working about 40 hours per week.

[25] Both Ms Yu and Mr Wang described how, when Mr Wang first arrived in New Zealand, he was dependent on other staff to pick him up and take him to the worksite because he did not have a vehicle or a driver's license. Mr Wang's account was: "[W]ent together to work, work together, finish together, then he took me back to home on his way." Allstar's evidence was that these other staff would work 60-70 hours per week in summertime and 55-60 hours in winter.

[26] Mr Wang kept his own record of the hours he worked. He said this was his habit since working in China.

What hours did Mr Wang work?

[27] For the first three months of his employment it is common ground between the parties that only Mr Wang kept a record of the hours that he worked. A mandatory requirement is laid on every employer by s130 of the Act to keep a wages and time record which shows, among other things, the number of hours worked each day in a pay period and the pay for those hours; and the wages paid to the employee each pay period and the method of calculation.

[28] Where a record has not been kept and the employee's ability to bring an accurate claim is affected by this failure, the Authority has the discretion under s 132 of the Act to:

accept as proved all claims made by the employee in respect of—

(a) the wages actually paid to the employee:

(b) the hours, days, and time worked by the employee.

[29] There is no dispute that Mr Wang was paid \$900 gross per week during this period, but the employer does not accept that he worked more than either the guaranteed 36 hours per week or, at most, a usual 40 hour week. However Mr Wang was not given any explicit direction to work no more than 36 or 40 hours in a week after his arrival in New Zealand and Allstar continued to rely on whatever explanation about hours may have been provided by the agent in China. Such explanations as he was given seemed to have related more to the salaried nature of the payment of remuneration. The directors of the Allstar confirmed in evidence they believed this meant that Mr Wang would be paid no more than \$900 per week regardless of how many hours he worked.

[30] Both parties accept that initially Mr Wang had no independent transport to work sites and was picked up and taken home by fellow workers. Given Allstar's evidence of the usual hours worked by these employees, I find it more likely than not that Mr Wang worked alongside them for the time he was on-site. The hours he has recorded are in keeping with the hours probably worked by his fellow workers. Accordingly I exercise the discretion accorded the Authority under s132(2) of the Act to accept as proved Mr Wang's claims as to hours worked.

How should Mr Wang have been paid for the hours worked?

[31] Mr Wang's wage arrears claims are based on the contention that he should have been paid for every hour worked from the commencement of his employment at the rate of \$25.00 per hour and that annual leave and payment for public holidays and rest breaks should also be based on this hourly rate. However, there is no hourly rate specified in the employment agreement document, which only records the \$46,800 (gross) per annum figure. Although Mr Wang's written witness statement says that the employment agreement stated that the hourly rate was \$25, this is not what the document he has signed records. It seems probable that the \$25 is arrived at by making the unwarranted assumption that guaranteed hours in the employment agreement of "at least 36 hours each week" means that the employee's working week is of 36 hours duration.

[32] Allstar outsourced its payroll function to its accountant of some years standing, who calculated an hourly rate of \$22.50 for Mr Wang from the gross annual figure based on the more standard assumption of a 40 hour working week. Given that the

employment agreement does not record any hourly payment figure, an assumption based on the default hours in a working week under the Minimum Wage Act 1983 would seem to be a reasonable basis on which the hourly figure could be calculated.

[33] Mr Wang's witness statement alleges that "[A]fter I worked for three months, Allstar Roofing Ltd...without my notice and my agreement...changed the hourly rate from \$25 to \$22.50." However up to this point Mr Wang had not received any payments made on an hourly basis and there is no written confirmation of his hourly rate. From May 2020 until the end of November 2020, Mr Wang was paid on the basis of an hourly rate of \$22.50. I do not find in the evidence before me that any specific protest as to the hourly rate was made during Mr Wang's employment, despite his claims of repeatedly raising the issue of wage arrears. Mr Wang has not established that his hourly rate was ever agreed to be \$25 per hour or that he has a reasonable basis for arriving at this figure. But even if it had been set at \$25 and varied to \$22.50, the lack of timely objection to that figure would tend to suggest that he had acquiesced in any variation. Accordingly I find that Allstar had a reasonable basis for paying Mr Wang an hourly rate of \$22.50.

Should Mr Wang have been paid on an hourly basis from the outset of his employment?

[34] A significant component of Mr Wang's wage arrears claim relates to the initial period of his employment, when Allstar says that he was being paid the annual salary specified in his employment agreement. The evidence of both of Allstar's directors is that the difference between being paid a salary and paid an hourly rate was explained to him by Mr Ma. Mr Ma's explanation to me was that it was his understanding that a salary arrangement was like a training arrangement. This training as described to me, however, was on the job training provided by two other employees at the job site and consisted of watching how to do it and working with them together.

[35] The written employment agreement is clear that payment at an hourly rate rather than as a proportion of the annualised salary rate depended on agreement between the parties with the employer asking that the more than the usual hours are worked and the employee agreeing to do this. This appears to have been the situation which prevailed from May 2020. But from the outset of Mr Wang's employment until this variation in the contractual arrangements, the written employment agreement set his pay rate at the gross annual figure of \$46,800.00.

[36] Migrant employees seeking employment in New Zealand through a recruitment agent are not in a strong position to negotiate terms of conditions of work and are even less so as to whether remuneration is salarised. However, the written employment agreement records that this is what Mr Wang accepted and Allstar was entitled to pay him according to the agreement between the parties.

What are Allstar’s obligations under the Minimum Wage Act 1983?

[37] In the case of *Victoria Law and others v Board of Trustees of Woodford House*², the Employment Court has confirmed that:

...an employee in receipt of a salary (or of remuneration so expressed) is not thereby excluded from coverage and falls under the category of “in all other cases” in the rates specified in the statutory Minimum Wage Orders...Salaried employees are not excluded from coverage by the Minimum Wage Act because of the description of their remuneration as being on an annual basis.³

[38] The Court specified that to establish compliance this coverage imposed the following obligations on an employer where the contractual basis of the employee’s remuneration is by annual salary:

- to establish each week of work
- to calculate the number of hours worked during each of those weeks
- to the extent that the employee worked 40 hours or less, to establish that the weekly minimum payment under cl 4(c)(i) of the relevant Minimum Wage Order has been met in practice.
- if the hours worked are more than 40 hours in any week, to establish that payment for each extra hour over 40 hours is for a sum not less than the minimum hourly rate under cl 4(c)(ii) of the relevant Minimum Wage Order.⁴

[39] Mr Wang was paid on a fortnightly pay cycle. The corresponding obligations to establish compliance for Allstar as Mr Wang’s employer in the first three months of his employment is that the Minimum Wage Order 2019 should be applied to the remuneration paid to Mr Wang. So that for every fortnight he worked for 80 hours, he

² *Victoria Law and others v Board of Trustees of Woodford House* [2014] NZEmpC 25.

³ At [71].

⁴ At [235]-[239].

should have been paid \$1,416 for the fortnight and for every additional hour worked in that fortnight he should have been paid \$17.70. I have already found that the hours Mr Wang claims as worked during this period have been established. The Authority will direct Mr Wang to recalculate his wages arrears schedule to establish that the payments he received for those hours of work comply with the Minimum Wage Act 1983 based on his record of the hours worked.

[40] A similar exercise should be undertaken for the subsequent pay fortnights prior to Mr Wang being paid according to the hours worked rather than according to the contractual salary arrangement. This means:

- identifying the remaining fortnights where Mr Wang is not being paid according to the actual hours worked
- calculating the actual hours worked in those fortnights according to Mr Wang's records
- establishing whether the minimum wage of \$1,512 each fortnight has been paid in accordance with the Minimum Wage Order 2020 for the first 80 hours worked
- establishing whether any hours worked in excess of 80 hours per fortnight have been paid in accordance with the Minimum Wage Order 2020 at the rate of \$18.90 per hour.

[41] Mr Wang is to lodge and serve within 14 days of the date of this determination a recalculation of his wage arrears schedule for the first three months of his employment and the subsequent period before he was paid according to the hours worked. This claim is to be calculated according to the hourly rate as recorded in this determination and the parameters set out in [38]-[40] above. It is to record any discrepancies between the amount paid to Mr Wang and his entitlements under the relevant Minimum Wage Orders.

Was Mr Wang paid his statutory entitlements to annual leave, public holidays and rest breaks?

[42] Mr Wang's claim for unpaid annual leave relies on the contention that he should have been paid for every hour worked from the commencement of his employment at the rate of \$25.00 per hour. However the Authority has found that Allstar had a reasonable basis for paying Mr Wang an hourly rate of \$22.50. It has also found that

the written employment agreement records that payment is to be on the basis of an annualised gross amount and that Allstar was entitled to pay Mr Wang according to the agreement between the parties before that agreement was varied. Given these findings it seems probable that there are no outstanding annual leave payments owing to Mr Wang.

[43] However, the contractual payment arrangement is subject to Allstar's obligations under the Minimum Wage Act 1983 being met. Should the applicant be able to substantiate discrepancies between remuneration received and entitlements unmet under the relevant Minimum Wage Orders, then there may potentially be entitlement for unpaid annual leave.

[44] Allstar has conceded that Mr Wang may be owed payments for public holidays on 1 June 2020 and 6 February 2020. Mr Wang's record of hours worked show that he worked 8.5 hours on 6 February 2020. He was paid \$180 for this public holiday, the equivalent of 8 hours @ \$22.50 hour. This amount is the entitlement for one day's work under the contractual annualised gross amount stated in Mr Wang's employment agreement. However Mr Wang was entitled to be paid time and a half and receive a day's pay in lieu for working on a public holiday. So he was also owed $\$90 + \$180 = \$270$ to satisfy this requirement under the Holidays Act 2003.

[45] Mr Wang was also paid \$180 for working 6 hours on 1 June 2022. His total entitlement for this public holiday was $6 \text{ hours} \times \$22.50 = \135.00 . Time and a half $\$135$ divided by 2 = $\$67.50$ and \$180 for a day in lieu. Since he had already been paid \$180 the public holiday pay arrears for 1 June 2020 are \$202.50. Mr Wang is owed a total of \$472.50 for unpaid public holiday entitlements.

[46] Mr Wang has also claimed that he did not have any paid rest breaks for the duration of his employment. The employment agreement specified that meal breaks were unpaid but that rest breaks were paid and would be taken at suitable times during the employee's work. Mr Wang's evidence was that he was not told he could have paid rest breaks and that he only took an unpaid meal break. It is clear that there was no oversight of breaks being taken or not taken by any on site management. In the circumstances it would appear probable that short breaks were required to refill water bottles or go to the toilet and that these would be taken as the work allowed. I find that it is inherently unlikely that breaks were never taken during Mr Wang's employment, though I accept that there was no systematic or organised provision to ensure that breaks

were taken. I do not find that Mr Wang has established a claim to payment for arrears for unpaid rest breaks.

Were there breaches of the Act and of the HA 2003?

[47] As noted in [27], Allstar breached s130 of the Act in failing to keep a record of the hours Mr Wang worked in the first three months of his employment. The failure to properly pay for public holidays on which Mr Wang worked, as set out in [44] & [45] above is also in breach of ss 50 & 56 HA.

Has Mr Wang's personal grievance claim of unjustifiable disadvantage in his employment been established?

[48] The statutory test for justification in s103A (1) & (2) of the Act requires that the employer's actions and how the employer acted meets the objective standard of what a fair and reasonable employer could have done in all the circumstances at the time the...action occurred. A fair and reasonable employer must, if challenged, be able to establish that he or she or it has complied with statutory obligations⁵ because the fair and reasonable employer will comply with the law.⁶

[49] In not meeting its statutory obligations under s130 of the Act and ss50 & 56 of the HA, then, Allstar has not met the objective standard of what the fair and reasonable employer could have done because it has not complied with the law. Potentially, should there be breaches established of the Minimum Wage Orders 2019 & 2020, this lack of justification would be further demonstrated.

[50] Has Mr Wang's employment been affected to his disadvantage by these unjustified actions of the employer? He has been deprived of the use of the unpaid sums for public holiday entitlement and arguably may be adversely affected in establishing breaches of the minimum wage provisions with respect to the first three months of his employment by the employer's failure to keep time records. His evidence was that he was insulted and angry at the unreasonable refusal of payment and that he had a lot of stress and anxiety due to the money owed for a long time. However it would seem that some of the stress and anxiety arose from the pressure for payment of the fee to the recruitment agent in China and some of the anger and insult derived from unsupportable

⁵ *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 at 842.

⁶ At [66].

assumptions about the amount of unpaid wage arrears and the quantum of compensation to which he was entitled. In the interim, before information as to an amended wage arrears claim is available on which to assess compliance or otherwise with minimum wage payment obligations, I award Mr Wang \$2,000 in compensation for humiliation, loss of dignity, and injury to the feelings of the employee resulting from the unjustified actions of the employer.

Penalties

[51] I have found that Allstar breached s130 of the Act in failing to keep a record of the hours Mr Wang worked in the first three months of his employment and that the failure to properly pay for public holidays on which Mr Wang worked was also in breach of ss 50 & 56 HA.

[52] When assessing the level of penalty I have regard to the principles governing the imposition of a penalty⁷

[53] Mr Wang has been compensated for his losses. The purpose of penalties is to deter, not to compensate. The penalty imposed is to reinforce to Allstar and other employers the importance of keeping records of hours worked and of compliance with the requirements for payment of public holiday entitlements.

[54] Allstar in its evidence has readily conceded that public holiday entitlements were not paid for two statutory holidays on which Mr Wang worked. It also recognised that expressing employee remuneration as a gross annualised amount did not exempt the employer from Allstar's usual practice of recording hours worked. It acknowledged that Allstar had been mistaken in believing that recording remuneration as a salary meant that no record of hours worked was required.

[55] Accordingly I order Allstar to pay a penalty amount of \$500.00 to the Authority for transfer to a Crown Bank Account.

Claim for penalties against the second and third respondent?

[56] Mr Wang has claimed that penalties should be awarded against both Allstar and against the second and third respondent as its directors. However, although the directors may meet the requirements of being "directly or indirectly, knowingly concerned in, or

⁷ *Borsboom v Preet PVT Limited* [2016] NZEmpC 143 and *Nicholson and Ford* [2018] NZEmpC 132.

party to, the breach” pursuant to s142W (1)(c) of the Act, any application to impose a penalty on such a person under s142X of the Act may only be made by a Labour Inspector.

Summary of orders

[57] The applicant is to lodge and serve within 14 days of the date of this determination a recalculated wages arrears schedule for the first three months of Mr Wang’s employment and the subsequent period before he was paid according to the hours worked.

[58] This schedule is to be recalculated in accordance with the findings of this determination that:

- The Authority pursuant to s132(2) of the Act accepts as proved Mr Wang’s record as to hours worked during these two periods;
- Mr Wang’s hourly rate was \$22.50 per hour;
- Mr Wang was paid according to the terms of his employment agreement during the first three months of his employment;
- The remuneration paid to Mr Wang must comply with the relevant Minimum Wage Orders for 2019 and 2020 and that this compliance or failure to comply is to be established by undertaking the process set out in [38]-[40] of this determination

[59] The respondent has 14 days to lodge and serve a response to any such amended wage arrears claim.

[60] Allstar is to pay Mr Wang a total of \$472.50 for unpaid public holiday entitlements.

[61] Allstar is to pay Mr Wang \$2,000 in compensation under s123(1)(c)(i) of the Act for humiliation, loss of dignity, and injury to the feelings of the employee resulting from the unjustified actions of the employer.

[62] Allstar is to pay a penalty amount of \$500.00 to the Authority for transfer to a Crown Bank Account.

[63] Further orders may be sought if warranted when the recalculated wages arrears schedule is lodged.

Costs

[64] Costs are reserved to be determined after any recalculated wages arrears schedule has been further considered and adjudicated.

Pam Nuttall
Member of the Employment Relations Authority