

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 695
3255939

BETWEEN	KUNXIANG CHEN First Applicant
AND	XENGXI LI Second Applicant
AND	MICHAEL LEE First Respondent
AND	SHIBI ZHAO Second Respondent

Member of Authority:	Sarah Blick
Representatives:	May Moncur, advocate for the applicants Michael Lee, in person Martin Aisingioro, advocate for respondents
Investigation meeting:	15 October 2024 in Auckland and by audio visual link
Submissions and other information received:	At the investigation meeting 4 February 2025, 16 May 2025, 8 July 2025, 29 September 2025, 7 and 12 October 2025
Determination:	30 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kunxiang Chen and Xengxi Li were recruited in China to work as construction workers for NZ Astra Construction Limited (NZ Astra), a construction company based in Auckland which is now in liquidation. They came to New Zealand on Accredited Employer Work Visas (AEWV) in 2023, after allegedly making payments to third party agents.

[2] NZ Astra's liquidators declined consent for these proceedings to continue against it, which included personal grievance claims. The applicants now seek to recover wages, holiday pay and the payments made to the third parties as unlawful premiums. The claims are made against the remaining respondents, on the basis they are persons involved in employment standards breaches. They further seek penalties against the respondents for inciting, instigating, aiding or abetting the breaches of their employment agreements.

[3] Michael Lee is a former director and shareholder of NZ Astra, and Shibi Zhao was a listed director and shareholder at the time of liquidation. Neither NZ Astra nor the respondents lodged statements in reply, nor did the respondents attend a case management conference held with the Authority.

[4] The respondents' response to the claim has been gleaned from the evidence Mr Lee gave at the investigation meeting, which was that NZ Astra neither requested or received the monies alleged to be paid by the applicants. He did not appear to dispute that NZ Astra stopped offering Mr Chen work for performance reasons, and that he was instead offered alternative work. He generally denied knowledge of Mr Li and his circumstances.

The Authority's process

[5] The applicants lodged witness statements and gave evidence at the investigation meeting by audio visual link, with prior leave from the Authority.

[6] Prior to the investigation meeting, advocate Martin Aisingioro had indicated he was acting for one or more of the respondents, but when asked to provide confirmation of his engagement, none was provided. The day prior to the investigation meeting, Mr Aisingioro advised the respondents were unavailable for the investigation meeting. In response, the Authority advised it expected the respondents to attend if they wished to be heard. This was on the basis no valid reason for their inability to attend had been given, the very late notice of their adjournment request, and their failure to apply for leave to respond to the application at any point prior.

[7] Mr Lee attended the investigation meeting. Leave was orally granted for him to respond or reply to the application.

[8] Ms Zhao failed to attend the investigation meeting. Leave was not granted to her as she failed to engage with the Authority or attend the investigation meeting.

[9] Mr Aisingioro did not attend the investigation meeting in person but attempted, and requested, to attend by telephone, citing other undisclosed commitments. The Authority declined that request and the meeting proceeded in his absence.

[10] The three witnesses in attendance were assisted by a Mandarin-speaking interpreter and answered questions under oath or affirmation from the Authority and the representatives.

[11] At the conclusion of the meeting, I indicated a wish to attempt to hear evidence from the alleged agent to whom Mr Chen says he made payments (who I refer to as Ms L in this determination). Following the investigation meeting the Authority sought the provision of contact details for Ms L. Although Ms Moncur indicated Ms L may have been associated with a recruitment company based in Auckland, none of the parties provided sufficient information upon which the Authority could attempt to summons her as a witness, despite a number of requests over time.

[12] Additional inquiries were also made of a licensed immigration adviser (LIA) Jean Hu used by the applicants. Ms Moncur advised of a preference for the Authority's determination to be issued, on the basis of information available. This determination has taken into account relevant correspondence provided, including correspondence apparently involving Ms Hu.

[13] Mr Aisingioro belatedly provided the Authority with closing submissions when given a final opportunity to respond prior to the issuing of this determination. Very limited weight has been given to those submissions, on the basis they contained unsworn/unaffirmed evidence and addressed the applicants' personal grievance claims, which do not require determination.

[14] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination does not record all the evidence and submissions received, and fully considered, during the Authority's investigation but states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter, and specifies orders made as a result.

The issues

[15] The following are the issues for investigation and determination:

- (a) Did NZ Astra and/or the respondents seek and/or receive unlawful premiums from the applicants, and if so, should leave be granted to recover the claimed premiums from the respondents as persons involved?
- (b) Did NZ Astra fail to pay the applicants' wages and holiday pay, and if so should leave be granted to recover these from the respondents?
- (c) Did NZ Astra breach the applicants' individual employment agreements and if so did Mr Lee and/or Ms Zhao incite, instigate, aid, or abet the breaches, such that penalties should be imposed on them?
- (d) Should either party contribute to the costs of representation of the other party?

Background

Evidence regarding Mr Chen's claim

[16] Mr Chen is from China. Mr Chen says he learned about Ms L through promotional videos on social media apps TikTok and Kuaishou in 2022. He says she primarily offered overseas employment services, and claimed that by working in New Zealand a person could earn hundreds of thousands of RMB annually. In early 2023, Mr Chen contacted Ms L to register for overseas employment.

[17] After he submitted a work video to Ms L, he says she informed him he needed to have a video interview with NZ Astra and pay an interview fee of 10,000 RMB, which would be fully refunded if the interview failed. While he does not remember the date of the interview, he says Ms L and Mr Lee attended. Mr Lee acknowledges

attending a video call. Two days after the interview, Mr Chen says Ms L advised he had successfully passed it.

[18] After passing the interview, Mr Chen says he began preparing various documents required for a work visa. His employment agreement (Mr Chen's IEA) was in English, which he says he could not understand, but signed it as required. Mr Chen's IEA stated he would be paid \$29.66 per hour, and guaranteed a minimum 30 hours each week. Mr Chen's IEA included a 90-day trial period provision, as did Mr Li's.¹ During the trial period, it stated the normal four week notice period did not apply - instead, either the employee or the employer may end the agreement by giving one week notice. It is signed by two parties and dated April 2023.

[19] Mr Chen gave evidence that all expenses, including third-party fees totalling 65,000 RMB, were paid to Ms L via WeChat and Alipay. Mr Chen has provided screenshots of payments dated 14 November 2022 to 15 May 2023 identifying Ms L's first name as the recipient of payments totalling 57,300 RMB (approximately \$13,000 NZD).

[20] At the investigation meeting Mr Lee stated Ms L was a "friend" of NZ Astra and acted as agent to assist with labour/recruitment. He denies NZ Astra or any of the companies he was involved with received any of Mr Chen's money from Ms L.

[21] Mr Chen says the Ms Hu handled his visa application, and her services were arranged by his employer. Mr Chen's work visa application was approved on 3 May 2023. His visa conditions included that he may only work as a construction worker for NZ Astra, and must be paid \$29.66 per hour. A large payment of 25,000 RMB shows as paid on 5 May 2023, after the visa was granted.

[22] Mr Chen entered New Zealand on 13 May 2023. Upon arrival, he reports not initially having NZ Astra's contact information. A few days later, Ms L added him to a WeChat group, where Ms L introduced a person (who I refer to as Mr K in this determination) as the owner of a takeaway delivery company and a good friend of NZ Astra.

¹ From 29 October 2023 accredited employers were not able to use 90-day trial periods in employment agreements when hiring people on an AEWV.

[23] Mr Chen refers to Mr Lee as his “boss”. On the way to the worksite one day, Mr Chen says Mr Lee told him and others that since they were new, their hourly wage would be \$23 per hour, despite the agreed rate in Mr Chen’s IEA. He says he did not object, fearing dismissal.

[24] On 18 May 2023, Mr Chen reports being notified to start working at a frame factory.

[25] Screenshots of WeChat messages between Mr Chen and Mr Lee are before the Authority. Mr Lee has not disputed the reliability or accuracy of the translated messages between them.

[26] Messages on Sunday 21 May 2023 show Mr Chen asked where he was working the next day, to which Mr Lee responded “8:30, at the frame factory”. Mr Chen says he worked the next day.

[27] On 22 May 2023 Mr Chen sent Mr Lee a message providing his Inland Revenue details, and asked where he was working the next day, to which Mr Lee responded he would be at the factory again.

[28] At the investigation meeting, Mr Lee stated during the video interview that Mr Chen claimed to have experience, but when he started to work at the factory, there were concerns about Mr Chen’s training and skills. He suggested other workers did not wish to work with Mr Chen due to this, and Mr Lee said he finally asked Mr Chen to do a cleaning job. At the investigation meeting Mr Chen said his experience was in carpentry.

[29] On 23 May 2023 Mr Chen messaged Mr Lee again asking if he was still working at the framing factory tomorrow. Their exchange went as follows:

Mr Lee: Tomorrow, no. Stay home and rest.

Mr Chen: Is there not much work to do, boss?

Mr Lee: Mr. [W] said you don't need to go anymore

Mr Chen: I am very capable of enduring hardship. I'm just not used to it yet and need some time to adapt. After all, I really have experience in China as a main construction carpenter and tiler.

Mr Lee: I don't know. I'll ask tomorrow.

[30] A short time later Mr Lee advised Mr Chen to get up earlier the next day, be at the company by 7:30am, and go to a construction site to do cleaning, which subsequent messages confirm he did the next day.

[31] On 24 May 2023 messages between Ms L and Mr Chen show his role was being reconsidered:

Ms L: [Mr K] will go talk to the boss to see if it's possible to transfer to another position to try.
Mr Chen: Ok, sister.
Ms L: If that doesn't work out, you can start by doing delivering takeaways.
Ms L: [Mr K] will look after you; he is the boss of the delivery company
Mr Chen: The boss asked me and [Mr W] to go to the construction site for cleanup work today.
Ms L: If that doesn't work out, you can start by doing delivering takeaways
Ms L: Alright, you go and make sure to perform well.
Ms L: It's best if you can stay at the construction site, but even if you can't, there are other options.
Don't be afraid
Mr Chen: I'm very capable of enduring hardship, big sister

[32] Mr Chen says on 28 May 2023 he was told not to come to work anymore. That afternoon, when he asked Mr Lee again where he was working the next day, Mr Lee responded “no arrangements for tomorrow”, which Mr Chen appears to have accepted.

[33] Messages show on 29 May 2023 Mr Chen asked what the plan was for the next day, to which Mr Lee responded:

Mr Lee: you should approach [Ms L]
Mr. Chen: yes, boss
Mr Lee: I can introduce you to one of the companies we collaborate with that outsources work to us. I'll refer you to them to see if they need someone. You can't be too picky; you need to think about how to improve your skills. Ask Mr K if he can give you some casual work. Otherwise, I'll ask Mr K. He said he can guarantee you work.

[34] Mr Lee said it was a delivery job and provided Mr K's contact details.

[35] Subsequently, Mr Chen says Ms L and Mr K directed him to deliver takeaways. Mr Chen believes Ms L, Mr K and Mr Lee must have had some sort of arrangement because his wages for working for the food delivery company were paid through NZ

Astra. The “second boss” of NZ Astra (who I refer to as Ms W) appears to have been the contact point for the delivery driver wages as well as the factory work for NZ Astra.

[36] Ms Chen says he could barely make ends meet by delivering takeaways. On 5 September 2023, Mr Chen returned to China.

[37] Undated WeChat screenshot messages between Mr Chen and Ms Hu show her responding that she did not know the situation but that Ms L had been introduced by Mr Chen’s “boss”. She said her agency was commissioned by Mr Chen’s employer to process the visa, and they were only responsible for the visa and charged a fee of \$1,500. In what appears to be the same group chat, Ms L stated:

Ms L: When you approached me, I sent you a clear quote that included the services, content, and procedures. The amount was in RMB. If you forgot, you can check the chat history. You thought the quote was reasonable and paid a deposit before we could proceed. It's all in Chinese; there shouldn't be anything you don't understand. I suggest you still ask May for help, as we have discussed all the changes between us.

Evidence regarding Mr Li's claim

[38] Mr Li is also from China. He says in China he used to do construction work interior decoration, drive deliveries, and work as a warehouse worker. In 2022, he learned about job opportunities in New Zealand through a host (the host) on a TikTok live stream. The host claimed that by working in New Zealand a person could earn more than 20,000 RMB per month and have their children attend school in New Zealand for free. Mr Li says it was held out that the visa application process was simple with a guaranteed approval.

[39] Mr Li contacted the live stream host and his assistant (the assistant), hoping to arrange for work in New Zealand. Mr Li has provided screenshots of WeChat messages dated 25 November 2022 he says were from the assistant. They state the total fee for the application process was 60,000 RMB, which comprised of:

Registration fee of 5,000 yuan, submission of a resume, and recording of a work video.

Match with an employer and arrange an interview (if a job contract is not secured or the interview is unsuccessful, we will refund the 5,000 yuan).

Upon passing the interview, pay the remaining balance of 25,000 yuan.

Provide the necessary documents for the visa application, fill out forms, and schedule a medical examination.

Submit the visa application.

After the visa is approved, pay the final balance of 30,000 yuan

[40] Another message identified miscellaneous fees plus additional third-party costs which would be borne by Mr Li. A message provided a bank account name and number for a Chinese-based labour company. Mr Li says he paid, as required, 5,000 RMB to that company on 26 November 2022, and 25,000 RMB again on 12 December 2022. Screenshot records of those payments have been provided.

[41] Mr Li says the assistant arranged a video interview with NZ Astra which took place on 4 February 2023. Mr Li says after the interview, he was informed he had passed. Mr Li believes Mr Lee attended the video interview, which Mr Lee strongly denies.

[42] Mr Li has provided a copy of his employment agreement with NZ Astra (Mr Li's IEA), which is signed by two parties and dated 28 February 2023. It records an hourly rate of \$27.76 per hour with guaranteed minimum of 32 hours of work.

[43] Mr Li's work visa application was approved on 10 March 2023, after which he paid the remaining 30,000 RMB on 12 March 2023. His visa conditions included that he may only work as a construction worker for NZ Astra, and must be paid \$27.76 per hour.

[44] Mr Li gave evidence that during this period, the assistant informed him that a person (who I refer to as Ms N) would coordinate with him in New Zealand. At the investigation meeting Mr Li said he did not know what type of relationship Ms N had with NZ Astra. A WeChat message confirms Mr Li should discuss his arrival plans with Ms N.

[45] Mr Li has provided what appears to be a WeChat message from Ms N stating:

Ms N: Currently, there is indeed competition among construction workers. It's normal for many local workers to have no jobs. Our company guarantees work, but it depends on your skills. We will provide training, but if you do not improve and continue to delay and hinder other workers, it will be difficult for us to explain to the other workers

Ms N: You might consider learning some skills on your own. After entering the country, if you really can't adapt to the construction site, we will also consider other jobs for you, so you won't be directly fired. We currently need delivery drivers—those who can drive and are willing to endure hardship can ensure their income. Once your wife becomes familiar with the environment, you can buy a used car. However, for every job I offer you, you still need to be prepared to go there and endure hardship; that's just the basics.

Mr Li: Okay, I will consider it carefully.

[46] Mr Li arrived in Auckland on 8 April 2023, and was in contact via WeChat with the assistant and Ms N. He asked what next the steps were. Ms N advised him to open a bank account, get a tax number and buy a used car. He says he followed these instructions, including buying a car.

[47] Another message on about 10 April 2023 has the following instructions:

Ms N: I'll arrange for you to deliver food directly, so you don't need to go to the construction site. With your skill level, going to the site would just be a waste of time and energy.

Ms N: Hurry up and look at the cars, get familiar with them. Delivering food is better than working on a construction site, at least for you

Ms Li: Does that mean I need to change my visa? Can I do deliveries if I don't speak English?

Ms N: No need to change the visa; don't worry about things you shouldn't worry about.

Ms N: Chinese food delivery platform.

[48] Mr Li says he had no choice but to accept the arrangement. On or around 12 April 2023 Mr Li bought a used car as directed. He says he worked for two months and work was arranged day by day with the delivery company. Mr Chen did not recall hearing of Mr K.

[49] On or around 17 May 2023, he and Ms N exchanged messages in which Mr Li asked if there was still work at the carpentry boss' place, and that he wanted to learn

some carpentry, painting, and plastering. He advised he wanted an extra job to earn more. Ms N advised there was no such work available.

[50] Mr Li says he did not have any contact with Mr Lee while in New Zealand, as he was told Mr N was the person to contact.

[51] Through Mr Aisingioro's submissions, the respondents say Mr Li was never an employee, NZ Astra never signed an employment agreement with him, and Mr Li never reported to work. They allege Mr Li was involved in a driving incident and he left New Zealand due to that.

[52] By the end of June 2023, due to financial difficulties, Mr Li says he could not pay for accommodation, so moved out of his accommodation and slept in his car at night. He says he was unable to find new work. On 6 August 2023, Mr Li returned to China.

[53] Mr Li gave evidence that he asked for a refund from the assistant but was told he would not be given a refund of the monies he had paid.

Mr Lee and Ms Zhao

[54] The Companies Register shows Mr Lee ceased to be a director and shareholder of NZ Astra in November 2020. He says he sold the business to Ms Zhao and Ms W.

[55] Ms Zhao became a director and shareholder of NZ Astra in September 2022. There is no evidence Mr Chen or Mr Li had dealings with Ms Zhao, although it was confirmed at the investigation meeting that Ms Zhao's name is recorded as being in their IEAs.

[56] At the investigation meeting Ms Moncur put to Mr Lee that he was the general manager (GM) of NZ Astra, citing a reference in an email communication in which the LIA referred to Mr Lee as such. Mr Lee denied being GM of NZ Astra, and said it was Ms Zhao and the second boss who operated it. He said he owns a framing company which was "tightly connected" to NZ Astra and that they cooperated together, with his company manufacturing frames and NZ Astra using them on job sites. He said they shared the same premises but occupied different parts of it.

[57] At the investigation meeting, Ms Moncur put a message to Mr Lee, which he acknowledged sending to her, regarding resolution of Mr Chen’s employment relationship problem with NZ Astra. That proposed resolution involved NZ Astra inviting Mr Chen to return to work for NZ Astra on increased hours with “compensation for the hours previously provided”. Mr Lee explained that after Ms Moncur asked for a resolution, he and Ms W worked hard to contact Ms Zhao, who was offshore, to approve the terms in the message. Mr Lee stated Ms Zhao and Ms W contacted Ms L to return the money, and that initially she had agreed to, but did not.

[58] When it was put to Mr Lee that he was effectively managing Mr Chen, Mr Lee responded that was incorrect – that NZ Astra paid wages to workers and, he only indicated to NZ Astra how many workers he needed.

Analysis

(a) *Did NZ Astra fail to pay the applicants’ wages and holiday pay, and if so should leave be granted to recover these from the respondents?*

Mr Chen

[59] Mr Chen claimed “wage losses” for the period between 26 May 2023 and 4 September 2023, while he was in New Zealand ready and willing to work for NZ Astra (a total 14.5 weeks). Based on his contractual rate and hours this is calculated by him as $\$29.66 \times 32 \text{ hours} \times 14.5 \text{ weeks} = \$13,762.24$ (gross).

[60] Mr Chen’s evidence is that he commenced employment on 18 May 2023, but was summarily dismissed on 26 May 2023 due to alleged performance concerns.² I find that is in fact what occurred – his employment ended on either that date or at the latest on 28 or 29 May 2023 when Mr Lee advised him there was no work, and to contact Ms L. While there may have been an arrangement with the delivery company that NZ Astra would be the conduit in paying his delivery driving wages, the evidence

² The same date was referred to in the applicants’ original statement of problem and amended statement of problem as the date of dismissal.

is not sufficient to establish NZ Astra remained Mr Chen's employer during that later period.

[61] Mr Chen's wage losses following the termination of his employment could have properly been pursued as a personal grievance remedy against NZ Astra, had consent to continue these proceedings against it been granted. His claim for arrears of wages or lost wages is not made out.

Mr Li

[62] Mr Li claimed "wage losses" for the period between 10 April 2023 and 6 August 2023, while he was in New Zealand ready and willing to work for the employer (a total 12.5 weeks). Based on his contractual rate and hours he calculated this as $\$27.76 \times 32 \text{ hours} \times 12.5 \text{ weeks} = \$11,104$ (gross).

[63] There is no evidence Mr Li commenced working for NZ Astra after arriving in New Zealand. The evidence is not sufficient to establish NZ Astra was or remained Mr Li's employer during his period of delivery driving. Again, Mr Li's wage losses could have properly been pursued as a personal grievance remedy against NZ Astra had consent to continue these proceedings against it been granted. His claim for arrears of wages lost wages is not made out against the respondents.

[64] As with Mr Chen, Mr Li's wage losses following the termination of his employment could have properly been pursued as a personal grievance remedy. As he has been unable to pursue personal grievances against NZ Astra, his claim for arrears of wages or lost wages is not made out.

Holiday pay

[65] The applicants' claims and evidence in relation to holiday pay were not articulated or related to periods during which they were no longer employed. No claim for holiday pay arrears is made out.

Conclusion

[66] As defaults in payment of wages and holiday pay due to a breach of employment standards have not been established, leave cannot be granted to recover monies from the respondents as persons involved to the extent NZ Astra could not pay them.³

(b) Did NZ Astra breach the applicants' IEAs and if so did Mr Lee and/or Ms Zhao incite, instigate, aid, or abet the breaches, such that penalties should be imposed on them?

[67] The applicants ask that penalties be imposed on the respondents under s 134 of the Act. The applicants' claims regarding breaches of their IEAs were not clearly particularised, although I understood they related to NZ Astra failing to pay their wages. Although breaches may have occurred, the claim and evidence of breaches related to wages was too vague upon which to make findings upon which a penalty claim could be founded.

(c) Did NZ Astra and/or the respondents seek and/or receive unlawful premiums from the applicants, and if so, should leave be granted to recover the claimed premiums from the respondents as persons involved?

[68] Under s 12A of the Wages Protection Act 1983 (WPA), a person is prohibited from requiring an employee or prospective employee to pay "an employment premium" to obtain employment. Any employee who is the subject of any such breach may recover the amount of the premium.

[69] The applicants sought leave from the Authority under s 11A of the WPA and s 142Y of the Act to recover the alleged premium amounts to the extent NZ Astra could not pay them.

[70] In assessing the evidence before the Authority, while the evidence on the balance of probabilities established Mr Chen paid monies to Ms L, there was insufficient evidence to show those payments were sought or received by NZ Astra, or

³ Employment Relations Act 2000, ss (1) and (2).

sought or received by either of the respondents. As Ms L was not a party to these proceedings, no liability finding is made against her.

[71] Further, while the evidence indicated Mr Li paid monies to the labour company based in China, there was also insufficient evidence to show those payments were sought or received by NZ Astra, or sought or received by either of the respondents.

[72] For these reasons, the applicants' claims under s12A of the WPA were unsuccessful. The Authority must decline leave to recover monies from the respondents as persons involved under s 11A of the WPA and 142Y of the Act, the relevant criteria for liability under those sections not having been established.

Outcome

[73] The applicants have not established any of the claims against the respondents. I acknowledge this outcome will be disappointing for the applicants.

Costs

[74] Given Mr Lee was largely self-represented, Ms Zhao took no part in the investigation, and Mr Aisingioro's and very limited involvement as representative, costs in this matter are to lie where they fall. No order for costs is made.

Sarah Blick
Member of the Employment Relations Authority