

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 193
3335340

BETWEEN

ZIGEN WONG
Applicant

AND

NZAT CONSTRUCTION
LIMITED
Respondent

Member of Authority: Matthew Piper

Representatives: Aimee Cai, advocate for the Applicant
No appearance for the Respondent

Investigation Meeting: 29 January 2026 in Auckland

Determination: 31 March 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] ZiGen Wong claimed that NZAT Construction Limited (NZAT Construction) employed him but did not pay his wages over multiple months. He further claimed that he was unjustifiably constructively dismissed. Mr Wong sought wage arrears and, in respect of the termination of his employment, lost wages and compensation for injury to his feelings.

[2] NZAT Construction did not participate in the Authority's investigation other than to email the Authority saying it did not employ staff and did not know the applicant. I am satisfied that NZAT Construction had sufficient opportunity to participate in the Authority's process.

The Authority's investigation

[3] The Authority contacted NZAT Construction on 26 March 2025 and was given an email address for communications. The company's then director Vin Kay Low emailed the Authority on 29 April 2025 denying it had employed Mr Wong.

[4] NZAT Construction did not lodge a statement in reply. It was invited to participate in a case management conference, but did not respond. The case management conference proceeded in its absence.

[5] The Authority's directions regarding the issues and timetabling of its investigation were served on NZAT Construction, as was the notice of investigation meeting.

[6] Further unsuccessful attempts to contact NZAT Construction were made on the day of the investigation meeting and the start of the meeting was briefly paused to allow NZAT Construction to attend. Ultimately, given NZAT Construction's lack of engagement the Authority's investigation proceeded in its absence.

[7] For the Authority's investigation a written witness statement was lodged from Mr Wong, who also answered questions under affirmation from me. Ms Cai gave oral closing submissions at the conclusion of Mr Wong's evidence.

[8] 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

[9] The issues requiring investigation and determination were:

- (a) Was Mr Wong a permanent employee of NZAT Construction?
- (b) Is Mr Wong owed wage arrears by NZAT Construction?
- (c) Was Mr Wong dismissed by NZAT Construction and, if so, was the dismissal justified?
- (d) If NZAT Construction's actions were not justified by dismissing Mr Wong, what remedies should be awarded, considering:

- (i) Lost wages (assessing the period for which loss is claimed; what was done, if anything, in that period to find alternative work and income; and whether what was, or was not done over that period was reasonable in the circumstances); and
 - (ii) Compensation under s123(1)(c)(i) of the Act?
- (e) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Wong that contributed to the situation giving rise to his grievance?
 - (f) Should either party contribute to the costs of representation of the other party.

Background

[10] Mr Wong is a Malaysian national who came to New Zealand in September 2023 on a visitor visa. He told the Authority he hoped to find an employer who would sponsor him so he could obtain a work visa.

[11] Through a friend of a friend, Mr Wong was introduced to Jason Liew. Mr Wong was told Mr Liew may be able to offer him work in the construction industry.

[12] Mr Wong contacted Mr Liew on 25 September 2023 and was invited to attend a construction site in downtown Auckland regarding potential work. He attended the site and started as a labourer the next day. When Mr Wong arrived at site, he was given an ID card and a PIN to get in and out.

[13] NZAT Construction did not offer Mr Wong an employment agreement or any other contractual documentation. However, Mr Liew told Mr Wong that he would be needed from 7am until 5pm, Monday to Friday. Mr Wong said he and Mr Liew agreed to an hourly rate of \$25 per hour.

[14] Initially Mr Wong's hours of work were recorded in a document entitled "NZAT Construction LTD Weekly Time Sheet". Mr Wong said that this method of recording hours stopped but that he continued to work the same pattern.

[15] No end date for the work was discussed, and Mr Wong told the Authority he believed the working relationship would be ongoing, including potentially on other worksites.

[16] At no time while working for NZAT Construction did Mr Wong have a visa entitling him to work in New Zealand, nor did he have an IRD number or pay tax. All payments made by NZAT Construction to Mr Wong were made in cash. No payslips were provided to Mr Wong.

Mr Wong's pay

[17] Mr Wong told the Authority that he was paid for his first week's work in his second week, but that after this payment became irregular.

[18] Mr Wong said that he was paid for the work he performed up to Christmas 2023, but that he received this money sporadically between January and April of 2024. He said he was not paid for any work performed in between 8 January 2024 and 5 May 2024 but that he continued to work the same hours each week, apparently because the sporadic payments and assurances from NZAT Construction caused him to believe he would receive his wages.

[19] Mr Wong said that during March and April 2024 he urged Mr Liew to pay him his wages and that although Mr Liew continually promised to pay him in full for his work, he would then fail to do so. This ultimately led to Mr Wong losing confidence he would be paid for his work and finding it increasingly difficult to pay his living expenses.

[20] Mr Wong claimed that NZAT Construction's failure to pay his wages was a serious breach of the agreement he had with the company and meant he could not continue in the job.

[21] On 5 May 2024 Mr Liew contacted Mr Wong and said the construction site had reduced staff and he was to "take a break for now". Mr Wong then stopped working and did not return to site for the week starting 6 May 2024.

[22] On 7 May 2024 a new site "at the South" was raised by Mr Liew, but no work at that site ever eventuated for Mr Wong.

[23] After an exchange between Mr Wong and Mr Liew on 27 July 2024 where Mr Wong again complained that he had not been paid and Mr Liew accepted this but said

he did not have the ability to pay, Mr Liew offered to give Mr Wong \$2,000. Mr Liew then sent a message saying “you should hurry up and buy your ticket home. I’ll transfer the rest to you bit by bit later”.

[24] Mr Wong was paid \$2,000 in cash on around 28 July 2024. He told the Authority he did not receive any of the further wages owed to him by NZAT Construction.

Was Mr Wong a permanent employee of NZAT Construction?

[25] Whether Mr Wong was employed by NZAT Construction is a matter to be decided with reference to s 6 of the Act. Section 6 defines an employee as a person employed by an employer to do any work for hire or reward under a contract of service. The section requires the Authority, in deciding whether a person is an employee, to determine “the real nature of the relationship between them”.¹

[26] In making this assessment the Authority must consider all relevant matters, including matters that indicate the intention of the parties, but must not treat any label applied by the parties as determinative of the nature of their relationship.² This is a reference to ascertaining the parties’ common intention about the substance of their mutual rights and obligations, objectively ascertained. The parties’ respective subjective intentions are irrelevant to the question of “real nature” of the relationship.³

[27] These statutory provisions are informed by caselaw which has developed on the topic, which establishes principles for determining the “real nature” of the relationship. The inquiry into the “real nature” of the relationship is intensely factual and is to be objectively assessed. It turns on what a reasonable person would understand the substance of the relationship to be.

[28] The starting point for assessing whether a person was an employee should be the parties’ mutual rights and obligations as set out in any contractual documentation. In this case there were no such documents.

[29] Following this analysis, it is appropriate to apply the law found in *Bryson v Three Foot Six Limited*⁴ where the Supreme Court confirmed the following tests are to

¹ Section 6(2) of the Employment Relations Act 2000

² Section 6(3) of the Employment Relations Act 2000

³ *Rasier Operations Bv v E TŪ INC* at para [211]

⁴ [2005] NZSC 34

be considered when analysing the “real nature” of the relationship. These are the “control test”, the “integration test” and the “fundamental or economic reality test”.

[30] Mr Wong contacted Mr Liew looking for labouring work. He then presented to a construction site and commenced the labouring work that was given to him on the basis of agreed hours and an agreed hourly rate. He was given a PIN for access and a card purporting to show his safety credentials. He did not know others on the site, other than having met them there.

[31] Mr Wong’s hours were regular and he had little skills or experience to offer beyond basic labouring. He worked as directed at the site and was not in business on his own account. He did not perform labouring work for any other companies while he was engaged by NZAT Construction.

[32] Considering the above factors, I find Mr Wong was employed by NZAT Construction between 26 September 2023 and 5 May 2024.

[33] This conclusion is not disturbed by the fact Mr Wong did not have a work visa or that he admits not paying tax. It is not within the jurisdiction of the Authority to determine taxation or immigration law compliance.

Is Mr Wong owed wage arrears by NZAT Construction?

[34] Given Mr Wong was employed by NZAT between 26 September 2023 and 5 May 2024, he was entitled to be paid in accordance with the terms that had been agreed at the start of his engagement. I find that he was offered and accepted a rate of \$25 per hour for 9.5 hours per day, five days per week. This amounts to \$1,187.50 gross per week.

[35] Mr Wong told the Authority he was not paid for the work he performed in the weeks between 8 January 2024 and 5 May 2024. This would mean Mr Wong worked but was not paid for 17 weeks’ work.

[36] Although in July 2024 there were some exchanges regarding outstanding amounts owed by NZAT Construction to Mr Wong, these did not create reliable foundations for the calculation of arrears.

[37] Given NZAT Construction has not participated in the Authority's investigation process and has not produced wage and time records, I accept Mr Wong's account that he worked the same hours each week.

[38] Based on the evidence presented to the Authority, I find it likely that NZAT Construction owes Mr Wong 17 weeks' wages.

[39] I therefore find the wage arrears owing to Mr Liew were \$20,187.50, less the \$2,000 paid to him in cash on around 28 July 2024. Mr Liew is therefore owed \$18,187.50 in wage arrears.

[40] I accept Mr Liew did not receive holiday pay and it is therefore appropriate to add 8% being a further \$1,455.00 to account for what Mr Liew should have been paid for annual leave.

[41] All figures referred to above, including the cash payments made, are gross figures. NZAT and Mr Wong respectively will have obligations to the Inland Revenue Department that each should ensure they comply with.

Was Mr Wong dismissed by NZAT Construction and, if so, was the dismissal justified?

[42] An unjustified constructive dismissal may occur where a fundamental breach of duty has caused the employee to resign.⁵ The breach of duty needs to be sufficiently serious as to be capable of being interpreted as a repudiation of the employment agreement and the employee ending the relationship also had to be a reasonably foreseeable result of the employer's breach.

[43] A sustained failure to pay wages on time or at all, as occurred here, can amount to an unjustified constructive dismissal.

[44] Mr Wong raised his concerns about not receiving his pay repeatedly and they were not addressed. This failure to pay wages considered together with Mr Liew telling Mr Wong that he was no longer needed on site, means I have little difficulty finding that Mr Wong has a personal grievance for unjustified constructive dismissal.

⁵ *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372

Remedies

[45] Having succeeded in establishing a personal grievance for unjustified dismissal, Mr Wong is entitled to consideration of whether remedies should be awarded in his favour. He seeks lost wages and compensation for humiliation and injury to feelings pursuant to ss 128 and 123(1)(c)(i) of the Act.

Lost remuneration

[46] In order for Mr Wong to be awarded lost remuneration under s 128 of the Act, he must establish that he has lost remuneration as a result of the personal grievance.⁶ As part of establishing this position Mr Wong must be able to show he mitigated, or at least attempted to mitigate, any lost wages flowing from his dismissal.

[47] In addition to Mr Wong not having a work visa while he worked for NZAT Construction, he also did not apply for one after his employment concluded. This means he did not take a fundamental step toward being able to lawfully mitigate his loss.

[48] Although not having a visa does not prevent Mr Wong from being found to be an employee by dint of s 6 of the Act, I find he was not able to work lawfully after the termination of his employment with NZAT Construction and failed to mitigate his losses by seeking a work visa. Mr Wong's inability to work lawfully after the termination of his employment with NZAT Construction and his failure to take steps to change this position means he is not entitled to an award of lost wages.

Compensation for humiliation and injury to feelings

[49] Mr Wong seeks compensation for humiliation, loss of dignity and injury to feelings pursuant to s123(1)(c)(i) of the Act. In assessing whether such an award should be made, the Authority must quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of the unjustified actions.⁷

[50] I accept that Mr Wong found being strung along and not paid his wages on time caused him emotional upset and anxiety. He felt concerned that he may not be able to pay living expenses or be able to afford to return home because of NZAT Construction's unjustified actions.

⁶ Section 128(1)(b).

⁷ *Richora Group Ltd v Cheng* [2018] NZEmpC 113

[51] Mr Wong also said the ending of his employment was also a source of injury to his feelings because he felt increased anxiety about whether he would receive what he was owed.

[52] Mr Wong was a robust young man. He did not give evidence of any instances of feeling humiliated in front of his community or peers. Rather, the main impact on him was the emotional harm caused by not knowing how he could meet his expenses. There was no other evidence provided to the Authority to show he had suffered material emotional harm, humiliation or indignity.

[53] Although I accept Mr Wong would have suffered some emotional impact, in all the circumstances and based on the evidence received, I assess the harm and loss as at the lower end of the impact seen in other cases. I quantify the appropriate compensation as being \$8,000.00.

Contribution

[54] Where it has awarded remedies in respect of a personal grievance, the Authority must, in deciding both the nature and extent of the remedies to be provided, consider the extent to which the actions of the employee contributed towards the situation that gave rise to the grievance.⁸

[55] Where there is relevant contribution, the Authority may reduce the remedies awarded. In this regard, more than simple cause and effect is required. The employee's actions must be blameworthy or wrongful which, when assessed in a commonsense way, contributed to the situation giving rise to the grievance.⁹

[56] Although Mr Wong was working without a visa and was not paying tax, matters which could properly be regarded as blameworthy, these factors were not causative of the situation giving rise to his grievance, and it appears they were condoned or encouraged by NZAT Construction.

[57] The assessment of blameworthy conduct's relevance to contribution requires consideration of how the conduct related to the grievance, as established. In Mr Wong's

⁸ Section 124 of the Act.

⁹ Xtreme Dining Ltd v Dewar [2016] NZEmpC 136 at [175]

case there is no relevant connection between the established grievance and the above referred behaviours. It would therefore not be correct to apply a reduction for contribution on account of them.

Costs

[58] Given NZAT Construction's non-attendance at the Authority's investigation meeting, the case was dealt with efficiently over the course of a half-day, inclusive of Ms Cai's submissions.

[59] The starting point for an award of costs is the daily tariff of \$4,500.00. However, given the brevity of the investigation meeting and the limited documents provided to the Authority, a downward adjustment of the tariff to \$3,500.00 is appropriate.

[60] Mr Wong is also entitled to recover his filing fee.

Summary and orders

[61] For the reasons set out above, within 28 days of the date of this determination, NZAT Construction is ordered to pay Mr Wong:

- a. \$18,187.50 (gross) in wage arrears;
- b. \$1,455.00 (gross) in unpaid holidays entitlements;
- c. \$8,000.00 in compensation pursuant to s 123(1)(c)(i) of the Act;
- d. \$3,500.00 as a contribution to costs; and
- e. \$71.55 in terms of reimbursement of his lodgement fee.

Matthew Piper
Member of the Employment Relations Authority