

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 385  
3292139

BETWEEN YUSHAN (PAMILA) JIANG  
Applicant

AND TRUSTED TOUCH THERAPY  
LIMITED (IN LIQUIDATION)  
First Respondent

AND SARAH BRONWYN COCKROFT  
and  
(PATRICK) PING DU  
Second Respondents

Member of Authority: Philip Cheyne

Representatives: Kathryn McAuley, counsel for the Applicant  
Sarah Cockroft for the First Respondent and in person  
Gordon Paine, counsel for (Patrick) Ping Du

Investigation Meeting: 18 February 2025 and 13 March 2025 in Dunedin

Further Information: 4 June 2025 from the applicant

Date of Determination: 2 July 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Yushan Jiang was employed by Trusted Touch Therapy Limited (TTTL) but the employment ended in January 2024.

[2] Ms Jiang raised her unjustified dismissal personal grievance with TTTL through her lawyer's correspondence dated 28 March 2024. The letter also set out claims for wage and holiday pay arrears. Wage and time records and holidays and leave records were sought.

[3] TTTL disputed the claims.

[4] Ms Jiang then applied to the Employment Relations Authority to investigate and determine her employment relationship problem. She sought arrears of wages and holiday pay plus interest, compensation and reimbursement for her personal grievance and penalties for breaches of several statutory provisions. Costs were also sought.

[5] In its statement in reply, TTTL denied most of the factual allegations and disputed the claimed arrears, personal grievance and penalties.

[6] TTTL then lodged its own claims against Ms Jiang. However, in October 2024, TTTL withdrew its application. It is not necessary to say more about those claims.

[7] Ms Jiang lodged an amended statement of problem in December 2024. The claim for arrears of wages and holiday pay continued. Penalties were sought against TTTL for alleged breaches of s 75 of the Holidays Act 2003 (the HA) and s 130 of the Employment Relations Act 2000 (the ERA). Penalties were also sought for alleged breaches of s 69ZF, s 63A and s 4A of the ERA.

[8] During Ms Jiang's employment, Sarah Cockroft was TTTL's sole director and shareholder. The amended statement of problem added claims against Ms Cockroft (second respondent) as a person involved in TTTL's alleged wage and holiday pay defaults and the claimed statutory breaches. Penalties were sought against Ms Cockroft, as well as an order that she would be liable if TTTL was unable to pay arrears of wages and holiday pay.

[9] Neither TTTL nor Ms Cockroft lodged a reply to the amended statement of problem.

[10] As explained below, Ping Du was later joined as a second respondent together with Ms Cockroft as persons involved. Mr Du lodged a statement in reply. He disputes that he was a person involved, as defined in the ERA.

[11] TTTL was placed in liquidation on 29 April 2025, following the investigation meeting but before the determination was completed. On 4 June 2025, in response to an approach from

counsel for the applicant, the Liquidator consented to the continuation of Ms Jiang's proceedings against the company.<sup>1</sup>

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

[12] Mediation was directed following the initial statement of problem, TTTL's reply and its own claim against Ms Jiang.

[13] Counsel for Ms Jiang later advised the Authority that a co-ordinator had not been able to schedule a mediation. There was a case management conference and I repeated the direction to mediation, but also set arrangements for an investigation meeting in the event that matters were not resolved.

[14] Despite mediation between TTTL, Ms Cockroft and Ms Jiang, the employment relationship problem was not resolved.

[15] As noted, TTTL withdrew its claims against Ms Jiang and Ms Jiang lodged an amended statement of problem.

[16] Ms Jiang lodged statements of evidence and a bundle of documents in preparation for the investigation meeting. TTTL and Ms Cockroft did not lodge any statements of evidence.

[17] Ms Jiang and a former employee of TTTL both attended the investigation meeting on 18 February 2025 to confirm their evidence on oath and answer questions. Despite not lodging an amended statement in reply or a statement of evidence, Ms Cockroft attended the investigation meeting and gave evidence on oath.

[18] Having heard from Ms Jiang and Ms Cockroft, I considered that Mr Du should be joined as a second respondent to the proceedings, for the Authority to more effectually determine the matter in accordance with its substantial merits and equities. Mr Du was served with the proceedings and notice of the further investigation meeting.

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<sup>1</sup> Companies Act 1993 s 248(1)(c).

[19] Mr Du attended on 13 March 2025, gave oral evidence and answered questions. Through counsel, Mr Du also cross-examined Ms Cockroft but elected not to cross-examine Ms Jiang.

[20] In this determination, I will set out relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders.

[21] It is first helpful to explain the background of the problem, before identifying and determining the necessary issues.

### **Background**

[22] TTTL was registered as a company in December 2020. Ms Cockroft was always the sole director and initially the sole shareholder. From November 2022 until April 2023, Mr Du held 40% of TTTL's shares, but he was then removed as a shareholder. Mr Du's evidence is that this was in connection with money he lent to Ms Cockroft.

[23] TTTL operated a therapeutic massage business in Dunedin.

[24] The massage business opened Monday - Friday 9.00 am to 6.00 pm, Saturday 9.00 am to 5.00 pm and Sunday 10.00 am to 5.00 pm. Ms Cockroft is an experienced and qualified clinical massage therapist, but worked in the business only on Sundays. Others (including Mr Du) also worked in the business.

[25] In April 2023, TTTL advertised for a massage therapist. TTTL said it was able to support a visa application if needed. Ms Jiang was in China, saw the ad but needed a visa to work as a massage therapist in New Zealand. There were messages between Ms Jiang and Ms Cockroft. Ms Cockroft said she could arrange her therapist who spoke Mandarin to talk with Ms Jiang. Ms Jiang's evidence is that she then spoke with Mr Du, but Mr Du denies that he spoke to her before she came to New Zealand.

[26] In any event, by June 2023, TTTL's exchanges with Ms Jiang had resulted in an employment agreement for her to work as a "Reflexologist – Foot and Hand Massage",

conditional on being able to work legally in New Zealand. The June 2023 agreement was signed and dated by Ms Cockroft and by Ms Jiang.

[27] Ms Jiang received an accredited employer work visa starting from 4 September 2023 for three years to work as a “Reflexologist – Foot and Hand Massage” for TTTL. Ms Jiang arrived in Dunedin on 15 September 2023, accompanied by her daughter.

[28] Ms Jiang and her daughter had signed “Flat/house sharing agreement[s]” with Mr Du in late August 2023. Mr Du says there was a second agreement, but that is not relevant for present purposes. Ms Jiang and her daughter lived in Mr Du’s property from 15 September 2023 until January 2024.

[29] There is a dispute about when Ms Jiang started work. She says it was on Sunday 17 September 2023. TTTL said in its original reply that Ms Jiang started work on Monday 30 October 2023.

[30] Ms Jiang says that she worked Monday to Thursday and Saturday, with Friday and Sunday as her days off. Ms Jiang also says her work hours were from 9.00 am to 6.00 pm, except on Saturday when she worked from 9.00 am to 5.00 pm. Ms Jiang says that she was required to stay at work from her start time until her finish time and that TTTL did not provide her with rest breaks and meal breaks when she was at work.

[31] Ms Jiang says that Mr Du paid her weekly in cash at first. Mr Du disputes that. The first computer payslip is for the week 30 October 2023 – 5 November 2023. There are computer payslips for most of the following weeks. These payslips match deposits in Ms Jiang’s bank account from November 2023.

[32] There is a second signed employment agreement, which appears to bear the date 26 October 2023. It provides for Ms Jiang to be employed as a “Natural Remedy Consultant” on a casual “as required” basis for TTTL. There is also a signed letter from Ms Jiang to Ms Cockroft, appearing to bear the date 27 October 2023. Ms Jiang says these documents were given to her on 26 and 27 November respectively, which was when she signed them and wrote the November dates on the documents. Ms Jiang was not given copies of the signed documents.

[33] On or about 6 January 2024, Ms Jiang told Mr Du that she and her daughter would be moving out of his property within three weeks.

[34] On 8 January 2024 there was a meeting between Ms Jiang, Ms Cockroft and Mr Du. Ms Jiang was given two letters dated 8 January 2024. One letter gave Ms Jiang four weeks' notice of termination of her employment. The second letter was Ms Jiang's resignation on four weeks' notice. Each letter referred to 5 February 2024 as the end of her employment. Ms Jiang was required to sign each letter.

[35] On 17 January 2024, Ms Jiang received an email from Ms Cockroft. The email advised Ms Jiang that she was suspended from 18 January 2024. Ms Jiang did not return to work.

[36] Ms Jiang was last paid on 24 January 2024.

[37] The following issues arise:

- (a) When did Ms Jiang start work?
- (b) What days and hours did Ms Jiang work?
- (c) How and what was Ms Jiang paid?
- (d) What terms of agreement applied initially?
- (e) When was the casual agreement signed?
- (f) What was the effect of the casual agreement?
- (g) Did TTTL fail to pay wages owed to Ms Jiang?
- (h) Did TTTL fail to provide Ms Jiang minimum entitlements under the Holidays Act 2003?
- (i) If there was any default in payments to Ms Jiang, are Ms Cockroft and Mr Du liable as persons involved?
- (j) Should penalties be imposed on TTTL?

- (k) If so, what penalties are appropriate?
- (l) Should penalties be imposed on Ms Cockroft and/or Mr Du?
- (m) If so, what penalties are appropriate?
- (n) Was Ms Jiang unjustifiably dismissed?
- (o) If so, what remedies should be ordered?

**When did Ms Jiang start work?**

[38] Ms Jiang's evidence is that she had to start working on a day that Ms Cockroft would be at work. She says that Sunday 17 September 2023 was her first work day and she met Ms Cockroft that day at the business premises. In her evidence, Ms Cockroft did not dispute that they met and that Ms Jiang would have started work that day. Mr Du denies knowing when Ms Jiang started work.

[39] Ms Jiang received her visa on 3 September 2023. Ms Jiang arrived in Dunedin on 15 September 2023. She already had a flat/house sharing agreement with Mr Du, a signed employment agreement with TTTL and the appropriate visa. Nothing prevented Ms Jiang starting work shortly after her arrival and it is likely that she would have started working as soon as possible. It is inherently unlikely that Ms Jiang would have put off starting work until the end of October 2023.

[40] It is undisputed that Ms Jiang lived in Mr Du's house from 15 September 2023 and that Mr Du worked at TTTL's massage business before and after that date, he says six days a week. Mr Du did not retreat from his evidence that he does not know when Ms Jiang started work. However, he must know how soon after Ms Jiang started to live at his house it was (at least approximately) before she started going to work each day at the same place where he worked. I do not accept Mr Du's evidence that he does not know.

[41] Ms Jiang and Ms Cockroft both say it was Mr Du who Ms Jiang spoke with about the employment before Ms Jiang got her visa. I prefer this evidence to Mr Du's evidence that he did not speak with Ms Jiang before she arrived in New Zealand.

[42] These two findings cause me to be cautious about Mr Du's other evidence.

[43] In the original statement in reply, TTTL said that Ms Jiang had been paid in accordance with the signed casual contract dated October 2023 for all her work for the company, which was from 30 October 2023 to 17 January 2024. For reasons set out later, I find that this casual agreement was proffered by TTTL and signed by Ms Jiang on 26 November 2023. The date on the casual agreement was changed later to make it look like Ms Jiang first started work to coincide with when TTTL started paying her by direct credit.

[44] I accept Ms Jiang's evidence that she started work on 17 September 2023.

### **What days and hours did Ms Jiang work?**

[45] The June 2023 employment agreement set hours at 30 each week 10.00 pm – 5.00 pm, Monday to Wednesday, Saturday and Sunday. It also said that the job should not be over 40 hours if overtime was requested and any overtime required Ms Jiang's consent. Wages were set at \$30.00 (gross) per hour.

[46] Ms Jiang's evidence is that shortly after her employment started, she asked Mr Du and Ms Cockroft if she could work Thursday instead of Sunday so she could attend church, and they agreed. Ms Cockroft did not dispute that evidence.

[47] The change to days of work was not recorded in writing, despite a provision in the agreement that changes must be in writing and agreed by both parties. I am satisfied that both parties nonetheless consented to the change to Ms Jiang's regular hours.

[48] Ms Jiang's evidence is that she worked from 9.00 am to 6.00 pm on Monday – Thursday and from 9.00 am to 5.00 pm on Saturday, reflecting the opening hours of the business. Ms Jiang also says that she was given keys to the premises by Mr Du within a week or so of starting. Ms Jiang also says that she was instructed by Mr Du that she had to stay on the premises throughout her working hours.

[49] Mr Du declined to give evidence in support of TTTL's position as to Ms Jiang's working hours. He denied giving business keys to Ms Jiang.

[50] Ms Cockroft accepted that she was not present at the business except on Sundays, so could not give first hand evidence about Ms Jiang's hours of work. However, Ms Cockroft produced a hand-written summary entitled "Pamela days worked", between 30 October 2023 and 3 February 2024. She told me that she wrote it out from TTTL's client booking system. For the period shown, the information is mostly supportive of Ms Jiang's evidence about her working hours.

[51] Comparing Ms Cockroft's summary with the payslips shows that Ms Jiang was actually paid for fewer hours than she worked from 30 October 2023. From that, I find that TTTL kept inaccurate wage and time records for Ms Jiang from 30 October 2023. It kept no records before then.

[52] TTTL's failure to keep records has prejudiced Ms Jiang's ability to bring an accurate claim.

[53] There is no reason to doubt Ms Jiang's evidence about her starting and finishing times. I also accept her evidence that she was not provided with meal breaks. Ms Jiang worked or had to be available to work each day from her starting time to her finishing time. Any breaks that she was able to take must be treated as paid time.

[54] In summary, arrears will be calculated on the basis that Ms Jiang generally worked Monday to Thursday from 9.00 am to 6.00 pm and Saturday from 9.00 am to 5.00 pm. Ms Jiang started work on Sunday 17 September 2023. The business opened 10.00 am to 5.00 pm on Sundays, so I treat Ms Jiang as entitled to 7 hours pay that day.

### **How and what was Ms Jiang paid?**

[55] Ms Jiang opened a New Zealand bank account on 27 September 2023, so TTTL could have complied with the employment agreement which required it to pay wages weekly into a nominated bank account. However, Ms Jiang's evidence is that Mr Du paid her about \$300.00 cash each week from when she started until the pay period 30 October – 5 November 2023, when TTTL started to pay wages by direct credit to Ms Jiang's bank account.

[56] Ms Cockroft's evidence is that Mr Du managed the business. She did not dispute that he paid Ms Jiang in cash. Mr Du denies ever paying Ms Jiang in cash.

[57] There are no independent witnesses or documentary evidence on the point.

[58] It is unlikely that Ms Jiang would have worked with no pay from 17 September to early November 2023, without raising that as a concern. I do not accept Mr Du's denial. Rather, I prefer Ms Jiang's evidence about being paid in cash. I find that it was usually around \$300.00 in cash per week until early November when TTTL started to pay wages by direct credit.

[59] Counsel for Ms Jiang has treated the cash payments as a gross payment of \$359.11 every week starting Wednesday 20 September 2023. I accept that as a fair and reasonable approach.

[60] From the pay week ending Sunday 5 November 2023, payslips and IRD information show the gross and net payments and Ms Jiang's bank information shows the net payments she received, starting 8 November 2023. It is not suggested that Ms Jiang received any wages in cash once wage payments by direct credit started.

#### **What terms of agreement applied initially?**

[61] The June 2023 agreement for permanent employment set the pay at \$30.00 per hour 2023 for a minimum of 30 hours per week as "Reflexologist – Foot and Hand Massage" in Otago for TTTL. These provisions reflected the work visa.

[62] The agreement provided for the work to be performed between set hours but allowed for overtime, up to a maximum of 40 hours work each week. However, it was not a salaried position. I find from this that Ms Jiang was entitled to be paid her hourly rate for every hour she worked, even if "overtime" resulted in her working more than 40 hours per week. Arrears will be calculated based on hours worked at \$30.00 per hour from 17 September 2023 for the time covered by this agreement.

#### **When was the casual agreement signed?**

[63] The copy of the casual agreement produced in evidence has the signatures of Ms Cockroft and Ms Jiang, with what appears to be the date "26/10/23" in handwriting, alongside each signature.

[64] There is also a letter which purports to be from Ms Jiang to Ms Cockroft, bearing both their names and what appears to be the date “27/10/2023” in handwriting alongside each signature.

[65] Ms Jiang’s evidence is that these documents were presented to her at work on 26 November 2023, not in October 2023. She says that her figure “11” has been altered to read “10” on each document. Ms Jiang produced a picture taken by her using her phone, showing the unsigned letter. The property information accompanying the picture records it as having been taken on 26 November 2023. Her evidence was that she only had a limited opportunity to take the picture without being seen by Ms Cockroft or Mr Du.

[66] Ms Cockroft too now says that her hand-written figure “11” has been changed to show “10” on the casual agreement and the letter. Her evidence is that she does not have the original documents, but Mr Du does. She attributes the date changes to Mr Du.

[67] There were messages on 25 November 2023 between Ms Cockroft and Ms Jiang about meeting “tomorrow”. Ms Jiang agreed to the meeting and went into work to meet. 26 November 2023 fell on a Sunday, the only day of the week when Ms Cockroft worked at the business. So Sunday 26 November 2026 was unusual in that both Ms Jiang and Ms Cockroft were at the business premises together. Mr Du worked as normal that day.

[68] Ms Jiang recorded an exchange with Ms Cockroft and Mr Du on 26 November 2023, which preceded the presentation to her of the casual agreement and the letter. A transcript of the exchange was produced in evidence. Ms Jiang and Ms Cockroft accepted its accuracy.

[69] Mr Du denies changing “11” to “10” on the casual agreement and the letter. He also denies having the original documents. His evidence is that he was involved in this meeting just to help interpret as required.

[70] However, the transcript shows that Mr Du’s involvement was not just as an interpreter, so I do not accept that part of Mr Du’s evidence.

[71] Copies of the signed documents were not given to Ms Jiang during her employment. The copies in evidence were provided by TTTL to Ms Jiang’s representative after the

employment had ended, as part of its defence to Ms Jiang's claims. Looking at them, the dates might or might not have been changed.

[72] Counsel for Mr Du suggested that the picture (property information) might be of a second copy of the letter. However, there is no evidence that Ms Jiang ever had access to a second copy of the letter. I accept her evidence that she only ever had the letter on the same day that she signed it and returned it to Ms Cockroft and Mr Du.

[73] There is no reason to doubt the picture property information. I find that the letter was first presented to Ms Jiang on 26 November 2023 and she signed it shortly thereafter. Ms Jiang is likely to have written "11", being the month that she signed the letter.

[74] The letter and the casual agreement were provided to Ms Jiang at the same time. I also find that Ms Jiang wrote "26/11/23" on the casual agreement.

[75] Only Ms Cockroft or Mr Du had the original documents after they were signed by Ms Jiang, so they were the only people who could have altered the dates on the original documents. I accept Ms Cockroft's evidence that it was Mr Du who changed the dates.

#### **What was the effect of the casual agreement?**

[76] The casual agreement was for employment as a "Natural Remedy Consultant", rather than as a "Reflexologist – Foot and Hand Massage" covered by the first agreement. Ms Jiang's accredited employer work visa only permitted the latter employment. This agreement is for employment on a casual as required basis, with the employee paid on a "piece work basis" at \$37.00 gross for each completed one hour massage session. Payment would be weekly, in cash. The employee would get holiday pay with their "regular" pay, described as "pay-as-you-go leave".

[77] Despite the casual agreement, payslips show that TTTL paid Ms Jiang at \$30.00 per hour and accrued her holiday pay, from early November 2023 until 10 January 2024. Only the payment to Ms Jiang on 17 January 2024 and the last payment a week later were at the rate in the casual agreement with holiday pay added each time.

[78] The casual agreement provides that the employer will give reasonable notice when asking the employee to work, that the employee may accept or decline the offer and that each acceptance is considered a new period of employment. There is no evidence that TTTL ever gave Ms Jiang notice asking her to work under this agreement, or that she accepted (or declined) specific work offers. In reality, Ms Jiang continued to work the same days and hours under the same arrangement from the date she signed the casual agreement, as beforehand.

[79] In its reply to the original statement of problem, TTTL said that it agreed to Ms Jiang's letter of request to transfer her wages to \$30.00 per hour to help maintain her "visa status" before she found another employer. TTTL relies on the letter, alleged to have been signed on 27 October 2023.

[80] It includes the following:

I understood that I signed an employment agreement with your company and my wage is based on a piece work basis at a rate of \$37 ... for each completed one hour massage session(s). I will be paid \$37 plus 8% holiday pay weekly in cash.

For meeting my needs, I request you for approving that transferring my above income to \$30\*30hr/week wage payment and 8% holiday pay (which will be paid after working for 12 months when I requested for annual leave ...)

[81] Ms Jiang did not write or request this letter. She signed it in November 2023, but only because she was required to do so by Ms Cockroft and Mr Du. I also accept Ms Jiang's evidence that she was pressured to sign the casual agreement.

[82] I accept Ms Cockroft's evidence that Mr Du prepared the letter.

[83] A party cannot challenge an individual agreement as unfair or unconscionable, except under s 68 of the ERA. Section 68 of the ERA prescribes circumstances where bargaining for an individual employment agreement is unfair and, at s 69, the remedies then available. The Authority cannot cancel or vary an agreement which is the result of unfair bargaining, except in compliance with s 164 of the ERA.

[84] There is a sense in which Ms Jiang is challenging the casual agreement, or at least the purported change from permanent employment at a set hourly rate for her work hours, to casual

employment paid under a piece work arrangement for each completed one hour massage session. But I have not been asked to cancel or vary the casual agreement.

[85] Ms Jiang through counsel agreed to waive the difference between the piece work rate (\$37.00 for each completed session) and the permanent employment rate (\$30.00 per hour for all work). Ms Cockroft's summary of days and hours from 30 October 2023 supports Ms Jiang's claim that she worked regular days and hours, before and after the casual agreement was signed. There is no evidence to show that the number of "completed one hour massage session(s)" referred to in the casual agreement differed from the hours listed by Ms Cockroft.

[86] To summarise, Ms Jiang has proven that she worked regularly and is entitled to be paid for her hours of work, under the June 2023 employment agreement and then from later November 2023 under the casual agreement.

#### **Did TTTL fail to pay wages owed to Ms Jiang?**

[87] TTTL did not keep time and wage records, contrary to the requirement under the ERA. I accept Ms Jiang's evidence about the days and hours she worked.<sup>2</sup> Ms Jiang worked 7 hours in the week ending 17 September 2023 and 44 hours each of the 17 weeks thereafter until the week ending 21 January when she worked 27 hours.<sup>3</sup> Ms Jiang should have been paid for a total of 782 hours.

[88] Ms Jiang should have been paid \$30 per hour from 17 September 2023 until the date of the casual agreement and thereafter at \$37.00 per hour. Taking account of Ms Jiang's waiver of the difference between the rate under the first employment agreement and that under the casual agreement, she should have received \$23,460.00 in wages during her employment.

[89] Counsel treats the six weekly payments of \$300.00 cash from 17 September to 22 October 2023 as \$359.11 (gross) weekly, totalling \$2,154.66 (gross). Ms Jiang worked as usual but was not paid anything for the week ending 29 October 2023. The payslips record payments totalling \$6,030.00 (gross) from the week ending 5 November 2023 to 7 January 2023

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<sup>2</sup> Employment Relations Act 2000 s 132.

<sup>3</sup> Ms Jiang worked her normal hours on Monday 15 January Tuesday 16 January and is entitled to the full day's pay for Wednesday 17 January 2024.

and a further \$647.35 (gross) in the weeks ending 14 January and 21 January 2023, totalling \$6,677.35 (gross) paid by direct credit. IRD records match that total. Ms Jiang's bank records mostly show the net payments recorded in the payslips.<sup>4</sup> I find that TTTL paid Ms Jiang \$8,832.01 (gross) during her employment.

[90] TTTL failed to pay Ms Jiang wages of \$14,627.99 (gross) during her employment.

[91] The failure to pay wages due under an employment agreement amounts to an unlawful deduction under the Wages Protection Act 1983 and is recoverable under s 11 of that Act.<sup>5</sup> In reliance on that Act, there will be an order against TTTL to recover \$14,627.99 (gross).

**Did TTTL fail to provide Ms Jiang minimum entitlements under the Holidays Act 2003?**

[92] If a public holiday fell on a day that would otherwise be a working day for Ms Jiang she was entitled to a paid day off, or if she worked on that day, Ms Jiang was entitled to be paid half time extra for hours worked and an alternative holiday.<sup>6</sup>

[93] The following five public holidays fell or were observed on Ms Jiang's otherwise working days from 17 September 2023 to 21 January 2024: Labour Day, Christmas Day, Boxing Day, New Year's Day, and Day After New Year's Day.

[94] Payment of the ordinary wage for the public holidays has been included in the arrears above. Ms Jiang worked on four of those days, but not Christmas Day. Ms Jiang should also have been paid half-time extra on those four days: four days at 9 hours per day times \$15.00 totals \$540.00. There will be an order against TTTL for \$540.00 in arrears under s 48 of the HA.

[95] Ms Jiang should have been provided with alternative holidays for the four public holidays that she worked. Since Ms Jiang did not take any alternative holidays during the employment, she should have been paid for four days at 9 hours per day at \$30.00 at the end of

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<sup>4</sup> According to her bank records, Ms Jiang received \$850.70 on 10 January 2023 from TTTL, not \$813.47 as reported by the payslips and to IRD. TTTL did not explain the extra amount, so I do not include it as part of the wages and holiday pay TTTL paid to Ms Jiang.

<sup>5</sup> *Labour Inspector v 4S Hospitality Limited* [2023] NZERA 697 at [77].

<sup>6</sup> Holidays Act 2003 s 48.

her employment.<sup>7</sup> There will be an order against TTTL for arrears of \$1,080.00 under s 48 of the HA.

[96] Ms Jiang should have been paid 8% of her gross earnings since the start of her employment in accordance with s 23 of the HA. As set out above, Ms Jiang's gross earnings since employment commenced should have been \$25,080.00. There will be an order against TTTL for arrears of \$2,006.40 under s 23 of the HA.

[97] The total arrears due under the HA is \$3,626.40.

[98] Ms Jiang's evidence, which I accept, is that Mr Du required her to sign a form to cover when she was not massaging clients, presumably as part of the piece-work arrangement. The forms were not produced in evidence, so it is not necessary to make any findings about what (if any) effect they had.

[99] As explained above, Ms Jiang worked when she was present at the business premises and was entitled to be paid for that time. Ms Jiang did not request and did not take any annual leave in advance. Ms Jiang never worked intermittently or irregularly when employed, so TTTL never had a right to pay holiday pay with her regular pay. Some payments were recorded as holiday pay in the payslips. TTTL has been credited with those payments against the wages owed, so it is not necessary to account for them again against the holiday pay arrears.

#### **Are Ms Cockroft and/or Mr Du liable as persons involved?**

[100] Ms Jiang is entitled to recover from TTTL unlawfully deducted wages under the Wages Protection Act 1983 and arrears of holiday pay under the Holidays Act 2003.

[101] It is apparent from the liquidator's initial report and correspondence to the Authority that TTTL is unlikely to be able to pay arrears.

[102] The defaults are breaches of employment standards. Ms Cockroft and Mr Du, if they are persons involved in the breaches, are liable to the extent that TTTL is unable to pay the

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<sup>7</sup> Holidays Act 2003 s 60(2)(ii).

unlawful deductions and arrears. Ms Jiang seeks leave of the Authority, so I need to consider whether Ms Cockroft and Mr Du were persons involved as defined by the ERA.

*Ms Cockroft is a person involved*

[103] The breaches are by a company. Officers of the company may be treated as persons involved.<sup>8</sup> Ms Cockroft was TTTL's sole director, so is an officer of the company.<sup>9</sup>

[104] Personal liability for Ms Cockroft turns on whether she has been, directly or indirectly, knowingly concerned in, or a party to the breaches.<sup>10</sup> The other gateways provided by s 142(1) of the ERA need not be considered. It must be shown that Ms Cockroft had knowledge of the essential facts that establish TTTL's contraventions.<sup>11</sup>

[105] The essential facts of the breach of the Wages Protection Act 1983 can be summarised as follows. Ms Jiang worked for TTTL from September 2022 until January 2024. During that period, TTTL paid Ms Jiang less than was due to her for each pay period under the permanent employment agreement and then under the casual employment agreement. The essential facts of the breaches of the Holidays Act 1983 are as follows. Ms Jiang worked on public holidays, but was not paid extra. When Ms Jiang's employment ended, TTTL did not pay her holiday pay calculated on her gross earnings during her employment.

[106] Ms Cockroft says that she relied on Mr Du. As will be apparent from what follows, there is some substance to that point. However, her reliance on information from Mr Du was not reasonable. Ms Cockroft knew that Mr Du paid Ms Jiang in cash initially and that, throughout her employment, she worked more hours than TTTL paid her for. Ms Cockroft did not attempt to prove that she took all reasonable and proper steps to ensure that TTTL properly paid Ms Jiang wages and holiday pay during and at the end of her employment.

[107] I find that unlawfully deducted wages and arrears of holiday pay due to Ms Jiang may be recovered from Ms Cockroft to the extent that TTTL is unable to pay those arrears.

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<sup>8</sup> Employment Relations Act 2000 s 142W(2).

<sup>9</sup> Employment Relations Act 2000 s 142W(3)(a).

<sup>10</sup> Employment Relations Act 2000 s 142W(1)(c).

<sup>11</sup> *Labour Inspector v Southern Taxis Limited* [2021] NZCA 705 at [59].

*Mr Du is a person involved*

[108] Persons holding positions in a company, if in a position to exercise significant influence over the management or administration of the company, are treated as officers of the company for the purposes of Part 9A of the ERA.<sup>12</sup>

[109] Mr Du was involved in employing Ms Jiang. I accept Ms Jiang's evidence that she spoke with him before she received the June 2023 employment agreement. He was responsible managing Ms Jiang's work each week throughout the employment. Mr Du paid Ms Jiang in cash initially. He had a significant role in getting Ms Jiang to sign the casual employment agreement and the letter in November 2023. Mr Du drafted the letter.

[110] As set out later, Mr Du was central to the January 2024 written and in-person exchanges that ended Ms Jiang's employment. I find that Mr Du wrote these exchanges and sent them to Ms Jiang, but in the name of "Sarah".

[111] Mr Du ran TTTL's therapeutic massage business, as if it was at least to some extent his own business. I accept Ms Cockroft's evidence that Mr Du "pretty much" ran the business and that he preferred to pay wages in cash, rather than putting it through the books. I also accept her evidence that Mr Du sent many emails using her name dealing with business matters.

[112] I find that Mr Du must be treated as an officer of the company.

[113] I further find that Mr Du knew the essential facts that establish the breach by TTTL of both the Wages Protection Act 1983 and the Holidays Act 2003. The arrangements about what Ms Jiang was paid were largely at his initiative.

[114] I find that arrears of wages and holiday pay due to Ms Jiang may be recovered from Mr Du to the extent that TTTL is unable to pay those arrears.

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<sup>12</sup> Employment Relations Act 2000 s 142W(3)(e).

## **Should penalties be imposed on TTTL?**

### *Record Keeping*

[115] TTTL kept no wage and time records and no holiday and leave record for the first part of Ms Jiang's employment. TTTL did keep a record of payments to Ms Jiang from November 2023. That included total weekly hours and the payroll software also generated holiday and leave information. As explained above, Ms Jiang was not paid for all her work, so the time records and holiday and leave records from November 2023 are incomplete.

[116] I find that TTTL breached s 130 of the Employment Relations Act 2000 and s 81 of the Holidays Act 2003. TTTL is liable for penalties of up to \$20,000.00 for each breach.

[117] The same conduct breached statutory obligations under both the ERA and the HA, so it is appropriate to globalise the breaches. I will treat TTTL as liable for a penalty of up to \$20,000.00 for a breach of s 130 of the Employment Relations Act 2000.

### *Rest and Meal Breaks*

[118] Ms Jiang regularly worked nine-hour days during the week and eight-hour days on Saturdays. TTTL had a statutory duty to provide Ms Jiang with two 10-minute paid rest breaks and one 30-minute meal break each day.<sup>13</sup>

[119] The June 2023 employment agreement entitled Ms Jiang to paid rest breaks of 15 minutes in the morning and afternoon and an unpaid meal break of 60 minutes taken at 12.00 pm each day. The casual employment agreement did not provide for rest or meal breaks. TTTL's statutory duty to provide breaks remained despite the casual agreement.<sup>14</sup>

[120] There is no reason to doubt Ms Jiang's evidence that she was not provided rest and meal breaks. Mr Du declined to give evidence in support of TTTL and Ms Cockroft was not present at the workplace during Ms Jiang's working hours. I find that TTTL did not comply with s 69ZD of the Employment Relations Act 2000 and is liable to a penalty of up to \$20,000.00.

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<sup>13</sup> Employment Relations Act 2000 s 69ZD(4) and (6).

<sup>14</sup> Employment Relations Act 2000 s 69ZG(2).

*Bargaining for an individual agreement*

[121] No issue arose regarding bargaining for the June 2023 employment agreement. However, penalties are sought with respect to the casual agreement.

[122] When bargaining for terms and conditions of an individual agreement and variations if no collective agreement applies to the employee's work, the employer must do the following: provide a copy of the intended agreement; advise the employee they are entitled to seek independent advice; give the employee a reasonable opportunity to seek that advice; and consider and respond to any issues raised.<sup>15</sup>

[123] For the reasons given above, I accept Ms Jiang's evidence that she was presented with the casual agreement on Sunday 26 November 2023 by Ms Cockroft and Mr Du. I accept Ms Jiang's evidence that she could not refuse to sign the agreement because she had to keep working for TTTL to obtain money. It is apparent from the recording that they pressed her to sign the agreement and afforded her no opportunity to consider the agreement or to get advice. The declarations immediately above Ms Jiang's signature that she understood the agreement, had received a copy of it, had been advised of her right to independent advice and had been given time to do that and that TTTL had responded to issues she had raised were not true.

[124] I find that TTTL did not comply with its obligations set out at s 63A(2) of the Employment Relations Act 2000. TTTL is liable for a penalty of up to \$20,000.00 for the breach of s 63A of the Employment Relations Act 2000.

*Good Faith*

[125] A penalty is sought under s 4A of the Employment Relations Act 2000. The breaches relied on are: falsification of wage and time records, procuring false leave records, changing dates on the casual employment agreement and the related letter, coercion to sign those documents and the conduct in January 2024 that ended the employment.

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<sup>15</sup> Employment Relations Act 2000 s 63A(1)(e) and s 63A(2).

[126] The record keeping breaches are already subject to a penalty. It is not appropriate to further penalise the same conduct by relying on it for liability under s 4A of the ERA.

[127] The “procuring false leave records” point is Ms Jiang’s claim that Mr Du required her to sign leave forms to create the appearance that she had taken unpaid leave. TTTL would apparently be able to point to the leave forms, if required to show it had complied with the minimum weekly hours for visa or other purposes.

[128] No forms were produced in evidence. There is no evidence that TTTL used them. There is little to show that Ms Jiang was or even was likely to be misled or deceived by the requirement. I am not satisfied that there was a breach of good faith at the level that makes TTTL liable for a penalty.

[129] In any event, the substantive problem was that Ms Jiang was required to work despite any forms, but was not paid for all her work. That has been resolved by the recovery of the arrears. The record failures related to that have also been remedied by penalties.

[130] There is no evidence about when the dates on the casual employment agreement and the related letter were changed, but it may well have been after March 2024 when Ms Jiang raised her personal grievance. The duty of good faith owed by an employer to an employee ends with the employment relationship. Conduct after the end of the employment relationship cannot give rise to liability under s 4A of the Employment Relations Act 2000.

[131] I accept that Ms Jiang was pressured to sign the casual agreement and the related letter. That conduct is a substantial part of the earlier finding of a breach of s 63A of the ERA. It is not appropriate to further penalise the same conduct.

[132] As explained below, TTTL unjustifiably dismissed Ms Jiang in early 2024. That conduct also breached good faith. However, it was not a sustained breach of good faith, so was not at the level required to create liability for a penalty. In any event, the harm caused to Ms Jiang is properly remedied through her personal grievance.

[133] For these reasons, the claim for a penalty under s 4A of the ERA is not made out.

## **What penalties are appropriate against TTTL?**

### *Record-Keeping*

[134] Proper record keeping by the employer is central to employment standards and an important part of acknowledging and addressing the inherent inequality of power in employment relationships. The level of penalty for breach of the obligation should be a deterrent to TTTL and others.

[135] There was a complete record keeping failure until November 2023, followed by non-compliant recording keeping for the remainder of the employment. TTTL knew what its obligations were. I find the breach was intentional. The evidence establishes that one employee was affected.

[136] The record-keeping breaches facilitated TTTL paying Ms Jiang less than she was due each week. TTTL has done nothing by way of reparation. Ms Jiang, as a holder of an accredited employer work visa and as a migrant worker, was particularly vulnerable.

[137] TTTL has not previously been found in any proceedings to have been involved in similar conduct. There is insufficient evidence to warrant an adjustment to the level of penalty based on capacity to pay.

[138] Having regard to these factors, I fix \$5,000.00 as the appropriate penalty for the breach of record keeping obligations.

### *Rest and Meal Breaks*

[139] I treat the breach of this obligation as negligent, rather than intentional. TTTL was obliged to organise its business in a way that allowed it to meet Ms Jiang's entitlement to and its duty to provide her with rest breaks and meal breaks.

[140] It neglected to do so. Rather, Ms Jiang was only able to take breaks if there was an opportunity between her work with TTTL's clients. As above, Ms Jiang was a vulnerable employee not able to assert her legal right to breaks during the employment. There is no history

of prior similar breaches by TTTL. A penalty of \$1,500.00 is appropriate to punish the breach and for general deterrence.

*Bargaining for an individual agreement*

[141] It is clear from the bargaining that led to Ms Jiang's employment that TTTL was aware of its obligations when bargaining for an individual employment agreement. It intentionally breached those requirements in November 2023 with respect to the casual agreement. Its conduct was inconsistent with the objects of the ERA, especially regarding good faith behaviour and recognition of the inherent power inequity. Ms Jiang was a vulnerable employee. There is no history of a prior similar breach by TTTL. A penalty of \$2,500.00 is appropriate to punish the breach and for general deterrence.

**Should penalties be imposed on Ms Cockroft and Mr Du?**

[142] In her amended statement of problem, Ms Jiang sought penalties against Ms Cockroft as second respondent for the breach of s 75 of the Holidays Act 2003 (record keeping), breaches of s 4A of the ERA (good faith) and for breach of the employment agreement (s 134 of the ERA).

[143] In joining Mr Du as a second respondent, I drew attention to several issues with the penalty claims against the second respondents.

[144] Only a Labour Inspector can apply for a penalty against a person involved within the meaning of s 142W of the ERA.<sup>16</sup> Additionally, sections 4 and 134 of the ERA are not within the definition of "employment standards", breach of which can give rise to penalty liability under s 142X of the ERA.<sup>17</sup>

[145] Ms Cockroft and Mr Du were not the employer or parties to the employment relationship. They cannot be liable under s 75 of the Holidays Act 2003, or s 4A and s 134 of the ERA.

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<sup>16</sup> Employment Relations Act 2000 s 142X(2).

<sup>17</sup> Employment Relations Act 2000 s 5.

[146] Given those issues, I directed that the Authority would investigate the penalty claim at 3.1.15 of the Amended statement of problem as a claim against Ms Cockroft and Mr Du under s 134(2) of the ERA that they incited, instigated, aided or abetted a breach of employment agreement by TTTL.

[147] An action for the recovery of a penalty for breach of employment agreement must be commenced within 12 months of the date when the cause of action first became known to the claimant or when it should reasonably have been known to them, whichever is later.<sup>18</sup> The employment ended in January 2024, by which time Ms Jiang knew the facts relied on for the cause of action.

[148] The amended statement of problem against Ms Cockroft was lodged on 20 December 2024 within time, but Mr Du was not joined as a party until February 2025. The penalty claim as against Mr Du must be dismissed, given it cannot be treated as having been commenced within time. It is not necessary to set out Mr Du's involvement in the business when it was operated by a different company.<sup>19</sup>

[149] A penalty action against Ms Cockroft was commenced in December 2024. The casual employment agreement must be treated as the operative agreement for the purposes of assessing whether Ms Cockroft aided and abetted TTTL's breach of an employment agreement.

[150] I find that TTTL breached Ms Jiang's employment agreement in the relevant period from December 2023 by not paying her for each completed one-hour massage session. I find that Ms Cockroft aided TTTL's breach by arranging and approving wage payments as made, rather than in accordance with the employment agreement and the work performed.

[151] The maximum penalty for an individual is \$10,000.00.<sup>20</sup> In large measure, Ms Cockroft relied on Mr Du for the way the business operated. Her failing was proper oversight of the arrangements. Accordingly, I treat her breach as negligent rather than intentional. The harm to Ms Jiang was significant and she was a vulnerable employee. Ms Cockroft has done nothing

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<sup>18</sup> Employment Relation Act 2000 s 135(5).

<sup>19</sup> *Labour Inspector v Elements Therapeutic Massage Limited & Ors* [2022] NZERA 415.

<sup>20</sup> Employment Relation Act 2000 s 135(2)(a).

by way of restitution. However, Ms Cockroft has not been previously found by the Authority or the Court to have been involved in similar conduct.

[152] Balancing these factors, I fix \$1,500.00 as the appropriate penalty against Ms Cockroft under s 134(2) of the ERA.

### **Was Ms Jiang unjustifiably dismissed?**

[153] In the statement in reply, TTTL said that Ms Jiang “confessed the misconducts” and apologised. TTTL considered it had a right to dismiss Ms Jiang “immediately” for serious misconduct, but gave her four weeks’ notice. TTTL said that Ms Jiang consented to that and also asked TTTL to accept her resignation.

[154] At the investigation meeting, Ms Cockroft explained that she had relied on reports from Mr Du at the time to justify TTTL’s actions.

[155] Ms Jiang recorded the exchange between her, Ms Cockroft and Mr Du on 8 January 2024 when she was dismissed. Two letters dated 8 January 2024, both written for TTTL, are in evidence as well as some email and txt exchanges. Ms Jiang also gave evidence about what happened. There is no reason to doubt Ms Jiang’s evidence. I will briefly outline what happened.

[156] In December 2023, Ms Jiang raised with Ms Cockroft her concern about how much she was earning. On 24 December Ms Cockroft said she would respond after advice from her accountant, mentioned that Ms Jiang was a “casual therapist” and suggested she make an appointment next Sunday to discuss matters in preference to txting.

[157] On 31 December, Ms Cockroft asked Ms Jiang to meet on Sunday 7 January 2024 to follow up on these points. Ms Jiang said she would meet if it was only them.

[158] On 6 January 2024, Ms Cockroft said Ms Jiang could attend with a support person. Ms Jiang said she would not meet as she had no support person and confirmed that she needed more work to earn a living.

[159] Also on 6 January 2024, Ms Jiang advised Mr Du that she would end the flat sharing agreement with him in 3 weeks' time. Mr Du's response was to send Ms Jiang an email that evening. Mr Du threatened various legal consequences for what he described as her breach of the signed lease agreement.

[160] On 8 January 2024, Ms Jiang was required to meet with Ms Cockroft and Mr Du in the carpark adjacent to the business premises. Ms Jiang said she needed more work. Mr Du and Ms Cockroft presented her with two letters. Mr Du explained that the first letter was notice of termination and the second letter was Ms Jiang's resignation. He said if Ms Jiang had no argument "with us", they would only show her resignation letter to "immigration" if needed. If Ms Jiang disputed matters, they would show the first (dismissal) letter. Mr Du confirmed it was their final decision. Ms Jiang attempted to dispute matters, without success. Mr Du said to Ms Jiang that her job would be suspended from tomorrow, leaving her without income. Eventually Ms Jiang signed both letters.

[161] On 9 January 2024, Ms Jiang received an email from TTTL. It repeated that "The notification" was the final decision and she could use Ms Cockroft's name in her CV in accordance with the "approved resignation". Ms Jiang's "unreasonable request" was one reason for termination of her employment.

[162] Despite the foregoing events, Ms Jiang worked her usual days and hours until 17 January 2024. She then received an email at 12.26 pm from TTTL suspending her from "tomorrow" because of misconduct. This followed an incident that day at work when Mr Du accused Ms Jiang of stealing company information. Mr Du apparently reported it to Ms Cockroft who sent the email. Ms Jiang was also copied into an email from Mr Du to Ms Cockroft where he confirmed he would "block" Ms Jiang from coming into the business premises. 17 January 2024 was Ms Jiang's last day of work.

[163] Ms Jiang was paid on 17 January 2024 for the pay week ending 14 January and on 24 January 2024 for the pay week ending 21 January.

[164] On 22 January 2024, Ms Jiang complained to the Ministry of Business, Innovation and Employment (MBIE). She later received MBIE approval to apply for and received a Migrant Exploitation Protection Visa which was granted on 22 February 2024.

*Dismissal or resignation?*

[165] TTTL has characterised events as a resignation by Ms Jiang. Even if events could be construed as a resignation, Ms Jiang was sent away from her employment by TTTL. However, I find that Ms Jiang did not resign. She was given notice of dismissal on 8 January 2024, required to sign both letters in the meeting that day and told that TTTL was prepared to treat it as a resignation if she did not challenge its decision to terminate her employment. Before the notice period ended, TTTL prevented Ms Jiang from working further and ceased paying her.

[166] I find that TTTL dismissed Ms Jiang.

*Was the dismissal justified?*

[167] There is a statutory test for justification for a dismissal.<sup>21</sup>

[168] TTTL has not shown its actions and how it acted were what a fair and reasonable employer could have done at the time.

[169] There were no credible allegations of misconduct against Ms Jiang as at 8 January 2024. Ms Jiang was dismissed because she raised concerns about her pay and because she had told Mr Du that she was ending the flat sharing agreement. No fair and reasonable employer could have dismissed an employee for such matters.

[170] The dismissal letter sets out a number of allegations. There is no reliable evidence to support any of them. The meeting on 8 January was simply to announce TTTL's decision, not to investigate any genuine concerns. The transcript of the recording establishes that TTTL rejected Ms Jiang's protestations, without any consideration. The threat to disclose the dismissal letter to immigration if Ms Jiang disputed the termination of her employment but otherwise to portray it as her resignation, reinforces my conclusion that there was no substance to the allegations in the letter.

[171] Ms Jiang attempted to work through the notice period. However, on 17 January 2024, Ms Jiang was getting a client to complete a feedback form. Mr Du wrongly accused Ms Jiang

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<sup>21</sup> Employment Relations Act 2000 s 103A.

of stealing company information, told her to tear up the form, threatened to get security to block her coming to work the next day and arranged TTTL to send her the last email suspending her from work. None of these actions were steps open to a fair and reasonable employer at the time.

[172] I find that TTTL's dismissal of Ms Jiang was unjustified. Ms Jiang has a personal grievance against TTTL.

**What remedies should be ordered?**

[173] The effect on Ms Jiang of being unjustifiably dismissed was significant. There is no reason to doubt her evidence on the point. To summarise, Ms Jiang accepted the position in Dunedin, left family in China and brought her daughter here. Mr Du urged her to accept the job, saying it was a good business. That promise was false. After a relatively short period of employment, Ms Jiang was dismissed without proper reason. Ms Jiang did not understand why that happened. Isolated and unsupported, she became very depressed and anxious. The effects were made worse by TTTL's post dismissal conduct. Ms Jiang was also very upset at the disruption and harm to her daughter caused by her loss of income and the disruption to their life.

[174] To remedy these effects, TTTL must pay Ms Jiang compensation of \$40,000.00.

[175] Ms Jiang lost remuneration from when she was dismissed. Ms Jiang could not obtain other paid employment at first because of her visa status. She later obtained other employment part-time from May 2024.

[176] I accept that Ms Jiang was entitled to \$1,320.00 ordinary time remuneration each week. Her loss to date has exceeded three months' ordinary time remuneration. However, the claim is limited to three months. TTTL must pay Ms Jiang reimbursement of \$17,160.00.

[177] Ms Jiang's actions did not contribute in a blameworthy way to the situation that gave rise to her personal grievance.

## **Summary and orders**

[178] When Ms Jiang's wages became payable each pay period, TTTL did not pay her the entire amount of the wages without deduction, in breach of the Wages Protection Act 1983.

### *Arrears*

[179] Trusted Touch Therapy Limited (in liquidation) must pay Yushan (Pamila) Jiang \$14,627.99 (gross) under the Wages Protection Act 1983, by no later than 30 July 2025.

[180] TTTL also failed to pay Ms Jiang payments due under the Holidays Act 2003 for work on public holidays, for alternative holidays and for holiday pay at termination.

[181] Trusted Touch Therapy Limited (in liquidation) must pay Yushan (Pamila) Jiang \$3,626.40 (gross) under the Holidays Act 2003, by no later than 30 July 2025.

### *Interest*

[182] A total of \$18,254.39 is due. Ms Jiang seeks interest on these amounts. She has been denied use of the money and should be compensated for that. For simplicity, I take the end of the employment (17 January 2024) as the date the debt was incurred and 30 July 2025 as the date for final payment. Trusted Touch Therapy Limited (in liquidation) must pay Yushan (Pamila) Jiang interest of \$1,618.25 by 30 July 2025.

### *Persons involved - Liability*

[183] Both Ms Cockroft and Mr Du are persons involved and are liable to Ms Jiang to the extent that TTTL is unable to pay the arrears of \$18,254.39. TTTL is in liquidation and is unlikely to pay any arrears to Ms Jiang.

[184] By 31 July 2025, Sarah Bronwyn Cockroft and (Patrick) Ping Du must, jointly and severally, pay Yushan (Pamila) Jiang \$18,254.39, less any payment by Trusted Touch Therapy Limited (in liquidation) to Ms Jiang under the orders at [179] and [181] above.

*Persons involved - Interest*

[185] By 31 July 2025, Sarah Bronwyn Cockroft and (Patrick) Ping Du must, jointly and severally, pay Yushan (Pamila) Jiang interest of \$1,618.25, less any payment by Trusted Touch Therapy Limited (in liquidation) to Ms Jiang of interest under the order at [182] above.

*Penalties - TTTL*

[186] TTTL failed to keep proper records, failed to provide rest and meal breaks and failed to comply with the law regarding bargaining. Together, there are penalties of \$9,000.00.

[187] Ms Jiang asks that the whole of any penalties be paid to her. Ms Jiang has had no other remedy for those breaches. It is appropriate to order the whole of the penalty payable to her.

[188] By 30 July 2025, Trusted Touch Therapy Limited (in liquidation) must pay Yushan (Pamila) Jiang penalties totalling \$9,000.00 for breaches of the Employment Relations Act 2000.

*Penalties – Ms Cockroft and Mr Du*

[189] The penalty claim against Mr Du fails because it was not commenced within time. Ms Cockroft aided and abetted TTTL's breach of Ms Jiang's employment agreement.

[190] By 30 July 2025, Sarah Bronwyn Cockroft must pay Yushan (Pamila) Jiang a penalty of \$1,500.00 under s 134(2) of the ERA.

*Personal grievance*

[191] Ms Jiang was unjustifiably dismissed and has a personal grievance against her former employer, TTTL.

[192] To settle the personal grievance, by 30 July 2025 Trusted Touch Therapy Limited (in liquidation) must pay Yushan (Pamila) Jiang the following amounts:

- (a) Compensation of \$40,000.00 (without deduction); and
- (b) Reimbursement of \$17,160.00 (gross).

*Costs*

[193] Costs on this matter and TTTL's withdrawn claim under file number 3299479 are reserved.

[194] If the parties are unable to resolve costs in discussions and an Authority determination is needed, Ms Jiang as the successful party may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Trusted Touch Therapy Limited (in liquidation), Ms Cockroft and Mr Du, either together or separately, will then have 14 days to lodge their reply.

[195] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>22</sup>

Philip Cheyne  
Member of the Employment Relations Authority

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<sup>22</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)