

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 155
3316860

BETWEEN

SHARON SHEN
Applicant

SUPREME HUANG
LIMITED
First Respondent

YANFEI HUANG
Second Respondent

Member of Authority: Marija Urlich
Representatives: Ms Shen, in person
No appearance for the Respondents
Investigation Meeting: 11 March 2025 by audio-visual link
Determination: 14 March 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Sharon Shen was employed by Supreme Huang Limited (SHL) as a café assistant from 17 October 2021 until the café closed on 24 July 2024. Ms Shen seeks orders for contractual notice and holiday and sick leave arrears from her former employer and/or its director Yanfei Huang. Interest is sought on sums ordered.

The Authority's investigation

[2] SHL and Mr Huang have not filed statements in reply or sought leave to do so out of time. They have not otherwise engaged with the Authority process. I am satisfied service has been affected in accordance with regulations. The statement of problem was sent to them respectively by courier to the addresses provided in the companies office

register for that purpose at 12.35pm 12 September 2024.¹ On 22 January 2025 a case management conference was held to progress this application as advised to the parties by earlier direction of the Authority. At my direction, at the scheduled start time, the Authority Officer telephoned Mr Huang twice at the number provided. The phone was not answered. The case management conference continued in the absence of the respondents having received a fair opportunity to participate.

[3] Subsequent to the case management conference, Authority directions dated 22 January 2025 which included the issues for determination, specified information the parties were to file, an investigation meeting date along with an investigation meeting notice and a further copy of the statement of problem were served on the respondents at the address provided in the companies register by courier at 11am 4 February 2025. Both courier packs were signed for by “Y. Huang”. An updated notice of investigation meeting was emailed to the parties and couriered to the respondents’ addresses.

[4] At the scheduled start time of the investigation meeting Mr Huang was not in attendance or a representative of SHL. At my direction the investigation meeting commenced 15 minutes after the advised start time to accommodate possible lateness on the part of the respondents. Ms Shen gave evidence under affirmation. 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.

Issues

[5] The issues for investigation and determination are whether:

- (i) SHL owes wage arrears for hours worked and notice to Ms Shen;
- (ii) SHL owes sick leave arrears to Ms Shen;
- (iii) SHL owes holiday pay arrears to Ms Shen;
- (iv) interest should be ordered on any arrears;

¹ Employment Relations Authority Regulations 2000, clause 16.

- (v) leave should be granted to Ms Shen to recover any award of minimum standards from Mr Huang;² and
- (vi) either party entitled to an award of costs.

Discussion

Is Ms Shen entitled to paid notice?

[6] A copy of the parties' written employment agreement was not before the Authority. SHL did not file a copy of Ms Shen's written employment agreement as directed on 22 January 2025. Ms Shen has not retained a copy of her employment agreement and was unable to recall the detail of any notice provision in the written employment agreement. She told the Authority she was paid weekly.

[7] Though Ms Shen's employment was described as casual it is apparent the nature of the parties' relationship was permanent, part-time employment. Her work was integral to the business, her work pattern was consistent and regular and there were mutual expectations between the parties that work would be provided and accepted.³ This conclusion is supported by Ms Shen's pay slips, an almost complete record of which she filed and by her unchallenged evidence, which is accepted, that she:

- (i) usually worked Thursday, Friday and one weekend day;
- (ii) worked hours which fluctuated from 16 hours per week during the academic term to 20 – 30 hours outside term time; and
- (iii) wrote the weekly roster for herself and the other part-time employees.

[8] Ms Shen said she expected to receive reasonable notice of her employment ending and this did not occur. On 24 July, on her way to work, she received a call from Mr Huang who advised the café was closed, that when she arrived, this was indeed the case, the landlord having posted a notice in the café window advising it had re-entered the property. She then sent a WeChat message to Mr Huang on the work group chat asking for more information and when she would receive "a payout" to which he replied indicating the payment would be made.

² Employment Relations Act 2000, s 142Y.

³ *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225 and *Barnes v Whangarei RSA (Inc)* [1998] ERNZ 626, pp 636-637.

[9] On Monday 29 July, having not heard further from Mr Huang, Ms Shen messaged him again for an update as to when she could receive her final pay. No reply was received, and she was blocked from the group chat. She has had no subsequent contact from Mr Huang.

[10] I am satisfied Ms Huang is entitled to be paid \$370.40 (gross) being one week's notice of her employment ending because she was paid weekly and she was a permanent employee.⁴ Supreme Huang Limited is ordered to pay Ms Shen notice of \$370.40 (gross) within 21 days of the date of this determination.

Are arrears of sick leave due and owing?

[11] Ms Shen claims payment for sick leave taken during her employment. She has provided evidence of sick leave taken from her job with SHL from 14 – 27 March and 1 July 2022 and it is accepted she has not received sick leave pay for these days.

[12] Ms Shen had a statutory entitlement to 10 days paid sick leave in the period of claim having completed 6 months continuous employment.⁵ She is entitled to paid sick leave on the days claimed calculated at the relevant daily pay and because the leave was taken on days that would otherwise have been working days.⁶

[13] The evidence establishes between 14 – 27 March and on 1 July 2022 she took 7 days sick leave on days she would otherwise have worked a total of 37 hours, being her average term time hours and paid at the rate of \$21.20 per hour, being the applicable minimum wage rate. Supreme Huang Limited is ordered to pay Ms Shen sick leave \$784.40 (gross) within 21 days of the date of this determination.

Are holiday pay arrears due and owing?

[14] As an employee Ms Shen was entitled to be paid termination holiday pay when her employment ended.⁷ She has not received this payment.

[15] Supreme Huang Limited is ordered to pay Ms Shen \$3,294.99 (gross) in holiday pay entitlement within 21 days of the date of this determination.⁸

⁴ \$23.15 (applicable minimum wage rate) x 16 hours = \$370.40 (gross).

⁵ Holidays Act 2003, s 63.

⁶ Holidays Act 2003, s 71.

⁷ Holidays Act 2003, sections 27, 50 and 56.

⁸ Holiday pay of 8% of total gross earnings = \$3,294.9968.

Should interest be ordered on the arrears?

[16] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[17] It is appropriate where a person has been deprived of the use of money to make an award for interest. Ms Shen is entitled to an award of interest on the wage, sick leave and holiday pay arrears awarded.

[18] Supreme Huang Limited is ordered to pay interest, using the civil debt interest calculator, within 21 days of this determination, as follows:⁹

- (i) Interest on the sum of \$4,449.79, being the total of arrears awarded, calculated from 24 July 2024 until the date payment is made in full.

[19] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Is Mr Huang a person involved in Supreme Huang Limited's breaches of employment standards?

[20] Given the findings made against SHL in this determination, its failure to date in pay Ms Shen and the information before the Authority that the café business has been closed since July 2024 it is appropriate to consider Ms Shen's application for leave to recover against Mr Huang.

[21] Under s 142Y(2)(a) and (b) of the Act, an employee seeking to recover money from a person who is not their employer can only do so with prior leave of the Authority (or Court) and, to the extent the employer is unable to pay the money owing.

[22] The first matter the Authority must be satisfied of is whether there has been default in payment of the holiday pay and wage arrears. I am satisfied this is the case. Ms Shen has established claims for sick leave and termination holiday pay. Next, I must be satisfied the default involves a breach of employment standards.¹⁰ Employment

⁹ www.justice.govt.nz/fines/civil-debt-interest-calculator.

¹⁰ Employment Relations Act 2000, s 5.

standards include the requirement to pay holiday and sick pay under the Holidays Act 2003. I am satisfied this is the case – Ms Shen’s holiday pay entitlement of \$3,294.99 (gross) and sick leave arrears of \$784.40 (gross) calculated at the applicable minimum wage is outstanding.

[23] Mr Huang’s involvement in the breach is now to be considered.¹¹ Mr Huang is the sole director and he and his wife hold equal shares in SHL. Ms Shen gave unchallenged evidence that Mr Huang was involved in the day-to-day management of the café, he arranged payment of wages, advised her when the café closed and that she no longer had a job. Ms Shen contacted Mr Huang about her final pay, he advised it would be settled and did not reply further to her when she followed up the request. There was no one else in the business for her to contact. On the information before the Authority Mr Huang was directly knowingly concerned in, or party to, the breach of the failure to pay Ms Shen her holiday pay and wage arrears. I am satisfied he is a person involved in a breach of employment standards under s 142W of the Act.

[24] SHL must be unable to pay the holiday and wage arrears.¹² It remains on the companies register. Information provided to the Authority in respect of Ms Shen’s claim indicates SHL is no longer trading. In addition, SHL has failed to make any payment to Ms Shen including the arrears of wages and holiday pay to date. I am satisfied there is reasonable grounds for concluding SHL is unable to pay the holiday and wage arrears owing.

Should Ms Shen be granted leave to recover arrears of wages and holiday pay from Mr Huang personally?

[25] Mr Huang has proposed no reason why leave should not be granted to recover the holiday pay and wage arrears from him directly. I am satisfied the grounds for granting leave to Mr Huang are made out. Ms Shen is granted leave to bring a claim to recover her holiday pay and wage arrears against Mr Huang under s 142Y of the Act.

Can Ms Shen recover the wages or other money SHL owes her from Mr Huang?

¹¹ Employment Relations Act 2000, s 142W.

¹² Employment Relations Act 2000, s 142Y(2)(b).

[26] Yes. Given the above findings Ms Shen can recover the wage arrears and holiday from Mr Huang personally. If SHL fails to comply with the order in full at [10], [13], [15] and [18] above within the set timeframe Mr Huang is liable to pay Ms Shen the arrears of wages and holiday pay within a further 7 days of that expiry of that timeframe.

[27] In the event SHL fails to comply as ordered it is appropriate that Ms Shen is able to recover interest on the arrears and that Mr Huang, given his knowing involvement in the breaches of employment standards, is liable for payment of interest on the sums of found breaches calculated from date of the grant of leave, being the date of this determination, until those arrears are paid in full. Interest is to be calculated using the civil debt calculator on the Ministry of Justice website.

Orders

[28] Within 21 days of the date of this determination Supreme Huang Limited must pay Sharon Shen \$4,449.79 and calculate interest on arrears as ordered at [18] above.

[29] If Supreme Huang Limited fails to comply within 21 days, within a further 7 days Yanfei Huang is liable to pay Sharon Shen sick leave arrears of \$784.40 and holiday pay arrears of \$3,294.99 due and owing and calculate and pay interest on those arrears from date of this determination until those sums are paid in full.

Reimbursement of filing fee

[30] Ms Shen is entitled to recover the filing fee incurred in lodging this application. Supreme Huang Limited and Yanfei Huang are jointly and severally liable to pay to Sharon Shen the filing fee of \$71.55 within 21 days of the date of determination.

Marija Urlich
Member of the Employment Relations Authority