

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 686
3364703

BETWEEN	FENG GAO Applicant
AND	CIVEX CONSTRUCTION LIMITED (IN RECEIVERSHIP AND LIQUIDATION) First Respondent
AND	NICK ASHURST Second Respondent

Member of Authority: Simon Greening

Representatives: Applicant in person
No appearance for the Respondents

Investigation Meeting: 24 October 2025 at Auckland

Determination: 28 October 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Gao was employed by Civex Construction Limited (Civex) for a period of two weeks as a civil engineer from 17 February to 28 February 2025. Mr Gao says that he worked a total of 93 hours for Civex, and he was due to be paid on 6 March 2025. Mr Gao says he has not received payment for the hours he has worked. Civex is in liquidation. Mr Ashurst was the director of the company during the period in which Mr Gao was employed. Mr Gao seeks to recover the wages owed to him from Mr Ashurst in his personal capacity.

The Authority's investigation

[2] Civex and Mr Ashurst did not lodge statements in reply or seek leave to do so out of time. I am satisfied service has been affected in accordance with the regulations. The statement of problem was sent to them respectively by courier to the registered office for the company on 28 March 2025. On 4 July 2025 Mr Ashurst provided an email address to the Authority.

[3] Mr Ashurst attended the first case management conference (CMC) on 18 July 2025. Mr Ashurst did not attend the second CMC on 24 July 2025.

[4] Following the second CMC, the parties received directions from the Authority regarding the issues to be investigated including a timetable for filing witness statements. On 24 July 2025, the Respondents were served with the notice of investigation meeting for today's investigation meeting.

[5] According to the companies register, Civex is in receivership and liquidation. A liquidator was appointed by the Court on 24 July 2025. Due to liquidation, proceedings against Civex cannot proceed without the consent of the liquidator.¹ On 14 October 2025, further directions were issued by the Authority. Mr Gao was advised of his right to seek consent from the liquidator to proceed against the Civex.

[6] The parties were also advised that in the event the liquidator did not grant consent, then Mr Gao's claims could only proceed in respect of Mr Ashurst, the second respondent.

[7] Mr Gao did not seek the liquidator's consent. Accordingly, Mr Gao's claims only proceed in respect of Mr Ashurst.

[8] In the directions issued by the Authority on 14 October 2025, the parties were provided a further opportunity to submit any additional information or evidence. The parties did not provide the Authority with any further information or evidence.

¹ Companies Act 1993, s 248(1)(c).

[9] Although the liquidation of Civex may give rise to evidential difficulties, nevertheless, if on the evidence available the Authority is satisfied there has been a default in the payment of money by the employer due to a breach of employment standards, the Authority may consider the potential liability of an individual pursuant to section 142Y of the Employment Relations Act 2000.²

[10] At the scheduled start time of the investigation meeting Mr Ashurst was not in attendance. At my direction the investigation meeting commenced 15 minutes after the advised start time to accommodate possible lateness on the part of the respondents. The Authority Officer attempted to contact Mr Ashurst, but with no success.

[11] Mr Gao gave evidence under affirmation. 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

[12] The issues requiring investigation and determination are:

- (a) Is Mr Gao owed wages by Civex and if so, how much?
- (b) Should interest be awarded on any monies found to be owing to Mr Gao by Civex?
- (c) Did Civex breach any employment standards?
- (d) Is Mr Ashurst a person involved in a breach of employment standards?
- (e) Should Mr Gao be reimbursed the filing fee of \$71.55 that was paid to lodge his claim with the Authority?

Is Mr Gao owed wages by Civex and if so, how much?

[13] There was a written employment agreement between Mr Gao and Civex (the agreement). The agreement was not signed by either party. Mr Ashurst sent the individual employment agreement, by email, to Mr Gao on 13 February 2025. Mr Gao commenced employment on 17 February 2025.

[14] The agreement records the position of Mr Gao as civil site engineer, being paid an hourly rate of \$30 per hour, working Monday to Sunday between 7am and 5pm.

² *Lawton v Steel Pencil Holdings Limited (in liq)* [2021] NZEmpC 199 at [37].

[15] Mr Gao has provided the Authority with the only payslip he received from Civex. This payslip covers the period 1 February to 28 February 2025. It records a payment date of 12 March 2025, total earnings \$4,500 (gross) and net pay \$3,726.33.

[16] The payslip records that Mr Gao was being paid for 150 hours worked between 1 February to 28 February 2025. The payslip records bank account details for the direct credit of wages. However, a note on the payslip records:

Hi James, please see updated payment for your salary. This includes 20 hours per week until the end of March.

[17] Mr Gao says that he only worked 93 hours for the company. He completed daily timesheets at the site office in Flat Bush. Mr Gao provided the Authority with a copy of the bank statement for the bank account referred to in the payslip. Mr Gao did not receive any monies from the company.

[18] The Authority reviewed text messages between Mr Gao and Mr Ashurst from 3 February to 1 April 2025. Mr Ashurst apologises to Mr Gao for not paying him and promises on several occasions that he would be paid. Mr Gao raises his concern about not being able to pay rent. Mr Gao asks Mr Ashurst if he could pay him from his personal bank account, and if the company subsequently paid him later then Mr Gao would refund Mr Ashurst.

[19] I am satisfied Mr Gao has not received any wages for the period he worked for Civex. In the text messages Mr Ashurst does not dispute the hours Mr Gao worked or that he is owed wages. On 1 April, by text message, Mr Ashurst confirms Mr Gao has not been paid.

[20] Mr Gao says his last day on site was 28 February 2025, and it was the same day Mr Gao says all the machines were removed from the work site.

[21] I am satisfied Mr Gao is owed wages in the sum of \$2,790 gross and \$223.20 for outstanding holiday pay.³

³ Holidays Act 2003, s 23(2).

Should interest be awarded on any monies found to be owing to Mr Gao by Civex?

[22] I am satisfied that Mr Gao has been deprived of the use of money due to non-payment of wages and therefore is entitled to interest on what is owed. Interest must be calculated and paid on the sum of \$3,013.20, using the civil debt calculator.⁴

Did Civex breach any employment standards?

[23] Section 5 of the Employment Relations Act 2000 (the Act) defines employment standards. This definition includes the provisions of the Wages Protection Act 1983. When any wages become payable to a worker, the employer must pay the entire amount of those wages to that worker without deduction.⁵

[24] I am satisfied that Civex did not pay Mr Gao wages owed at the time they became payable. Therefore, Civex breached an employment standard with reference to s 4 of the Wages Protection Act 1983.

Was Mr Ashurst a person involved in a breach of employment standards?

[25] According to s 142W of the Act, a person is “involved in a breach” if the breach is a breach of an employment standard and the person has aided, abetted, counselled, or procured the breach.⁶

[26] According to s 142Y of the Act, an employee may recover from a person who is not the employee’s employer any wages or other money payable to the employee if there has been a default in the payment of wages to the employee, the default is due to a breach of employment standards and the person is a person involved in the breach within the meaning of s 142W of the Act.⁷

[27] However, arrears of wages may be recovered by an employee, only with the prior leave of the Authority and to the extent the employer is unable to pay the arrears in wages.⁸ Civex is unable to pay the wages owed to Mr Gao because it is in liquidation.

⁴ www.justice.govt.nz/fines/civil-debt-interest-calculator.

⁵ Wages Protection Act 1983, s 4.

⁶ Employment Relations Act 2000, s 142W.

⁷ Employment Relations Act 2000, s 142Y.

⁸ Employment Relations Act 2000, s 142Y(2)(a).

[28] The knowledge required to establish liability for a person “involved in a breach” of employment standards under s 142W(1) of the Act is knowledge of the essential facts that establish the contravention by the employer.⁹

[29] I am satisfied that Mr Ashurst was a director of Civex during the period in which Mr Gao was employed. The text messages between Mr Gao and Mr Ashurst confirm Mr Ashurst knew Mr Gao had not been paid and that he was doing his best to ensure Mr Gao would be paid. Mr Ashurst knew Mr Gao had not been paid by Civex.

[30] Therefore, Mr Ashurst was a person involved in a breach of employment standards. I grant leave to Mr Gao to recover the sum of \$3013.20, plus interest as discussed at paragraph [22], from Mr Ashurst.

Orders

[31] Within 21 days of the date of this determination I order:

- (a) Mr Ashurst pay Mr Gao the sum of \$3013.20; and
- (b) Interest on this sum, as discussed at paragraph [22].

Costs

[32] Mr Gao is entitled to recover the filing fee incurred in lodging this application. Mr Ashurst is ordered to pay Mr Gao the filing fee of \$71.56 within 21 days of the date of this determination. There are no other orders in respect of costs.

Simon Greening
Member of the Employment Relations Authority

⁹ *A Labour Inspector v Southern Taxis Limited* [2021] NZCA 705 at [59].