

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 125
3308343

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| BETWEEN | JUNXIONG WU Applicant |
| AND | FZ GROUP NZ LIMITED Respondent |
| AND | HAMISH STOREY Second Respondent |
| AND | MINGYONG ZHENG Third Respondent |

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| Member of Authority: | Eleanor Robinson |
| Representatives: | Applicant in person No appearance by the Respondent |
| Investigation Meeting: | 28 February 2025 in Auckland |
| Submissions and/or further evidence | 15 January 2025 from the Applicant None from the Respondent |
| Determination: | 3 March 2025 |

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Junxiong Wu, claims that he is owed monies by the First Respondent, FZ Group NZ Limited (FZ Group), specifically unpaid annual holiday and public holiday entitlements.

The Authority's investigation

[2] The Authority received written and, under affirmation, oral evidence from the Applicant, Mr Wu and his wife, Mrs Wu.

[3] Hamish Storey, Director and the Second Respondent, initially engaged with the Authority but no Statement in Reply was lodged by the Respondents and he and FZ Group did

not participate in any of the further stages of the Authority's investigation. All documents had been delivered to FZ Group's registered office.

[4] The Respondent was not present at the start of the investigation. The Investigation Meeting was delayed while the Authority Officer attempted to make contact by telephone, but this was without success.

[5] The Respondent did not attend the Investigation Meeting. Given the difficulties encountered in progressing this case, I was satisfied that no good cause had been shown for FZ Group's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

[6] 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 received.

[7] The Authority was assisted during the Investigation Meeting by the services of a Mandarin interpreter.

Issues

[8] The issues requiring investigation are whether or not:

- Mr Wu owed annual and public holiday pay by FZ Group?
- Should Mr Storey and /or Mr Zheng be ordered to pay the amounts due to Mr Wu if FZ Group is unable to do so?

Background

[9] FZ Group, is involved in the building construction sector. It has two directors, Mr Storey, and Mingyong Zheng, the Third Respondent. At the time Mr Wu was employed there were approximately 30 employees, although the employee numbers fluctuated.

[10] Mr Wu said he commenced employment with FZ Group as a Carpenter on 16 October 2021. He reported to a number of managers during his employment and was paid an hourly rate of \$27.00 which increased to \$32.00 per hour by the end of his employment.

[11] Initially Mr Wu worked five to six days a week, but gradually this reduced to two to three days a week. From October 2023 Mr Wu said he began to experience issues with his

salary payments. These were delayed from payment once a week to payment once a fortnight and Mr Wu said he began to suspect that FZ Group was experiencing difficulties.

[12] Mr Wu was told that he would receive a payment by the time FZ Group ceased operating for the Christmas and New Year holiday but this did not occur.

[13] On 18 December 2023 FZ Group commenced a Christmas and New Year holiday break and Mr Wu said he was told that work would commence on 8 January 2024.

[14] On 7 January 2024 Mr Wu said he was informed by his manager that he had not had any update about the date when work would recommence. Mr Wu said he continued to make enquiry of the manager about resuming work, but the manager was unable to provide any information about a date.

[15] Mr Wu said he was told by Mr Zheng that FZ Group had contracts agreed, but the worksites for these contracts were outside Auckland and too far away for him to travel to them.

[16] Mr Wu said that the protracted period of non-payment and uncertainty was causing him severe financial strain and stress. As a result he submitted his resignation on 16 January 2024.

[17] Following his resignation Mr Wu had continuously contacted FZ Group, Mr Storey and Mr Zheng. On 3 February 2024 Mr Wu said he received his overdue wages but the annual and public holidays were not paid.

Is Mr Wu owed unpaid wages and/or holiday pay by FZ Group?

[18] Employees are to be paid accrued annual holiday pay and public holidays in accordance with s 27 and s 55 of the Holidays Act 2003 (HA) when their employment comes to an end.

[19] Mr Wu has provided evidence supporting his claim to unpaid holiday pay. The evidence included payslips and WeChat messages from the FZ Group financial accountant confirming the amount of outstanding annual holiday and public holiday pay entitlement.

[20] I determine that Mr Wu is owed the sum of \$10,592.00 gross (calculated as 331 hours at an hourly rate of \$32.00 per hour) in respect of annual leave entitlement, and \$1,152.00 in respect of public holiday entitlement.

Interest

[21] As stated above, employees are to be paid any accrued annual leave entitlement at the date of termination.

[22] FZ Group has failed to make full payment of all the outstanding holiday pay payments due to Mr Wu.

[23] Ms Wu said that the delays and subsequent non-payment by FZ Group caused him financial difficulty and he became very stressed.

[24] The purpose of interest is to reimburse someone for the loss of use of monies to which there is established entitlement as is the case with Ms Wu.

[25] I consider it appropriate therefore to award Mr Wu interest on the amounts owed to him.

[26] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

Filing Fee

[27] FZ Group is also ordered to pay Mr Wu \$71.56 in respect of the Authority filing fee.

Should Mr Storey and/or Mr Zheng be ordered to pay Mr Wu outstanding annual and public holiday entitlements?

[28] Mr Storey and Mr Zheng as joint directors and shareholders of FZ Group, are persons involved in the failures to pay Mr Wu his annual and public holiday entitlements correctly and may be held liable to fulfil the remedies ordered to be paid to Mr Wu pursuant to s 142Y(2)(b) of the Act: “to the extent that the employer’s employer is unable to pay the arrears in wages or other money”.

[29] I determine that FZ Group, Mr Storey and Mr Zheng are jointly and severally responsible for seeing this order is met in full. I determine that in the event that FZ Group is unable to, or fails to, pay Mr Wu the sums awarded to him including the interest and filing fee, Mr Storey and/or Mr Zheng are liable to pay the ordered payments.

Orders

[30] I have made the following orders: FZ Group is ordered to pay to Mr Wu the following amounts:

- **The sum of \$10,592. gross as unpaid annual holiday entitlement pursuant to s27(1)(b) of the HA**
- **The sum of \$1,152.00 gross as unpaid public holiday entitlement pursuant to s 55 of the HA**
- **Interest on the amounts ordered to be paid to him.**
- **\$71.56 in respect of the Authority filing fee.**
- **In the event that FZ Group is unable to, or fails to, pay Mr Wu the sums awarded to him, Mr Storey and/or Mr Zheng are liable to pay the ordered payments pursuant to s 142Y(2)(b) of the Act.**
- **All payments are to be made within 14 days of the date of this determination.**

Costs

[31] Mr Wu represented himself and there is no order for costs.

Eleanor Robinson
Member of the Employment Relations Authority