

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 42  
3193299

BETWEEN	LILI WANG Applicant
AND	HAPPY EATING LIMITED First Respondent
AND	YING CAO Second Respondent
AND	XIAO LIANG SUN Third Respondent

Member of Authority:	Rachel Larmer
Representatives:	David Kim, advocate for the Applicant Martin Lyttleton, advocate for the Respondents
Investigation Meeting:	On the papers
Submissions Received:	4 October 2022 from the Applicant 6 November 2022 from the First Respondent
Date of Determination:	27 January 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Authority issued a substantive determination on 29 August 2022 involving these parties.<sup>1</sup> Ms Wang was awarded \$4,000 distress compensation under s 123(1)(c)(i) of the

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<sup>1</sup> *Wang v Happy Eating Limited and Ors* [2022] NZERA 424.

Employment Relations Act 2000 (“the Act”) for a procedurally unjustified dismissal by the First Respondent (Happy Eating Limited).<sup>2</sup>

[2] Ms Wang has not been paid the \$4,000 she was awarded, so she has applied for a compliance order against the First Respondent.

### **Authority’s investigation**

[3] By agreement with the parties, the Authority has determined Ms Wang’s application for a compliance order ‘on the papers’, based on the currently available evidence.

[4] There was no dispute that Ms Wang has not been paid the money she was awarded by the Authority in its substantive determination.

[5] The First Respondent’s position was that Ms Wang had deliberately misled the Authority during its investigation meeting, she should not be paid anything.

[6] The Authority noted that was an issue that could and should have been dealt with by challenging the substantive determination, which has not occurred. Instead the First Respondent filed a re-opening application, that was not successful.<sup>3</sup>

### **The law**

[7] Section 137 of the Act gives the Authority the discretion to make a compliance order in a range of different situations, including regarding any determination it has issued.<sup>4</sup>

[8] Section 137(3) requires the Authority to specify a time within which the compliance order is to be obeyed.

### **Outcome**

[9] Ms Wang was entitled to be paid the \$4,000 she was awarded by the Authority. Based on the Authority’s review of the communications between the parties, and with the Authority, unless the Authority issued a compliance order, Happy Eating Limited was unlikely to voluntarily pay Ms Wang the money she had been awarded.

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<sup>2</sup> Above n1, at [74].

<sup>3</sup> *Happy Eating Limited v Wang* [2023] NZERA 35.

<sup>4</sup> Section 137(1)(b) of the Act.

[10] Accordingly, the Authority considered it appropriate to issue a compliance order to ensure that Ms Wang was paid the \$4,000 she was owed within a specified time.

### **Terms of the compliance order**

[11] Pursuant to s 137(1)(b) of the Act, Happy Eating Limited is ordered to comply with paragraph [74] of the Authority's substantive determination dated 29 August 2022, by paying Ms Wang the \$4,000 that she was awarded within 28 days of the date of this determination.<sup>5</sup>

### **Warning about further breach**

[12] If Happy Eating Limited fails to comply with this compliance order, Ms Wang may apply under s 138(6) of the Act to the Employment Court for the exercise of its powers under s 140(6) of the Act.

[13] The Employment Court's powers under s 140(6) of the Act include the power to order (among other things) imprisonment for a period not exceeding three months, impose a fine up to a maximum of \$4,000, or order that property be sequestered.

[14] Any breach of the Authority's compliance order must therefore be pursued in the Employment Court.

### **Costs**

[15] Ms Wang, as the successful party, was entitled to a contribution towards her actual legal costs.

[16] Accordingly, in order to bring this matter to a conclusion Happy Eating Limited is ordered to pay Ms Wang \$300 GST inclusive towards her actual legal costs and to reimburse her \$71.56 for her filing fee.

[17] Happy Eating Limited is ordered to pay Ms Wang the \$371.56 total costs and disbursements she has been awarded within 28 days of the date of this determination.

**Rachel Larmer**  
**Member of the Employment Relations Authority**

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<sup>5</sup> Above n1.