

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 505  
3266640

BETWEEN	HAITAO ZHU Applicant
AND	RONG RONG LIMITED First Respondent
	YONG HUANG Second Respondent
AND	CHANGYIN LI Third Respondent
AND	

Member of Authority:	Claire English
Representatives:	May Moncur, advocate for the Applicant Yong Huang for the Respondents
Investigation Meeting:	13 August 2024 in Hamilton
Submissions received:	Up to 4 April 2025 from Applicant Up to 25 July 2025 from Respondent
Determination:	19 August 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Haitao Zhu, was employed as a chef in the first respondent's restaurant from 6 June 2018 to 29 April 2019. During this time, he says he worked 6 days per week, for 10 hours per day, and was only paid at an hourly rate of \$11.03 per hour. He seeks payment at his contractual rate of \$24.00 per hour. He also seeks

payment of 6 public holidays on which he says he worked, plus 8% holiday pay on these arrears.

[2] The first respondent (RRL) is a company with its business running a Chinese restaurant. It has one director, Mr Yong Huang, who represented RRL at the investigation meeting. Mr Huang says in response to the claims that Mr Zhu was employed by the previous owner of the business, and he has no records relating to Mr Zhu.

[3] Mr Zhu says the second respondent, Ms Changyin Li, is or was married to Mr Huang, and that she and Mr Huang both worked at the restaurant with him during his employment. Mr Zhu claims that both Ms Li and Mr Huang are persons involved in breaches of employment standards, and that as such, they should be made liable for any unpaid wages and money that is ordered to be paid to him.

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

[4] For the Authority's investigation written witness statements were lodged from Mr Zhu. The first and second respondents were given the opportunity to provide witness statements and other documentation, but did not do so. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

[5] 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.

### **The issues**

[6] The issues requiring investigation and determination were:

- (a) Was Mr Zhu employed to work 60 hours per week, 6 days per week during his employment? If so, what was he paid, and are arrears owing to him?
- (b) Did Mr Zhu work on 6 public holidays, and is he owed any arrears for this?
- (c) Was Mr Zhu owed annual leave as at the end of his employment, and if so, what should be paid to him?

- (d) Were Mr Huang and/or Ms Li persons involved in a breach of minimum standards? If so, should orders be made that they should be personally liable for any arrears payable to Mr Zhu?
- (e) Should either party contribute to the costs of representation of the other party.

## **Background**

[7] Mr Zhu is a Chinese Chef, and was recruited by RRL from China. He began working in the restaurant on 6 June 2018. He was given a contract in Chinese, which stated that he would “work 6 days a week up to 60 hours”, and that he would have a “weekly net income of \$700 NZD after taxes”.

[8] Mr Zhu says this is what occurred. He worked in the restaurant 6 days a week, with Tuesdays as his day off as the restaurant was closed on Tuesday. Mr Huang confirms that Tuesday is the day the restaurant is closed, and indeed, asked for the investigation meeting to occur on a Tuesday so he could better attend.

[9] Mr Zhu says his hours were from 10.30 am to 9.00 pm, consistent with the restaurant’s opening hours of 11.00 am to 9.00 pm, meaning he started work half an hour before the restaurant opened.

[10] Mr Zhu worked every week. He says that the restaurant was open every day except Tuesdays, and as a result, he worked on 6 statutory holidays that fell during the 10 months of his employment, and received only his normal pay. The statutory holidays in question are: Labour Day, 2 January, Auckland Anniversary Day, Waitangi Day, Good Friday, and Easter Monday.

[11] He now seeks the additional ‘half’ pay that she should have received for working on a statutory holiday in accordance with the Holidays Act 2003.

[12] In addition, Mr Zhu says there were 8 days when the restaurant was closed over Christmas and New Year in 2018-2019. During those 8 days, he did not work, but he was paid his normal wages.

[13] Mr Huang says that at the relevant time, he was not in control of the business, but was only an employee in it. He says the business was owned and managed by his

ex-wife, and he had no control of such matters as 'hiring and firing' or paying bills or wages.

[14] Mr Huang says that Mr Zhu worked 6 days per week, with Tuesdays as his day off, but that he did not work 10 hours per day. Mr Huang says that the restaurant opened at 11.30 am, not 11.00 am, so Mr Zhu's work day started at 11.00 am not half an hour earlier at 10.30 as he claimed.

[15] Mr Huang also says that Mr Zhu was not working between about 3.00 pm and 5.00 pm, as there were very few customers during this time. He says that during this time, Mr Huang was just "mucking around" the shop, and this did not count as work. Mr Huang's evidence on this was mixed however, as he also stated that Mr Zhu had to have everything ready for the dinner shift at a quarter to 5, and that the restaurant remained open during these hours serving customers although there were normally only very few.

[16] Mr Huang's evidence as to when Mr Zhu's work day ended was essentially the same as Mr Zhu's, in that the restaurant closed at 9.00 pm. Mr Zhu could expect to work till around that time, although occasionally there would be days when the restaurant closed slightly later or earlier depending on customer demand. Mr Zhu gave evidence that he needed to do certain closing task such as putting food in the fridge, sweeping/mopping, and taking out the rubbish at the end of each day.

[17] Mr Huang said he was aware of the minimum wage rate, but denied any knowledge of what Mr Huang was actually paid. He said that the other director of the company, his ex-wife, managed payments. Even after he became director of RRL for the last 5 and a half weeks of Mr Zhu's employment, he said that he was not responsible for wages which were managed by his business partner. This is despite acknowledging that one of the reasons he took over the business was to have more control, responsibility, and freedom to manage it, including over hiring and firing, and bill payment.

[18] Mr Zhu gave evidence of cash payments made to him by Mr Huang. He said that after 3 months, Mr Huang had paid him an additional \$60 per week in cash. After the Christmas break, this was increased to \$120 per week, and this continued weekly until two weeks before he left.

[19] Mr Huang agreed that he had paid cash to Mr Zhu weekly, but said that the amount was set by his wife, Ms Li, and was a bonus or recognition for the work that Mr Zhu was doing. He also suggested that Mr Zhu wanted this payment in cash. Mr Huang explained that the payments did stop after Mr Zhu resigned, as why would there be any need to make payment to someone who had already decided to leave? Mr Huang characterised these payments as variously both wages and as a bonus.

[20] Mr Huang said he was aware of the need to pay extra for work done on public holidays, but didn't know how or what Mr Zhu was paid. When it was put to him that he was the director of RRL for the last two public holidays Mr Zhu worked (Good Friday and Easter Monday 2019), he again said he did not know about payments.

[21] In respect of annual leave, it is accepted that Mr Zhu was not paid any annual leave on the termination of his employment. Mr Huang says this is because he was not entitled to this as he had not yet worked for a full year.

### **The Company**

[22] The first respondent RRL is a limited liability company.

[23] When Mr Zhu was first employed on 6 June 2018, RRL had one director, Ms Changying Li. Ms Li was the sole director of RRL from 15 December 2015 to 15 March 2019. During this time, she was also a shareholder, and ceased to be a shareholder on 19 March 2019.

[24] Mr Huang became the sole director of RRL on 18 March 2019, which was shortly before the ending of Mr Zhu's employment on 29 April 2019. Mr Huang was a shareholder in the business for a longer time however, as he became a shareholder alongside Ms Li on 15 February 2016, meaning he was a shareholder for the duration of Mr Zhu's employment.

[25] Despite this, Mr Huang maintains he was not in control of what or how Mr Zhu was paid, and that this was dealt with by either Ms Li, or his more recent business partner.

[26] A change in the shareholding or directorship of the respondent company does not change the obligations on the company itself. Mr Zhu has raised claims against the company that was his employer for arrears of wages and associated monies. Any

awards will be made against the company, regardless of changes to its directors and/or shareholders.

[27] I note that Ms Li did not attend the investigation meeting. Mr Huang said that he was not in contact with her and had not heard from her. It was discussed with the applicant and his representative that, as there was insufficient evidence that service had been properly effected on Ms Li, that this might mean that no orders could properly be made against her. The applicant and his representative accepted this, as demonstrated by the subsequent submissions filed.

[28] Following the investigation meeting, time was allowed for the provision of further information by all parties. The Authority made attempts to obtain documents and submissions from the respondents which Mr Huang indicated had been or would be filed. As part of this, Mr Huang indicted that he “would not be accountable” and any actions should be directed to “the previous owner”.

[29] In all the circumstances, my view is that no claims can be properly pursued against Ms Li personally in the absence of confirmed service. Accordingly, this matter resolves Mr Zhu’s claims against his employer the company, and against Mr Huang as a person involved in a breach only. Any dispute Mr Huang may have with Ms Li as to these claims is in my view, a matter as between them.

### **Arrears Claims**

[30] I will first consider Mr Zhu’s claim for wages. His evidence and the evidence of Mr Huang as to what he did and when he did it is highly consistent. It differs on only two points. First, Mr Huang says that Mr Zhu started work at 11.00 am, being half an hour before the restaurant opened at 11.30. Mr Zhu says that during his time there, the business opened at 11.00 am, therefore he started work at 10.30 am and it has subsequently reduced its hours. I note that promotional pages for the business still refer to its “normal hours” of an 11.00 am start, and thus I prefer Mr Zhu’s evidence on this point.

[31] Mr Huang also says that Mr Zhu did not work for 2 hours in the middle of each day, however, he accepts that Mr Zhu was at the shop which did not close, or would do shopping for items that the restaurant might need during this time. Mr Huang also said that Mr Zhu’s duties were to be ready for the dinner rush at 5.00 pm quarter of an hour

prior. All of this suggests that Mr Zhu was working during this time but at a slower pace. For these reasons, I again prefer the evidence of Mr Zhu insofar as it actually differs from Mr Huang's account. I find that Mr Zhu worked 60 hours per week, as he claimed.

[32] I do not accept Mr Huang's evidence that Mr Zhu was not working. The duties he performed during this 2-hour period were clearly work, were required for his duties, and were for the benefit of the business and contributed to its smooth running.

[33] Accordingly, I find that Mr Zhu worked 10 hours per day, 6 days per week as he has claimed.

[34] Over the course of his employment, Mr Zhu calculates that, taking into account the 8-day period over Christmas and New year 2018, he worked a total of 282 days. There is no particular dispute from the respondent, and in the absence of contrary records, I accept this claim. Mr Zhu further says that, as he worked 10 hours per day, this amounts to a total number of hours worked over the course of his employment of 2,820 hours. For the same reasons, I accept this claim also.

[35] Mr Zhu states that at his contractual hourly rate of \$24 per hour, he should have received the total sum of \$67,680.00 in wages over the course of his employment. He states that he actually earned \$31,078 based on his tax records, therefore the sum of \$36,602.00 gross remains outstanding.

[36] I record that the respondents generally resist this. However, at the investigation meeting, Mr Huang accepted that Mr Zhu was paid a flat rate of \$700 per week, and has provided no pay records or wage and time records that would suggest Mr Zhu was ever paid at his contractual rate.

[37] Accordingly, I find that Mr Zhu was underpaid during his employment, and is owed outstanding wages of \$36,602.00 gross as he has claimed. Orders are made accordingly.

[38] Mr Zhu also claims outstanding wages for work done on public holidays during his employment. These holidays are: Labour Day 2018, 2 January 2019, Anniversary Day (28 January) 2019, Waitangi Day 2019, Easter Friday and Easter Monday 2019.

Mr Zhu says that he worked as usual on these days, and was paid at his usual rate, thus he did not receive the statutory time-and-a-half pay for working these 6 days.

[39] Mr Huang said simply that he did not know about payment for these days, and (even when he was a director), he was not responsible. This falls well short of any evidence to suggest that Mr Zhu did not work on these statutory holidays, or that he was in some way paid appropriately. In addition, the evidence is that the restaurant was continuously open its normal hours regardless of statutory holidays.

[40] Accordingly, I find that Mr Zhu did work on these 6 statutory holidays, and is owed payment in respect of them at the rate of time-and-a-half required by s 49 of the Holidays Act 2003. Mr Zhu claimed payment for a total of 60 hours' pay for these statutory holidays. I asked for further details about this claim from the parties.

[41] Mr Huang said in response that:

- a. He was not responsible for claims relating to the period of time when his wife ran the business;
- b. Mr Zhu needed to provide documents demonstrating he had not been paid, and as he had not provided sufficient documents, his claim should be dismissed; and
- c. There was no "demonstration" that the payments made to Mr Zhu violated s 49 of the Holidays Act 2003.

[42] I have considered these submissions. First, the claims made by Mr Zhu are claims made against the company. The company remains liable to meet its obligations regardless of any change in ownership that is now alleged. Any promises made by Ms Li to Mr Zhu (which I have no evidence of) is a matter between them. This does not change the legal obligations owed by the company to Mr Zhu.

[43] Second, it is the employer's obligation to keep and produce wage and time records as set out in s 130 of the Act, and holiday and leave records as set out in s 81 of the Holidays Act 2003. This is not Mr Zhu's obligation, it is the company's obligation. Neither the company nor Mr Huang as representative of the company have provided to the Authority any of the wage and time or holiday and leave records it was required to keep.

[44] In the absence of the employer's records, I am able to accept Mr Zhu's accounting, as set out in s 132 of the Act. Given that Mr Huang's in-person evidence was consistent with Mr Zhu's evidence on key points, I find that it is appropriate for me to exercise my discretion under s 132 of the Act to prefer Mr Zhu's evidence where it differs from Mr Huang's in the absence of employer records.

[45] As I have found that Mr Zhu worked 10 hours per day, the requisite "half" payment for each statutory holiday worked amounts to an additional 5 hours payment. Any underlying underpayment for the actual hours worked has already been remedied by the underlying arrears orders already made. Five hours payment at Mr Zhu's hourly rate of \$24.00 gross is \$120.00. Multiplied by the 6 holidays in question, this comes to a total amount outstanding of \$720.00 gross. Orders are made accordingly.

[46] Mr Zhu also claims for holiday pay owing on termination of employment which he has calculated at 8% of his gross wages, being a further \$5,414.40 gross. Mr Huang accepted that, to the best of his knowledge, no annual leave payments were ever made to Mr Zhu. I again note that no records were produced on behalf of the respondent that would suggest Mr Zhu's claim was incorrect.

[47] I accept that annual leave payments are still outstanding, and should be awarded to Mr Zhu in the amount that he claims. Orders are made accordingly. Holiday pay at the rate of 8% should also be awarded on the arrears to be paid in respect of statutory holidays, and orders are made for this also.

### **Was Mr Huang a person involved in a breach of employment standards?**

[48] It is claimed that Mr Huang was a person involved in a breach of employment standards as these are defined in s 142 of the Act, and that he should be held personally liable for any arrears awarded to Mr Zhu. For avoidance of doubt, I have assessed this as a claim that Mr Huang was a person involved in breaches as set out in s 142W of the Act.

[49] Mr Huang denies any personal liability. In particular, he says he only became a director of Rong Rong Limited on 18 March 2019, which was shortly before the ending of Mr Zhu's employment on 29 April 2019. He says in essence that this was his wife's business and by extension he should not be held responsible for it. Mr Huang

was a shareholder in the business together with his wife since 15 February 2016, meaning he was a shareholder for the duration of Mr Zhu's employment.

[50] Mr Huang's in-person evidence does not support the claim that he was not involved in the day to day running of the business, or that he was not responsible for or aware of Mr Zhu's true terms and conditions of employment. He gave in-person evidence of what he said were Mr Zhu's hours of work and patterns of work, details of Mr Zhu's activities during the working day, and details of his pay. He also denied knowing about any payments to Mr Zhu for statutory holiday pay, although he did know that Mr Zhu had not been paid annual leave on the termination of his employment.

[51] Section 142W provides that a person is involved in a breach if:

- a. The breach is a breach of employment standards; and
- b. Where the employer is a limited liability company, the person is either a director or in a position to exercise significant influence over the management or administration of it; and
- c. Has procured the breach, induced the breach, been in any way knowingly concerned in or party to the breach.

[52] All three requirements must be made out before personal liability can follow.

[53] The breach must be a breach of employment standards, which are defined in s 5 of the Act. Employment standards include the requirements of the Holidays Act 2003, including the requirements to pay annual leave and for public holidays; and the requirements of the Minimum Wage Act 1983, which requires that employers pay wages in full when due. Failures to pay annual leave owing on termination and for work done on public holidays are therefore breaches of employment standards. Failures to pay for all hours worked and/or to pay at a rate equal to or greater than the minimum wage rate are also breaches of employment standards. As I have found these breaches occurred, it follows that there are multiple breaches of employment standards, satisfying this first requirement.

[54] Mr Huang was a director of the employer company for a part of Mr Zhu's employment, and is therefore directly responsible for the failures to pay annual leave, failures to pay for public holidays as at termination, and failure to pay wages in full and when due for part of Mr Zhu's employment.

[55] I also find that for the earlier part of Mr Zhu's employment when he was continually short-paid, Mr Zhu exercised sufficient control and influence over the running of the business and had sufficient knowledge of the terms and conditions that Mr Zhu worked under, to be considered an officer of the company for this time also. Mr Huang's evidence as to the running of the business satisfies me that he was sufficiently involved in its day to day operations to be considered an officer of the first respondent during the portion of Mr Zhu's employment when he was only a shareholder rather than both a shareholder and a director. Accordingly, Mr Zhu is an officer of the employer company for the purposes of s 142W.

[56] I also need to consider if Mr Huang meets any of the tests set out in subsection (1) of s 142(W), being whether his actions were sufficient to procure the breaches of employment standards that I have found occurred, or induced them, or were such that he was in any way, directly or indirectly, knowingly concerned in or party to, these breaches.

[57] Given the conclusions I have set out above, the answer must be yes. Mr Huang was personally and legally responsible for the failures to pay Mr Zhu his entitlements under the Holidays Act 2003 at the time Mr Zhu's employment ended. He also had direct knowledge of the hours Mr Zhu actually worked and that he was paid significantly less than either the minimum wage rate or the contractual rate during his employment. Mr Huang is a person involved in a breach.

[58] It is submitted for Mr Zhu that Mr Huang should be made personally liable for any arrears awarded, to the extent that Rong Rong Limited fails to make payment, in accordance with s 142Y of the Act. I find that this is a situation where s 142Y applies, It is appropriate for Mr Huang to be made liable for any unpaid monies in accordance with that section, and I grant leave for any further applications as may be required.

### **Orders**

[59] Mr Haitao Zhu is owed the following amounts as outstanding wages and statutory entitlements, and Rong Rong Limited is ordered to pay the following amounts to Mr Zhu within 28 days of the date of this determination:

- a. The sum of \$36,602.00 gross as outstanding wages;

- b. The sum of \$720.00 gross in respect of work done on 6 specified statutory holidays;
- c. The sum of \$5,414.40 gross as unpaid holiday pay owing on termination of employment;
- d. The sum of \$57.60 gross being holiday pay calculated at the rate of 8% on the arrears owing for underpayments in relation to specified statutory holidays.

## **Costs**

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

[61] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Zhu 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, the respondents will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[62] 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>1</sup>

Claire English  
Member of the Employment Relations Authority

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<sup>1</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)