

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 315  
3300279

BETWEEN XIANXIAO ZHAO  
Applicant  
AND MT SERVICE LIMITED  
First Respondent  
AND YIMING SHA  
Second Respondent

Member of Authority: Rachel Larmer  
Representatives: No appearance by the applicant  
Yiming Sha for the respondents  
Date of Investigation Meeting: 5 June 2025 in Auckland and by AVL  
Oral Determination: 5 June 2025  
Written Record of Determination: 5 June 2025

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relations Authority**

[1] The applicant, Mr Xianxian Zhao, claimed that either the first respondent MT Service Limited and/or the second respondent Mr Yiming Sha required him to pay an employment premium in breach of s 12A of the Wages Protection Act 1983 (the WPA). Mr Zhao sought to recover the employment premium he claimed he had paid, and he wanted a penalty imposed for the breach of the WPA.

[2] The respondents disputed requiring Mr Zhao to pay, and/or receiving an employment premium from him. The respondents denied breaching the WPA.

### **The Authority's investigation**

[3] The Authority held an in-person investigation meeting (IM) in Auckland on 5 June 2025. Mr Zhao and his witness both reside in China, so in February 2025 they were given permission to attend the IM remotely. The respondents were required to attend the IM in-person.

[4] On 25 March 2025 Mr Zhao's former advocate informed the Authority that he had not been in contact with her since 12 February 2025. The former advocate confirmed to the Authority that Mr Zhao had been provided with a copy of the Notice of IM and that he had been asked to contact the Authority directly with his email and phone number, as she did not have that information for him because they had only communicated via WeChat.

[5] Mr Zhao has not had any contact with the Authority. He did not lodge a witness statement for himself or the China based agent who he said would also be giving evidence for him. Mr Zhao did not attend the IM, but Mr Sha did.

[6] Mr Sha lodged a witness statement in accordance with the Authority's timetable directions but he initially did not appear at the IM. When an Authority officer contacted Mr Sha to find out why he was not at the IM he said he was at work. Mr Sha does not speak English, so he had used auto translate for the Notice of IM. The auto-translation had told him the IM was on 25 June not 5 June. His non-attendance was therefore attributed to a translation error.

[7] Mr Sha was at work, so said he could not travel to attend the IM in-person at such short notice. He did however make himself available to give his evidence remotely via a Teams link that had been set up to facilitate the remote evidence of Mr Zhou and his China based witnesses. On that basis, the IM proceeded as scheduled via the Teams link.

[8] A Mandarin interpreter assisted the Authority.

### **The issues**

[9] The following issues are to be determined:

- (a) Did one or both respondents breach s 12A of the WPA by requiring the applicant to pay an employment premium to obtain his job?
- (b) If so, from whom can the applicant recover the employment premium?

- (c) If s 12A of the WPA was breached, should a penalty be imposed on the first respondent?
- (d) If so, should some or all of any penalty imposed by paid to the applicant instead of or as well as the Crown?
- (e) What costs and disbursements should be awarded?

**Did the respondents breach s 12A of the WPA by requiring Mr Zhao to pay an employment premium?**

[10] Section 12A of the WPA prohibits any person from requiring an employee or prospective employee to pay “an employment premium” in order to obtain employment. Where that has occurred, then the employee can recover the unlawful employment premium.

[11] A penalty could also be imposed for a breach of the WPA. A penalty on a person who was not the employee had to be commenced by a Labour Inspector, but an employee could apply for a penalty to be imposed on their employer themselves.

[12] The Authority has determined this matter based on the information that was available to it today. Both parties were aware of the IM today. The applicant did not provide any sworn or affirmed evidence. Nor did the applicant attend the IM today, despite receiving notice of it, so he could not be questioned about his claims.

[13] Mr Sha gave evidence under affirmation, with the assistance of the Mandarin interpreter. Mr Sha denied the applicant’s claims on behalf of himself and the first respondent. Mr Sha is the sole director and shareholder of MT Service Ltd. Mr Sha denied requesting or receiving any money from Mr Zhou in return for employing him.

[14] Mr Sha was questioned about the information in the statement of problem and in other documents the applicant’s former advocate had provided to the Authority before they had withdrawn from representing Mr Zhao. Mr Sha repeated his denials of the applicant’s claims in the face of the Authority’s questioning of him. He also pointed out that the applicant had failed to appear at the IM, so his (Mr Zhou’s) evidence could not be tested.

[15] Mr Zhou did not present sworn or affirmed evidence to support his claims. That contrasted with Mr Sha’s evidence, which was given under affirmation, which was subject to questioning by the Authority Member and which was uncontested.

[16] Accordingly, the affirmed evidence available to the Authority did not support Mr Zhao's claims, which therefore did not succeed.

**Costs**

[17] The respondents were self-represented, so the issue of costs did not arise.

Rachel Larmer  
Member of the Employment Relations Authority