

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 434
3298079

	BETWEEN	YING CHEN Applicant
	AND	STONE BUILD LIMITED (in liquidation) Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Applicant in person No appearance for the Respondent	
Determination:	21 July 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ying Chen, claims that he was employed by the Respondent, Stone Build Limited (in liquidation) (SGL), from October 2023 until 30 November 2023, and is owed three weeks wages.

[2] SBL denies that Mr Ying Chen was an employee and claims that he was an independent contractor when carrying out work for it.

The Authority's investigation

[3] The Authority received written and, under affirmation, oral evidence from the Applicant, Ying Chen.

[4] Yaokun Chen, one of the directors and shareholder of SBL, provided a Statement in Reply and some documents and a statement of evidence, but did not attend the Investigation Meeting which was set down to take place on 17 July 2025.

[5] I am satisfied that Yaokun Chen had been provided with the link to join the AVL Investigation Meeting.

[6] Yaokun Chen was not present at the start of the investigation. The Investigation Meeting was delayed while the Authority Officer attempted to contact him, but without success, and Yaokun Chen did not attend the Investigation Meeting.

[7] I was satisfied that no good cause had been shown for Yaokun Chen's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

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

[9] 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

[10] The issues requiring investigation are whether or not Mr Ying Chen:

- was an employee whilst working for SBL

If so:

- Is he owed any monies by SBL?

Background

[11] SGL (in liquidation) was a small construction company. It had two directors and shareholders, Yaokun Chen and Jianqiao Jing.

[12] Ying Chen had previously worked as a Carpenter on other construction sites, when he saw an advertisement for carpenters posted by SBL on SkyKiwi.

[13] Ying Chen responded to the advertisement and was interviewed by Yaokun Chen. They agreed on an hourly rate of \$28.00 on a full-time work basis. Ying Chen said Yaokun Chen told him he would be provided with an employment agreement, however he did not receive one.

[14] Ying Chen said he requested an employment agreement on several occasions from Yaokun Chen but did not receive one. There was no written evidence of a request for an employment agreement provided to the Authority.

[15] Ying Chen said he worked as a Carpenter on the one construction site and reported to the Team Leader on site who in turn reported to Yaokun Chen. Yaokun Chen attended the construction site if there were issues or to hold a meeting but was not on the construction site daily.

[16] Ying Chen said he supplied his own tools and personal protective equipment.

[17] Ying Chen said he sent his weekly working hours to Yaokun Chen via a group message link. The construction site was busy when he started, he worked Monday to Friday full-time and often on a Saturday.

[18] Ying Chen said Yaokun Chen paid him in cash for the first two weeks at the beginning of his third week of employment. He paid his own tax on the cash payment.

[19] Ying Chen said that after he had been working on the site for approximately one month, Yaokun Chen called him and told him he was not required to work any longer. At that time there was an outstanding payment for three weeks work. He had contacted Yaokun Chen on several occasions subsequently to try to obtain payment, but without success.

Was Ying Chen an employee or an independent contractor while working for SBL (in liquidation)?

[20] In proceeding to determine whether Ying Chen was employed by as an employee or engaged as an independent contractor I apply s.6 of the Employment Relations Act 2000 (the Act) which provides:

6 Meaning of employee:

(1) In this Act, unless the context otherwise requires, **employee** –

(a) Means a person of any age employed by an employee to do any work for hire or reward under a contract of service ...

(2) In deciding ... whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2)... or the Authority-

(a) must consider any relevant matters, including any matters that indicate the intention of the parties

(b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship

[21] In examining the facts in this case I note the following:

- (a) There is no written employment agreement. It is clear there was an hourly rate agreed for the work to be carried out by Ying Chen as a Carpenter on the SBL construction site, but there is no evidence of any other terms and conditions of employment having been agreed.
- (b) Ying Chen was paid for the hours he worked, he sent his weekly hours to Yaokun Chen through a group email channel, and was paid on the basis of the hours worked rather than in accordance with agreed hours of work.
- (c) Ying Chen was paid in cash. He paid the tax on the amount he received.
- (d) Ying Chen provided his own tools, equipment and personal protective equipment.
- (e) There were no formal parameters to a working day or week, and it was for Ying Chen to advise Yaokun Chen of the hours he had worked in a particular week.
- (f) There was a Team Leader on the construction site, but there were no written instructions or a job description provided to Ying Chen.

[22] In examining whether or not Ying Chen was in business on his own account, I observe that that there is no evidence that he worked for another construction company during the time he was working for SBL.

[23] However he was paid in cash, and when combined with the other circumstances of the engagement, I find they are more consistent with Ying Chen working as an independent contractor for SBL rather than as an employee.

[24] I find that Ying Chen was owed monies by SBL when the employment ended, however since I have determined that Ying Chen was not an employee, I am unable to assist him further, although he may be able to successfully seek payment in another jurisdiction.

Costs

[25] I consider this to be a matter in which it is appropriate that costs lie where they fall.