

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 437  
3324120

BETWEEN	CHONGXUAN ZHANG Applicant
AND	MAYS PROPERTY DEVELOPMENT LIMITED First Respondent
AND	SI FENG Second Respondent

Member of Authority:	Eleanor Robinson
Representatives:	David Kim, advocate for the Applicant Fiona McMillan and Abby Lohrey, counsel for the Respondent
Investigation Meeting:	15 July 2025 in Auckland
Submissions and/or further evidence	15 and 16 July 2025 from the Applicant 15 July 2025 from the Respondent
Determination:	22 July 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Chongxuan Zhang, commenced work as a Site Manager for the First Respondent, Mays Property Development Limited (MPDL), on 1 August 2023. Mr Zhang reported to the Second Respondent, Si Feng.

[2] Mr Zhang resigned from his employment on 12 July 2024 and claims that he was unjustifiably disadvantaged in, and forced to resign his employment with MPDL by the unreasonable actions of Mr Feng.

[3] MPDL denies that Mr Feng was unjustifiably disadvantaged in his employment and claims that he resigned voluntarily of his own volition.

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

[4] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Zhang, and from Tara Li, Mr Zhang's wife, and Chenbai Li, a former colleague of Mr Zhang.

[5] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Si Feng and his wife, Xiaowei Liu.

[6] Oral and written submissions were received from Mr Kim for the Applicant and from Ms McMillan for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[7] 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**

- [8] The issues requiring investigation are whether or not Mr Zhang was:
- constructively dismissed by MPDL or whether he resigned voluntarily.
  - unjustifiably disadvantaged in his employment with MPDL
  - There was a breach of good faith by MPDL towards Mr Zhang

### **Background**

[9] MPDL is a small residential construction company based in Auckland. Mr Feng is the sole director.

[10] Mr Zhang was employed as the Site Manager in August 2023 and provided with an individual employment agreement which he and Mr Feng signed (the Employment Agreement). The terms and conditions of the Employment Agreement included the following:

#### **4 Scope of Employee's Duties**

4.1 the Employee is employed in the position set out in Schedule 1 to this Agreement. The Employee's Duties are set out in Schedule 2 to this Agreement ...

4.2 The Employee may also be required to perform other functions and duties from time to time, and will every effort to adjust to any reasonable re-definition of duties. The employee will undertake the duties as requested, and obey all lawful and reasonable instructions from the Employer.

[11] Schedule 2 to the Employment Agreement comprised the Job Description and stated:

The Employee will perform the following tasks and duties:

1. Working on building and construction sites to ensure a project completes safely, on time, and within budget.
2. Monitoring and direct contractor activities from start to finish and direct and oversee various contractors and subcontractors from site preparation and foundation laying to the final touches.
3. Supervising the process with a critical eye, provide input on selecting and hiring contractors, and serve as a liaison between contractors and clients.

[12] Mr Zhang said that he reported to his Site Manager but Mr Feng also gave him tasks which were unrelated to his Site Manager duties. These tasks involved running errands in connection with a farm operated by Mr Feng (e.g. purchasing livestock, renting farm equipment) )and other personal tasks for Mr Feng or his family, including taking Mr Feng to the airport and booking airline tickets for Ms Liu.

[13] Mr Zhang said he had mentioned that he was prepared to assist with alternative tasks on that one occasion but did not want it to be ongoing. He told Mr Feng he should employ a personal assistant.

[14] Mr Zhang said he was subjected to abuse by Mr Feng regularly and was told he was 'useless' on a regular basis. Ms Tara Li said Mr Feng would telephone Mr Zhang constantly at home after hours, at weekends and even during holidays. Mr Feng confirmed he did telephone Mr Zhang at home sometimes, but disagreed that this was extensive.

[15] Ms Chenbai Li, the former office administrator at MDPL, said that Mr Feng would telephone her to ascertain Mr Zhang's whereabouts and would speak of Mr Zhang in derogatory terms. She said Mr Feng also threatened to dismiss Mr Zhang.

[16] Mr Feng said that throughout his employment there were performance concerns with Mr Zhang. He said that despite Mr Zhang having stated in his curriculum vitae that he had a Bachelor of Construction Quantity Surveying and had previous experience in quantity surveying and as a site manager, he was unable to perform satisfactorily in the role of Site Manager.

[17] Mr Feng stated that he had tried to work with Mr Zhang throughout his employment to improve his performance and achieve the tasks set in his job description.

[18] He believed he had a good and amicable relationship with Mr Zhang and, rather than carry out a formal performance management process, he assigned Mr Zhang alternative duties

as a means to keeping him employed. Mr Zhang's English skills were very good and this was an asset.

[19] Ms Liu said her parents were to visit from China and she was booking their travel. Her English skills were poor and she said Mr Zhang offered to assist her and offered advice on where to take them sightseeing in New Zealand. Ms Liu said Mr Zhang did not tell her he did not want to help her and it was he who had offered to assist.

[20] On 1 February 2024 Mr Feng said he raised concerns with Mr Zhang and confirmed their discussion in an email which referred to delayed submissions. The email stated:

We urge you to take immediate action to address this issue and ensure that your future assignments are completed within the specified timelines. Failure to improve your performance in this regard may result in more severe consequences, including formal disciplinary action.

Please consider this letter as an official warning , and we expect to see a marked improvement in your work habits going forward. If you require any support or resources to meet your deadlines, please do not hesitate to discuss this with your supervisor or the relevant team member.

[21] On 19 March 2024 Mr Feng said he raised concerns about Mr Zhang sharing confidential company quotes to others outside of MPDL without permissions. In that email he stated:

Please understand that this letter is not only a warning but also an invitation to open a dialogue to prevent such occurrences in the future. ...

[22] Mr Feng said that in or around April 2024 Mr Zhang was assigned a task to verify and compare quotes for the construction of 14 foundations and plumbing building works from the subcontractor. Mr Zhang had been provided with the quotes so all that was required was that he compare the quotes, however this task took him significantly longer than had been reasonably expected, specifically three months rather than the two weeks anticipated as reasonable.

[23] Mr Zhang said he was called to Mr Feng's home on 19 June 2024 and told to resign because he had not calculated the building costs for the 14 properties. He said he did not accept he had done anything wrong, so refused to resign.

[24] Mr Feng denied having told Mr Zhang to calculate the building cost for the 14 properties. He said Mr Zhang had been asked to compare quotes only, a task which should have been within his qualification and skill set. He denied telling Mr Zhang he had to resign.

[25] In June 2024 Mr Zhang was unwell. He said he required four days absence from work and that Mr Feng called and abused him for taking so many days off work.

[26] Mr Feng denied he had done so, and provided a copy of an email he sent to Mr Zhang on 13 June 2024 in which he stated: “Go see a doctor and get some proper rest.”.

[27] On 25 June 2024 Schedule 2 to the Employment Agreement was amended. It was signed by Mr Zhang. The amended version included additional tasks:

5 Other work related tasks assigned by the company.

6 Responsible to other groups/companies related to Mays Property Development Limited.

[28] On 10 July 2024 Mr Zhang said he had telephoned Mr Feng about requirements for construction workers on one of the sites. During the conversation Mr Feng had sworn at him and been very abusive about him and insulted his mother. He said it was this conversation that made him decide to resign his employment.

[29] On 12 July 2024 Mr Zhang said he resigned due to the abuse in the telephone conversation on 10 July 2024. His resignation was confirmed in an email in which he stated:

After careful consideration, I have made this decision because I feel forced to resign due to ongoing bullying in the workplace. The duties assigned to me have increasingly deviated from my job description, extending to areas not related to site work. Additionally the verbal abuse has significantly impacted my mental health, leading to stress and anxiety that affect my performance and daily life.

[30] In regard to the telephone conversation on 10 July 2024, Mr Feng said that when Mr Zhang called him it had been early in the morning, he was in Australia and had been very tired. He was frustrated to be disturbed by the issue because Mr Zhang should have known that MPDL was not the employer of the subcontractors.

[31] Mr Feng agreed the language he used during the call was unacceptable, but disagreed that he normally addressed employees including Mr Zhang in that manner. In addition he pointed out that he had not suggested Mr Zhang resign during that telephone conversation. He had also apologised subsequently.

[32] Mr Feng said that the reference on ‘ongoing bullying’ in Mr Zhang’s resignation letter was the first time this concern had been raised with him.

## **Was Mr Zhang constructively dismissed or did he resign voluntarily?**

[33] An employee who has resigned has not been dismissed. A constructive dismissal occurs where an employee appears to have resigned, but the situation is such that the resignation has been forced or initiated by an action of the employer.

[34] The starting point for any enquiry into whether or not there has been a constructive dismissal relies upon establishing the terms of the employment agreement and whether or not there had been a breach of the terms of that contract serious enough to warrant the employee leaving the employment of the employer.<sup>1</sup>

[35] As set out in *Auckland etc Shop Employees etc IUOW v Woolworths (NZ) Ltd* there are three fundamental situations in which a constructive dismissal claim may arise:

- i. An employee is given a choice between resigning and being dismissed;
- ii. There has been a course of conduct followed by the employer with the deliberate and dominant purpose of coercing the employee to resign;
- iii. There had been a breach of duty by the employer which causes an employee to resign.<sup>2</sup>

[36] Although Mr Zhang said Mr Feng had asked him to resign on 19 June 2024, Mr Feng denies having done so. Mr Feng claims the working relationship was amicable, and I note that although there had been issues in the relationship, there had been no suggestion that Mr Zhang resign in the letters dated 1 February and 19 March 2024.

[37] Significantly there is no suggestion Mr Zhang resign in the telephone conversation on 10 July 2024 despite Mr Feng being very frustrated and personally abusive to Mr Zhang during the call.

[38] I find there is little evidence to support Mr Zhang having been asked to resign by Mr Feng.

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<sup>1</sup> *Wellington Road Transport etc IUOW v Fletcher Construction Co Ltd* (1983) ERNZ Sel Cas 59, as referred to in *Wellington etc Clerical etc IUOW v Greenwich* (1983) ERNZ Sel Cas 95 [1983] ACJ 965 (at pp 112-113: p 985)+

<sup>2</sup> *Auckland Shop Employees etc IUOW etc v Woolworths (NZ) Ltd* [1994] 1 ERNZ 168

[39] Turning the second situation, although Mr Zhang stated in the resignation letter that there had been “ongoing bullying” in the employment relationship, he had not raised this concern at any other time, and his evidence was that it was the telephone call on 10 July 2024 that prompted him to resign.

[40] Mr Feng’s evidence was that Mr Zhang had not been performing. However there were no formal disciplinary steps undertaken and in the emails sent to Mr Zhang on 1 February and 19 March 2024 there are offers of support and resources which I find indicates a positive employment relationship.

[41] The parties to an employment relationship owe each other a duty of good faith. Mr Zhang is claiming a breach of the duty of good faith on the part of MPDL. The leading case in this type of constructive dismissal is *Auckland Electric Power Board v Auckland Provincial Local Authorities Officers IUOW*<sup>3</sup>. The Court of Appeal in examining the question of constructive dismissal observed that in examining whether a constructive dismissal under this heading has occurred two questions arise:

- i. First, has there been a breach of duty on the part of the employer which has caused the resignation, and
- ii. Second, if there was such a breach, was it sufficiently serious so as to make it reasonably foreseeable by the employer that the employee would be unable to continue working in the situation, that is, would there be a substantial risk of resignation?

[42] Williamson J in *Wellington Clerical Workers IUOW v Greenwich* observed in describing this type of constructive dismissal:

It is essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the border line which separates inconsiderate conduct causing some unhappiness or resentment to the employee, from dismissive or repudiatory conduct reasonably sufficient to justify the termination of the employment relationship.<sup>4</sup>

[43] To amount to a constructive dismissal the employee’s resignation must be a proportionate and reasonable response to a sufficiently serious breach of duty by the employer, made in circumstances where he or she had no other option.

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<sup>3</sup>*Auckland Electric Power Board v Auckland Provincial Local Authorities Officers IUOW* [1994] 2 NZLR 415; [1994] 1 ERNZ 168 (CA)

<sup>4</sup> *Wellington Clerical Workers IUOW v Greenwich* 1983] ACJ 965

[44] The evidence was that Mr Feng did not believe Mr Zhang was performing the role of a Site Manager to the expected level of performance. Rather than conducting a performance management process, Mr Feng assigned Mr Zhang alternative duties. Mr Zhang's evidence was that he was unhappy about being asked to perform the alternative duties, however he did not raise this with Mr Feng, other than the one occasion when he suggested Mr Feng should employ an assistant.

[45] Mr Zhang's evidence was that it was the abusive nature of the telephone conversation between him and Mr Feng on 10 July 2024 that caused him to resign. The language used during the call consisted of repeated use of expletives, however Mr Feng stated it was not usual for him to swear at an employee and Mr Zhang's evidence was that although Mr Feng had abused him previously, he did not use the "f-word".

[46] In the case of *Harrod v DMG World Media (NZ) Ltd* the then Chief Judge observed that the unsuccessful plaintiff failed in her claim of constructive dismissal in circumstances in which: "... she knew or ought to have known that it could have been discussed further if it was troubling her."<sup>5</sup>

[47] While Mr Zhang was unhappy about the telephone conversation, there is no evidence that he brought this to Mr Feng's attention prior to resigning. I note that following the resignation there had been a meeting in which Mr Feng apologised Mr Zhang for the tone of the conversation. This supports the view that if Mr Zhang had brought his concern about the content of the telephone conversation to Mr Feng's attention, it may have been resolved at that point.

[48] The threshold for constructive dismissal is high, and I find is not met in this case.

[49] I determine that Mr Zhang was not constructively dismissed by MPDL.

### **Was Mr Zhang unjustifiably disadvantaged in his employment?**

[50] Section 103 (1)(b) of the Act is applicable to disadvantage grievances and states:

That the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer;

[51] The elements of s103 (1) (b) are twofold:

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<sup>5</sup> *Harrod v DMG World Media (NZ) Ltd* at [54]

- a. An unjustifiable action by the employer, which
- b. Affected the employee's terms and conditions of employment, and this was to the employee's disadvantage.

[52] Mr Zhang was employed as a Site Manager, this accorded with his qualifications and experience as set out in his curriculum vitae. However he was assigned a significant number of tasks which sat outside of the Job Description included as Schedule 2 of the Employment Agreement. Although this was amended to include additional tasks, this did not occur until a few weeks prior to Mr Zhang's resignation.

[53] Mr Feng's evidence was that Mr Zhang was not performing the Site Manager role to the expected standard. This was addressed by a series of informal measures as outlined in the emails dated 1 February 2024 and 19 March 2024, and primarily by assigning Mr Zhang other tasks. These tasks were outside the expectations of a site Manager role being connected with the running of a farm and the making of personal administrative arrangements for Ms Liu.

[54] Mr Zhang was unhappy about the tasks assigned to him and by the fact that he was often told he was 'useless' when he did not complete them as quickly as Mr Feng expected.

[55] As stated in the Employment Agreement at clause 4.2 MPDL could ask Mr Zhang to perform other duties on occasion. However I find these alternative tasks which Mr Zhang was asked to perform were so far removed from his main tasks as Site Manager that I do not consider to constitute a 'reasonable re-definition of duties'.

[56] While I accept that, other than on one occasion, Mr Zhang had not expressed his unhappiness at the nature of the tasks assigned to him, I note that this could be attributed to the inherent imbalance in the employment relationship and Mr Zhang being concerned about jeopardizing the ongoing nature of his employment.

[57] I find that the additional tasks did disadvantage Mr Zhang in his employment relationship by failing to utilise his professional skills.

**Did MPDL breach the duty of good faith it owed to Mr Zhang?**

[58] As observed there is a duty of good faith owed to each party in an employment relationship. In failing to engage in a formal manner with Mr Zhang in relation to the assignment of tasks not related to his job description, I find that MPDL did not act in good faith towards him.

[59] In addition it was Mr Zhang's evidence that Mr Feng frequently told him he was 'useless'. I find this evidence is supported by the evidence provided by Ms Chenbai Li. This is not the manner in which a fair and reasonable employer would be expected to address an employee.

[60] I find that MPDL did breach the duty of good faith it owed to Mr Zhang.

[61] However it was the failure to act in good faith that resulted in the unjustifiable disadvantage to Mr Zhang and I make no separate award under this head.

### **Remedies**

[62] I have found that Mr Zhang was disadvantaged in regard to the reassignment of tasks outside of his position description.

#### *Compensation*

[63] I find that Mr Zhang suffered hurt and humiliation in respect of the reassignment of tasks. This caused him stress and unhappiness, and made him suffer some mental distress.

[64] I order that MDPL pay Mr Zhang the sum of \$10,000.00 as compensation pursuant to s 123(1)(c)(i) of the Act.

#### *Contribution*

[65] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[66] Mr Zhang was held by MPDL to not be performing the role of Site Manager to the expected standards. This is exemplified in the emails sent to him on 1 February and 19 March 2024 which also offered him support

[67] To the extent that it was Mr Zhang's failure to meet the required standards which resulted in him being assigned alternative tasks, I find contribution on his part and reduce the compensatory award by 10 percent.

### **Orders**

[68] **MDPL is ordered to pay Mr Zhang the following sums:**

- 1. \$9,000.00 as compensation pursuant to s 123(1)(c)(i) of the Act.**
- 2. \$71.56 in respect of the Authority filing fee.**

## Costs

[69] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[70] If they are not able to do so and an Authority determination on costs is needed the applicant may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the respondent would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[71] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[72] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>6</sup>

Eleanor Robinson  
Member of the Employment Relations Authority

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<sup>6</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].